



Direct Dial: 020-7901-7435

19 May 2003

The National Grid Company, CUSC Signatories and  
Other Interested Parties

Your Ref: CAP044  
Our Ref: IND/COD/CUSC/CAP044

Dear Colleague,

**Amendment to the Connection and Use of System Code (“CUSC”) - Decision and Direction in relation to Proposed Amendment CAP044: “Extension of Election Arrangements to Panel Alternates”.**

The Gas and Electricity Markets Authority (the “Authority”<sup>1</sup>) has carefully considered the issues raised in the Amendment Report<sup>2</sup> in respect of Proposed Amendment CAP044 “Extension of Election Arrangements to Panel Alternates”.

The National Grid Company plc (“NGC”) recommended to the Authority that Alternative Amendment (A) should be approved with an implementation date of 10 days after the Authority’s decision.

The Authority has decided to direct a modification to the CUSC.

This letter explains the background to Proposed Amendment CAP044, as set out in the Amendment Report, and sets out the Authority’s reasons for its decision. In addition, this letter contains a direction to NGC to modify the CUSC in respect of Proposed Amendment CAP044.

This letter constitutes the notice by the Authority under Section 49A of the Electricity Act 1989 in relation to the direction.

**Background**

Paragraph 8A.4 of the current version of the CUSC describes the procedure for the replacement of Panel Members that cease to hold office pursuant to paragraph 8.5 of the CUSC. Under this

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<sup>1</sup> Ofgem is the office of the Authority. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

<sup>2</sup> CAP044 Amendment Report dated 26 March 2003.

procedure, should a Panel Member cease to hold office not less than six months before the expiry of his/her term, an election is held in which only those Users that voted for the outgoing Panel Member or those that did not vote for (and are not Affiliates of any User which voted for) any other Panel Member still serving, may participate (either in the nomination of candidates or actual voting). Should a Panel Member cease to hold office less than six months before the expiry of his/her term the User that nominated the outgoing Panel Member is entitled to appoint a replacement for the remainder of the term of office.

Currently under the CUSC, however, there is no provision for the replacement of Alternate Members. This issue was drawn to the attention of the Amendments Panel at the CUSC Amendments Panel meeting on 25 October 2002. The Amendments Panel agreed that the lack of a procedure for the replacement of Alternate Members was a defect in the current version of the CUSC which required a solution.

Proposed Amendment CAP044 was raised by NGC on 14 November 2002 and was submitted for consideration at the CUSC Amendments Panel Meeting on 22 November 2002. At the meeting, the Amendments Panel determined that Proposed Amendment CAP044 should be considered by the Governance Standing Group acting as a Working Group. The Working Group provided an initial report to the Amendments Panel on 13 December 2002. The Amendments Panel agreed that the Working Group should consider an Alternative Amendment and the Working Group provided its final report to the Amendments Panel on 21 February 2002. The Amendments Panel determined that Proposed Amendment CAP044 and Alternative Amendment (A) should proceed to wider consultation by NGC. A consultation paper was issued on 24 February 2003 with responses invited by 12 March 2003. The final Amendment Report was submitted to the Authority on 26 March 2003.

### **The Proposed Amendment**

Proposed Amendment CAP044 seeks to amend paragraph 8A.4 of the CUSC to extend the current election arrangements for the replacement of Resigning Panel Members (Panel Members that cease to hold office pursuant to paragraph 8.5 of the CUSC) to include the replacement of Resigning Alternate Members. The term 'Resigning Alternate Member' would also become a new defined term in the CUSC.

The Proposer considered that Proposed Amendment CAP044 would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence<sup>3</sup> since it would reduce the likelihood of inquorate CUSC Amendments Panel meetings as well as improving the choice of Alternate Members available to Panel Members in the event that such Panel Members are unable to attend a meeting of the Amendments Panel.

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<sup>3</sup> The Applicable CUSC Objectives are contained in Standard Condition C7F of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence") and 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.

### **Alternative Amendment (A)**

In discussing an Alternative Amendment to Proposed Amendment CAP044, the Working Group considered that there were a variety of possible mechanisms for addressing the problem of the replacement of Alternate Members. These included a full election based on a poll of all eligible CUSC Parties, co-option of Alternate Members by the Amendments Panel, co-option of Alternate Members by the Amendments Panel following calls for nominations for candidates from CUSC Parties and more frequent elections, for instance annually.

Of these mechanisms a majority of Working Group members considered that co-option of Alternate Members by the Amendments Panel, following calls for nominations for candidates from CUSC Parties, would best facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment and the current version of the CUSC.

The Working Group therefore developed Alternative Amendment (A) which seeks to amend paragraph 8A.4 of the CUSC such that, following an Alternate Member ceasing to hold office pursuant to paragraph 8.5 of CUSC, the Amendments Panel is required to appoint a new Alternate Member based on nominations received from Users.

### **Alternative Amendment (B)**

Alternative Amendment (B) was submitted during wider consultation on Proposed Amendment CAP044. The proposer of Alternative Amendment (B) considered that it would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment and Alternative Amendment (A).

