

## Protocol for the appointment of an independent CUSC Amendments Panel Chairman

### 1. Background

- 1.1 Ofgem initiated a Code Governance Review in November 2007. The Final Proposals and associated licence modifications to National Grid Electricity Transmission plc's ("National Grid") electricity Transmission Licence mandated the appointment of an "independent" Panel Chair for the CUSC Amendments Panel. Under the existing CUSC provisions, National Grid provides the Panel Chairman; under the proposed arrangements, "independent" means independent of National Grid.
- 1.2 In order to implement its licence obligations relating to the Code Governance Review, National Grid raised CAP185: Code Governance Review: Role of Code Administrator and Code Administration Code of Practice in July 2010. CAP185 seeks to introduce the basic requirement into the CUSC for the Panel Chairman to be independent of National Grid, without going into the detail of how such a person would be appointed. CAP185 proposes that an independent Panel Chairman be appointed from 1<sup>st</sup> October 2011 to coincide with the results of the next Panel Election.
- 1.3 During the discussions of the CAP185 Working Group, it was agreed that the issue of the appointment process should be referred to the Governance Standing Group (GSG) for its consideration and to develop an approach to be put forward to the Amendments Panel. The issue was raised and discussed at the GSG meeting on 2<sup>nd</sup> September 2010 and at subsequent meetings.
- 1.4 This paper contains the GSG's proposed protocol for appointing an independent Panel Chairman for the CUSC Amendments Panel. It also offers some options for industry consideration. **The GSG welcomes the industry's views on the matters discussed in this consultation paper.** Please see section 6 for how to respond.

### 2. Selection Process

- 2.1 The GSG considered the mechanics of how the appointment process for an independent Panel Chairman would work and identified a number of aspects, including: (i) the use of a Selection Adviser (commonly referred to as a "headhunter"); (ii) the creation of a Panel Subcommittee to assist the Panel in its recommendation to the Authority and; (iii) the ability of Panel Members to nominate candidates in line with the Candidate Attributes (set out in section 4 below). The GSG identified four options using a combination of these elements, as set out in section 3.

**Selection Adviser**

- 2.2 The GSG considered that a Selection Adviser may be used for drawing up a shortlist of candidates for an independent Panel Chairman. Given that National Grid will be coordinating the appointment process and acting either as (i) the employer or (ii) paying the successful candidate a fee/monthly retainer, the GSG recognised that National Grid's existing recruitment processes would need to be taken into account. If a Selection Adviser were used, it is expected that they would charge a fee for finding suitable candidates and that this fee, although variable, could be in the order of one year's fee or salary that the candidate would receive.
- 2.3 The Selection Adviser would be required to use the Candidate Attributes in section 4 of this paper to draw up their shortlist of potential candidates.
- 2.4 The GSG noted that the proposed CUSC provisions allow for the replacement of the Panel Chairman every second year and, were this to happen and a fee to be payable each time, it could prove expensive and be considered an inefficient expense. Appointing the Panel Chairman for two terms (e.g. four years in total) could be considered a more efficient use of a Selection Adviser.

**Consultation Questions**

- Q1: Do you consider that a Selection Adviser should be used to help identify the candidate(s) to be the Panel Chairman?
- Q2: Do you have any views on the duration of the appointment of the Panel Chairman, such as a single term (of two years) only or two terms maximum or unlimited (e.g. able to be reappointed by the Authority, on the recommendation of the Panel, every two years)?

**Panel Subcommittee**

- 2.5 The GSG considered the creation of a Panel Subcommittee to assist the Panel and National Grid in the appointment process. The GSG proposed the following potential members for the subcommittee:
- Code Administrator – 1 representative (National Grid)
  - National Grid Electricity Transmission plc – 1 representative (this could be the existing Panel Chairman)
  - Panel Members – 2 representatives (not including National Grid or Authority Representative or Appointee)
- 2.6 If it were felt appropriate, a fifth, independent, member of the subcommittee, who would have no affiliation with any CUSC Party, BSC Party, National Consumer Council or the Authority, could be appointed by the Amendments Panel.
- 2.7 The Panel Subcommittee would undertake the following role:
- a) review the terms of reference for the Selection Adviser;
  - b) meet with the Selection Adviser to discuss their capabilities and their selection process. For example, whether the advisers would be seeking

candidates from the public sector, the private sector, academia etc. Whether the advisers would be seeking to advertise the post and, if so, where it would be advertised. If the post were not to be advertised, whether the advisers would be utilising their databases, contacts, experience etc;

- c) review the Selection Adviser's experience of appointments to a similar post;
- d) review and agree the scope of the Chairman's role, the anticipated workload (this is expected to be a part-time role);
- e) assess the shortlisted candidates provided by the Selection Adviser (this may include interviewing the candidate(s)) and recommend to the Panel the candidate or candidates who should be put forward to the Authority as the Panel's recommended candidate for approval.

