

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP225: Consequential changes following implementation of the Third Package and other miscellaneous changes</b>		
Decision:	The Authority <sup>1</sup> directs that this proposal be made <sup>2</sup>		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	26 June 2014	Implementation Date:	10 July 2014

## Background to the modification proposal

The EU Third Energy Package<sup>3</sup> (the Third Package) was implemented in Great Britain on 10 November 2011 by making amendments to relevant domestic legislation. The Electricity and Gas (Internal Markets) Regulations 2011 (the Regulations) gave effect to these changes. The Regulations made changes to gas and electricity licences once they came into force.<sup>4</sup>

The licence changes included changes to Standard Licence Condition C10 'Connection and Use of System Code (CUSC)' of the electricity transmission licence. These changes enable us to raise a CUSC modification proposal which we reasonably consider is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators (ACER). They also enable us to direct or amend the timetable for relevant modifications, and that such modifications cannot be withdrawn without our consent. The CUSC does not currently reflect these provisions.

## The modification proposal

NGET raised modification CMP225 in November 2013. A similar modification to the Balancing and Settlement Code, P298<sup>5</sup>, was raised in December 2013 and the two modifications were assessed together by a joint Workgroup.

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> The term 'Third Package' refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Electricity Directive); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Electricity Regulation); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Gas Regulation); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

<sup>4</sup> SI 2011/2704 which can be found here: <http://www.legislation.gov.uk/ukSI/2011/2704/part/1/made>. In addition, we made further consequential licence changes relevant to implementation of the Third Package (see our licence modification decision here: <https://www.ofgem.gov.uk/publications-and-updates/decision-modify-gas-and-electricity-licence-conditions-following-implementation-third-package-and-other-house-keeping-changes>).

<sup>5</sup> Papers relating to P298 are available on Elexon's website: <http://www.elexon.co.uk/mod-proposal/p298/>

CMP225 seeks to align the CUSC governance rules (in Section 8 of the CUSC) with the licence changes made to implement the Third Package. The modification:

- reflects that the Authority may raise, or direct the licensee to raise, a CUSC modification which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or ACER
- sets out that NGET and the CUSC Panel is to comply with any Authority directed timetable in respect of a modification which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the ACER. Compliance includes completion of the relevant modification process steps and implementation of the modification in accordance with the Authority's directed timetable, if any
- reflects that where NGET raises a modification which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the ACER, it cannot be withdrawn or amalgamated with another CUSC modification without prior Authority consent and
- provides definitions for 'ACER', 'Electricity Regulation' and 'European Commission' in Section 11 of the CUSC.

The workgroup that assessed CMP225 suggested some further changes to the code drafting to address practical effects of the licence changes, e.g. that Authority raised or directed modifications cannot be prevented by the CUSC Panel from being progressed through the modification process, and may only be amalgamated with the Authority's consent.

### **CUSC Panel<sup>6</sup> recommendation**

The CUSC Panel considered the draft Final Modification Report (FMR) for CMP225 at its meeting on 30 May 2014. The Panel unanimously recommended that the modification better facilitates Applicable CUSC Objectives (a) and (c). The views of Panel members are set out in full in the FMR.

### **Our decision**

We have considered the issues raised by the modification proposal and the FMR dated 10 June 2014. We have considered and taken into account the responses to the Code Administrator consultation which are attached to the FMR.<sup>7</sup> We have concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the CUSC<sup>8</sup>; and

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<sup>6</sup> The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

<sup>7</sup> CUSC modification proposals, modification reports and representations can be viewed on NGET's website at <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/Current/>

<sup>8</sup> As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.<sup>9</sup>

### **Reasons for our decision**

We have considered the views of the CUSC Panel and the respondents to the industry consultation who unanimously agreed that CMP225 should be approved. We agree with the views of the Panel that CMP225 better facilitates applicable CUSC Objectives (a) and (c) for the reasons set out below. We consider the modification has no impact on Applicable CUSC Objective (b).

*Applicable Objective (a) 'the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence'*

The electricity transmission licence was modified as a result of introducing the Third Package into domestic legislation. The aim of the changes proposed by CMP225 is to align the CUSC governance rules with the licence requirements set out in Condition C10 of the licence. This ensures that NGET can efficiently discharge its licence obligations. For this reason, we consider that the modification does better facilitate this objective.

*Applicable Objective (c) 'compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency'*

Changes introduced by this modification will help ensure that the CUSC governance rules reflect the appropriate governance processes that allow future compliance to take place. For this reason, we consider that this modification does better facilitate this objective.

### **Decision notice**

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that modification proposal CMP225 '*Consequential changes following implementation of the Third Package and other miscellaneous changes*' be made.

**Lesley Nugent**

**Head of Industry Codes and Licensing**

Signed on behalf of the Authority and authorised for that purpose

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<sup>9</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed in the Electricity Act 1989 as amended and in other relevant legislation.