

Stage 01: Proposal

CAP190: Two-Thirds majority voting requirement for CUSC panel recommendations on Amendments arising from Licence obligations, Authority requests or obligations

CAP190 seeks to modify the CUSC to require a two thirds majority vote at the CUSC Panel for Amendments that the Licensee has been obligated to raise.



The *Code Administrator* recommends:
CAP190 proceeds to Working Group



High Impact:
CUSC Panel



Medium Impact:
None anticipated



Low Impact:
None anticipated

What stage is this document in the process?

- ▶ 01 Initial Written Assessment
- 02 Definition Procedure
- 03 Assessment Procedure
- 04 Report Phase

Panel paper number
CAP190 Amendment
Proposal

01 September 2010

Version 0.2

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About this document:

This document is an Initial Written Assessment to support CAP190 which will be presented by the Proposer to the Amendments Panel on 03 September 2010. The Panel will consider the Proposer's recommendation, and agree whether this Proposal should proceed to consultation or be referred to a Working Group for development.

Further Information

Further information is available in the Amendment Proposal which is an appendix to this document. The Proposed CAP190 Working Group Terms of Reference are also included as an Appendix to this document.

Appendix 1: CAP190 Amendment Proposal form

Appendix 2: Draft CAP190 Working Group Terms of Reference

In addition, National Grid has provided links throughout this document to other useful background information, particularly documents relating to two related code modification proposals for the Uniform Network Code (UNC) and the Balancing and Settlement Code (BSC), information on the Competition Commission's website and the relevant Statutory Instrument.



Any questions?

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Wyre Power

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1 Why Change?

Background

The implementation of Ofgem's Code Governance Review has led to certain changes to the Transmission Licence. One of these changes, termed the Significant Code Review (SCR), gives Ofgem the ability to place an obligation on the Licensee to raise Amendment Proposals in line with their conclusions during an SCR.

Currently, the Amendments Panel will make a recommendation to the Authority as to whether it believes that an Amendment Proposal should be approved or rejected, based on an assessment of the merits of the proposal against the Applicable CUSC Objectives. The final recommendation is made, based on a simple majority vote, i.e. over 50% of the vote.

The Panel consists of the following members:

- 7 Industry elected members (one vote each)
- 1 National Consumer Council member (one vote)
- 2 National Grid members (one vote between them)
- 1 Panel Chairman (no vote for Panel recommendations)
- 1 Authority representative (no vote)

There is also a provision in the CUSC to allow the Authority to appoint an additional Panel Member, where the Authority considers that there is a class or category of person who has interests in the CUSC but whose interests are not reflected in the make up of the Panel Members at any particular time. Currently, there is no Panel Member appointed by the Authority.

The CUSC requires there to be six votes present in order for a Panel meeting to be quorate, although votes can be passed from a Panel Member to an alternate where that Panel Member is unable to attend a meeting, therefore there may not be six individual Panel Members present at a quorate meeting. As outlined above, the Panel Chairman does not have a casting vote for Panel recommendations and there can only be one vote between the two National Grid members, therefore a maximum of 9 votes can be cast. This would become 10 were the Authority to exercise its right to appoint an additional voting Panel Member in the future.

In the event of there being a deadlock in the voting and the Authority had made a decision on the Amendment Proposal, a party could appeal the decision to the Competition Commission. In other cases where the Authority decision is different to the majority recommendation of the Amendments Panel, it may also be appealed to the Competition Commission. However, there is a caveat within the Energy Act (Section 173) which excludes appeals if the delay caused by the appeal would impact on security of supply. If the Authority decision is in line with the Panel's majority recommendation, there would be no right of appeal to the Competition Commission.

