

Stage 04: Code Administrator Consultation

Connection and Use of System Code (CUSC)

CMP228

'Definition of 'Qualified Bank'

What stage is this document at?

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft CUSC Modification Report
06	Final CUSC Modification Report

This proposal seeks to make changes to the definition of 'Qualified Bank' to include 'trade credit insurance company', thereby increasing the number of prospective providers of security available to Users.

Published on: 8th April 2014
Responses by: 9th May 2014



National Grid opinion:

CMP228 should be implemented as it better facilitates Applicable CUSC Objective (b).



Low Impact:

Parties required to provide security under Sections 2 and 15.

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Any Questions?

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About this document

The purpose of this document is to consult on CMP228 with CUSC Parties and other interested industry members. Representations received in response to this consultation document will be included in the Code Administrator's CUSC Modification Report that will be furnished to the Authority for their decision.

Document Control

Version	Date	Author	Change Reference
1.0	8 th April 2014	Code Administrator	Version to Industry

1 Summary

- 1.1 This document describes the CMP228 Modification Proposal and seeks views from industry members relating to the proposal.
- 1.2 CMP228 was proposed by RWE (the Proposer) and submitted to the CUSC Modifications Panel (the Panel) for their consideration on 28th February 2014. A copy of the Proposal form is provided in Annex 1 of this document. The Panel determined that CMP228 should be considered as Self-Governance and should proceed directly to Code-Administrator Consultation for the standard 15 Business Days. A copy of the Self-Governance statement can be found in Annex 2.
- 1.3 Within the Panel meeting National Grid agreed to include a summary of advice it was seeking from legal and insurance experts to clarify whether the security provided by trade credit providers would be equivalent to that provided by banks within the Code Administrator Consultation for CMP228. A summary of this advice is included in Section 3 of this document.
- 1.4 CMP228 aims to change Section 11 of the CUSC by amending the definition of 'Qualified Bank' to include 'trade credit insurance company', thereby increasing the number of prospective providers of security available to Users.
- 1.5 This Code Administrator Consultation has been prepared in accordance with the Terms of the CUSC. An electronic copy can be found on the National Grid Website, <http://www2.nationalgrid.com/uk/Industry-information/Electricity-codes/>, along with the CUSC Modification Proposal Form.

CUSC Modification Panel's View

- 1.6 At the CUSC Modifications Panel meeting on 28th February 2014, the Panel agreed that CMP228 should be considered as Self Governance and should therefore proceed directly to Code Administrator Consultation.

National Grid's Initial View

- 1.7 National Grid supports the implementation of CMP228 as it better facilitates Applicable CUSC Objective (b). In our view, the modification has the potential to reduce the cost of providing security faced by those parties that do not meet the required credit rating by increasing the number (and hence choice and competition) of potential security providers.

2 Background

- 2.1 A number of credit and security provisions currently exist under the CUSC in respect of the following categories:
- (i) Termination Amounts (CUSC Paragraph 2.19)
 - (ii) Balancing Services Use of System Charges and Transmission Network Use of System Demand Charges (CUSC Paragraph 3.22)
 - (iii) Cancellation Charge Secured Amounts (CUSC Paragraph 15, Part 3)
- 2.2 Users who do not meet the required credit rating ('The Company Credit Rating') in the case of (i) & (iii), or who exceed their credit limit determined under the terms of the CUSC (the 'User's Allowed Credit') in the case of (ii) are required to provide security to National Grid. A number of alternative forms of acceptable security are specified in the CUSC. One such form of security in relation to (i) & (iii) may typically be in the form of a Letter Of Credit or Performance Bond provided by a 'Qualified Bank'.
- 2.3 The CUSC definition of a Qualified Bank describes the entity as a 'bank', which might imply that the entity is expected to hold a UK banking licence to provide banking services, although this requirement is not specified in the definition. However, the reference to 'bank' in the definition would appear to preclude other financial institutions, particularly insurance companies, which might otherwise meet the CUSC requirements relating to a Qualified Bank, from providing security in the form of a Performance Bond or Letter of Credit.
- 2.4 A Performance Bond from an insurance company may already be provided in relation to Use of System Charges under paragraph 3.22.5 of the CUSC, in the form of an Insurance Performance Bond.

