



WORKING GROUP REPORT

CUSC Amendment Proposal CAP103

Flexibility of Working Group Internal Procedures

**Prepared by the Governance Standing Group
acting as the CAP103 Working Group
for submission to the Amendments Panel**

Amendment Ref	CAP103
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Prepared by	Steve Drummond

I DOCUMENT CONTROL

a National Grid Document Control

Version	Date	Author	Change Reference
0.1	05/08/05	S Drummond	Initial draft
0.2	01/09/05	S Drummond	Second draft
1.0	14/09/05	S Drummond	Final Version

b Distribution

Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CAP103 'Flexibility of Working Group Procedures' was raised by National Grid ('the Proposer') on 29 July 2005. This proposal aims to introduce some additional flexibility to the Working Groups such that they can more easily change the membership of the Working Group and that they can agree to reduce from the period in which the Working Group approve the Working Group reports from 5 days to 3 days if required. The Panel determined that CAP103 should be considered by the Governance Standing Group acting as a Working Group and present their Final Report to the September Panel.
- 1.2 This Report is the result of the deliberations of the Governance Standing Group, which met on Thursday 4th and Wednesday 31st August 2005. At those meetings, the group refined the proposal and unanimously agreed to an Amendment that they believed would address the defect in Section 8 of CUSC and better facilitate the Applicable CUSC Objectives.

Working Group Recommendations

- 1.3 The Working Group invites the Panel to consider the report and the arguments and discussions relating to the issues. The Panel is also asked to consider whether the GSG has met its Terms of Reference and whether CAP103 can proceed to wider industry consultation.
- 1.4 The Working Group believes that CAP103 has been fully considered and recommends to the CUSC Panel that:
 - a) the CAP103 Terms of Reference have been met;
 - b) the Working Group Report should be prepared as a Consultation document; and that
 - c) the Consultation document should proceed to wider Industry consultation.

2.0 INTRODUCTION

- 2.1 CAP103 was proposed by National Grid and submitted to the Amendments Panel for consideration at their meeting on 29th July 2005. The Amendments Panel determined that the Governance Standing Group should act as a Working Group to consider CAP103 and that the Group should present their Final Report to the Panel meeting scheduled for September, but with the provision that it could be presented at the Panel meeting in August, should their consideration conclude sooner.

3.0 PURPOSE AND SCOPE OF WORKING GROUP

- 3.1 At the meeting of the Working Group on Thursday 4th August 2005, the members accepted the Terms of Reference and a copy of these are provided in Appendix 1.
- 3.2 The group thereby agreed to consider the issues raised by the Amendment Proposal and to consider whether the proposal better facilitates the achievement of the Applicable CUSC Objectives. It was also agreed at that time to consider and incorporate any appropriate legal text changes necessary to implement the CAP103.

- 3.3 However, at the meeting on Wednesday 31st August 2005 it was agreed that the legal text for this Amendment Proposal (if it is required) and its Alternative need not be prepared just yet. This was because of the considerable amount of Legal text that is currently having to be produced for other Working Groups, the clear conceptual nature of these proposals, and the fact that Legal text is not a requirement of Working Group Reports. However, clearly the Consultation Document will contain Legal text.

4.0 WORKING GROUP DISCUSSIONS

- 4.1 The Working Group examined each of the two parts of CAP103, which made up the original proposal, discussing whether there was a defect to be corrected and whether the proposed amendment addressed the issues and better facilitated the CUSC Objectives. The Working Group refined the proposal and developed what they believed was a workable solution, albeit as an Alternative to the original proposal. They were unanimous that the proposed Alternative Amendment would improve the management of the CUSC amendment process and thereby better achieves the CUSC Objective (a) 'the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence'. Furthermore the Working Group considered early on that there were difficulties in working up the Original, whereas the proposal that the Working Group all agreed best facilitated the Applicable Objectives was crafted from the Original. In the light of this, the Original proposal was not fully worked up.

Description of Defect and Proposed Amendment

- 4.2 The defect being addressed by CAP103 is that the amendment procedures are sufficiently inflexible in two identified areas, such that the efficiency of the process can be impaired. The two areas were concerned with the 'Membership of Working Groups' and 'Timescales for Circulation of Working Group Reports'.