Further information on the appeals process can be found on the following link:

<http://www.competition-commission.org.uk/appeals/energy/>

During industry discussions of other related Modification Proposals (see below) an issue was raised regarding the interpretation of the relevant Statutory Instrument (SI), "The Electricity and Gas Appeals (Designation and Exclusions) Order 2005". The Order provides for the circumstances in which a decision may be excluded from the right of appeal to the Competition Commission. In particular, discussions focussed on ambiguity regarding the use of the term "majority" in the SI and whether a code modification proposal could seek to clarify or change what is in the SI.

A copy of the Statutory Instrument is available at the link below:

<http://www.legislation.gov.uk/uksi/2005/1646/contents/made>



What are the Applicable CUSC Objectives?

The Applicable CUSC Objectives are contained in Standard Condition C10 of National Grid's Transmission Licence and are:

(a) *"the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this 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."*

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The Issue

The Proposer believes that Amendment Proposals that arise from Licence obligations are likely to contain contentious issues which the industry may have discussed previously but never reached an agreement. The current Panel voting process could result in a single vote making a recommendation to the Authority and removing the right of appeal to the Competition Commission. Therefore, contentious Amendment Proposals would be more likely to be approved by the Authority without the full support of the Panel which may increase the risk of judicial reviews being raised, where the right of a Competition Commission appeal is not available.

A further concern raised by the Proposer is that directions from the Authority to raise Amendment Proposals, in the case of SCRs for example, may be determined unfairly as it would be in the Authority's interests to ensure that the Amendment Proposal(s) was approved. The Proposer who would be the licensee would also be inclined to vote to approve the Amendment Proposal as they had raised it following a direction from the Authority.

For the avoidance of doubt, the Proposer highlights that CAP190 only applies to Amendment Proposals which arise from either an Authority request, direction or instruction.

Related Proposals

National Grid notes that two similar Modification Proposals have been raised to the UNC and the BSC as UNC Modification Proposal 0312 and BSC Modification Proposals P264 respectively. Links to the documentation for those proposals are included below for ease of reference.

UNC Modification Proposal 0312: Introduction of Two-Thirds Majority Voting to the UNC Modification Panel

Raised by E.ON UK on 26th May 2010 and amended by E.ON on 10th August 2010

Documents available on the Joint Office's website at:

<http://www.gasgovernance.co.uk/0312>

BSC Modification Proposals P264: Two-thirds majority requirement for Panel recommendations on licence originated Modifications

Raised by Drax Power Ltd on 2nd August 2010.

Documents available on ELEXON's website at:

http://www.elexon.co.uk/changeimplementation/findachange/modproposal_details.aspx?propID=292

2 Solution

CAP190 proposes that when the Amendments Panel votes on its final recommendation for an Amendment Proposal that the Licensee has been directed to raise by the Authority, a two-thirds majority vote would be required to recommend approval.

If the two-thirds majority is not reached by the Panel, the Amendment would be automatically recommended for rejection.

A two-thirds majority vote would mean that the number of votes in favour of approval would have to be at least twice the number of votes against approval. Any members that abstain from voting would not have a rejection vote assigned to them.

Please see the table below for examples of voting, bearing in mind the minimum required number of votes and the current maximum number of votes, as discussed earlier.

Total Votes cast	Votes required "for"	Votes "against"
9	6	3
8	6	2
7	5	2
6	4	2

For those Amendment Proposals which have not been raised following a direction from the Authority, the voting would be based on the current simple majority vote.

The Proposer considers that this solution addresses the following:

- Ensures appropriate level of support from the Panel when recommending an approval
- Reduces risks of a challenge in the form of a judicial review
- Removes risk of a single vote jeopardising the ability to appeal to the Competition Commission

3 Proposed Progression

The Proposer recommends that CAP190 proceeds to a Working Group for further development.

National Grid, as Code Administrator, proposes that Working Group members be sought from the Governance Standing Group as the body with the most appropriate expertise. National Grid proposes the following timescales for progressing CAP190. In preparing the timetable, National Grid has reviewed the progress of the aforementioned related Modification Proposals, in particular P264. National Grid notes that at the first meeting of the P264 Modification Group, on 25th August 2010, the Group agreed that ELEXON should seek legal advice from a Queen's Counsel (QC) on the legal interpretation of the term "majority" included in the relevant Statutory Instrument. The Modification Group intends to reconvene later in September or early October to review any advice received.

