

Modification proposal:	Grid Code GC0086: Grid Code Open Governance		
Decision:	The Authority ¹ directs ² that the proposed modification to the Grid Code be made		
Target audience:	National Grid Electricity Transmission PLC (NGET), the Grid Code Review Panel, Grid Code users and other interested parties		
Date of publication:	6 February 2017	Implementation date:	10 working days from date of this decision

Background

The industry codes³ underpin the electricity and gas wholesale and retail markets. Licensees are required to maintain, become party to, and/or comply with the industry codes in accordance with the conditions of their licence.⁴ As the codes define the terms under which industry participants can access the electricity and gas networks, they significantly impact the shape and development of the gas and electricity sectors.

The Grid Code sets out the minimum technical specifications for operation and development of the National Electricity Transmission System and for the connection of equipment to it. In accordance with the transmission licence,⁵ it is designed to permit the development, maintenance and operation of an efficient, economical and coordinated electricity system. All users of and connections to the transmission system in Great Britain must conform to the specifications as laid out in the Grid Code.⁶

The Grid Code was originally designed such that only NGET, following consultation with relevant parties, could formally propose modifications to the code for the Authority to consider and decide upon. Following Ofgem's Code Governance Review Phase 3 (CGR3),⁷ we amended the transmission licence to enable 'open governance', whereby Grid Code users and other named participants can formally propose Grid Code modifications. In addition, we introduced:

- the ability for a Grid Code Panel to make recommendations to the Authority in respect of whether a modification proposal should be approved, based on the Panel's assessment of the proposal against the relevant code objectives;
- the ability for a Grid Code Panel to make decisions on certain code modifications, without reference to the Authority, where those modifications meet certain criteria ("self-governance"), and subject to the self-governance appeal provisions;

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

² This document is a notice of the reasons for this decision, as required by section 49A of the Electricity Act 1989.

³ Multilateral agreements or codes developed pursuant to licence conditions which contain many of the rules and commercial and technical obligations that govern market participation.

⁴ Licence conditions can be found here: <https://www.ofgem.gov.uk/licences-codes-and-standards/licences/licence-conditions>

⁵ Current standard conditions for the transmission licence are available here: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

⁶ A summary of the Grid Code can be found here: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Code-Summaries/>

⁷ <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-governance-review>

- a fast-track self-governance process for modifications of a minor/housekeeping nature;
- the requirement for the Grid Code Panel to include a voting consumer representative;
- revised procedural and reporting requirements in respect of the consideration of modification proposals;
- a revised process for Significant Code Reviews (SCRs) and the ability for the Authority to raise modification proposals as a result of an SCR.

The modification proposal

GC0086 identifies that while Grid Code users can raise issues for consideration, the existing arrangements require NGET to be willing to take such issues forward via a formal modification proposal for the Authority to decide upon. Although a collaborative workgroup and Panel process exists, NGET is ultimately in sole control of all proposals submitted to the Authority. The concept of 'proposer ownership', whereby the party who raises the proposal retains ownership of the detail of the solution, therefore does not presently exist under the Grid Code. Nor is there a formal process for the raising of alternative proposals by industry participants, as currently any alternative presented to the Authority would be at NGET's discretion. Proposer ownership and the development of alternatives are principles enshrined in the Code Administration Code of Practice (CACoP)⁸ with which the Grid Code is required to comply (to the extent relevant).

The proposal seeks to modify the Grid Code in order to implement open governance. The proposed changes include:

- enabling participants other than NGET to formally propose code modifications, including alternatives;
- a revised Grid Code Panel membership and election process;
- the appointment of an independent panel chair, subject to Ofgem approval;
- the introduction of a self-governance process;
- provision of a Panel recommendation (or, in the case of self-governance, a decision) on code modifications;
- a revised SCR process to reflect recent licence changes under CGR3;⁹
- a process for urgent modifications.

