

Stage 03: Workgroup Report

Connection and Use of System Code (CUSC)

CMP196 Revisions to “recommendations” in the final CUSC Modification Report

What stage is this document at?

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft CUSC Modification Report
06	Final CUSC Modification Report

This proposal seeks to modify the CUSC to replace all references to “recommendations” in the CUSC Modification Report other than that which refers to the recommendation of the CUSC Modifications Panel to ensure existing rights of appeal are maintained

This document contains the discussion of the Workgroup which formed in March 2011 and the resultant Workgroup Consultations.



The Workgroup recommends:

The implementation of CMP196 as it better facilitates the Applicable CUSC Objectives



High Impact:

CUSC Parties



Low Impact:

Code Administration Code of Practice
CUSC Modification Report Template

Contents



Any Questions?

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1	Summary	3
2	Description of Proposed Modification	4
3	Summary of Workgroup Discussions.....	5
4	Impact and Assessment.....	11
5	Proposed Implementation.....	12
6	Recommendations.....	13
7	Responses	15
	Annex 1 - Proposed Legal Text	17
	Annex 2 – Ofgem comments on legal drafting.....	19
	Annex 3 - Workgroup Terms of Reference	20
	Annex 4 – Proposal Form.....	25
	Annex 5 - Workgroup Attendance Register.....	29
	Annex 6 – Workgroup Consultation Responses.....	30

About this document

This is the final Workgroup Report, which includes the deliberations of the Workgroup, responses from the two Workgroup Consultations and the final recommendations of the Workgroup.

Document Control

Version	Date	Author	Change Reference
1.0	16/06/11	National Grid	Final version for Panel submission

1 Summary

- 1.1 CMP196 was proposed by National Grid Electricity Transmission (NGET) and submitted to the CUSC Modifications Panel for their consideration on 24th March 2011. The Modifications Panel determined that the proposal should be considered by a Workgroup and that the Workgroup should report back to the CUSC Modifications Panel meeting within two months following a period of Workgroup Consultation.
- 1.2 CMP196 – “Revisions to “recommendations” in the final CUSC Modification Report” seeks to amend the CUSC to replace all references to “recommendations” in the CUSC Modification Report with the exception of that which refers to the recommendation of the CUSC Modifications Panel. This is ultimately to ensure that parties’ existing rights of appeal are maintained. This arose from an issue highlighted from CAP190 “Two-thirds Majority Voting requirement for CUSC Panel recommendations on Modifications arising from licence obligations, Authority requests or obligations”. More detail is provided in Section 2 of this report.
- 1.3 National Grid Electricity Transmission (NGET) has raised CMP196 on behalf of the industry following developments under CAP190. The Workgroup met on 29th March 2011 and the members accepted the Terms of Reference for CMP196. A copy of the Terms of Reference is provided in Annex 3. The Workgroup considered the issues raised by the CUSC Modification Proposal and worked through the Terms of Reference including reviewing the illustrative legal text provided.
- 1.4 A Workgroup Consultation was issued on 8th April 2011. Following closure of the Workgroup Consultation, a concern was raised by Ofgem regarding the draft legal text. A Workgroup meeting was held on 10th May 2011 to discuss Ofgem’s comments and it was agreed to make changes to the legal text. The timetable for CMP196 was extended by one month, following agreement by the CUSC Modifications Panel and a second consultation was issued on 19 May 2011.
- 1.5 The Second Workgroup Consultation closed on 2 June 2011 and five responses were received. These responses and the responses to the first Consultation can be found in Annex 6. A final Workgroup meeting was held on 3 June 2011 and the five Workgroup members voted unanimously that CMP196 better facilitates the Applicable CUSC Objectives and should be implemented.
- 1.6 This Workgroup Report has been prepared in accordance with the Terms of the CUSC. An electronic copy can be found on the National Grid Website, www.nationalgrid.com/uk/Electricity/Codes/, along with the CUSC Modification Proposal Form.

2 Description of Proposed Modification



How does a Competition Commission Appeal work?

The Competition Commission has a number of criteria that must be met before an appeal can be considered, namely that an Authority decision on a CUSC Modification Proposal must be contrary to the majority recommendation of the CUSC Panel. If the Authority decision is in agreement with the Panel recommendation, no appeal can be raised.

Further information on the Competition Commission appeals process can be found at the following link: <http://www.competition-commission.org.uk/appals/energy/>

- 2.1 The objective of CMP196 is to ensure that parties maintain their existing right of appeal to the Competition Commission. CMP196 arose from an issue highlighted under CAP190. The Statutory Instrument (SI) 2005 No. 1646 “The Electricity and Gas Appeals (Designation and Exclusion) Order 2005” prevents an appeal to the Competition Commission being made where GEMA’s (Gas and Electricity Markets Authority) decision on a code modification proposal consists in the “giving of consent to a majority recommendation”. A majority recommendation is defined as “a recommendation that is supported by the majority of those views of Panel Members which, in the reasonable opinion of GEMA, are clearly expressed in the Amendment Report.” The final CUSC Modifications Report, in addition to the CUSC Modification Panel Recommendation Vote, also allows for a recommendation from “The Company” (NGET), and Workgroup and Panel Members.
- 2.2 QC advice was sought under the CAP190 Workgroup on matters relating to a two-thirds majority vote threshold and the advice highlighted an issue for the CUSC that the multiple recommendations in the CUSC Modification Report may cause ambiguity as to what constitutes the majority recommendation, which could have the effect of preventing an appeal being raised to the Competition Commission. Removal of references to The Company and Workgroup recommendations in the CUSC and CUSC Modification Report and replacing them with alternative wording should narrow the interpretation of the meaning of “majority recommendation” in the SI and therefore make the route of appeal to the Competition Commission clearer.
- 2.3 CMP196 proposes to remove all references to ‘recommendations’ relating to The Company and the Workgroup and instead replace with the term Company ‘opinion’ and Workgroup ‘conclusion’. This will have the effect of recording the opinion and conclusion of The Company and the Workgroup in terms of their view of whether the proposal should be progressed, based on the Applicable CUSC Objectives, but will not be recognised as a recommendation and therefore will resolve the ambiguity caused in the SI with having multiple recommendations in the final CUSC Modification Report. Details of the proposed changes to the wording in the CUSC can be found in paragraph 3.4.

3 Summary of Workgroup Discussions

Presentation of proposal

- 3.1 The first Workgroup meeting was held on 29th March 2011. The National Grid representative as Proposer presented CMP196 and explained the impact that multiple recommendations had on the potential Competition Commission appeal rights of parties.

Consider implications of implementation on current proposals

- 3.2 The Workgroup considered how the implementation of CMP196 would affect proposals that are currently in progress. The Workgroup agreed that CMP196 should be applied to all live CUSC Modification Proposals which have not yet had the CUSC Modification Report submitted to the Authority. This means that the final CUSC Modification Report (for those Modifications) will be required to adhere to the new wording in the report template that has resulted from the changes made to the CUSC by CMP196 (if approved and implemented). This would have the effect of clarifying the route of an appeal to the Competition Commission, if the situation arose with those CUSC Modifications.

