





CMP323: Final Modification Report		At what stage is this document in the process?
<h1>CMP323</h1> <h2>Updating the CUSC governance process to ensure we capture the EBGL change process for Article 18 Terms and Conditions (T&Cs)</h2>		<div> <div>01</div> <div>Proposal Form</div> </div> <div> <div>02</div> <div>Code Administrator Consultation</div> </div> <div> <div>03</div> <div>Draft Final Modification Report</div> </div> <div> <div>04</div> <div>Final Modification Report</div> </div>
<p>Purpose of Modification: To ensure that the governance process for making future changes to the European Balancing Guidelines (EBGL) Article 18 (A18) T and Cs that are found in the CUSC incorporates the amendment process as laid out in EBGL Article 6 (A6) and Article (A10).</p>		
	<p>This Final Modification Report has been prepared in accordance with the CUSC. An electronic version of this document and all other CMP323 related documentation can be found on the National Grid ESO website via the following link:</p> <p>https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-governance-process-ensure-we</p> <p>At the CUSC Panel meeting on 24 April 2020, the Panel voted on whether the Original Proposal for CMP323 better facilitated the CUSC Standard objectives. The Panel members by majority agreed that the Original was better than the baseline and recommended that it should be implemented.</p> <p>The purpose of this document is to assist the Authority in making its determination on whether to implement CMP323 into the CUSC.</p>	
	<p>High Impact: N/A</p>	
	<p>Medium Impact: N/A</p>	
	<p>Low Impact: Code Governance team at National Grid ESO; industry parties raising Modifications</p>	

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Timetable		
The Code Administrator recommends the following timetable:		
Code Administrator Consultation	18 March 2020 to 8 April 2020	
Draft Final Modification Report issued to Panel	16 April 2020	
Modification Panel decision	24 April 2020	
Final Modification Report issued to Panel to check votes have been recorded correctly	28 April 2020	
Final Modification Report issued to the Authority	6 May 2020	
Decision implemented in CUSC	25 June 2020	

Any questions?


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Proposer Details

Details of Proposer: (Organisation Name)	John Welch National Grid ESO
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	National Grid Electricity System Operator
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	John Welch National Grid Electricity System Operator John.Welch@nationalgrideso.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Jon Wisdom National Grid Electricity System Operator Jon.Wisdom@nationalgrideso.com
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	

Impact on Core Industry Documentation.

Please mark the relevant boxes with an "x" and provide any supporting information

BSC

Grid Code

STC

Other

(Please specify) - No impacts because of this Modification

1 About this document

CMP323 was proposed by National Grid ESO and was submitted to the CUSC Modifications Panel for its consideration on 27 September 2019. The Panel concluded that they were unable to determine the governance route for this Modification and requested that the Proposer provide further clarity and re-present at the October CUSC Panel.

On 25 October 2019, CMP323 was re-presented to the Panel. The Panel, by majority, agreed that the Modification should proceed to Code Administrator Consultation but agreed to delay this until the related BSC and Grid Code Modification Workgroups had been held to ensure there is process alignment across the Codes and the legal text has been agreed.

CMP323 seeks to ensure that the governance process for making future changes to the European Balancing Guidelines (EBGL) Article 18 (A18) T and Cs that are found in the CUSC incorporates the amendment process as laid out in EBGL Article 6 (A6) and Article (A10).

Code Administrator Consultation Responses

Two responses were received to the Code Administrator Consultation. Both respondents believed that the Original better facilitated the CUSC Objectives than the Baseline. The full responses can be found in Annex 2 and a summary of the responses can be found in Section 10 of this document.

Panel Views

At the CUSC Panel meeting on 24 April 2020, the Panel voted on whether the Original Proposal for CMP323 better facilitated the CUSC Standard objectives. The Panel members by majority agreed that the Original was better than the baseline and recommended that it should be implemented.

This Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid ESO website:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-governance-process-ensure-we>

2 Summary

Defect

The CUSC needs to incorporate the EBGL change process laid out in A6 and A10 of EGBL, for future amendments to A18 T and Cs for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs). This was currently proposed to be implemented by National Grid ESO for 4 April 2020. Ofgem have now confirmed that they expect that all conditions listed in their letter from 8 October 2019 should be fulfilled by 25 June 2020 at the latest.

Currently NGESO or the Authority are the only parties able to raise a change to the A18 T and Cs, which this means all other CUSC parties raising Modifications will not be able to raise an A18 change proposal necessary for parts of the CUSC that are identified as being part of the A18 T and Cs. Updating the CUSC Governance process will ensure

the EBGL process is followed and the modification process remains clear and impact is minimised for industry.

What

Updates need to be made to ensure that when future changes are made to the A18 T and Cs that are found in the CUSC, the correct procedure is followed as laid out in EBGL.

