
Connection and Use of System Code (CUSC) CMP436: Update CUSC arrangements to replace the Electricity Arbitration Association (EAA) with the London Court of International Arbitration (LCIA) (Non-Charging) (CMP436)

Decision	The Authority ¹ determines that this modification should be made ²
Target audience	National Energy System Operator (NESO), Parties to the CUSC, the CUSC Panel and other interested parties
Date of publication:	20 March 2025
Implementation date:	Ten working days following Authority decision

Background

The CUSC sets out the procedures to be followed in the event of a party dispute. This includes provisions for CUSC code parties to undertake arbitration pursuant to the arbitration rules of the Electricity Arbitration Association (EAA). However, since its inception in 1993, the services of the EAA have not been used by any CUSC party.

In the Balancing and Settlement Code (BSC), an equivalent modification was approved by Ofgem in November 2023. P457³ proposed that the EAA be replaced in the BSC by the London Court of International Arbitration (LCIA) and removed the obligation on Elexon (BSC code administrator) to make regular payments for arbitration services, instead only paying LCIA in the event of a dispute requiring resolution.

The Grid Code and System Operator – Transmission Owner Code have implemented similar arbitration modifications through GC0172 and CM098 respectively.

The modification proposal

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 notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ [Authority decision on BSC modification P457 | Ofgem](#)

CMP436 was raised by National Grid ESO (the Proposer) on 9 May 2024 and seeks to replace references to the EAA in the CUSC with the LCIA where applicable.

The Proposer sets out in the Final Modification Report, the reasons for change are as follows:

- i) The EAA has not been used in any industry dispute since 1993 and cannot be contacted. 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 as the BSC code administrator, were responsible previously for paying the overhead costs of the EAA. While 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 only requires payment in instances where there is a dispute requiring its arbitration services.
- iv) The LCIA is a not-for-profit company limited by guarantee. They can provide an appropriate level of expertise to administer arbitration disputes within the CUSC. The charges for this arbitration service would fall upon the party initiating the arbitration.
- v) The proposed changes will be an improvement on the current service within the CUSC.

The Proposer believes that the EAA is a non-operational organisation”, and this change allows the CUSC to appropriately align its arbitration services to that of the other codes such as the Balancing and Settlement Code and the Retail Energy Code.

CUSC Panel⁴ recommendation

At the CUSC Panel meeting on 26 July 2024, the Panel unanimously considered that CMP436 would better facilitate the CUSC objectives (a), (b) and (d), and therefore recommended to implement.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 7 August 2024. We have considered and taken account of the response to the industry consultation on the modification proposal attached to the FMR.⁵ We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives⁶ of the CUSC⁷
- directing that the modification be made is consistent with our principal objective and statutory duties⁸

Reasons for our decision

We consider this modification proposal will better facilitate CUSC applicable objective (b) and (d) only. We believe it has a neutral impact on the remaining CUSC objectives including objective (a).

⁴ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

⁵ CUSC modification proposals, modification reports and representations can be viewed on NESO's website at: [CMP436 Update CUSC arrangements to replace the Electricity Arbitration Association with the London Court of International Arbitration \(LCIA\) \(Non Charging\)](#)

⁶ For the avoidance of doubt, we have made our assessment for this Proposal with reference to the Applicable Code Objectives that came into effect on 1 October 2024. As noted in our letter to Panel dated 06 March 2025, and having not received representations to the contrary, we consider that updates the modifications to the Applicable Code Objectives (which came into effect on 1 October 2024 upon the establishment of NESO) would not have materially impacted any assessment of objectives and subsequent analysis and voting undertaken by Panel.

⁷ As set out in Standard Condition E2 of the Electricity System Operator Licence.

⁸ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence

Panel view

On assessment, Panel members considered that CMP436 positively impacted this objective.

Our view

We do not consider that CUSC objective (a) is impacted by CMP436 because there is no condition in the licensee's licence that requires arbitration services and/or relates to a dispute resolution process. Therefore, we believe this objective to be neutrally impacted by the proposal.

(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;

Panel view

Most of the Panel considered that having a working and effective disputes resolution service would encourage competition in electricity supply and generation markets to better facilitate this CUSC objective.

Our view

We agree with the Panel that by replacing a non-functioning arbitration service with one that is effectively working encourages competition and provides confidence to new entrants that a disputes service is operational in the CUSC. We consider the proposal better facilitates CUSC objective (b) than the baseline.

(d) promoting efficiency in the implementation and administration of the CUSC arrangements

Panel view

The Panel considers the current arbitration arrangements to be inefficient because the EAA is non-functioning and non-operational. Therefore, by replacing a non-functioning service with one that is functioning and operational will better facilitate this objective.

Our view

We agree with this assessment and consider that this modification will afford greater efficiency in the implementation and administration of the CUSC arrangements. We therefore agree that CMP436 would better facilitate objective (d).

Decision notice⁹

In accordance with Standard Condition E2 of the Electricity System Operator Licence, the Authority, hereby directs that modification proposal CMP436: Update CUSC arrangements to replace the Electricity Arbitration Association (EAA) with the London Court of International Arbitration (LCIA) (Non-Charging) be made.

Gavin Baillie

Head of Industry Codes

Signed on behalf of the Authority and authorised for that purpose

⁹ This decision was made in accordance with the code objectives prior to the introduction of the National Energy System Operator (NESO) on 1 October 2024. We acknowledge that there have been minor changes to code objectives due to the introduction of NESO and that these changes do not impact on our assessment of the proposal nor our decision.