

Draft Final Modification Report

CMP437: Update CUSC arrangements to replace the Electricity Arbitration Association (EAA) with the London Court of International Arbitration (LCIA) (Charging)

Overview: This modification looks to replace the EAA references with the LCIA in Section 14 of the CUSC.

Modification process & timetable



Have 20 minutes? Read the full [Draft Final Modification Report](#)

Have 30 minutes? Read the full Draft Final Modification Report and Annexes.

Status summary: The Draft Final Modification Report has been prepared for the recommendation votes at Panel.

Panel recommendation: The Panel will meet on 26 July 2024 to carry out their recommendation vote.

This modification is expected to have a: **Low impact:** CUSC Users

Governance route Standard Governance modification straight to Code Administrator Consultation

Who can I talk to about the change?

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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 or disputes.

In 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 International 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 1 November 2023.

Section 14 of the CUSC contains 1 reference to the EAA. As it has been established that the EAA is *de facto*¹ defunct, it would be appropriate to align arbitration to that of 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 on several different 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*”². They provide an appropriate level of expertise to administer arbitration disputes within the CUSC. The charges for this arbitration service fall upon the party initialising the arbitration. These costs are set out on the LCIA website³.
- v) The proposed changes will be an improvement on the current service within the CUSC provisions.

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

² [Introduction \(lcia.org\)](#)

³ [LCIA Website - Costs](#)

What is the solution?

Proposer's Solution

Update reference in Section 14.15.87 (e) from EAA to LCIA.

- 14.15.87 Alternatively to the formula specified in 14.15.85 the proportion of the OFTO revenue associated with the Offshore Interlink allocated to each generator benefiting from the installation of an Offshore Interlink may be agreed between these Users. In this event:
- All relevant Users shall notify **The Company** of its respective proportions three months prior the OTSDUW asset transfer in the case of a generator build, or the charging date of the first generator, in the case of an OFTO build.
 - All relevant Users may agree to vary the proportions notified under (a) by each writing to **The Company** three months prior to the charges being set for a given **Financial Year**.
 - Once a set of proportions of the OFTO revenue associated with the Offshore Interlink has been provided to **The Company**, these will apply for the next and future **Financial Years** unless and until **The Company** is informed otherwise in accordance with (b) by all of the relevant Users.
 - If all relevant Users are unable to reach agreement on the proportioning of the OFTO revenue associated with the Offshore Interlink they can raise a dispute. Any dispute between two or more Users as to the proportioning of such revenue shall be managed in accordance with CUSC Section 7 Paragraph 7.4.1 but the reference to the '~~Electricity Arbitration Association~~ London Court of International Arbitration' shall instead be to the 'Authority' and the Authority's determination of such dispute shall, without prejudice to apply for judicial review of any determination, be final and binding on the Users.

Legal Text

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

What is the impact of this change?

Proposer's assessment against the Applicable Objectives

Proposer's assessment against CUSC Charging Objectives	
Relevant Objective	Identified impact
(a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;	Positive Updates to functional arbitration process
(b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);	Neutral
(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;	Neutral

(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Neutral
(e) Promoting efficiency in the implementation and administration of the system charging methodology.	Positive Allows for a more efficient arbitration service within the CUSC
**The Electricity Regulation referred to in objective (d) 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	Neutral
Lower bills than would otherwise be the case	Neutral
Benefits for society as a whole	Neutral
Reduced environmental damage	Neutral
Improved quality of service	Positive The appointment of the LCIA would be an improvement on the current arbitration service outlined in various sections of the CUSC

Code Administrator Consultation Summary

The Code Administrator Consultation was issued on 10 June 2024 closed on 28 June 2024 and received 1 late response. A summary of the response can be found in the table below, and the full response can be found in Annex 3.

Code Administrator Consultation Summary

Question	
Do you believe that the CMP437 Original Proposal better facilitates the Applicable CUSC Objectives?	The responder believes the proposal better facilitates objective (a) and makes the CUSC Arbitration provision functional and allows for increased efficiency in administering the code.
Do you support the proposed implementation approach?	Yes
Do you have any other comments?	No comments

Panel Recommendation Vote

The Panel will meet on the 26 July 2024 to carry out their recommendation vote. They will assess whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.



Vote 1: Does the Original proposal facilitate the Applicable Objectives better than the Baseline?

Panel Member: **Andrew Enzor, Users Panel Member**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Binoy Dharsi, Users Panel Member**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Cem Suleyman, Users Panel Member (Alternate for Joe Dunn)**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Daniel Arrowsmith, ESO**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Garth Graham, Users Panel Member**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Joe Colebrook, Users Panel Member**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						

Voting Statement						

Panel Member: Kyran Hanks, Users Panel Member

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: Paul Jones, Users Panel Member

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Vote 2 – Which option best meets the Applicable Objectives?

Panel Member	Best Option	Which objectives does this option better facilitate? (If baseline not applicable).
Andrew Enzor		
Binoy Dharsi		
Cem Suleyman		
Daniel Arrowsmith		
Garth Graham		
Joe Colebrook		
Kyran Hanks		
Paul Jones		

Panel conclusion

Panel will meet on 26 July 2024 to carry out their recommendation vote.

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 type="checkbox"/> EBR Article 18
T&Cs ⁴ | <input type="checkbox"/> Other
modifications | <input type="checkbox"/> Other |

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

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	Proposal form
Annex 2	Legal text
Annex 3	Code Administrator Consultation response

⁴ 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.