

| Code Administrator Consultation   |  |  |  |
|---|--|--|--|
| <h2>CMP436: Update CUSC arrangements to replace the Electricity Arbitration Association (EAA) with the London Court of International Arbitration (LCIA) (Non-Charging)</h2> <p><b>Overview:</b> This modification looks to replace the EAA references with the LCIA in the Non-Charging Sections of the CUSC.</p> | <h3>Modification process &amp; timetable</h3> <ol style="list-style-type: none"> <li>1 <b>Proposal Form</b><br/>06 June 2024</li> <li>2 <b>Code Administrator Consultation</b><br/>10 June 2024 - 10 July 2024</li> <li>3 <b>Draft Modification Report</b><br/>18 July 2024</li> <li>4 <b>Final Modification Report</b><br/>07 August 2024</li> <li>5 <b>Authority Decision</b><br/>15 August 2024</li> <li>6 <b>Implementation</b><br/>30 August 2024</li> </ol>                      |  |  |
| <p><b>Have 20 minutes?</b> Read the full <a href="#">Code Administrator Consultation</a></p> <p><b>Have 30 minutes?</b> Read the full Code Administrator Consultation and Annexes.</p>  |  |  |  |
| <p><b>Status summary:</b> We are now consulting on this proposed change.</p>  |  |  |  |
| <p><b>This modification is expected to have a:</b> <b>Low impact:</b> CUSC Users</p>  |  |  |  |
| <p><b>Governance route</b></p>  | <p>Standard Governance modification to proceed to Code Administrator Consultation</p>  |  |  |
| <p><b>Who can I talk to about the change?</b></p>   | <table border="0"> <tr> <td style="vertical-align: top;"> <p><b>Proposer:</b><br/>Joseph Henry, National Grid ESO<br/><a href="mailto:Joseph.henry@nationalgrideso.com">Joseph.henry@nationalgrideso.com</a><br/><br/>Phone: 07791257394</p> </td> <td style="vertical-align: top;"> <p><b>Code Administrator Chair:</b><br/>Catia Gomes<br/><a href="mailto:Catia.gomes@nationalgrideso.com">Catia.gomes@nationalgrideso.com</a><br/><br/>Phone: 07843816580</p> </td> </tr> </table> | <p><b>Proposer:</b><br/>Joseph Henry, National Grid ESO<br/><a href="mailto:Joseph.henry@nationalgrideso.com">Joseph.henry@nationalgrideso.com</a><br/><br/>Phone: 07791257394</p> | <p><b>Code Administrator Chair:</b><br/>Catia Gomes<br/><a href="mailto:Catia.gomes@nationalgrideso.com">Catia.gomes@nationalgrideso.com</a><br/><br/>Phone: 07843816580</p> |
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| <p><b>How do I respond?</b></p>   | <p>Send your response proforma to <a href="mailto:cusc.team@nationalgrideso.com">cusc.team@nationalgrideso.com</a> by 5pm on 10 July 2024</p>  |  |  |

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## What is the issue?

Since 1993, the CUSC has used the Electricity Arbitration Association (EAA) as its official arbitration provider for any arbitration/disputes.

In the Balancing and Settlement Code (BSC) modification [P457](#), it was highlighted that “[...]the EAA has not been used by a Market Participant since its inception in 1993 and does not provide good value for money for BSC Parties as monthly payments are required, irrespective of whether there are any disputes to consider. Moreover, the EAA is rarely used in commercial agreements, does not maintain its website and requires monthly payment, irrespective of whether their services are used. This therefore does not offer good value for money for BSC Parties”.

[P457](#) proposed that the EAA was replaced within the BSC by the London Court of Arbitration (LCIA) and removed the obligation on Elexon to make regular payments for arbitration services, instead only paying LCIA in the event of a dispute requiring resolution. This modification was approved by the Authority on 01 November 2023.

The CUSC currently contains multiple references to the EAA. As it has been established that the EAA is *de facto*<sup>1</sup> defunct, it would be appropriate to align arbitration to that of the other codes such as the BSC and the Retail Energy Code (REC).

Separate modifications have been raised for the Charging and Non-Charging sections of the CUSC.

## Why change?

- i) The EAA has not been used in any industry dispute since 1993 and is not contactable. Its website is not updated, and as such it seems inappropriate for the CUSC to list this as its official arbitration provider.
- ii) The LCIA is an internationally recognised provider of arbitration services. The LCIA is also experienced in the resolution of Energy Codes disputes, and is the official arbitration service of both the BSC and the REC.
- iii) Elexon were responsible previously for paying the overhead costs of the EAA. Whilst the CUSC did not pay for this service, it references the service in non-charging sections on multiple instances. The LCIA offer a service whereby it requires payment in instances where there is a dispute requiring arbitration.
- iv) The LCIA is a not-for-profit company limited by guarantee. The LCIA Board is “[...]made up largely of prominent London-based arbitration practitioners, is principally concerned with the operation and development of the LCIA's business and with its compliance with applicable company law<sup>2</sup>”. They provide an appropriate level of expertise to administer arbitration disputes within the CUSC. The charges for this arbitration service fall upon the party initiating the arbitration. These costs are set out on the LCIA website<sup>3</sup>.
- v) The proposed changes will be an improvement on the current service within the CUSC provisions.