Review the Statutory Instrument to ensure CUSC solution addresses the defect

- 3.3 The Workgroup considered whether alternative wording to ‘recommendation’ would resolve the issue that was being addressed under CMP196 or whether a change to the SI would also be required. The understanding from the legal representative was that replacing the term ‘recommendation’ with respect to The Company and The Workgroup would resolve the defect as the SI specifically refers to ‘a recommendation’ in the final CUSC Modification Report.

Review illustrative legal text

- 3.4 The Workgroup conducted a page-turning exercise on the illustrative legal drafting provided by National Grid which can be found in Annex 1 of this document. The main points discussed are as follows:

Section 8 – CUSC Modification

- 8.22.4 and 8.22.10– The group considered the reference to ‘initial views’ in these paragraphs. It was agreed that the understanding of ‘initial view’ in terms of The Company, was on an administrative level and was simply a view on whether the proposal was practically able to progress and not whether it should or should not be implemented. Therefore it was agreed that no changes were required in this respect.
- 8.22.5 and 8.22.11– The Workgroup suggested replacing the reference to the ‘recommendation’ of The Company with the CUSC Modifications Panel ‘view’. This is in the context of the requirement to provide legal text in the final CUSC Modifications report. The Workgroup considered that removing the concept of a ‘Company Recommendation’ would render it inappropriate for the Company to consult the Authority as to

whether the proposed text to amend the CUSC is needed. It was considered that this paragraph should be removed, but the group agreed to adapt it to replace The Company with the CUSC Modifications Panel to allow for the Panel to ask the Authority if text has to be provided.

- 8.23.2(b) – It was suggested to swap this round with 8.23.2 (k) and replace the wording with ‘Panel Members’ Recommendation’ as a new defined term.
- 8.23.2(c) – the group discussed editing this to provide for a summary of Panel Members’ views in the vote and the conclusions of the Workgroup. This addresses the issue of the SI as to what the views of the Panel Members are as they are now only expressed in the vote.
- 8.23.2(k) – the word ‘recommendation’ should be replaced with ‘opinion’ in terms of The Company as to whether the CUSC Modification Proposal or any alternative should be made.
- 8.23.5 – this has been changed to make it clear that the comments on the draft CUSC Modification Report following the vote accurately reflect the views of Panel Members.

Section 11 – Interpretation and Definitions

- CUSC Modifications Panel Recommendation Vote – this provides for Panel Members to vote on whether they believe the CUSC Modification Proposal (or any Workgroup Alternative CUSC Modification Proposals) should be made, based on whether the Applicable CUSC Objectives (ACOs) are better facilitated.
- Panel Members’ Recommendation – new definition added in order to clarify what constitutes the recommendation.

3.5 The proposed legal drafting has the effect that there is one clear recommendation throughout the process and that the recommendation is derived through a vote of Panel Members. The views of the Panel Members are expressed through the vote which results in a recommendation being made. In the context of a simple majority of more than half the votes cast, this voting process serves to demonstrate that this recommendation is one supported by the majority of those views of Panel Members, as required in the SI, and that they are clearly expressed in the final CUSC Modification Report.

3.6 In the meeting on 29th March 2011, the group considered what the view of The Company and the Workgroup meant, in comparison to what the Panel Members’ Recommendation meant. The group agreed that the views expressed in the final CUSC Modification Report would be whether the CUSC Modification Proposal should be made based on an assessment of the ACOs. It is the understanding of the CMP196 Workgroup that where a Workgroup has come to a ‘conclusion’ (with respect to the ACOs) by

majority, then this shall not be taken as a recommendation, but rather a conclusion of the final view of the Workgroup.

- 3.7 In response to the first Workgroup Consultation, two respondents suggested that a clearer distinction should be drawn between the "opinion" of The Company and that of the Workgroup and that using different terms for each would aid clarity. One of the respondents favoured using the terms "Workgroup conclusion" and "The Company opinion" as being the most appropriate. The CMP196 Workgroup considered this and agreed with this suggested change to "Workgroup conclusion" and "The Company opinion". The legal text drafting was amended to reflect this following the Workgroup meeting; it was also agreed that the wording in the template for the final CUSC Modification Report would be amended. Where reference is made to a Workgroup and/or Company recommendation, this will be replaced with the term "conclusion" and "opinion" respectively.

Ofgem Comments on legal text

- 3.8 Following closure of the first Workgroup Consultation, Ofgem highlighted some concerns on the legal drafting included in the first Workgroup Consultation (please see Annex 2 for Ofgem's email). Ofgem felt that by having a two-stage vote by the Panel Members, namely whether Panel Members believe that the ACOs are better facilitated and whether Panel Members believe that the proposal and/or alternative should be made, that ambiguity is created as it introduces a possible risk that a proposal and/or alternative is considered to better facilitate the ACOs, but Panel Members are then of the view that it should not be made. Ofgem did recognise, however, that this risk was small and the situation was generally unlikely to arise.
- 3.9 Ofgem highlighted that the Transmission Licence requires the Panel's report to the Authority to have an assessment of the extent to which the proposal and/or any alternative better facilitates the ACOs and is silent on whether the Panel should also come to a further view on whether it should be made. In order to resolve this issue, at the second Workgroup meeting on 10th May, the Workgroup agreed with the suggestion from Ofgem that the definition of "Panel Recommendation Vote" be worded in a way so that the decision on whether the proposal and/or alternative(s) should be made is based on whether it better facilitates the ACOs (and not whether it should or should not be made even if it better facilitates the ACOs). Please see Annex 1 for the proposed revised legal drafting.
- 3.10 At the second meeting, following the comments received from Ofgem, the Workgroup considered scenarios where Panel Members vote on one or more Workgroup Alternative CUSC Modifications (WACM) in addition to the original CUSC Modification Proposal. The Workgroup noted that Panel Members may vote that all the WACMs better facilitate the ACOs and therefore all would be recommended for implementation. Under the existing working practice, Panel Members would also provide a view on which option they consider would 'best' facilitate the ACOs, which would include the CUSC baseline as one of the options. The Workgroup noted that this vote

or information is not required by the CUSC or the Transmission Licence and is undertaken to provide information to the Authority when making its decision.

3.11 The Workgroup debated whether, under the above scenario, the appeal route would be open for those options which the Authority rejected. For example, if a CMP had 2 WACMs, there would be three options available for implementation. The Authority cannot approve more than one option, regardless of whether the Panel recommend that all the options better facilitated the ACOs. If Panel Members voted that all three options better facilitated the ACOs, but considered that the original "best" facilitated the ACOs, and the Authority approved the original for implementation, the original would not be open to Competition Commission appeal. However, there was a question over whether the rejected options could be appealable. The Workgroup concluded that those WACMs which had not been implemented, but which had also been recommended for implementation, might not be appealed although this would depend on the Competition Commission's interpretation of the case at hand.