In addition:

- Any Workgroup Consultation must be open for 1-month and all consultation responses received must be responded to by National Grid ESO, with justification as to why they will be considered or not.
- A draft EBGL A18 proposal must be also raised during the CUSC modification process;
- There must be a process to ensure that any send back by the Authority goes back through the whole EBGL amendment process; and
- CUSC Modifications raised that affect the A18 T and Cs will have to go to the Authority for a decision so Self Governance cannot be an option in these circumstances.

Why

We need to make this change to ensure that we remove the risk of the EBGL process not being followed and ensure the modification process remains as efficient and inclusive for all parties to the Code.

How

By making changes to the CUSC Governance Rules we can capture the necessary changes, which will ensure the EBGL process is followed.

3 Governance

At the CUSC Panel on 25 October 2019, the Panel, by majority, agreed that the Modification should proceed to Code Administrator Consultation but agreed to delay this until the related BSC and Grid Code Modification Workgroups had been held to ensure there is process alignment across the Codes and the legal text has been agreed. The Panel decided by majority that CMP323 should proceed straight to Code Administrator consultation for 15 Working days.

4 Why Change?

Making this change will ensure that we are compliant with EU law and the correct processes are followed.

- We need to make this change to minimise the risk of the EBGL process not being followed. EBGL A6 and A10 lay out the procedure that must be followed when making changes to the A18 T and Cs for BSPs and BRPs.

- Some of these T and Cs are found in the CUSC and the current Governance Rules do not meet the requirements under EBGL - namely there is no 1-month workgroup consultation or responsibility on National Grid ESO to feedback justification against consultation responses.
- There is no process which recognises that an EBGL draft proposal needs raising or allows other CUSC parties to do so.
- There is currently no process to ensure all Modifications go to the Authority or for capturing send back from the Authority.

5 Code Specific Matters

Technical Skillsets

Understanding of Code Governance processes and EBGL (specifically requirements in Articles 6, 10 and 18.

Reference Documents

EBGL guidelines

https://www.entsoe.eu/network_codes/eb/

CUSC Governance Rules

<https://www.nationalgrideso.com/document/91381/download>

6 Solution

By making changes to the section of the CUSC Governance Rules we can capture the necessary changes, which will ensure the EBGL process is followed, and ensure that all CUSC Parties can raise changes to the A18 T and Cs held within the CUSC.

7 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No.

Consumer Impacts

None

8 Relevant Objectives

Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	None
(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;	None
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Positive
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive
*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).	

This proposal positively impacts objectives c and d. Most obviously for c as this proposal is fundamental in ensuring that we capture the EBGL EU regulations and without it we run a high risk of being non-compliant running a process outside of the CUSC framework. It also has a positive impact on administration of the CUSC as it ensures that these processes are captured in the governance rules so that the code can still be managed in an efficient way by the Code Governance team without room for error. Updating the CUSC Governance process will ensure the EBGL process is followed and the modification process remains clear and impact is minimised for industry.

9 Implementation

Ofgem Decision on the proposed Article 18 terms and conditions related to balancing

In Ofgem's decision letter of the 8 October 2019¹ they requested that work is completed for implementation on 4 April 2020.

Implementation update following original submission of Proposal: On Thursday 6 February 2020 Ofgem replied to the BSC's query letter relating to 'Clarifications on the Authority's decision of 8 October 2019 on the Electricity System Operator's proposal for

¹ https://www.ofgem.gov.uk/system/files/docs/2019/10/article_18_final_decision_letter_-_08.10.2019_1.pdf

the Terms and Conditions related to balancing' the Balancing & Settlement Code (BSC) Panel asked Ofgem for "clarification on whether the 4 April 2020 is in itself a condition (or an anticipated date for completion of the conditions)". Ofgem have now confirmed that they expect that all conditions listed in their letter from 8 October 2019 should be fulfilled by 25 June 2020 at the latest.

10 Code Administrator Consultation: Responses

The Code Administrator Consultation was issued on 18 March 2020 for fifteen Working days, with a closing date of 8 April 2020. Two responses were received to the Code Administrator Consultation. The full responses can be found in Annex 2 but are summarised below:

- Both respondents believed that the Original better facilitated the CUSC Objectives (specifically Applicable CUSC Objectives (c) and (d)) than the Baseline;
- However, one respondent challenged the legal status of Ofgem's 8 October 2019 decision letter and added that they are yet to receive response on the questions they posed to Ofgem and National Grid ESO in early November 2019; and
- The same respondent also believes that changes to the CUSC approved / implemented after 4th August 2019 (up to and including 25th June 2020) will, if they concern parts of the CUSC listed in Annex 1 of the 4th August 2019 letter, need to be subject to the EBGL change process in order to have legal effect in GB.

11 Panel Views

At the CUSC Panel meeting on 24 April 2020, the Panel voted on whether the Original Proposal for CMP323 better facilitated the CUSC Standard objectives.

The Panel members by majority agreed that the Original was better than the baseline and recommended that it should be implemented.