#### **Panel Member nominations**

2.8 The GSG considered the possibility of each Panel Member being able to nominate one potential candidate (the two National Grid representatives would only be able to nominate one candidate) for the position of independent Panel Chairman. This would be in place of using a Selection Adviser. This would have the benefit of a lower cost, but would be less transparent and may raise issues over impartiality and potential conflicts of interest, depending on the nominations received.

2.9 As with the requirement on the Selection Adviser, Panel Members would be required to use the Candidate Attributes in section 4 of this paper to make their nomination.

#### **Consultation Questions**

Q3: Do you have any views on the possibility of Panel members being able to nominate a candidate each (instead of using a Selection Advisor) to help identify the candidate(s) to be the Panel Chairman?

### **3. Options**

3.1 The GSG identified four options for the selection process for an independent Amendments Panel Chairman. Notwithstanding which of the four options is taken forward, the GSG proposes that the Panel recommends no more than 3 candidates in total to the Authority for its appointment decision.

#### **Option 1: Selection Adviser + Panel Subcommittee + Panel Recommendation**

Step 1: Selection Adviser (commonly referred to as a "head-hunter") draws up a shortlist of candidates according to the Candidate Attributes provided in section 4 below.

- Step 2: Panel Subcommittee reviews shortlist of candidates (this may include interviewing the candidate(s)) and recommends candidate(s) to the Panel for recommendation to the Authority.
- Step 3: (Full) Panel reviews Subcommittee's recommendation (this may include interviewing the candidate(s)) and recommends candidate(s) for appointment to the Authority.
- Step 4: Authority approves appointment. If Authority does not approve appointment, steps 1 to 3 to be redone, as required.

**Option 2: Selection Adviser + Panel recommendation**

- Step 1: Selection Adviser (commonly referred to as a "head-hunter") draws up a shortlist of candidates according to the Candidate Attributes provided in section 4 below.
- Step 2: Panel reviews shortlist of candidates (this may include interviewing the candidate(s)) and recommends candidate(s) to the Authority for appointment;
- Step 3: Authority approves appointment. If Authority does not approve appointment, steps 1 and/or 2 to be redone, as required.

**Option 3: Panel nominations + Panel Subcommittee + Panel recommendation**

- Step 1: Panel Members (excluding the Authority Representative or Appointee) nominate one candidate each (two National Grid Panel Members get one nomination between them), by reference to the Candidate Attributes provided in section 4 below.
- Step 2: Panel Subcommittee reviews nominations and recommends candidate(s) to the Panel for recommendation to the Authority.
- Step 3: (Full) Panel reviews Subcommittee's recommendation (this may include interviewing the candidate(s)) and recommends candidate(s) for appointment to the Authority.
- Step 4: Authority approves appointment. If Authority does not approve appointment, steps 1 to 3 to be redone, as required.

Notes. If this option were used, the Panel Subcommittee would be required to undertake the following tasks:

- a) review and agree the scope of the Chairman's role, the anticipated workload (this is expected to be a part-time role);

- b) assess the nominated candidates provided by Panel Members (this may include interviewing the candidate(s)) and recommend to the Panel the candidate or candidates who should be put forward to the Authority as the Panel's recommended candidate for approval.

If the Panel Member nomination process is used (instead of using a Selection Adviser) to identify potential candidates, there is a potential for conflicts of interest between: (i) Panel Members who are also Subcommittee members assessing and recommending their own candidate and/or; (ii) Panel Members recommending their own candidate to the Authority for approval.

#### **Option 4: Panel nominations + Panel recommendation**

- Step 1: Panel Members (excluding the Authority Representative or Appointee) nominate one candidate each (two National Grid Panel Members get one nomination between them), by reference to the Candidate Attributes provided in section 4 below.
- Step 2: (Full) Panel reviews Panel's nominations (this may include interviewing the candidate(s)) and recommends candidate(s) for appointment to the Authority. NB. These step 1 nomination and step 2 recommendation phases would need to be undertaken separately, allowing time between them for each Panel Member to review the candidate's CVs prior to deciding upon their recommendation.
- Step 3: Authority approves appointment. If Authority does not approve appointment, steps 1 and 2 to be redone, as required.