Potential Workgroup Alternative CUSC Modification

3.12 In the meeting on 10th May 2011, one Workgroup member suggested that other instances of the term 'recommendation' within Section 8 could be replaced, in particular, under paragraph 8.24 'Urgent CUSC Modification Proposals'. The Workgroup member considered that this would avoid any ambiguity over the Panel's recommendation vote. The Workgroup decided that this was not within scope of CMP196 as CMP196 specifically deals with the meaning of recommendation in the final CUSC Modification Report and other references would not have an impact on what CMP196 is trying to achieve. The Workgroup member agreed that they were happy not to pursue the potential alternative. However it was duly noted that this issue could be dealt with in another CUSC Modification Proposal at a later date.

Post Consultation Workgroup Final Meeting

3.13 The Workgroup held one final meeting on 3rd June 2011 after the closure of the second Consultation. The Workgroup Consultation responses were discussed and clarity was sought on some aspects of CMP196.

3.14 One Workgroup member queried the consistency across the major industry codes in relation to what constitutes a Panel Recommendation. It was highlighted that a past BSC Modification (P235) had been voted on by the BSC Panel, whereby it was deemed that both the original and the alternative solutions for P235 better facilitated the BSC objectives, however, the Panel recommendation was to implement one of the options and reject the other. The group discussed whether this was an anomaly with that particular modification or if it was standard BSC process, in which case it would conflict with the Workgroup's perception of the CUSC Panel recommendation process.

- 3.15 The Workgroup chair highlighted that CMP196 was not seeking to codify a change to the existing CUSC Panel recommendation process and therefore CMP196 should not be prevented from progressing even if there was an inconsistency between BSC and CUSC Panel recommendation processes. However, the Workgroup agreed that it would be useful to clarify the circumstances behind the BSC modification in question in order to provide some context. National Grid agreed to pursue a line of enquiry with ELEXON as to the relevant Panel processes and the extent to which they are codified, but the Workgroup agreed that this would not have a detrimental effect on the progression of CMP196 as it does not directly affect it.
- 3.16 After contacting ELEXON to discuss the issue above, it was established that the BSC requires the final report to include 'the recommendation of the Panel as to whether or not the Proposed Modification or any Alternative Modification should be made'. There are no defined terms relating to the Panel recommendation in the BSC and the recommendation does not refer to the Applicable BSC Objectives, only whether or not the modification should be made. Therefore, the BSC Panel can consider that both the original and the alternative better meet the Applicable BSC Objectives but will only declare a preference for one of them to be made, thereby stating that the other option should not be made. This consequently highlights an inconsistency in the process in the BSC and CUSC as the CUSC Panel will effectively recommend the original and any alternatives if they believe they all better meet the ACOs, but provide an opinion on which they think is 'best'. By choosing a 'best' option, this does not preclude the other options from being recommended for implementation. However, the Workgroup agree, as described in 3.15 above, that this inconsistency does not prevent CMP196 from progressing and that this issue could be raised separately if necessary.
- 3.17 The group also discussed E.ON's response to the second Workgroup Consultation and the query regarding the Transmission Licence requirement for a recommendation. It was noted that Standard Condition C10 6b v), whilst not specifically using the word 'recommendation', alludes to the process for the Panel producing a recommendation.
- 3.18 The legal text was discussed further in the post-consultation meeting and one Workgroup member queried whether the reference to the term 'recommendation' under the "Panel Members Recommendation" definition in Section 11 should be pluralised to encompass the recommendations on the original and any alternatives. One Workgroup member felt that the recommendation is a package that covers the proposal and any alternatives and therefore forms one decision. The group agreed that the definition should be left as singular to avoid any potential problems resurfacing with multiple "recommendations" but noted that the issue could not be resolved in its entirety and that it would be a case for the Competition Commission and the applicable legal teams to determine as and when the situation arises.
- 3.19 In relation to paragraph 8.23.2 (c) it was agreed to remove the wording 'made during the consultation' in light of the fact that that Workgroup do not

reach a conclusion during the consultation. The legal drafting has been altered to that effect and can be found in Annex 1.

Impact on the CUSC

- 4.1 CMP196 requires amendments to the following parts of the CUSC:
- Section 8
 - Section 11
- 4.2 The revised text required to give effect to the original proposal is contained in Annex 1 of this document.

Impact on Greenhouse Gas Emissions

- 4.3 Neither the Proposer nor the Workgroup identified any material impact on Greenhouse Gas emissions.

Impact on Core Industry Documents

- 4.4 Neither the Proposer nor the Workgroup identified any impacts on Core Industry Documents.

Impact on other Industry Documents

- 4.5 CMP196 has an impact upon the Code Administration Code of Practice (CACOP) in that the CACOP states that “Completed Modification documents will include the Workgroup’s recommendation to the code panel”. Principle 4 allows the CACOP to be reviewed periodically and amended by users, subject to discussion and consultation, and approval by Ofgem.

Assessment against Applicable CUSC Objectives

- 4.6 At the post-consultation Workgroup final meeting, two Workgroup members voted that ACO (a) is better facilitated and the remaining 3 were neutral. The Workgroup voted unanimously that CMP196 better facilitates ACO (b).
- 4.7 For reference the CUSC Objectives are:
- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

5 Proposed Implementation

- 5.1 The Workgroup propose that CMP196 should be implemented ten Working Days after an Authority decision. Any CUSC Modification Proposals that are in progress at the time of implementation but have not yet had their final CUSC Modifications Report sent to the Authority for decision or, in the case of Self-governance CUSC Modification Proposals, have not yet had their final report presented to the CUSC Modifications Panel for a final determination, will be required to adhere to the new wording in the report; namely Workgroup Conclusion and Company Opinion replacing Workgroup and Company Recommendation(s) respectively.
- 5.2 All four respondents to the first Workgroup Consultation supported this implementation approach and no further comments were received in relation to implementation in response to the Second Workgroup Consultation.

6 Recommendations

Workgroup View

- 6.1 The Workgroup believes the terms of reference have been fulfilled and CMP196 has been fully considered and unanimously recommends to the CUSC Modifications Panel that CMP196 should be implemented. The Workgroup also recommend that CMP196 should proceed to the Code Administrator Consultation.
- 6.2 During the final Workgroup vote, undertaken on 3 June 2011, five Workgroup Members voted unanimously that CMP196 better facilitates the Applicable CUSC Objectives, as set out in the table below. One Workgroup member was not present for two of the three Workgroup meetings and was therefore not eligible to vote.
- 6.3 For ease of reference, the Applicable CUSC Objectives are reproduced below:
- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity

Does CMP196 better facilitate the Applicable CUSC Objectives than the CUSC baseline?

Objective	(a)	(b)
Emma Clark	Yes, it enhances efficiency by clarifying the terminology in the CUSC and reducing the potential for confusion.	Yes, by removing a potential barrier to the right of appeal to the Competition Commission by having one clear Panel recommendation in the final CUSC Modification Report.
Steven Eyre	Neutral	Yes, by removing ambiguity in interpreting parties' right to appeal a code modification decision thereby promoting transparency and certainty in the arrangements.