The proposer of Alternative Amendment (B) acknowledged the benefits of the Proposed Amendment in that it recognised that, since all other Parties' votes in any consequent election would still be 'valid', should an Alternate Member cease to hold office pursuant to paragraph 8.5 of the CUSC, any election should be restricted to those Users who voted for the outgoing Alternate Member or who did not vote for any other Panel Member still serving. However, the proposer of Alternative Amendment (B) considered that the mechanism put forward by the Proposed Amendment may be unable to cope with a changing and evolving industry structure and also that it would not enable the appointment of any Alternate Member vacancies arising other than pursuant to paragraph 8.5 of the CUSC.

The proposer of Alternative Amendment (B) did not support Alternative Amendment (A) since, in the view of the proposer, it was not appropriate to allow all Amendments Panel Members, including those appointed by NGC and Energywatch, to participate in a vote for the replacement of an outgoing Alternate Member should more than one nomination be received.

The proposer of Alternative Amendment (B) considered that this proposal would better facilitate achievement of the Applicable CUSC Objectives since it represented the most "realistic solution". Alternative Amendment (B) seeks to amend paragraph 8A.4 of the CUSC such that, following an Alternate Member ceasing to hold office pursuant to paragraph 8.5 of CUSC, Users would be entitled to nominate candidates for the vacant Alternate Member position and, should more than one nomination be received, a full election pursuant to paragraph 8A.2 and 8A.3 of the CUSC would be held but with participation limited to those Users that are party to the CUSC Framework Agreement (other than NGC) at the date that the outgoing Alternate Member ceased to hold office.

## **Respondents' views**

NGC issued a consultation paper on 24 February 2003 inviting views from CUSC Parties and interested parties.

NGC received five responses to the consultation in respect of Proposed Amendment CAP044, all of which supported the principle of the Proposed Amendment. Four respondents expressed support for Alternative Amendment (A) over the Proposed Amendment and one respondent expressed support for Alternative Amendment (B) over both the Proposed Amendment and Alternative Amendment (A).

One respondent that supported Alternative Amendment (A) considered that the Proposed Amendment, in restricting those Users that may participate in any election to replace an Alternate Member to those Users that voted for the outgoing Alternate Member or who did not vote for any other Panel Member still serving, "may either not provide sufficient nominees or hints at selective nomination". This respondent considered that since Alternative Amendment (A) would allow all CUSC Users to nominate candidates, with subsequent co-option of Alternate Members by the Amendments Panel, it would ensure both provision of a sufficient pool of nominees and would avoid any perception of selective nomination.

Another respondent that supported Alternative Amendment (A) considered that it represented a "pragmatic and relatively simple solution which can be implemented early to provide a 'top-up' mechanism for the pool of Alternates both now and in the future".

A further respondent that supported Alternative Amendment (A) considered that it would offer "the most transparent and open process for electing Panel alternates" and therefore that it would better facilitate achievement of Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment.

One respondent that did not support the Proposed Amendment or Alternative Amendment (A) submitted Alternative Amendment (B) which they considered would better facilitate achievement of the Applicable CUSC Objectives. Alternative Amendment (B) has been described previously in this letter and is contained in full in the Amendment Report in respect of Proposed Amendment CAP044.

The respondents' views are summarised and contained in the Amendment Report in respect of Proposed Amendment CAP044.

## **Amendments Panel Members' views**

No formal responses were submitted by Amendments Panel Members to the consultation on Proposed Amendment CAP044. However, during discussions at Amendments Panel meetings, Amendments Panel Members supported the Proposer's view and that of the Working Group that the Proposed Amendment addressed a defect in the current version of the CUSC.

## **NGC's recommendation**

NGC recommended to the Authority that Alternative Amendment (A) should be approved with an implementation date of 10 days after the Authority's decision. NGC considered that, while extension of the current election arrangements for the replacement of Resigning Panel Members

to include the replacement of resigning Alternate Members is a possible approach, it is unnecessarily complex. NGC considered that the arrangements for replacing resigning Alternate Members proposed by Alternative Amendment (A) are more pragmatic and sensible given the relatively minor nature of the defect in the current version of the CUSC.

Concerning Alternative Amendment (B), NGC did not consider that this proposal met the sensible and pragmatic additional criteria that were identified by the Working Group as compared with Alternative Amendment (A). Further, NGC considered that Alternative Amendment (B) would introduce unnecessary complexity into the arrangements for the replacement of resigning Alternate Members which do not apply to Resigning Panel Members.

### **Ofgem's view**

Having had regard to its statutory duties, the Applicable CUSC Objectives and the consultation responses, Ofgem is of the view that Proposed Amendment CAP044 would better facilitate achievement of the Applicable CUSC Objective C7F.1(a) for the efficient discharge by NGC of the obligations imposed upon it under the Act and by its Transmission Licence as compared with Alternative Amendments (A) and (B) and the current version of the CUSC.