3 Modification Proposal

- 3.1 Following the downgrading of several licensed banks by Moody's and Standard & Poor's during 2012 and 2013, the number of financial institutions with an adequate credit rating to provide security on behalf of Users under the CUSC has reduced. A smaller pool of prospective security providers and the potential for further downgrading is unlikely to incentivise Qualified Banks and similar entities to maintain or reduce their charge to Users for providing security acceptable to National Grid.
- 3.2 The CUSC definition of Qualified Bank requires the entity providing a Performance Bond or Letter of Credit to meet the general description of being a 'bank'. CMP228 proposes that this general description be extended to include a company capable of providing trade related credit insurance, or 'trade credit insurance company', thereby increasing the number of prospective providers of security available to Users. Trade credit insurance companies would normally be members of the International Credit Insurance & Surety Association (ICISA) and capable of providing security of a similar level and form as that provided by a bank.
- 3.3 Under this proposed change, the criteria which must be met by a 'trade credit insurance company' to meet the definition of a Qualified Bank would be the same as the criteria to be met by a 'bank', such that the level of security would be similar and neither National Grid nor other Users should be disadvantaged by the choice of entity providing the security.
- 3.4 As part of its own assessment of CMP228, National Grid has discussed the change with legal and insurance experts (both internal and external to National Grid) to clarify whether security provided by a trade credit insurance company is equivalent to that provided by a bank under the existing arrangements. The following is a summary of the main points of these discussions:
 - i) The term 'trade credit insurance company' refers to a company that provides trade credit insurance, which is a separate product to a Performance Bond or Letter of Credit. However, a Performance Bond could be considered equivalent to a surety bond which many insurance companies, including (but not limited to) trade credit insurance companies, can provide.
 - ii) To operate within the United Kingdom, insurance companies must be authorised by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) to provide their products within the UK, or authorised within another country within the European Economic Area and subject to a passporting arrangement that allows them to provide their products within the UK. Whilst regulated differently to banks, insurance companies are subject to a set of EU-wide capital requirements and risk management standards and compliance with such requirements will be reflected within the insurance company's credit rating.
- 3.5 National Grid has made the Proposer aware of the advice it has received and the points have been considered within the draft legal text presented in Annex 3 of this document as follows:
 - i) The definition revised definition of Qualified Bank includes the term "regulated insurance company" as opposed to the more limiting term "trade credit insurance company"; and
 - ii) For transparency, the requirement that for an insurance company providing security to have the necessary authorisation to do so within the UK in order for the

security to be deemed acceptable to National Grid, has been included within the definition.

4 Proposed Implementation and Transition

- 4.1 It is proposed that if CMP228 is accepted by the CUSC Panel, there will be a 15 day appeals window commencing on 30th May 2014 and closing on 20th June 2014. Subject to any appeals, CMP228 will be implemented 10 Working days later on 7th July 2014.

5 Impacts

Impact on the CUSC

- 5.1 CMP228 seeks to change Section 11 of the CUSC – Interpretations and Definitions, with minor consequential changes to Sections 2 and 15.

Impact on Greenhouse Gas Emissions

- 5.2 None identified.

Impact on Core Industry Documents

- 5.3 None identified.

Impact on other Industry Documents

- 5.4 None identified.

Assessment against the Applicable CUSC Objectives

- 6.1 For reference, the Applicable CUSC Objectives, as defined in the Transmission Licence are:
- (a) The efficient discharge by the licensee of the obligations imposed upon it under 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.

National Grid's Initial View

- 6.2 National Grid supports the implementation of CMP228. In our view, the modification has the potential to reduce the cost of providing security faced by those parties that do not meet the required credit rating by increasing the number (and hence choice and competition) of potential security providers, better facilitating Applicable CUSC Objective (b).
- 6.3 Based upon the legal and insurance advice we have received, we understand that although the scope of potential security providers is being increased, the addition of them as a security provider and nature of the security they issue should not in itself present an additional risk of a bad debt being incurred over that provided by a bank. In the event of a bad debt arising from any insurance security, as with a bad debt resulting from any bank security today, there would be a resulting pass through claim. Approval by self-governance assumes that CMP228 is non-material, and as such we understand that the Authority in not vetoing the self-governance status of CMP228 is also satisfied with the level of risk associated with the change.