Objective	(a)	(b)
Esther Sutton	Yes, aiming to reduce confusion between the terms used in the CUSC would be more efficient and ensuring that the CUSC does not impair appeal rights would better meet the requirement to establish procedures for modifying the CUSC as set out in licence condition C10.	Yes, CMP196 makes it easier for Parties to understand the process and give participants confidence that the appeal route should be open to them if desired. By removing a potential barrier to appeal confidence will be enhanced in the procedures in place and support effective competition.
Stuart Cotten	Neutral	Yes, CMP196 will promote effective competition by ensuring that the appeals process functions as originally intended and clarifies the ambiguity between the SI and the CUSC
Garth Graham	Neutral	Yes, as it removes regulatory risk associated with appeals to the Competition Commission and therefore supports effective competition in GB generation and the supply of electricity.

National Grid Initial View

- 6.4 As Proposer, National Grid supports the implementation of CMP196 on the basis that it better facilitates the Applicable CUSC Objectives by clarifying the terminology in the CUSC therefore preventing confusion and by removing a potential barrier to the right of appeal by having one clear Panel recommendation in the final Modification Report submitted to the Authority.

7 Responses

7.1 Four responses were received to the first Workgroup Consultation. All were supportive of CMP196 and are summarised in more detail below:

Reference	Company	Supportive	Comments
CMP196-WGC1-01	E.ON UK	Yes	<ul style="list-style-type: none"> Should assist in progressing CMP190 and further protecting parties appeal rights and is an improvement to the existing Report wording Should be implemented as soon as possible Separate terms may be better to distinguish between Workgroup and Company 'opinion'.
CMP196-WGC1-02	Drax Power Limited	Yes	<ul style="list-style-type: none"> Clarifies ambiguity between the SI and the provisions of the CUSC Implementation approach is sensible Agree with suggested terms to replace 'recommendation'
CMP196-WGC1-03	EDF Energy	Yes	<ul style="list-style-type: none"> CMP196 will remove ambiguity caused in respect of the appeal arrangements. Implementation date is appropriate and agree that the proposal should apply to all existing CUSC Modifications Proposals that have yet to be submitted to the Authority for decision. Believe suggested wording is appropriate.
CMP196-WGC1-04	SSE	Yes	<ul style="list-style-type: none"> CMP196 corrects a legal anomaly and places the CUSC back to the position that Parliament intended. Support proposed implementation arrangements. The Workgroup should reach a 'conclusion' and the Company should have an 'opinion'. By using three separate and distinct terms, the possibility of confusion is removed.

7.2 Five responses were received to the Second Workgroup Consultation. Four of the respondents were the same as in the first Workgroup consultation and expressed similar views. All were supported of CMP196 and the additional response and further views are summarised below:

Reference	Company	Supportive	Comments
CMP196-WGC2-01	E.ON UK	Yes	<ul style="list-style-type: none"> Could be made clearer that that the Panel Members' Recommendation is for each proposal or WACM. Would appreciate further detail regarding the licence requirement for a recommendation.
CMP196-WGC2-02	Drax Power Limited	Yes	<ul style="list-style-type: none"> Agree with conclusion of Workgroup that further information should be provided to the Authority where the Panel feels it is appropriate in order to better inform the Authority's decision making process.

CMP196- WGC2-03	EDF Energy	Yes	<ul style="list-style-type: none"> • Believe greater clarity is required on the practice to be adopted by the Panel in respect of providing a preference for the original or any alternatives • Consistency on what constitutes a recommendation across the codes should be applied in order to ensure that the potential of appealing decisions is the same across the codes.
CMP196- WGC2-04	SSE	Yes	<ul style="list-style-type: none"> • Agree with revised legal text in second consultation.
CMP196 WGC2-05	Scottish Power	Yes	<ul style="list-style-type: none"> • Agree with the suggested changes to the legal text. • CMP196 better facilitates the ACO (a) and (b).

Section 8:

- 8.22.5 Where ~~The Company~~ is proposing to recommend to the ~~Authority~~ the **CUSC Modifications Panel** is of the view that the proposed text to amend the **CUSC** for that a **CUSC Modification Proposal** or **Workgroup Alternative CUSC Modification** should not be made is not needed in the **CUSC Modification Report**, the **CUSC Modifications Panel** ~~The Company~~ shall consult (giving its reasons as to why it is of this view) with the **Authority** as to whether the **Authority** would like the **CUSC Modification Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, **The Company** shall prepare such text to modify the **CUSC** in order to give effect to such **CUSC Modification Proposal** or **Workgroup Alternative CUSC Modification** and shall seek the ~~conclusions~~ views of the relevant **Workgroup**.
- 8.22.11 Where ~~The Company~~ is proposing to recommend to the ~~Authority~~ that a ~~CUSC Modification Proposal~~ should not be made the **CUSC Modifications Panel** is of the view that the proposed text to amend the **CUSC** for a **CUSC Modification Proposal** is not needed, ~~The Company~~ the **CUSC Modifications Panel** shall consult (giving its reasons as to why it is of this view) with the **Authority** as to whether the **Authority** would like the **CUSC Modification Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, **The Company** shall prepare such text to modify the **CUSC** in order to give effect to such **CUSC Modification Proposal**
- 8.23.2 The matters to be included in a **CUSC Modification Report** shall be the following (in respect of the **CUSC Modification Proposal**):
- [(a) the **CUSC Modification Proposal** and any **Workgroup Alternative CUSC Modification**;
 - (b) the recommendation of ~~The Company~~ as to whether or not the **CUSC Modification Proposal** (or any **Workgroup Alternative CUSC Modification** as provided below) should be made the **Panel Members' Recommendation**;
 - (c) a summary (agreed by the **CUSC Modifications Panel**) of the views (including any recommendations) from **Panel Members in the CUSC Modifications Panel Recommendation Vote** and/or the conclusions of the **Workgroup** as the case may (if there is one) be made during the consultation in respect of the **CUSC Modification Proposal** and of any **Workgroup Alternative CUSC Modification**;
 - (k) details of the outcome of whether or not, in the opinion of **The Company**, the **CUSC Modifications Modification Proposal** (or any **Workgroup Alternative CUSC Modification**) should be made **Panel Recommendation Vote**.
- 8.23.5 A draft of the **CUSC Modification Report** following the **CUSC Modifications Panel Recommendation Vote** will be circulated by the **Code Administrator** to **Panel Members** (and in electronic mails to **Panel Members**, who must supply relevant details, shall meet this requirement) and a period of no less than five (5) **Business Days** given

for comments to be made on whether the **CUSC Modification Report** accurately reflects the views of the **Panel Members** as expressed at the **CUSC Modifications Panel Recommendation Vote**. Any unresolved comments made shall be reflected in the final **CUSC Modification Report**.

Section 11

"CUSC Modifications Panel Recommendation Vote"

the vote of **Panel Members** undertaken by the **Panel Chairman** in accordance with Paragraph 8.23.4 as to whether **in their view** they believe each **CUSC Modification Proposal**, or **Workgroup Alternative CUSC Modification** would better facilitate achievement of the **Applicable CUSC Objective(s)** and so should be made;

"Panel Members' Recommendation"

the recommendation in accordance with the **CUSC Modifications Panel Recommendation Vote**.