The GC0086 workgroup developed an alternative option to implement open governance without a self-governance process or an independent chair or panel secretary. The alternative does not incorporate the CGR3 changes to the SCR process under the Grid Code. This version of the solution would retain but update the existing 'Constitution and Rules of the Grid Code Review Panel', whereas GC0086 original proposes to remove this subsidiary document and insert a new governance section in the Grid Code instead, similar to the CUSC.¹⁰

NGET's recommendation

NGET considers that open governance will be beneficial to the Grid Code and that while both versions of the proposal better facilitate the relevant objectives, the original solution best facilitates the objectives. NGET believes the proposal better facilitates objective 'ii'¹¹

⁸ <https://www.ofgem.gov.uk/publications-and-updates/code-administration-code-practice-version-4>

⁹ This element of the solution was introduced after the Authority sent back GC0086 for further work – see below – and did not form part of the industry consultation undertaken by NGET on this modification proposal.

¹⁰ Connection and Use of System Code.

¹¹ "to facilitate competition in the generation and supply of electricity (and without limiting the foregoing, to facilitate the national electricity transmission system being made available to persons authorised to supply or generate electricity on terms which neither prevent nor restrict competition in the supply or generation of electricity)"

by conforming to industry best practice and facilitating better engagement by stakeholders, providing them with ownership of any modification proposals they raise. It is also noted that a formal process for the development of alternative modifications may facilitate the achievement of better solutions, which could positively impact competition, and NGET considers that GC0086 better facilitates compliance with objective 'iv'¹² and their obligations under the transmission licence.

Send-back

NGET originally submitted GC0086 to us for decision on 17 March 2016. We sent GC0086 back to NGET on 13 April 2016 because certain licence changes would be required to implement the proposal, and relevant licence changes were being considered alongside Ofgem's CGR3 at that time.¹³ NGET subsequently updated GC0086 to reflect the CGR3 licence changes (which came into effect on 10 August 2016)¹⁴ and resubmitted the proposal for Authority decision.

Our decision

We have considered the issues raised by the modification proposal and the Final Report dated 23 December 2016. We have considered and taken into account the responses to NGET's consultations on the modification proposal which are included in the Final Report.¹⁵ We have concluded that:

- implementation of either the original modification proposal or alternative version would better facilitate the achievement of the objectives of the Grid Code;¹⁶
- GC0086 original better facilitates the Grid Code objectives compared to the alternative version and should therefore be implemented; and
- approving GC0086 original is consistent with our principal objective and statutory duties.¹⁷

Reasons for our decision

We consider this modification proposal will better facilitate Grid Code objectives 'ii', 'iv' and 'v' and has a neutral impact on the other objectives.

We consider that the original version of the modification proposal better facilitates the objectives compared with the alternative proposal. The alternative does not achieve compliance with the relevant licence provisions for the introduction of self-governance (objective 'iv'). The original proposal also requires an independent chair to be appointed, and while this is not mandated by the licence, we consider that independent chairs can play a role in providing oversight of the code administrator, in turn improving accountability to parties, as well as helping to ensure that Panel business is conducted efficiently and effectively, therefore further supporting objective 'v'.

¹² "to efficiently discharge the obligations imposed upon the licensee by this license and to comply with the Electricity Regulation and any relevant legally binding decisions of the European Commission and/or the Agency."

¹³ Authority decision to 'send back' Grid Code modification proposal GC0086 'Open Governance': https://www.ofgem.gov.uk/system/files/docs/2016/04/gc0086_send_back_letter_final_13_april_2016_2.pdf

¹⁴ <https://www.ofgem.gov.uk/publications-and-updates/decision-modify-gas-and-electricity-licences-implement-code-governance-review-phase-3-final-proposals>

¹⁵ Grid Code proposals, final reports and representations can be viewed on NGET's website at:

<http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Grid-code/Modifications/>

¹⁶ As set out in Standard Condition C14(1)(b) of NGET's Transmission Licence, available at:

<https://epr.ofgem.gov.uk/>

¹⁷ The Authority's statutory duties are wider than matters which NGET must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

(ii) to facilitate competition in the generation and supply of electricity...