7 How to Respond

7.1 If you wish to respond to this Code Administrator Consultation, please use the response pro forma which can be found under CMP228 at the following link;

<http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP228/>

7.2 Responses are invited to the following questions;

1. **Do you believe that CMP228 better facilitates the Applicable CUSC Objectives set out in paragraph 6.1? Please include your reasoning.**
2. **Do you support the proposed implementation approach?**
3. **Do you agree with the decision to progress CMP228 through the Self-Governance route?**
4. **Do you have any other comments?**

7.3 Views are invited on the proposals outlined in this consultation, which should be received by **5pm** on **9 May 2014**. Please email your formal response to:

Cusc.team@nationalgrid.com

7.4 If you wish to submit a confidential response, please note the following:

Information provided in response to this consultation will be published on National Grid's website unless the response is clearly marked "Private & Confidential", we will contact you to establish the extent of the confidentiality. A response marked "Private & Confidential" will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the CUSC Modifications Panel or the industry and may therefore not influence the debate to the same extent as a non confidential response.

Please note an automatic confidentiality disclaimer generated by your IT System will not in itself, mean that your response is treated as if it had been marked "Private & Confidential".

CUSC Modification Proposal Form CMP228



Connection and Use of System Code (CUSC)

Title of the CUSC Modification Proposal
Definition of “Qualified Bank”
Submission Date
18 / 02 / 2014
Description of the Issue or Defect that the CUSC Modification Proposal seeks to address
<p>The CUSC currently requires Users to provide The Company with security in respect of the following categories:</p> <ul style="list-style-type: none"> (i) Termination Amounts (CUSC Paragraph 2.19) (ii) Balancing Services Use of System Charges and Transmission Network Use of System Demand Charges (CUSC Paragraph 3.22) (iii) Cancellation Charge Secured Amounts (CUSC Paragraph 15 Part 3) <p>For Users who do not meet the required The Company Credit Rating in the case of (i), who exceed their User’s Allowed Credit in the case of (ii), or do not meet The Company Credit Rating in the case of (iii), a number of alternative forms of acceptable security are specified in the CUSC. Such alternative form of security may typically be in the form of a Letter of Credit or Performance Bond provided by a Qualified Bank.</p> <p>The CUSC definition of a Qualified Bank describes the entity as a “bank”, which might imply that the entity is expected to hold a UK banking licence to provide banking services, although this requirement is not specified in the definition. However, the reference to “bank” in the definition would appear to preclude other financial institutions, particularly trade credit insurance companies, which might otherwise meet the CUSC requirements relating to a Qualified Bank from providing security in the form of a Performance Bond or Letter of Credit.</p>
Description of the CUSC Modification Proposal
<p>Following the downgrading of several licensed banks by Moody’s and Standard & Poor’s during 2012 and 2013, the number of financial institutions with an adequate credit rating to provide security on behalf of Users under the CUSC has reduced. A smaller pool of prospective security providers and the potential for further downgradings is unlikely to incentivise Qualified Banks and similar entities to maintain or reduce their charge to Users for providing security</p>

acceptable to **The Company**.

The CUSC definition of **Qualified Bank** requires the entity providing a **Performance Bond** or **Letter of Credit** to meet the general description of being a “bank”. It is proposed that this general description be extended to include a company capable of providing trade related credit insurance, or “trade credit insurance company”, thereby increasing the number of prospective providers of security available to **Users**. Trade credit insurance companies would normally be members of the International Credit Insurance & Surety Association (ICISA) and capable of providing security of a similar level and form as that provided by a bank.

Under this proposed change, the criteria which must be met by a “trade credit insurance company” to meet the definition of a **Qualified Bank** would be the same as the criteria to be met by “bank”, such that the level of security would be similar and neither **The Company** nor other **Users** would be disadvantaged by the choice of entity providing the security.

Impact on the CUSC

If this **CUSC Modification** Proposal is accepted, it is anticipated that the following change would need to be made to the **CUSC**:

Amend the definition "**Qualified Bank**" or "**Qualifying Bank**".

Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes / No

No

Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information

None

Urgency Recommended: Yes / No

No

Justification for Urgency Recommendation

N/A

Self-Governance Recommended: Yes / No

Yes

Justification for Self-Governance Recommendation

This **CUSC Modification Proposal** is intended to increase the range of providers capable of meeting the **CUSC** requirements relating to the provision of security and would not result in a reduction in the level of security currently provided by **Users** to **The Company**. Consequently, the **User** considers it unlikely to have a material effect on any of the above criteria.

Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews?

The Proposer is not aware of any ongoing Significant Code Review related to this Modification Proposal

Impact on Computer Systems and Processes used by CUSC Parties:

The Proposer does not anticipate that any Computer Systems or Computer Processes would be affected by this **CUSC Modification Proposal**.

Details of any Related Modification to Other Industry Codes

None.

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives:

Please tick the relevant boxes and provide justification:

√ (a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

This **CUSC Modification Proposal** seeks to increase the range of providers capable of meeting the **CUSC** requirements relating to the provision of security available to **Users**, thereby reducing the effective preferential treatment of licensed banks above other financial institutions in the provision of security (Licence Condition 19E).

√ (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.

Increasing the number of potential providers of security is expected to reduce the cost to **Users** who are not **Qualifying Companies**, thereby facilitating effective competition in the generation and supply of electricity.

(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1.

Objective (c) was added in November 2011. This refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

This section is mandatory. You should detail why this Proposal better facilitates the Applicable CUSC Objectives compared to the current baseline. Please note that one or more Objective must be justified.

Additional details

Details of Proposer: (Organisation Name)	John Norbury (for the RWE Group of companies, including RWE Npower plc, RWE Npower Renewables Limited and RWE Supply & Trading GmbH) Network Connections Manager RWE Supply & Trading GmbH Windmill Hill Business Park Whitehill Way Swindon, Wiltshire SN5 6PB T +44 (0)1793 89 2667 M +44 (0)7795 354 382 john.norbury@rwe.com
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	As above
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	David Munday UK Group Treasurer RWE Npower plc Windmill Hill Business Park Whitehill Way Swindon, Wiltshire SN5 6PB T +44 (0)1793 89 2280 M +44 (0)7989 493626 david.munday@rwenpower.com

Attachments (Yes/No):
If Yes, Title and No. of pages of each Attachment: No.

Contact Us

If you have any questions or need any advice on how to fill in this form please contact the Panel Secretary:

E-mail cusc.team@nationalgrid.com

Phone: 01926 655223.

For examples of recent CUSC Modifications Proposals that have been raised please visit the National Grid Website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/curentamendmentproposals/>

Submitting the Proposal

Once you have completed this form, please return to the Panel Secretary, either by email to Emma.Clark2@nationalgrid.com and copied to cusc.team@nationalgrid.com, or by post to:

Emma Clark
CUSC Modifications Panel Secretary, TNS
National Grid Electricity Transmission plc
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

If no more information is required, we will contact you with a Modification Proposal number and the date 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, the Proposal can be rejected. You will be informed of the rejection and the Panel will discuss the issue at the next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform you.



National Grid House
Warwick Technology Park
Gallows Hill, Warwick
CV34 6DA

Abid Sheikh
Licensing and Industry Codes
Ofgem
3rd Floor
Cornerstone
107 West Regent Street
Glasgow
G2 2BA
(By Email)

Jade Clarke
CUSC Modifications Panel
Secretary
Jade.Clarke@nationalgrid.com
Direct tel +44 (0)1926 653606

7th March 2014
Reference: CMP228 Self-Governance Statement

www.nationalgrid.com

Dear Abid,

This is the CUSC Modifications Panel's Self-governance Statement to the Authority for CUSC Modification Proposal (CMP) 228. National Grid has prepared this Self-governance Statement on behalf of the CUSC Modifications Panel and submits it to you in accordance with CUSC Section 8.25.1.

On 28th February 2014 the CUSC Modifications Panel considered CMP228 and confirmed by majority vote that it meets the Self-governance criteria.