Hi both,

As discussed, Ofgem has the following views regarding the proposed legal drafting for CMP196:

There is a suggestion in the WG consultation document (page 7) with regard to the suggested amendment to the definition “CUSC Modifications Panel Recommendation Vote” that there will be two questions for the Panel members to vote on, namely, whether the Applicable Objectives are better facilitated by a mod proposal and/or an alternative and whether Panel members believe that the proposal and/or any alternative should be made. The suggested legal text makes additions to reflect this ‘...better facilitate achievement of the Applicable CUSC Objective(s) and whether or not it should be made’.

This wording creates ambiguity rather than removes it as it introduces a possible risk that a proposal and/or alternative does, in the Panel members’ view, better facilitate the AOs but they are then of the view that it should not be made. The transmission licence asks for the Panel’s report to the Authority to have an assessment of the extent to which the proposal and/or any alternative better facilitates the AOs and does not mention that the Panel should also come to a further view on whether the proposal and/or alternative is made.

Ofgem considers that it would be helpful and constructive to removing any ambiguity and assist clarity if the suggested legal text removes the underlined words above. In the new definition “Panel Members’ Recommendation”, it would also be helpful to delete the words after ‘the recommendation in accordance with the CUSC Modifications Panel Recommendation Vote’ to achieve consistency with the other definition.

It is unfortunate that Ofgem wasn’t able to provide this view before the WG consultation was issued. However, it is important that clarity in the legal text is achieved and we offer our views to the WG to allow this to happen.

Kind regards

Abid

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TERMS OF REFERENCE FOR CMP196 WORKGROUP

RESPONSIBILITIES

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal 'CMP196 Removal of the Company and Workgroup Recommendation in the Final CUSC Modification Report' tabled by National Grid at the Modifications Panel meeting on 25th March 2011.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:
 - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

SCOPE OF WORK

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:
 - a) Consider implications of implementation on current proposals;
 - b) Review the Statutory Instrument to ensure CUSC solution addresses the defect;
 - c) Review illustrative legal text
6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.

7. The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.
8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.
10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.17. The Workgroup Consultation period shall be for a period of three weeks as determined by the Modifications Panel.
11. Following the Consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Workgroup will be required to undertake any further analysis and update the original Modification Proposal and/or WACMs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Workgroup's deliberations and conclusions. The report should make it clear where and why the Workgroup chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WACM against the majority views of Workgroup members. It should also be explicitly stated where, under these circumstances, the Workgroup chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on 16th June 2011 for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on 24th June 2011.

MEMBERSHIP

13. It is recommended that the Workgroup takes its membership from the CAP190 Workgroup and / or the Governance Standing Group (GSG)

Role	Name	Representing
Chairman	Alex Thomason	National Grid
National Grid Representative*	Emma Clark	National Grid

Industry Representatives*	Garth Graham	SSE
	Lisa Waters	Waters Wye Associates – for Wyre Power
	Peter Bolitho	E.ON UK plc
	Steven Eyre	EDF Energy
	Stuart Cotten	Drax
Authority Representative	N/A	
Technical Secretary	Bali Virk	National Grid
Observers	N/A	

NB: A Workgroup must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP196 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.
15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise. There may be up to three rounds of voting, as follows:
 - Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
 - Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal;
 - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Workgroup report in as much detail as practicable.

16. It is expected that Workgroup members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes place. Where abstention occurs, the reason should be recorded in the Workgroup report.
17. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.
18. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance

Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.

19. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

RELATIONSHIP WITH MODIFICATIONS PANEL

20. The Workgroup shall seek the views of the Modifications Panel before taking on any significant amount of work. In this event the Workgroup chairman should contact the Modifications Panel Secretary.
21. The Workgroup shall seek the Modifications Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.20.17 of the CUSC.
22. Where the Workgroup requires instruction, clarification or guidance from the Modifications Panel, particularly in relation to their Scope of Work, the Workgroup chairman should contact the Modifications Panel Secretary.

MEETINGS

23. The Workgroup shall, unless determined otherwise by the Modifications Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Modification Proposals.

REPORTING

24. The Workgroup chairman shall prepare a final report to the June Modifications Panel responding to the matters set out in the Terms of Reference, including all Workgroup Consultation Responses and Alternative Requests.
25. A draft Workgroup Report must be circulated to Workgroup members with not less than five Business Days given for comments, unless all Workgroup members agree to three Business Days.
26. Any unresolved comments within the Workgroup must be reflected in the final Workgroup Report.
27. The chairman (or another member nominated by him) will present the Workgroup report to the Modifications Panel as required.

Appendix 1: Indicative Workgroup Timeline

The following timetable is suggested for progressing the CMP196 Workgroup

25 th March 2011	Panel to agree progression
29 th March 2011	First CMP196 Workgroup meeting 1
31 st March 2011	Issue draft Workgroup Consultation for Workgroup comment (5 days)
7 th April 2011	Deadline for comments on draft Workgroup Consultation
8 th April 2011	Publish Workgroup consultation (for 3 weeks)
5 th May 2011	Deadline for responses to Workgroup consultation
10 th May 2011	Post-consultation Workgroup meeting 2
13 th May 2011	Issue draft Workgroup Consultation 2 for Workgroup comment (3 days)
18 th May 2011	Deadline for comments on draft Workgroup Consultation 2
19 th May 2011	Publish Workgroup Consultation 2 (10 days)
2 nd June 2011	Deadline for responses to Workgroup Consultation 2
3 rd June 2011	Post-consultation Workgroup meeting 3
7 th June 2011	Circulate draft Workgroup Report
14 th June 2011	Deadline for comment on Workgroup Report
16 th June 2011	Submit final Workgroup report to Panel Secretary
24 th June 2011	Present Workgroup report to CUSC Modifications Panel

CUSC Modification Proposal Form	CMP196
<p>Title of the CUSC Modification Proposal: <i>(mandatory by Proposer)</i> Revisions to "recommendations" in the final CUSC Modification Report</p>	
<p>Submission Date <i>(mandatory by Proposer)</i> 24th March 2011</p>	
<p>Description of the CUSC Modification Proposal <i>(mandatory by Proposer)</i></p> <p>It is proposed to amend the CUSC to replace all references to “recommendations” in the CUSC Modification Report other than that which refers to the recommendation of the CUSC Modifications Panel. The term ‘recommendation’, for example in relation to "The Company" and the "Workgroup" recommendations would be replaced by terms with a similar meaning, which should result in the removal of a potential barrier to appeal rights, as set out in the defect section below, and would also provide more consistency with the wording of the BSC and would therefore assist with consistency across the electricity codes.</p>	
<p>Description of Issue or Defect that CUSC Modification Proposal seeks to Address: <i>(mandatory by Proposer)</i></p> <p>The Statutory Instrument (SI) 2005 No. 1646 "The Electricity and Gas Appeals (Designation and Exclusion) Order 2005" prevents an appeal being made where GEMA's (Gas and Electricity Markets Authority) decision on a code modification proposal consists in the “giving of consent to a majority recommendation”. With regard to the CUSC, a majority recommendation is defined as “a recommendation that is supported by the majority of those views of Panel Members which, in the reasonable opinion of GEMA, are clearly expressed in the Amendment Report.”</p> <p>At the time the SI was written, the concept of a CUSC Modifications Panel Recommendation Vote did not exist and the report to the Authority contained the recommendation of National Grid, as the Transmission Company. Currently, in addition to the CUSC Modifications Panel Recommendation Vote, the final CUSC Modification Report also allows for a recommendation from "The Company", any Workgroup and Panel Members.</p> <p>The CAP190 Workgroup, in conjunction with the BSC P264 Workgroup, recently sought the advice of a QC on matters relating to establishing a two-thirds majority vote threshold. The QC's advice highlighted an issue for the CUSC that the multiple recommendations in the CUSC Modification Report referred to above may cause ambiguity as to the majority recommendation and could ultimately prevent an appeal being raised. By removing references to The Company and Workgroup recommendations in the CUSC and the CUSC Modification Report and replacing them with alternate wording, the interpretation of the meaning of "majority recommendation" in the SI should be narrower and the route of appeal would be clearer.</p>	