Membership of Working Groups

- 4.2.1 Currently the CUSC requires that all Working Groups must process all changes of membership through the CUSC Amendments Panel, CUSC 8.17.5 refers.
- 4.2.2 The Proposer maintains that these rules are potentially too prescriptive. Working Groups often have requests to vary their membership between Panel meetings and current arrangements would only allow a potential new member of the Working Group to attend as an 'Observer' until the next CUSC Panel meeting, when the membership could be endorsed or not. As an observer, that person could not have their view officially counted as that of a Working Group member and, where there was only one Working Group meeting, this might prevent a viable Working Group Alternative Amendment being put forward or alter the weighting of support for a particular proposal.
- 4.2.3 The proposed amendment would provide the Working Group with the ability to unilaterally alter membership for the period up to the next Amendments Panel, following which the Amendments Panel could either uphold or overturn the Working Group changes of membership.
- 4.2.4 It is proposed that by confirming that Working Groups have the right to agree interim changes of membership, Working Groups will work more efficiently. Equally, ensuring that the Amendments Panel has the opportunity to uphold or overturn the Working Group decisions in relation to

changes of membership acts as a safeguard that enables the Amendments Panel to continue to ultimately act as a check on Working Group decisions in this area.

Working Group Discussion and Proposed Solution to Defect

- 4.2.5 The Working Group agreed that requests for changes to the membership of Working Groups was a common occurrence and that the difficulties as described above could arise, albeit that to date such problems have not hindered the amendments process. This was partly due to the nature of the amendment proposals that have hitherto been put forward, but also because of the pragmatic approaches sometimes adopted by the Working Group Chairman to ensure that all views and opinions are captured in the Working Group and Amendment Reports. This was thought to be undesirable, especially with the new Appeals process enacted, and that it was important that it was seen that due process had been taken when considering any amendment proposal, in order to avoid any legal challenge.
- 4.2.6 The Working Group believed that this amendment proposal had brought to light that the present arrangements could be regarded as exclusive; that they might hinder parties from becoming fully involved in the amendment process
- 4.2.7 However the Working Group were concerned that the proposal in its original form could somehow allow the Working Group to freely appoint new members in order to favour one side of an argument, especially as members of the Working Group can act in a partial manner. This would have the effect of creating an imbalance in the weighting of arguments for or against any proposal and thereby making the processes less efficient and not consistent with the CUSC Objectives. The Working Group therefore did not believe that the Original should be worked on any further and, as all Working Group members supported the Working Group Alternative Amendment, the Original Proposal was not taken forward in its own right.
- 4.2.8 The Working Group proposed an Alternative that encompassed the intent of the Original CAP103 Proposal but also addressed the concerns of the Working Group about the membership becoming unbalanced. The Alternative was also felt to be more inclusive.

Working Group Alternative Amendment

- 4.2.9 Instead of the Working Group collectively agreeing on whether or not to appoint new members to the Working Group, it was suggested that this responsibility could rest with the Working Group Chairman.
- 4.2.10 The Chairman of the Working Group has to act impartially and independently (CUSC 8.17.4) and it was considered by the CAP103 Working Group that if the Chairman was to be given the expressed authority to appoint attendees of Working Group as Working Group members, then their concerns would be allayed.
- 4.2.11 The Working Group had also initially considered that the Working Group Chairman should only have this ability until such time as the appointment could be endorsed at the next Panel. This appeared to be consistent with the existing arrangements whereby Working Groups do not make

decisions, their role is to assess and advise the CUSC Panel as appropriate.

- 4.2.12 However during the report preparation stage an issue was raised which cast doubt on the wisdom of this solution.
- 4.2.13 It was realised that it would be possible for a person to be appointed to the Working Group, through the Chairman's discretion, and for that person to raise a Working Group Alternative Amendment (which only he supported), but for that person to then be voted off the Working Group by the subsequent Amendment Panel meeting. This would put the status of the WGAA into question.
- 4.2.14 A number of options were identified which could address this issue and be incorporated within the amendment proposal. These were:
- a) Simply accepting that any WGAA would become ineligible and for it to be up to that party to submit a new CAP or to await the consultation process to submit an alternative.
 - b) Accepting the WGAA as still valid, because at the time the party was a WG member?
 - c) Giving the WG Chairman an unreserved delegated authority to appoint members to the WG once the WG has been set up?
 - d) Keeping a definitive list of possible persons approved by the Panel, which could be used by the WG Chairman to allow those on the list to be official members of the WG?
 - e) Allowing any attendee of the Working Group to be a Working Group member and to thus have consequent voting rights status.
- 4.2.15 The Working Group carefully considered each of these and came to the conclusion that the current provision for the Amendment Panel to always authorise appointments to the Working Group was needless. It would be more efficient in their view and more in keeping with the CUSC Objectives, if once the Working Group had been set up and an initial set of Working Group members had been identified along with a Working Group Chairman, then the authority for appointed future members should rest with the Working Group Chairman. This accords with option (c) above.
- 4.2.16 None of the other options offered any gains in efficiency, they either increased the administrative burden on National Grid, prevented possible alternative solutions being discussed at an early stage or provided the potential for the process to be frustrated.
- 4.2.17 By giving the Working Group Chairman the authority to appoint members to the group and by him acting in an independent capacity, the Working Group believed that CUSC Parties could have their views fairly heard without increasing the administrative burden on the Amendment Panel or Parties. Furthermore, that removing the need for the Amendment Panel to appoint members to the Working Group subsequent to the initial appointments would improve process efficiency.