3 September 2010	Amendments Panel Meeting – agree Working Group Terms of Reference (see draft TOR as Appendix 2 to this IWA)
23 September 2010	First Working Group meeting (using scheduled GSG meeting as host)
7 October 2010	Second Working Group Meeting (date dependent on legal advice)
12 October 2010	Draft Working Group Consultation for comment
20 October 2010	Publish Working Group consultation (for three weeks)
10 November 2010	Deadline for responses on Working Group report
17 November 2010	Post-consultation Working Group meeting (to review consultation responses, confirm any alternatives and undertake Working Group vote)
24 November 2010	Draft Working Group Report circulated for comment
01 December 2010	Deadline for comment on Working Group report
09 December 2010	Publish final Working Group report for Panel Papers
17 December 2010	Present Working Group report to Amendments Panel
04 January 2011	Issue industry consultations (3 weeks)
25 January 2011	Deadline for industry comment
28 January 2011	Draft Amendment Report published for industry consultation
04 February 2011	Deadline for industry comment
25 February 2011	Amendments Panel Meeting – Panel Recommendation Vote
02 March 2011	Send final Amendment Report to Authority
06 April 2011	Indicative Authority decision (25 Working Day KPI)
20 April 2011	Indicative implementation date (10 Working Days after decision)

4 Impacts & Costs

Estimated Costs of Progressing Amendment Proposal

Estimated code administration costs based on proposed timetable	
Resource costs	£5,445 - 3 Working Group meetings £60 - Catering
Total Code Administrator costs	£5505

Indicative industry costs

Resource costs	£8,167 - 3 Working Group meetings £18,150 2 Consultations
Total Industry Costs	£26,317

The costs above are estimates and assume:

- 3 Working Group meetings held at National Grid offices for which there are no room costs.
- Working Group Chairman and Technical Secretary provided by National Grid.
- Resource costs are based on National Grid's "Charge-Out Rates", published in Schedule 3 of The Statement of Use of System Charges, on National Grid's website at:
<http://www.nationalgrid.com/uk/Electricity/Charges/chargingstatementsapproval/index.htm>;
- The published rates include overheads.
- Working Group costs assume 1.5 man days effort per meeting
- Consultation costs assume 2.5 man days effort and 6 responses to be received.

Impacts

Impact on Code Systems	
None anticipated	

Impact on Core Industry Documents and other documents	
None anticipated	

5 The Case for Change

The Proposer believes that CAP190 would better meet both Applicable CUSC Objectives:

- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this license;
 - Ensures the appeals process is enhanced and protected
 - Drives efficiency in process by supporting better governance and reducing uncertainty of Panel recommendations
 - Encourages engagement with the Industry by the Authority which improves the governance process

- (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent wherewith) facilitating such competition in the sale, distribution and purchase of electricity.
 - Ensures concerns from small parties can better influence the Panel recommendations and provide a more robust route of appeal
 - Ensures Authority directed proposals have an appropriate level of support from Panel members
 - Reduces perceived regulatory risk and encourages new entrants to the market

6 Recommendation

The Code Administrator invites the Panel to:

- DETERMINE that Modification Proposal CAP190 progress to Working Group
- AGREE the draft Working Group Terms of Reference, including the timetable