For reference the Applicable CUSC Standard Objectives are:

- (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission 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;
- (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
- (d) Promoting efficiency in the implementation and administration of the CUSC arrangements.

*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

Vote 1: Does the original facilitate the objectives better than the Baseline?

Panel Member: Andy Pace

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This proposal is necessary to update the CUSC governance process for the EBGL and ensure compliance with the EBGL EU regulations. We therefore believe it better meets CUSC objectives (c) and (d).					

Panel Member: Cem Suleyman

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This modification provides compliance with the EU Regulation and ensures suitable processes are captured within the CUSC.					

Panel Member: Garth Graham

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	No	No	No
Voting Statement					
<p>Given the discussion at the April CUSC Panel meeting and the Code Administrator Consultation responses, concerning the legal status of the Authority letter of 8th October 2019, and taking into account the process set out in Articles 4, 5, 6 and 10 of EBGL, there are material doubts around the legal status of that 8th October letter then, in those circumstances, the CMP323 Original is not better in terms of Applicable Objective (c) and (d) and neutral in terms of (a) and (b). In that case the best option would be the Baseline.</p> <p>However, if the Authority letter of 8th October 2019 is, according to the process set out in Articles 4, 5, 6 and 10 of EBGL, a legally valid decision then CMP323 Original would in that case be better in terms of Applicable Objective (c) and (d) and neutral in terms of (a) and (b). In that case the best option would be the Original.</p>					

Panel Member: Grace March

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This modification provides compliance with the EU Regulation and ensures suitable processes are captured within the CUSC.					

Panel Member: Jon Wisdom

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	No	Yes
Voting Statement					
The original proposal better facilitates CUSC objective a) and c) by providing a minimum compliant solution that allows alignment of the CUSC process with the EBGL Article 18 change process. Although this is necessary for compliance with European Law it introduces further complexity into the process and does not better facilitate objective d). On balance, as this is a compliance issue, it is better than the baseline.					

Panel Member: Joseph Dunn

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
<p>Vote is based on the original proposal but on the basis that Ofgem's 8th October 2019 letter on EBGL terms is 'legal' (ref: questions posed by SSE of a legal nature raised with NGESO and Ofgem in early November and shared with the GCRP in early December in respect of legal status, i.e. taking into account the process set out in Articles 4, 5, 6 and 10 of EBGL).</p> <p>On this basis I consider CMP323 to be neutral in terms of Applicable Objectives (a) and (b), and better facilitates Applicable CUSC Objectives:</p> <p>(c) by ensuring compliance with European law by allowing process that aligns EBGL Article 18 change process procedures</p> <p>(d) in terms of the efficiency in implementation and application of the CUSC (than if a more complex process was in place with EU regulations)</p>					

Panel Member: Mark Duffield

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Yes	Yes
Voting Statement					
I believe that the Original Proposal best facilitates the Applicable CUSC objectives (a), (c) and (d) by bringing the existing CUSC baseline into line with the relevant EU Regulations.					

Panel Member: Paul Jones

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Neutral	Yes
Voting Statement					
Allows CUSC to meet requirements of EBGL so that changes can be proposed to any parts of the CUSC classified as A18 Terms and Conditions in accordance with the process required for the EBGL.					

Panel Member: Paul Mott

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Yes	Yes
Voting Statement					
This proposal better facilitates objectives a, c and d. It makes sure that we capture the EBGL EU regulations and that the ESO is compliant with all obligations on it. It has a positive impact on administration of the CUSC as it ensures that these processes are captured in the governance rules so that the code can still be managed in an efficient way by the Code Governance team without room for error. Updating the CUSC Governance process will ensure the EBGL process is followed for as long as EBGL still applies in GB, and the modification process remains clear and impact is minimised for industry.					

12 Impacts

There were no Workgroup meetings and one Code Administrator Consultation administered as part of this modification.

Code Administrator costs	
Total Code Administrator Costs	£0 – No Workgroup meetings

Industry costs	
Resource costs	£1,815 – 1 Consultations <ul style="list-style-type: none">• 0 Workgroup meetings• 1.5 man days effort per consultation response• 2 consultation respondents
Total Industry Costs	£1,815

13 Legal Text

The Proposer identified that sections of the Governance Rules (Section 8) and the Glossary (Section 11) need to be updated.

Since the Original Proposal was raised (and prior to the Code Administrator Consultation being issued), the legal text was updated to:

- Reflect that the one-month EBGL Article 18 consultation will take place at the Code Administrator Consultation rather than workgroup stage as proposed in the first draft of the text; and
- Reflect discussions in the Grid Code and BSC versions of this Modification, to ensure consistency where appropriate and relevant.

The full legal text is set out in Annex 1.

14 Annex 1 Legal Text

Full legal text can be located in the zip folder labelled Annex 1.

15 Annex 2 Code Administrator Consultation Responses

The Code Administrator Consultation responses received can be located in the zip folder labelled Annex 2.