In general terms, Ofgem considers that, in order for the Amendments Panel to be able to properly discharge its duties under section 8 of the CUSC, the composition of the Amendments Panel, in terms of the experience and expertise of both Panel Members and Alternate Members, should be such that the composition of the industry is reflected as closely as is practicable. However, consistent with the view of the Working Group, Ofgem acknowledges that, in considering the development of the CUSC election arrangements (including the arrangements for replacing Panel Members and Alternate Members), ensuring that the necessary experience and expertise is present on the Amendments Panel should not be achieved entirely at the expense of the arrangement's ability to cope with a changing and evolving industry structure and the complexity of such arrangements.

Ofgem acknowledges that, while the mechanism proposed by Alternative Amendment (A) may be simple yet robust enough to cope with a changing and evolving industry structure, Ofgem does not consider that this mechanism would necessarily ensure that the necessary experience and expertise is present on the Amendments Panel as compared with the Proposed Amendment. Although section 8 of the CUSC requires Amendments Panel Members and Alternate Members to act impartially and with a view to ensuring that the CUSC facilitates achievement of the Applicable CUSC Objectives, Ofgem does not consider that the Amendments Panel's duties and obligations as currently described in the CUSC are appropriate or sufficient to ensure that the necessary experience and expertise is present on the Amendments Panel. It is therefore Ofgem's view that Alternative Amendment (A) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment.

In addition, Ofgem considers that any mechanism in which the Amendments Panel is given the power to appoint an Alternate Member, where such a person once appointed as an alternate by a Panel Member can exercise and discharge all the functions, duties and powers of a Panel Member at the meeting in question, whether based on nominations received from Users or not, would produce an Amendments Panel consisting of 'elected' members and 'appointed' members. As stated previously, Ofgem does not consider that Alternative Amendment (A) would necessarily ensure that the necessary experience and expertise is present on the Amendments Panel. Therefore, for example, in discharging its responsibility as to whether to establish a

Working Group to consider a Proposed Amendment or whether to proceed directly to wider consultation by NGC (paragraph 8.16.5 of the CUSC), an Amendments Panel consisting of a number of 'appointed' members may not be able to best operate in an efficient, economical and expeditious manner, taking account of the complexity, importance and urgency of a particular Amendment Proposal, consistent with paragraph 8.2.3.2(a) of the CUSC. It is Ofgem's view that such a situation would undermine the integrity of the Amendments Panel and undermine the authority with which it makes decisions. Ofgem considers that this would not be in the interest of the efficient operation of the Amendments Panel and therefore that Alternative Amendment (A) would not better facilitate achievement of the Applicable CUSC Objective C7F.1(a) as compared with the Proposed Amendment.

Ofgem acknowledges that the mechanism proposed by Alternative Amendment (B) may be robust, in that it could cope with a changing and evolving industry structure. However, Ofgem considers that this mechanism could be both costly and time consuming, as compared with the Proposed Amendment, should a number of Alternate Members cease to hold office in the period between elections. Further, Ofgem does not consider that the mechanism proposed by Alternative Amendment (B) would ensure that the necessary experience and expertise is present on the Amendments Panel as compared with the Proposed Amendment since holding a full election for a single vacancy is likely to result in replacement Alternate Members having similar experience and expertise to existing Panel Members.

Ofgem considers that, should an Alternate Member cease to hold office, it is important that an opportunity is provided to those Users whose interests are reflected by the outgoing Alternate Member, in terms of his/her experience and expertise, to appoint/elect a similarly skilled individual. It is therefore Ofgem's view that the Proposed Amendment, in seeking to extend the existing provisions in the CUSC for the replacement of Panel Members who cease to hold office to the replacement of Alternate Members, would best ensure that the necessary experience and expertise is present on the Amendments Panel as compared with Alternative Amendments (A) and (B) and the current version of the CUSC.

Ofgem acknowledges that the mechanism put forward by Proposed Amendment CAP044 is potentially a more costly and time consuming solution than that proposed by Alternative Amendment (A) since there is the possibility that by-elections may have to be held (should any outgoing Alternate Member cease to hold office not less than 6 months before the expiry of the term of his/her office). However, it is Ofgem's view that, on balance, Proposed Amendment CAP044 would better facilitate the achievement of the Applicable CUSC Objective C7F.1(a) as compared with Alternative Amendments (A) and (B) and the current version of the CUSC.

### **The Authority's Decision**

The Authority has therefore decided to direct that Proposed Amendment CAP044, as set out in the Amendment Report, should be made and implemented.

### **Direction Under Condition C7F.7(a) of NGC's Transmission Licence**

Having regard to the above, the Authority, in accordance with Condition C7F.7(a) of the licence to transmit electricity treated as granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence"), hereby directs NGC to modify the CUSC in respect of Proposed Amendment CAP044, as set out in the Amendment Report.

The modification is to be implemented and take effect from 10 days after the Authority's decision.

In accordance with Condition C7F.7(b) of NGC's Transmission Licence, NGC shall modify the CUSC in accordance with this direction of the Authority.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Edward', written in a cursive style.

**David Edward**

**Head of Electricity Codes**

Signed on behalf of the Authority and authorised for that purpose by the Authority