Timescales for Circulation of Working Group Reports to Members for Agreement

- 4.2.18 Currently CUSC 8.17.10(c) states that WG member will be given 'a period of not less than 5 Business Days' to comment on the draft report.

- 4.2.19 The Proposer maintains that this inability to reduce timescales can lead to timetable difficulties. Working Group Reports in general need to be circulated 5 days before a Panel meeting, but there are occasions when having to wait for the 5 days for the Working Group members to sign off the report can lead to the CUSC Panel Paper Submission date being missed.
- 4.2.20 The proposed solution is that, where the Working Group Members all agree, the 5 day circulation rule can be reduced down to 3 days. However, where Working Group Members are not comfortable to agree a relaxation, 5 days would remain the default position.

Working Group Discussion and Proposed Solution to Defect

- 4.2.21 The Working Group unanimously agreed that this proposal would provide increased flexibility to the Working Group process. It would allow Working Group members the ability to agree a three day timetable for the approval of Working Group Reports by the Working Group, but only if all Working Group Members agree to this. In the event of no agreement, the standard five day timetable for approval would remain.

5.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 5.1 The terms of the Transmission Licence require National Grid to establish and operate procedures for the modification of the CUSC, including the modification procedures themselves, so as to better facilitate 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.
- 5.2 The Working Group, including the Proposer of the original amendment proposal, believed that the Working Group Alternative Amendment proposal would better facilitate Licence Objectives (a). It will allow National Grid to facilitate the efficient discharge of the obligations imposed upon it under the Act and by its Licence, by ensuring that the provisions of the CUSC are practical and effective. It will allow Working Groups to function more efficiently, whilst retaining a safeguard that where one or more Working Group Members are not comfortable with a variation from the 5 day rule to one of 3 days, then the default will remain at 5 days.
- 5.3 It therefore enables the Transmission Licensee to more efficiently discharge the obligations placed upon it by the Electricity Act and the Transmission Licence. This proposal is therefore consistent with the Applicable CUSC Objective described by Condition C7F, Paragraph 1 (a) and Paragraph 1 (b) of the Electricity Transmission Licence held by National Grid.

6.0 PROPOSED IMPLEMENTATION AND TIMESCALES

- 6.1 In the event that CAP103 were to be approved by the Authority, the Working Group believes it should be implemented 10 days after the decision was received.

7.0 IMPACT ON CUSC

- 7.1 Should CAP103 be approved changes to Section 8.17 (Working Groups) would be required.

8.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 8.1 There is no impact on Core Industry documents arising from CAP103.

Impact on other Industry Documents

- 8.2 There is no impact on other industry documents arising from CAP103.

Annex 1 – Working Group Terms of Reference and Membership

TERMS OF REFERENCE FOR CAP103 WORKING GROUP

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposals CAP103 tabled by National Grid Company at the Amendments Panel meeting on 29th July 2005.
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 Proposals and consider if the proposals identified better facilitate achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and incorporate appropriate legal drafting in the report to implement CAP103 or any Working Group Alternative Amendment (WGAA) developed by the Group.
6. The Working Group is responsible for the formulation and evaluation of any WGAA's arising from Group discussions which would, as compared with the Amendment Proposal, 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 Amendments 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 Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. The Working Group Chairman should provide progress reports to the CUSC Amendments Panel meeting scheduled for 25th August 2005. If some of the Amendment Proposals can be progressed earlier than the timetable in this paragraph then the Working Group should report earlier to the Panel on those Amendment Proposals. The Working Group is to submit their final report to the CUSC Panel

Secretary on 15th September 2005 for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 23rd September 2005.

MEMBERSHIP

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

Chair	Steve Drummond
National Grid	Ben Graff
Industry Representatives	Malcolm Taylor David Lane Simon Goldring/Mark Manley Steven Eyre Neil Smith Bob Brown Steve Phillips Steve Moore Terry Ballard
Authority Representative	David Edward
Technical Secretary	Lindsey Paradine

[NB: Working Group must comprise at least 5 Members (who may be Panel Members) and will be selected by the Panel with regard to WG List held by the Secretary]

10. The membership can be amended from time to time by the CUSC Amendments Panel. Any additional nominations for Membership of the Group after the CUSC Panel meeting scheduled for 29th July 2005 should be provided to the CUSC Panel Secretary.