CUSC Amendment Proposal Form	CAP:190
Title of Amendment Proposal:	
Two-Thirds Majority Voting requirement for CUSC Panel recommendations on Amendments arising from Licence obligations, Authority requests or obligations	
Description of the Proposed Amendment (mandatory by proposer):	
<p>It is proposed that where an Amendment Proposal being presented to the CUSC Panel for a recommendation vote has been raised to comply in full or in part with a Licence change, or following an Authority direction, request or obligation (e.g. potentially from a Significant Code Review (SCR) should this be facilitated under the CUSC), a recommendation to implement that Amendment Proposal by the CUSC Amendments Panel must be based on at least two-thirds of votes cast by those Panel members present being in favour of implementation. Thus if the Panel comprises 7 members plus 1 Consumer Focus representative and 2 National Grid representatives (with one vote) and that all 9 votes are cast, it would take at least 6 votes in favour for the Panel to recommend implementation of such a Proposal. As at present an abstention would not count as a vote cast.</p> <p>Where the Panel does not have a two thirds majority, even if the votes cast do make any majority, the Panel recommendation will be maintain the status quo and not implement the Amendment. This would also be the case where the Panel reaches no decision, for example where the vote is split 4:4.</p> <p>For clarity, it is intended that this Proposal should only apply to Amendment Proposals arising either directly from a Licence condition or Authority request, direction or instruction to bring forward a proposal (i.e. a Proposal raised in response to a Licence condition or SCR conclusions) or indirectly (i.e. a Proposal arising from an industry review process which was initiated to meet a Licence condition or SCR conclusions). For all other Amendment Proposals the current rules shall continue; i.e. a simple majority of votes cast is required, with an abstention not counted as a vote cast.</p> <p>It is suggested that a Proposer should indicate on the CUSC Amendment Proposal Form whether they believe that implementation of their Proposal would meet the requirements of a Licence direction, Authority request, direction or instruction, in full or in part; in which case it should be subject to two-thirds majority voting for the final Panel recommendation. The Panel would review this and confirm by simple majority vote whether or not two-thirds or the default simple majority voting would apply for their final recommendation vote to be presented to the Authority.</p> <p>Alternatively the Panel could write to the Proposer asking that they confirm that the Amendment Proposal falls into one of the categories subject to a two thirds majority vote.</p> <p>It is suggested that the voting approach determined by the Panel for the original Proposal would also apply to any Alternative(s) raised, any such solution(s) having also been raised to comply with the relevant direction or licence change.</p> <p>The proposal is that all Proposed Amendments that meet the criteria are subject to the two thirds majority vote. This would include Licence conditions arising from a price control or other regulatory process that result in a CUSC Amendment being raised.</p> <p>To cover Amendments that may also be fulfilling SCR conclusions, in part or in full, the voting would also be applied to Amendments subsumed into an SCR or suspended during an SCR process. The proposer recognises that an alternative may be to exclude such Amendments.</p>	
Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):	
Introducing two-thirds majority voting for recommendation of Licence-originated, Authority directed, requested or instructed Amendment Proposals would safeguard Parties' Appeal	

rights regarding those Proposals likely to be of greatest impact on industry.

The requirement to recommend rejection where a two thirds majority cannot be achieved likewise protects and strengthens these appeal rights.

The Panel vote on whether to recommend implementation of an Amendment Proposal determines the ability of a Party or Parties to appeal the Authority's final determination on that Proposal: in order to appeal such a determination, the Authority's decision must be counter to the Panel's recommendation to the Authority. The government having given rights of appeal that allow parties to question the Authorities' policy decisions (rather than the narrower Judicial Review appeal grounds) it signalled that its policy was to implement a check on regulatory powers to change industry contracts. This Amendment seeks to protect those appeal rights and should help achieve better regulation by making the Authority decisions more robust, well argued and supported by appropriate analysis.