Impact on the CUSC *(this should be given where possible)*

Changes need to be made to Section 8.

Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes/No *(assessed in accordance with Authority Guidance – see guidance notes for website link)*

No

Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information *(this should be given where possible)*

BSC

Grid Code

STC

Other

The Code Administration Code of Practice states that “Completed Modification documents will include the Workgroup’s recommendation to the code panel”. Principle 4 allows the Code of Practice to be reviewed periodically and amended by users, subject to discussion and consultation and approval by Ofgem.

Change required to CUSC Modification Report template to replace references to ‘Workgroup Recommendation’ and ‘Company Recommendation’.

Urgency Recommended: Yes / No *(optional by Proposer)*

No

Justification for Urgency Recommendation *(mandatory by Proposer if recommending progression as an Urgent Modification Proposal)*

Self-Governance Recommended: Yes / No *(mandatory by Proposer)*

No

Justification for Self-Governance Recommendation *(Mandatory by Proposer if recommending progression as Self-governance Modification Proposal)*

Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews? *(Mandatory by Proposer in order to assist the Panel in deciding whether a Modification Proposal should undergo a SCR Suitability Assessment)*

There are no ongoing SCRs that would be applicable to this CUSC Modification Proposal.

Impact on Computer Systems and Processes used by CUSC Parties: *(this should be given where possible)*

None.

Details of any Related Modification to Other Industry Codes *(where known):*

CAP190 – Two-thirds Majority Voting requirement for CUSC Panel recommendations on Modifications arising from licence obligations, Authority requests or obligations

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives:
(mandatory by proposer)

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

This Proposal will assist in facilitating competition in that it will remove a potential barrier to the right of appeal to the Competition Commission by having one clear Panel recommendation in the final Modification Report submitted to the Authority.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1

Details of Proposer: (Organisation Name)	National Grid Electricity Transmission plc
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Emma Clark National Grid Electricity Transmission plc 01926 655223 emma.clark@uk.ngrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Garth Graham Scottish and Southern Energy plc 01738 457377 garth.graham@sse.com

Attachments (Yes/No):

If Yes, Title and No. of pages of each Attachment:

Yes: Statutory Instrument 2005 No.1646

QC Legal Advice

Current CUSC Modification Report template

Annex 5 - Workgroup Attendance Register

Name	Organisation	Role	29/3/11	10/5/11	3/6/11
Alex Thomason	National Grid	Chairman	No*	Yes	Yes
Bali Virk	National Grid	Technical Secretary	Yes	Yes	Yes
Emma Clark	National Grid	National Grid representative	Yes	Yes	Yes
Angela Quinn	National Grid	National Grid Legal Representative	Yes	Yes	No
Garth Graham	SSE	Workgroup Member	Yes	Yes	Yes
Stuart Cotten	Drax Power	Workgroup Member	Yes	Yes	Yes
Peter Bolitho	E.ON UK	Workgroup Member	Yes	Yes	Esther Sutton in place of Peter.
Lisa Waters	Waters Wye	Workgroup Member	Yes	No	No
Steven Eyre	EDF Energy	Workgroup Member	Yes	Yes	Yes
Abid Sheikh	Ofgem	Ofgem Representative	No	Yes	Yes

*Bec Thornton of National Grid chaired the meeting on 29/03/11 in place of Alex Thomason.

Annex 6 – Workgroup Consultation Responses

First Workgroup Consultation

Respondent:	<i>Esther Sutton</i> esther.sutton@eon-uk.com 024 76183440
Company Name:	<i>E.ON UK</i>
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	<i>We support CMP196 and hope that its implementation will provide greater clarity in Modification Reports. Prompt implementation should assist in progressing CAP190 and further protecting parties appeal rights, however regardless of CAP190, CMP196 in itself would be a worthwhile improvement to the existing Report wording.</i>
Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>Yes, clarifying the terminology used in the CUSC Modification Report to prevent any confusion would be more efficient, and ensuring that the CUSC does not impair appeal rights would better meet the requirements to establish procedures for modifying the CUSC as set out in licence condition C10.</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p><i>Likewise, by clarifying the CUSC and becoming more consistent with the BSC CMP196 would make it easier for Parties to understand the processes. More critically by removing a potential barrier to appeal rights CMP196 supports CUSC Objective (b).</i></p>
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	<i>Yes, CMP196 should be implemented as soon as possible.</i>

Do you have any other comments?	<i>No</i>
Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<i>No</i>

Specific questions for CMP196

Q	Question	Response
1	Do you agree with the suggested terms to replace 'recommendation' or do you have any other suggestions?	<i>We note that CMP196 itself does not appear to suggest what suitable alternative terms could be used; 'view', opinion' etc. However we agree that this change is sensible so that it is absolutely clear that the Panel's recommendation to the Authority is what matters in relation to appeal rights. 'Opinion' as suggested in the Workgroup consultation for the others would be appropriate. It could be argued however that separate terms might be better to distinguish more easily between the 'opinion' of the Workgroup and the 'opinion' of the Company.</i>

Respondent:	Stuart Cotten (01757 612 751)
Company Name:	Drax Power Limited
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	This Modification clarifies the current ambiguity between the Statutory Instrument (SI) and the provisions of the CUSC with regards to Modification recommendations and appeals. It is important that this correction is implemented to ensure that the Modification appeals procedure functions as originally intended. On this basis, Drax supports CMP196.
Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	Yes. Drax agrees with the proposer that the Modification will better facilitate Applicable CUSC Objective (b). The Modification will promote effective competition by ensuring the appeals process functions correctly and as originally intended.
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	Yes, the implementation approach appears to be sensible.
Do you have any other comments?	No.
Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No.

Specific questions for CMP196

Q	Question	Response
1	Do you agree with the suggested terms to replace 'recommendation' or do you have any other suggestions?	Yes. The Modification appears to take a sensible approach that removes the ambiguity between the SI and the CUSC, whilst remaining consistent with the original intention of the SI.