<sup>1</sup> <https://dictionary.cambridge.org/dictionary/english/de-facto>

<sup>2</sup> [Introduction \(lcia.org\)](#)

<sup>3</sup> [LCIA Website - Costs](#)

## What is the solution?

### Proposer's solution

Update the references to the EAA with LCIA within the following elements of the CUSC:

- CUSC Section 4, Section 6, Section 7 and Section 11
- CUSC Exhibit O Part 1B, Exhibit O Part 2B Exhibit O Part 1C, Exhibit O Part 2C
- CUSC Schedule 2 Exhibit 3A.

### Legal text

The legal text for this change can be found in Annex 2.

N.B. This modification has been identified as having EBR impacts due to the proposed amendment to CUSC Section 4.

## What is the impact of this change?

### Proposer's assessment against the Applicable Objectives

| Proposer's assessment against CUSC Non-Charging Objectives  |  |
|---|--|
| Relevant Objective  | Identified impact  |
| a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;  | <b>Positive</b><br>Allows for a more efficient arbitration service within the CUSC |
| 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;  | <b>Positive</b><br>Allows for an effective disputes process within CUSC            |
| c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and   | <b>Neutral</b>   |
| d) Promoting efficiency in the implementation and administration of the CUSC arrangements.  | <b>Positive</b><br>Allows for a more efficient arbitration service within the CUSC |
| *The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006. |  |

**Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories**

| Stakeholder / consumer benefit categories     | Identified impact  |
|---|--|
| Improved safety and reliability of the system | <b>Neutral</b>   |
| Lower bills than would otherwise be the case  | <b>Neutral</b>   |
| Benefits for society as a whole               | <b>Neutral</b>   |
| Reduced environmental damage                  | <b>Neutral</b>   |
| Improved quality of service                   | <b>Positive</b><br>The appointment of the LCIA would be an improvement on the current arbitration service outlined in the Non-Charging sections of the CUSC. |

**When will this change take place?****Implementation date**

10 Business Days after Authority decision – The code changes would ideally be implemented prior to the 01 September 2024 to align with [CMP398](#) implementation and the potential for increased need for Arbitration.

**Date decision required by**

By 15 August 2024

**Implementation approach**

No systems or processes will require updating, as a result of this modification.

**Interactions**

- |   |  |  |                                |
|---|--|--|--------------------------------|
| <input checked="" type="checkbox"/> Grid Code   | <input type="checkbox"/> BSC   | <input checked="" type="checkbox"/> STC      | <input type="checkbox"/> SQSS  |
| <input type="checkbox"/> European Network Codes | <input checked="" type="checkbox"/> EBR Article 18 T&Cs <sup>4</sup> | <input type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

The Grid Code and STC are also proposed to be updated.

This modification has been identified as having EBR impacts due to the proposed amendment to CUSC Section 4. [Exhibit Y Mapping of EBR Article 18 Terms and Conditions for Balancing Service Providers and Balancing Responsible Parties to the CUSC.](#)

<sup>4</sup> If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the Electricity Balancing Guideline (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.

## How to respond

### **Code Administrator consultation questions**

- Please provide your assessment for the proposed solution against the Applicable Objectives?
- Do you support the proposed implementation approach?
- Do you have any other comments?
- Do you agree that CMP436 does impact the Electricity Balancing Regulation (EBR) Article 18 terms and conditions held within the CUSC?
- Do you have any comments on the impact of CMP436 on the EBR Objectives?

Views are invited on the proposals outlined in this consultation, which should be received by 5pm on **10 July 2024**. Please send your response to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com) using the response pro-forma which can be found on the [modification page](#).

*If you wish to submit a confidential response, mark the relevant box on your consultation proforma. Confidential responses will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.*

## Acronyms, key terms and reference material

| Acronym / key term | Meaning                                   |
|--------------------|---|
| BSC                | Balancing and Settlement Code             |
| CMP                | CUSC Modification Proposal                |
| CUSC               | Connection and Use of System Code         |
| EAA                | Electricity Arbitration Association       |
| EBR                | Electricity Balancing Regulation          |
| LCIA               | London Court of International Arbitration |
| REC                | Retail Energy Code                        |
| SQSS               | Security and Quality of Supply Standards  |
| STC                | System Operator Transmission Owner Code   |
| T&Cs               | Terms and Conditions                      |

## Annexes

| Annex   | Information          |
|---------|----------------------|
| Annex 1 | CMP436 Proposal Form |
| Annex 2 | CMP436 Legal Text    |