The implementation of Ofgem's Code Governance Review recommendations (via the associated changes to Licence conditions) will enable Ofgem to conduct Significant Code Reviews. SCR instigation, assessment and conclusions will all be led by Ofgem, who propose that:

"Ofgem should have the ability to start a SCR where a modification proposal is likely to have significant impacts on consumers, competition or other issues relevant to our statutory duties such as sustainable development." (Code Governance Review Final Proposals 2.29)

The desirability of protecting Parties' appeal rights on any matters where the Authority is 'the effective progenitor of a proposal' was highlighted by the Competition Commission's 2007 appeal decision regarding UNC Modification Proposal 116. This is particularly critical when as the Code Governance Review confirmed, matters addressed by SCRs are likely to be major issues on which the industry may have been unable to reach consensus in the past. Thus Amendment Proposals raised to comply with any SCR Direction issued to a licensee to progress Ofgem's SCR conclusions may well be contentious with potentially major impact on certain Parties. Ofgem acknowledged such concerns in their Final Proposals which also stated:

"To the extent that parties believe that further checks and balances are needed in relation to SCR modification proposals, it may be possible to pursue them through changes to the modification rules. For instance, while panel recommendations are currently made on the basis of a simple majority, the rules could be changed to require a different threshold for SCR modification proposals." (Appendix 2, 1.65)

This proposal thus seeks to introduce an appropriate check to ensure that where potentially contentious issues are addressed via Licence originated Amendment Proposals, an appropriate level of support is required for the Panel recommendation that will ultimately determine the ability of a Party to appeal an Authority determination. This is particularly pertinent to the CUSC Panel where The Company member, who may feel obliged to vote for the Proposal they have been required to raise, is indeed a voting Panel member, potentially one of a quorum of just 6.

The proposal also addresses a related issue raised during the Code Governance Review. The Final Proposals noted that the Panel Chairman should be independent and will be appointed by Ofgem. If the Chairman then gets a casting vote, or seeks to steer the debate, the Chair may effectively close the route to appeal. The Authority's documents appear to foresee this problem arising on Licence originated or Authority directed/requested Amendments:

"We have noted the concern that the independent chair's casting vote should not be able to determine whether or not an SCR proposal is subject to appeal. We note that a casting vote is only relevant where there would otherwise be deadlock and the panel is required to make a determination. We do not consider that a casting vote is necessary in the case of a recommendation, which can legitimately reflect a split vote without hindering the ongoing progress of a proposal; it will simply be recorded as such in the modification report to the Authority." (3.35)

Were Ofgem in future to recommend that the Panel Chairman has a vote, or it appoints another Panel member, as it can under CUSC 8.3.3, this proposal would still ensure that a significant majority is achieved in the very limited circumstances in which the proposal would apply. We believe that in creating the rights of parties to appeal the nature of an

Ofgem decision (rather than the limited Judicial Review scope) the government clearly intended that the right to appeal should be open for contentious issues. This modification would preserve and strengthen those rights.

The proposer is aware that the Authority has at times also requested Amendments are raised without an SCR process (e.g. transmission access) or via other regulatory processes, such as in a price control. Any changes that result in Amendments where the Authority could be perceived as the originator as well as the approver of a change should require greater support from the Panel to ensure the changes can be appealed by those not party to the original origination discussions.

Wyre Power believes that this proposal is particularly important to smaller players who may not have the staff to participate in the resource intensive processes of an SCR, or may not monitor all of the consultations on price controls, so will not necessarily have seen some of these changes coming. This means it may only be at the point of an Amendment being raised that they become aware that the proposal impacts their business. Knowing that such changes must carry a two thirds majority vote will offer some comfort to them that the governance process is weighted towards facilitating appeals where there is a proportion of the market who do not support the change.

We would note that we do not think that the main impact of this Amendment would be to increase the number of appeals, as they themselves are resource intensive and expensive. However, we do believe that it will improve the regulator process, reducing regulatory risk, by encouraging Ofgem to make robust, well analysed decisions. The potential for appeals more than appeals themselves should create the right incentives for good regulation.

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

Amendments to Section 8. A new section on the CUSC Amendment Proposal Form.

Impact on Core Industry Documentation (*this should be given where possible*):

None anticipated.

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

None anticipated.

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

UNC modification proposal 0312: 'Introduction of Two-Thirds Majority Voting to the UNC Modification Panel'.

BSC modification proposal P264: "Two-thirds majority requirement for Panel recommendations on licence originated modifications".

Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (*mandatory by proposer*):

The proposer believes that implementation of this Amendment Proposal would better facilitate the
Applicable CUSC Objective:

(a): *"the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence"*, specifically with regard to the obligation under standard condition C10 of the licence.

The change suggested by this Proposal is a minor alteration to the working practice of the CUSC Panel which would address the concerns raised at the Competition Commission, in the Code Governance Review and recognised by Ofgem in their Final Proposals. It is efficient for the licensee to meet the spirit of the regime as well as the letter of the licence conditions imposed under the Governance review. This means taking account of the appeal rights created by government and trying to protect and enhance them. The appeal rights become more important in a situation where Ofgem will run a review, select the solution and then sign off the Amendment, which seriously alters the role of Ofgem.

It will be a more efficient process if the risks associated with these sorts of Amendment are subject to a higher threshold as it will indicate clearly to the Authority the level of support that a change has. This in turn should improve the incentive of the Authority to act in a manner consistent with good regulation, for example not putting badly drafted licence conditions on the licensee and ensuring all the decisions are robust to challenge, were one to arise.

Implementing two-thirds majority voting on Amendment Proposals arising from Licence obligations, Authority requests, obligations or directions reduces the uncertainty and risk of time and money being wasted on legal challenges that might otherwise be raised when Panel recommendations are finely balanced.

In the longer term the efficiency of the market will be helped if a more robust regulatory regime is developed. The Authority getting a clear steer from participants may reconsider some of their proposed solution. They may be encouraged to engage more widely with the participants earlier in the process, as they will need robust decision making processes to accept Amendments that do not have significant support and thus may want earlier dialogue to ensure all angles are covered. It would be in the interests of the market as a whole that the governance process is robust, transparent and open to challenge.

This solution is also in line with that put forward under the BSC and UNC, which will help to ensure consistency across the industry codes.

It would also better facilitate the Applicable CUSC Objective:

(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 Amendment Proposal will ensure that Panel recommendations on potentially contentious Amendment Proposals resulting from Licence changes, SCR directions or other Authority requests and obligations are subject to an appropriate level of support from the expert Panel Members, and that Parties' rights to appeal Authority decisions regarding such Proposals are protected. The support of the CUSC signatories is vital if the contract is to develop in such a way as to encourage new entrants to the market. Market entry is vital to maintaining competitive pressure in the market.

Perceived regulatory risk is increasing with the Authority taking a more active role in the design and operation of the market. When civil servants are seen to be significantly impacting the way businesses operate this creates a barrier to entry. For example a regime that can change pricing rules with limited notice can be seen as being too risky for a new entrant. To increase competition the CUSC governance process should try to reduce regulatory risk and create a stable investment background where new entrants and smaller players feel they will have rights of recourse against any bad regulation.

This Amendment may be of particular relevance to smaller players who do not have the resources to participate in the SCR or price control type of processes (with many meetings and pages of documents). The raising of an Amendment Proposal may be the first opportunity that they have had to consider the impact of a change on them, possibly raising issues the SCR has not considered. To close down the route of appeal for such parties will increase the regulatory risk that they face. Regulatory risk is far greater if (like smaller players) you do not have the resources to fully participate in the regulatory process due to the work load created by activities such as SCRs. We note that in 2004 the original cash-out review consultation only received responses from big players and in 2006, though the response was better, there are still only 18 responses to the impact assessment.

Details of Proposer: Organisation's Name:	Wyre Power
Capacity in which the Amendment 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:	Lisa Waters Wyre Power 020 8286 8677 lisa@waterswye.co.uk
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Esther Sutton E.On UK 024 7618 3440 esther.sutton@eon-uk.com
Attachments (Yes/No): No If Yes, Title and No. of pages of each Attachment:	

Notes:

1. Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
2. The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform the Proposer.

The completed form should be returned to:

Steven Lam
Commercial
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Or via e-mail to: steven.lam@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in

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accordance with Paragraph 8.15.7 of the CUSC. A Proposer that is a CUSC Party shall be deemed to have granted this Licence).