As such, CMP228 is unlikely to discriminate between different classes of CUSC Parties and is unlikely to have a material effect on:

- i) Existing or future electricity customers;
- ii) Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- iii) The operation of the National Electricity Transmission System
- iv) Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies
- v) The CUSC's governance procedures or the CUSC's modification procedures

National Grid has chosen to procure external legal advice that would clarify part of CMP228 and include a summary of this advice within the Code Administrator Consultation. We therefore have delayed the publication of the Code Administrator Consultation. If National Grid receives legal advice before the proposed timetable begins we will endeavour to send the Code Administrator Consultation out sooner than planned.

The proposed timetable for the progression of CMP228 is as follows:

7 th April 2014	Code Administrator Consultation issued (allowed time to seek legal advice and for legal text to be finalised)
30 th April 2014	Deadline for responses
21 st May 2014	Draft FMR published with Panel papers
30 th May 2014	Panel Determination Vote (appeal window opens)
6 th June 2014	Deadline for Final report being published
20 th June 2014	Self Governance appeal window closes
7 th July 2014	Implementation date

The CMP228 form is available at
<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/>.

National Grid is a trading name for:
National Grid Electricity Transmission plc
Registered Office: 1-3 Strand, London WC2N 5EH
Registered in England and Wales, No 2366977

If you require any further information please do not hesitate to contact me.

Yours Sincerely,

Jade Clarke
CUSC Modifications Panel Secretary.

Section 11.3 DEFINITIONS

"Qualified Bank" or "Qualifying Bank"

means either:

- (a) a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the **Performance Bond** or **Letter of Credit** it issues in favour of **The Company**, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives **The Company** reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives **The Company** reasonable cause to have such doubt; or

- (b) a branch in **Great Britain** of a regulated insurance company, its successors and assigns, which throughout the validity period of the **Performance Bond** or **Letter of Credit** it issues in favour of **The Company**, is authorised or licensed to provide arrangements of this type in the United Kingdom, and has a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such regulated insurance company is not during such validity period put on any credit watch or any similar credit surveillance which gives **The Company** reasonable cause to doubt that such regulated insurance company may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives **The Company** reasonable cause to have such doubt.

Section 2:

2.22.2 (b) If the **User** becomes aware that the bank or insurance company issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, the **User** shall notify **The Company** in writing as soon as it becomes so aware. If **The Company** becomes aware that the bank or insurance company issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, **The Company** may notify the **User** to that effect in writing. Where the bank, insurance company or the company so ceases to be either a **Qualified Bank** or a **Qualified Company** (as the case may be) as a consequence of **The Company** having reasonable cause to doubt the continued rating of the said bank, insurance company or company, such notice shall be accompanied by a statement setting out **The Company's** reasons for having such doubt. The **User** shall within 21 days of the giving of such notice by **The Company** or the **User** whichever is the earlier provide a replacement **Performance Bond** and/or **Letter of Credit** from a **Qualified Bank** or **Qualified Company**, as the case may be, and/or provide a cash deposit in the required amount in a **Bank Account**. From the date the replacement **Performance Bond** or **Letter of Credit** or **Bank Account** cash deposit is effectively and unconditionally provided and **Valid**, **The Company** will consent in writing to the security which it replaces being released.

Section 15:

6.2.2 If the **User** becomes aware that the bank or insurance company issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, the **User** shall so notify **The Company** in writing as soon as it becomes so aware. If **The Company** becomes aware that the bank or insurance company issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, **The Company** may notify the **User** to that effect in writing. Where the bank, insurance company or the company so ceases to be either a **Qualified Bank** or a **Qualified Company** (as the case may be) as a consequence of **The Company** having reasonable cause to doubt the continued rating of the said bank, insurance company or company, such notice shall be accompanied by a statement setting out **The Company's** reasons for having such doubt. The **User** shall within 21 days of the giving of such notice by **The Company** or the **User** whichever is the earlier provide a replacement **Performance Bond** and/or **Letter of Credit** from a **Qualified Bank** or **Qualified Company**, as the case may be, and/or provide a cash deposit in the required amount in a **Bank Account**. From the date the replacement **Performance Bond** or **Letter of Credit** or **Bank Account** cash deposit is effectively and unconditionally provided and **Valid**, **The Company** will consent in writing to the security which it replaces being released.