We consider that the introduction of open governance, and the principle of 'proposer ownership', will better facilitate competition by ensuring that market participants are able to effectively seek to engage with, and influence, the rules relating to access to the transmission network that apply to them. We note that although the Grid Code is technical in nature, its provisions can have commercial impacts on its users.

(iv) to efficiently discharge the obligations imposed upon the licensee by this licence and to comply with the Electricity Regulation and any relevant legally binding decisions of the European Commission and/or the Agency.

The transmission licence was modified with effect from 10 August 2016 to incorporate the changes arising from CGR3, as well as changes related to Grid Code open governance, including amongst other things: the ability for Grid Code users to raise code modifications; the requirement for industry self-governance on certain modification decisions; and a revised process for SCRs. GC0086 original updates the Grid Code to reflect the revised licence provisions, therefore better facilitating this objective.

(v) to promote efficiency in the implementation and administration of the Grid Code arrangements

We consider that alignment and consistency of processes with other industry codes (notably the CUSC and STC¹⁸ which are also administered by NGET) will have efficiency benefits in the implementation and administration of the Grid Code. In addition, a streamlined Panel constitution, the introduction of a Panel decision-making role, and oversight by an independent chair can be expected to provide an improved process for the timely and robust assessment of change, and result in more effective and efficient decision-making. Under Ofgem's Code Governance Review¹⁹ we observed that the presence of an independently appointed chair could increase the robustness of industry assessments, ensuring that modification reports are balanced, and could help to ensure that small participants and consumer representatives are provided with more assistance in engaging in code processes.²⁰ GC0086 also introduces a formal process for considering modification proposals on an urgent basis, meaning that time-sensitive code changes can be dealt with in an efficient way.

It was noted by the workgroup that the costs of implementing GC0086 are difficult to quantify, however they considered that there would be no significant cost implication as a result of introducing open governance to the Grid Code. Qualitative assessment by the workgroup suggested that this modification may prove cost-neutral, and possibly even achieve cost savings, by aligning NGET's code administration function with the CUSC. The cost involved in recruiting an independent chair is noted, however it was also considered that the costs of an independent chair's salary would be comparable to the cost-saving for NGET funding the salary of an employee for this purpose. Furthermore, it is highlighted that some synergies with the CUSC Chair recruitment process may be possible. While some workgroup members felt that the solution was not proportionate to the defect identified, it was also recognised that increased administrative costs could be offset by improved processes and outcomes.

¹⁸ System Operator-Transmission Owner Code.

¹⁹ We introduced a licence requirement to have an independent panel chair for BSC, CUSC and UNC as part of the Code Governance Review:

https://www.ofgem.gov.uk/sites/default/files/docs/2010/03/cqr_finalproposals_310310_0.pdf

²⁰ As set out in our initial proposals in 2009:

https://www.ofgem.gov.uk/sites/default/files/docs/2009/07/code_governance_review_-_role_of_code_administrators_and_small_participant-consumer_initiatives_-_initial_proposals_0.pdf

Implementation

The Final Report proposes a staggered implementation of this modification, depending on whether: licence changes are required; significant process changes are required; or, no such changes are required. However, following our CGR3 licence changes and the Authority send-back and resubmission of GC0086 for decision, we do not consider that any further licence changes are required to implement GC0086.

We note that no 'sunrise' clause has been included in the legal drafting in order to achieve a staged implementation of any aspects of the new rules. Therefore we observe that the approved legal text for GC0086²¹ will be implemented as a whole 10 working days after the date of this letter. However, we do note that in order to conduct a recruitment process for a new Grid Code Review Panel and an independent chair, a practical interim solution will be required for a short period in respect of these provisions.

Decision notice

In accordance with Standard Condition C14 of NGET's Transmission Licence, the Authority hereby directs that Grid Code modification proposal GC0086: '*Grid Code Open Governance*' be made and that the Grid Code is modified as set out in the report submitted to the Authority.

Lesley Nugent

Head of Industry Codes and Licensing – Consumers and Competition

Signed on behalf of the Authority and authorised for that purpose

²¹ As included in annex 11 of the GC0086 Final Report.