3. Applicable CUSC Objectives** - These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1. Reference should be made to this section when considering a proposed amendment.

TERMS OF REFERENCE FOR CAP190 WORKING GROUP

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP190: Two-thirds majority voting requirements for CUSC panel recommendations on Amendments arising from Licence obligations, Authority requests or obligations tabled by Wyre Power at the Amendments Panel meeting on 03 September 2010.
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 amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

SCOPE OF WORK

4. The Working Group must consider the issues raised by the Amendment 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 Working Group shall consider and report on the following specific issues:
 - a) review the illustrative legal text
 - b) consider any alternative amendments
6. The Working Group is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAA) arising from Group discussions which would, as compared with the Amendment 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 Working Group should become conversant with the definition of Working Group Alternative Amendment which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Working Group to put forward a WGAA if the member(s) genuinely believes the WGAA would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Amendment Proposal or the current version of the CUSC. The extent of the support for the Amendment Proposal or any WGAA arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. Working Group members should be mindful of efficiency and propose the fewest number of WGAA's possible.

9. All proposed WGAAAs should include the Proposer(s)'s details within the final Working Group report, for the avoidance of doubt this includes WGAAAs which are proposed by the entire Working Group or subset of members.
10. There is an obligation on the Working Group to undertake a period of Consultation in accordance with CUSC 8.17. The Working Group Consultation period shall be for a period of 3 weeks as determined by the Amendments Panel.
11. Following the Consultation period the Working Group is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Working Group should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

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

12. The Working Group is to submit its final report to the Amendments Panel Secretary on 17 February 2011 for circulation to Panel Members. The final report conclusions will be presented to the Amendments Panel meeting on 25 February 2011.

MEMBERSHIP

13. It is recommended that the Working Group has the following members:

Role	Name	Representing
Chairman	<i>TBC</i>	
National Grid Representative*	<i>TBC</i>	
Industry Representatives*	<i>Generator Representative</i>	
	<i>Transmission Owner Representative</i>	
	<i>DNO Representative</i>	
	<i>Directly Connected Customer Representative</i>	
Authority Representative		
Technical Secretary	<i>[normally provided by National Grid]</i>	
Observers		

NB: A Working Group 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 Working Group and the Amendments Panel Chairman must agree a number that will be quorum for each Working Group meeting. The agreed figure for CAP190 is that at least 5 Working Group members must participate in a meeting for quorum to be met.

15. A vote is to take place by all eligible Working Group members on the Amendment Proposal and each WGAA. 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 Working Group 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 WGAA's exist, whether each WGAA better facilitates the Applicable CUSC Objectives than the original Amendment 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 Working Group report [in as much detail as practicable].
16. It is expected that Working Group 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 Working Group chairman at the earliest possible opportunity and certainly before the Working Group vote takes place. Where abstention occurs, the reason should be recorded in the Working Group report.
17. Working Group members or their appointed alternate are required to attend a minimum of 50% of the Working Group meetings to be eligible to participate in the Working Group vote.
18. The Technical Secretary shall keep an Attendance Record for the Working Group meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Working Group report.
19. The Working Group membership can be amended from time to time by the CUSC Amendments Panel.

RELATIONSHIP WITH AMENDMENTS PANEL

20. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event the Working Group chairman should contact the Amendments Panel Secretary.
21. The Working Group shall seek the Amendments Panel's advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.17.17 of the CUSC.
22. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group chairman should contact the Amendments Panel Secretary.

MEETINGS

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

REPORTING

24. The Working Group chairman shall prepare a final report to the 25 February 2010 Amendments Panel responding to the matters set out in the Terms of Reference, including all Working Group Consultation Responses and Alternative Requests.
25. A draft Working Group Report must be circulated to Working Group members with not less than five Business Days given for comments, unless all Working Group members agree to three Business Days.
26. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
27. The chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.