Respondent:	Steven Eyre steven.eyre@edfenergy.com
Company Name:	EDF Energy
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	EDF energy supports the proposal. We believe this modification will remove the inappropriate references to recommendations made in the CUSC Modification Report and the ambiguity this causes in respect of interpreting the code appeal arrangements. Replacing the use of the term “recommendations” with “opinions” in relation to the Working Group and the Company will ensure that the only recommendation is made by the CUSC Modifications Panel.
Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	We believe the proposal better facilitates the achievement of applicable objective (b) facilitating effective competition in the generation and supply of electricity. This proposal will remove the existing ambiguity in interpreting parties’ right to appeal a code modification decision to the Competition Commission thereby promoting transparency and certainty in the code modification arrangements.
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	Yes. We believe an implementation date of 10 working days following Authority decision is appropriate. We also agree that the modification should apply to all existing modifications that have yet to have the final CUSC Modification Report submitted to the Authority.
Do you have any other comments?	No.
Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No.

Specific questions for CMP196

Q	Question	Response
1	Do you agree with the suggested terms to replace ‘recommendation’ or do you have any other suggestions?	We believe the suggested terms to replace “recommendation” are appropriate.

Respondent:	<i>Garth Graham (01738 456000)</i>
Company Name:	Scottish and Southern Energy, Southern Electric, Airtricity Developments (Scotland) Limited, Airtricity Developments (UK) Limited, Clyde Wind Farm (Scotland) Limited, Greenock Wind Farm (Scotland) Limited, Griffin Wind Farm Limited, Keadby Developments Limited, Keadby Generation Limited, Medway Power Limited, Slough Energy Supplies Limited, SSE (Ireland) Limited, SSE Energy Limited and SSE Generation Limited.

<p>lease express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p>We welcomed the raising of CMP196. The ability for a CUSC Party to appeal (subject to the requirements set out in legislation etc.) code change proposals to the Competition Commission is very important.</p> <p>Its importance is witnessed by the fact that both the Government and Parliament went to the effort of raising and enacting the necessary legislation to ensure this could happen. The advice from the QC (in consider CAP190) raised a serious question mark over a practical aspect of this process of appeals by CUSC Parties to the Competition Commission.</p> <p>Its clear to us (and we believe to other CUSC Parties, the Authority and DECC) that it was the clear will of Parliament that we have the ability to appeal code change proposals to the Competition Commission (in certain, limited, circumstances).</p> <p>The QC identified (in her review of CAP190) that an anomaly seems to exist whereby multiple 'recommendations' appear in the (CUSC) Final Modification Report. CMP196 seeks to address that anomaly in a pragmatic way such that the potential legal uncertainty is removed.</p> <p>In our view the change has no 'practical' effect in the sense that it does not, in either a positive or negative way, alter the Code to the advantage or disadvantage of any CUSC Party or consumers.</p> <p>Rather it corrects a legal anomaly and places the CUSC back to the position that Parliament intended.</p> <p>We commend the industry, lead by National Grid and the CUSC Panel, in seeking to address this legal anomaly via a change to the appropriate Statutory Instrument. However, as noted in the consultation report, DECC has advised that due to the pressures associated with other ongoing legal changes the Department maybe unable to assist with this change in the short term. Rather DECC encouraged industry to consider use of another route.</p> <p>CMP196 is that other route. If, for some reason, CMP196 were not to be implemented then the industry would need to seek the expeditious changes to the Statutory Instrument. However, we hope that the reasonable and pragmatic solution that is CMP196 will avoid the need for the more complicated change to the SI.</p>
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<p>Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>In our view CMP196 does better meet, in particular, Applicable CUSC Objective (b) as it ensures there is no uncertainty around; and thus regulatory risk associated with; appeals to the Competition Commission. Removal of this risk (by CMP196) will support effective competition in GB generation and the supply of electricity.</p>
<p>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>We support the proposed implementation arrangements; as set out in paragraphs 4.2 and 6.1 of the consultation document; namely ten working days after an Authority decision, and applying to those proposals for which a Final Modification Report has yet to be produced.</p>
<p>Do you have any other comments?</p>	<p>See our answer to Question 1 below.</p> <p>We concur with the clear aim of CMP196, as summarised in paragraph 4.5, namely “that there is one clear recommendation throughout the [CUSC change] process and that the recommendation is derived through a vote of Panel Members”.</p>
<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p>No. We do not wish to raise a WG Consultation Alternative Request.</p>

Specific questions for CMP196

Q	Question	Response
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Q	Question	Response
1	Do you agree with the suggested terms to replace 'recommendation' or do you have any other suggestions?	<p>In our view the Workgroup should reach a "<u>Conclusion</u>" and the Company should have an "<u>Opinion</u>".</p> <p>We are mindful that the Workgroup completes the work they have been asked, by the Panel, to undertake. In this respect they come to a 'conclusion' that, for example, an original Modification Proposal better meets the applicable (CUSC) objective(s) along with two of the three alternatives raised with, say, the first alternative being the best. This 'conclusion' might be based on the unanimous view of the Workgroup members or a majority of the Workgroup members.</p> <p>We are mindful that National Grid will have an 'opinion' as to whether (using the above simple example) the original and the three alternatives better meets the applicable (CUSC) objective(s), and which is best.</p> <p>By using the three separate and distinct words (<i>Workgroup Conclusion</i>, <i>Company Opinion</i> and <i>Panel Recommendation</i>) we also avoid the possibility of confusion, in the future, of say having a Workgroup Conclusion and a Company Conclusion or a Workgroup Opinion and a Company Opinion.</p>

Second Workgroup Consultation

Respondent:	<i>Esther Sutton</i> esther.sutton@eon-uk.com 024 76183440
Company Name:	<i>E.ON UK</i>
<p>Please express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p><i>We continue to support this proposal. By ensuring that only the 'recommendation' of the Panel recommendation vote, is reported to the Authority, CMP196 should help to safeguard parties' right to appeal CUSC modification decisions to the Competition Commission. It is unfortunate that any possibility of confusion has arisen from the terminology currently used in CUSC Modification Reports and this should be corrected as soon as possible.</i></p> <p><i>It seems sensible to clarify the legal text to avoid any risk of 'two-stage' confusion and make it absolutely clear what the recommendation is. However if each option is being recommended for implementation or not on the basis of whether it would better achieve the Applicable CUSC Objectives (ACOs) 'and so should be made', with only a 'view' being provided as to which best meets the Objectives, it could perhaps be made clearer that the Panel Members' Recommendation is for each proposal or WACM, i.e. as suggested by the second Workgroup Consultation, several recommendations could still be made to the Authority where Alternative(s) exist as well as the Proposed, potentially all better facilitating the ACOs than the baseline. We note the Workgroup conclusion that whether any WACMs recommended but not implemented could be appealed if another recommended option had been implemented seems unlikely but may be down to the judgement of the Competition Commission.</i></p> <p><i>We would appreciate further detail regarding the Transmission Licence requirement for a recommendation, as Standard Condition C10 6b v)'s requirement for a report 'evaluating the proposed modification and any alternative' following 6b iv)'s requirement for 'development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the applicable CUSC objectives' would not seem to us to preclude a recommendation by the Panel of one option as best facilitating the ACOs. This is not clear to us from paragraph 3.9 of the consultation.</i></p>