RELATIONSHIP WITH AMENDMENTS PANEL

11. 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 CUSC Panel Secretary.
12. 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 CUSC Panel Secretary.

MEETINGS

13. 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

14. The Working Group Chairman shall prepare a final report to the Amendments Panel scheduled for 23rd September 2005 responding to the matter set out in the Terms of Reference.
15. A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.

16. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
17. The Chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

Annex 2 – Amendment Proposal Form

CUSC Amendment Proposal Form	CAP:103
Title of Amendment Proposal:	
Flexibility of Working Group Internal Procedures	
Description of the Proposed Amendment (mandatory by proposer):	
<p>This proposal would provide increased flexibility to the Working Group process by providing the Working Group with the ability to unilaterally alter membership for the period up to the next Amendments Panel, following which the Amendments Panel could either uphold or overturn the Working Group changes of membership.</p> <p>Furthermore, it proposes that Working Group members are able to agree a three day timetable for the approval of Working Group Reports by the Working Group if all Working Group Members agree to this. However, in the event of no agreement, the standard five day timetable for approval would remain.</p>	
Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):	
<p>Currently all Working Groups must process all changes of membership through the CUSC Amendments Panel and also abide by strict timetables for the circulation of WG documentation for agreement prior to Panel submission.</p> <p>These rules are potentially too prescriptive as Working Groups often have requests to vary their membership between Panel meetings. It is proposed that by confirming that Working Groups have the right to agree interim changes of membership, Working Groups will work more efficiently. Equally, ensuring that the Amendments Panel has the opportunity to uphold or overturn the Working Group decisions in relation to changes of membership acts as a safeguard that enables the Amendments Panel to continue to ultimately act as a check on Working Group decisions in this area.</p> <p>Secondly, given that Working Group Reports need to be circulated 5 days before a Panel meeting, Groups sometimes find the rule in 8.17 (c) that states Working Group Reports must be circulated in draft to Members 5 days before being signed off problematic in achieving the CUSC Panel Paper Submission date. Therefore, it is proposed that where the Working Group Members all agree, the 5 day circulation rule can be varied to a 3 day rule. However, where Working Group Members are not comfortable to agree a relaxation of the five day rule, 5 days would remain the default position.</p>	
Impact on the CUSC (this should be given where possible):	
Section 8.17 - Working Groups	
Impact on Core Industry Documentation (this should be given where possible):	
None	
Impact on Computer Systems and Processes used by CUSC Parties (this should be given where possible):	
None	

Details of any Related Modifications to Other Industry Codes (where known):	
None	
Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (mandatory by proposer):	
We believe that this proposal will better facilitate Licence Objectives (a). It will allow NGC to facilitate the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this Licence, by ensuring that the provisions of the CUSC are practical and effective and allow Working Groups to function as well as possible, whilst also retaining the appropriate safe-guards in relation to the Panel ultimately confirming or rejecting Working Group decisions to change Membership and ensuring that where Working Group Members are not comfortable with a variation from the 5 day rule, the 5 day rule will remain.	
Details of Proposer: Organisation's Name:	National Grid Company
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Ben Graff National Grid Company 01926 656312 Ben.Graff@uk.ngrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Emma Carr National Grid Company 01926 655843 Emma.Carr@uk.ngrid.com
Attachments (Yes/No):	
No	

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:

Lindsey Paradine
Panel Secretary

Commercial Frameworks
National Grid Company plc
National Grid Transco House
Warwick Technology Park
Gallows Hill
Warwick, CV34 6DA
Or via e-mail to: CUSC.Team@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 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 Company Transmission Licence under Section C7F, paragraph 15. Reference should be made to this section when considering a proposed amendment.

Annex 3 – Internal Working Group Procedure

CAP103 Working Group

Flexibility of Working Group Internal Procedures

INTERNAL WORKING PROCEDURES

1. Notes and actions from each meeting will be produced by the Technical Secretary (provided by National Grid) and circulated to the Chairman and Working Group members for review.
2. The Meeting notes and actions will be published on the National Grid CUSC Website after they have been agreed at the next meeting or sooner on agreement by Working Group members.
3. The Chairman of the Working Group will provide an update of progress and issues to the Amendments Panel each month as appropriate.
4. Working Group meetings will be arranged for a date acceptable to the majority of members and will be held as often as required as agreed by the Working Group in order to respond to the requirements of the Terms of Reference set by the Amendments Panel.
5. If within half an hour after the time for which the Working Group meeting has been convened the Chairman of the group is not in attendance, the meeting will take place with those present.
6. A meeting of the Working Group shall not be invalidated by any member(s) of the group not being present at the meeting.