<p>Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p><i>Yes, clarifying the terminology used in the CUSC Modification Report to ensure that all views, opinions, conclusions, recommendations, etc. are represented but aiming to prevent any confusion between these would be more efficient. More fundamentally, ensuring that the CUSC does not impair appeal rights would better meet the requirements to establish procedures for modifying the CUSC as set out in licence condition C10. Thus better meeting Objective (a).</i></p> <p><i>Likewise, by clarifying the CUSC arrangements CMP196 would make it easier for Parties to understand the process and give participants confidence that the appeal route should be open to them if desired. By removing a potential barrier to appeal rights CMP196 will thus enhance confidence in the procedures in place and support effective competition. Better facilitating CUSC Objective (b).</i></p>
<p>Do you have any other comments?</p>	<p><i>Prompt implementation should assist in progressing CAP190 which also aims to protect parties appeal rights, but CMP196 stands alone and regardless of CAP190, CMP196 should be implemented as soon as possible to protect appeal rights by removing the risk of any ambiguity through reporting multiple ‘recommendations’.</i></p> <p><i>Noting however our above concerns regarding potential for ambiguity still existing where more than one option may be ‘recommended’ by the Panel as better meeting the ACOs (than the baseline).</i></p>

Respondent:	Stuart Cotten (01757 612 751)
Company Name:	Drax Power Limited
<p>Please express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p>CMP196 aims to remove the ambiguity that currently exists between the Statutory Instrument (SI) and the provisions of the CUSC with regards to “recommendations” and the Competition Commission appeal process. CMP196 will deliver this clarification by ensuring only a single recommendation is provided to the Authority, which is based upon the Panel Recommendation Vote.</p> <p>The proposal also ensures that the level of information currently provided to the Authority to help better inform the decision making process (including the views of Panel Members, the Workgroup and National Grid) is preserved.</p> <p>It is important that this corrective Modification is implemented to ensure that the appeals process functions as originally intended.</p>
<p>Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>Yes. The Modification will better facilitate Applicable CUSC Objective (b).</p> <p>CMP196 will promote effective competition by ensuring the appeals process functions as originally intended. The Modification also preserves the level of information provided to the Authority (including the views of Panel Members, the Workgroup and National Grid), thereby ensuring no detriment to the Authority’s decision making process.</p>

<p>Do you have any other comments?</p>	<p>Drax agrees with the views of the Workgroup (and Ofgem's comments) that the Panel Recommendation Vote should be based upon the given proposal <i>better facilitating the Applicable CUSC Objectives</i>. There should be no ambiguity between the views of Panel Members and the way in which they vote.</p> <p>In addition, Drax agrees with the conclusion of the Workgroup that further information should be provided to the Authority where the Panel feels it is appropriate to do so (such as, in the opinion of the Panel, whether the proposal, an alternative or the baseline 'best' facilitates the Applicable CUSC Objectives). Whilst such information does not form part of the Panel Recommendation Vote (i.e. it is for information purposes only), there may be situations where such information provides the Authority with greater clarity on Panel Members' views (e.g. where there are multiple alternative solutions). This information may better inform the Authority's decision making process.</p>
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Respondent:	Steven Eyre Steven.eyre@edfenergy.com
Company Name:	EDF Energy
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	EDF Energy agrees that the amendments made to the definition of "Panel Recommendation Vote" following receipt of Ofgem comments on the legal text are appropriate. We believe it is right that a Panel recommendation vote on a proposal or alternative is based on whether it better facilitates the achievement of the applicable CUSC objectives and so should be made.
Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	Yes. Notwithstanding the comment above, we believe the proposal better facilitates the achievement of applicable objective (b) facilitating effective competition in the generation and supply of electricity. This proposal will remove the existing ambiguity in interpreting parties' right to appeal a code modification decision to the Competition Commission thereby promoting transparency and certainty in the code modification arrangements.
Do you have any other comments?	We believe greater clarity is required on the practice to be adopted by the Panel in respect of providing a preference for the original or any alternatives. Consistency on what constitutes a Panel recommendation across the major industry codes should be applied. It is not clear that this is the case and potentially means that the availability of appealing decisions differs between codes.

Respondent:	<i>Garth Graham (01738 456000)</i>
Company Name:	Scottish and Southern Energy, Southern Electric, Airtricity Developments (Scotland) Limited, Airtricity Developments (UK) Limited, Clyde Wind Farm (Scotland) Limited, Greenock Wind Farm (Scotland) Limited, Griffin Wind Farm Limited, Keadby Developments Limited, Keadby Generation Limited, Medway Power Limited, Slough Energy Supplies Limited, SSE (Ireland) Limited, SSE Energy Limited and SSE Generation Limited.
<p>Please express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p>We have expressed our view, at the first Workgroup consultation, on why we fully support the raising of this CMP196. We do not propose to repeat those comments here; however, they remain valid and should be read in conjunction with this response.</p> <p>Accordingly we have limited our comments here to the matter of the 'recommendation' itself and the Ofgem comments on the legal text.</p> <p>We agree with the suggestion, as set out in paragraph 3.7, that in order to avoid future confusion etc., that any CUSC Workgroup should reach a 'conclusion' (rather than, as per the baseline, a 'recommendation') and that the Company should have an 'opinion' on CUSC Modifications (rather than, as per the baseline, a 'recommendation').</p> <p>In this way it is clear, in the Final Modification Report, that there is only one 'recommendation' associated with the Modification proposal, namely that from the CUSC Panel itself.</p> <p>With respect to the Ofgem comments on the legal text we agree with the Workgroup that the suggestion from Ofgem that the definition of "Panel Recommendation Vote" should be worded in such a way so that the Panel decision on whether the proposal and/or alternative(s) should be made is based on whether it better facilitates the Applicable CUSC Objective(s) (and not whether it should or should not be made even if it better facilitates the Applicable CUSC Objective(s)).</p>

<p>Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p> <p>In our view CMP196 does better meet, in particular, Applicable CUSC Objective (b) as it ensures there is no uncertainty around; and thus regulatory risk associated with; appeals to the Competition Commission. Removal of this risk (by CMP196) will support effective competition in GB generation and the supply of electricity.</p>
<p>Do you have any other comments?</p>	<p>We have nothing further to add.</p>

Respondent:	Gary Henderson. 01355 814808 ghenderson@scottishpower.com
Company Name:	IBM (UK) Ltd for and on behalf of ScottishPower
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	We agree with the working group's recommendation that the suggested amendments to the legal text and definitions be made. The proposed changes will help to remove the possibility of the remote circumstances which Ofgem have brought to the groups attention from occurring.
Do you believe that the proposal better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>Yes, we believe they better facilitate the Objectives</p> <p>Objective a) By reducing the likelihood of appeals the licensee is better able to discharge the terms of their license.</p> <p>Objective b) By preserving the route for appeal this change brings a measure of stability to the market arrangements which can only be an aid to competition.</p> <p><i>For reference, the Applicable CUSC Objectives are:</i></p> <p><i>(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and</i></p> <p><i>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i></p>
Do you have any other comments?	No