Notes: If the Panel Member nomination process is used (instead of using a Selection Adviser) to identify potential candidates, there is a potential for conflict of interest between: (i) Panel Members who are also Subcommittee members assessing and recommending their own candidate and/or; (ii) Panel Members recommending their own candidate to the Authority for approval.

#### **GSG Recommendation**

- 3.2 The GSG recommends to the Panel that Option 1 be adopted.

#### **Consultation Questions**

- Q4: Do you agree with the GSG's recommendation to adopt Option 1?
- Q5: If not, which Option do you prefer and why?
- Q6: Do you have any alternative Options?

## **4. Candidate Attributes**

4.1 The GSG considered the potential attributes for an independent Panel Chairman candidate and sets out its views of the relative merits of each attribute below.

	<b>Pros</b>	<b>Cons</b>
<b>Retired</b>	Greater availability and flexibility to attend meetings, including "urgent" meetings, at short notice, read papers, attend briefings with the Code Administrator etc.	May be "out of the loop" in terms of current knowledge on industry or commercial matters.
<b>Currently employed</b>	Greater awareness of current issues and commercial practice.	Less availability and flexibility to attend meetings at short notice. Potential for conflict of interest, depending on current employment.
<b>Seniority</b>	Brings wider knowledge and experience to the position. Adds gravitas to the position.	The more senior the candidate, whether employed or retired, the more their availability and flexibility is likely to be restricted, due to existing diary commitments. Fee charged likely to be higher the more senior the candidate.
<b>Public Sector</b>	Independent of market participants.	More likely to lack relevant technical and/or commercial experience of issues which matter to the industry.
<b>Private Sector</b>	More likely to have relevant technical and/or commercial experience of issues which matter to the industry.	Potential for conflict of interest, depending on current or previous employment.
<b>Academic</b>	Independent of market participants. Likely to have relevant technical expertise.	May lack practical application of specialist theory. Potential for conflict of interest, depending on funding they / their employer receives from external bodies (such as energy companies) for research etc.
<b>Based in UK</b>	Better availability for meetings. Lower travel expenses. Potentially greater relevant UK experience.	May lack a wider non-UK perspective, which will become increasingly relevant with European Third Package.
<b>Based</b>	Potentially brings a wider	Potential lack of experience and

	<b>Pros</b>	<b>Cons</b>
<b>overseas</b>	understanding of how similar matters are dealt with overseas (e.g. European network codes).	knowledge of UK market and commercial operations. Higher travel expenses. Less flexibility and availability.
<b>Has relevant technical/ commercial experience of energy sector</b>	Greater understanding of issues raised and discussed, enabling better facilitation of the meeting. Able to recall experience of previous events or changes that are relevant to matters at hand.	May become overly involved in debate at meeting and step outside the role of chairing the meeting. Not constrained by previous events and decisions.

4.2 The GSG debated the relative merits of the candidate attributes set out above, for example, some might consider that a recently retired DECC official to be "ideal", as they would be independent, have knowledge of the industry and of matters likely to come before the Panel; others may consider such a candidate to be "remote" from commercial "reality" to appreciate the matters being discussed at the Panel.

4.3 The GSG noted that the licence precludes a candidate from National Grid being considered for the role. In light of this, the GSG considered whether there were any other potential candidates who currently fulfil certain roles which may be deemed unsuitable, for example, any existing Amendments Panel Member or an Ofgem employee.

### Consultation Questions

Q7: What are your views on the ideal candidate attributes? Please use the table below to indicate your preferences for each of the attributes. Please leave the box blank where you are neutral to the particular attribute.

	<b>Should have this attribute. Please tick and provide rationale.</b>	<b>Should NOT have this attribute. Please tick and provide rationale.</b>
<b>Retired</b>		
<b>Currently employed</b>		

	<b>Should have this attribute. Please tick and provide rationale.</b>	<b>Should NOT have this attribute. Please tick and provide rationale.</b>
<b>Seniority</b>		
<b>Public Sector</b>		
<b>Private Sector</b>		
<b>Academic</b>		
<b>Based in UK</b>		
<b>Based overseas</b>		
<b>Has relevant technical/ commercial experience of energy sector</b>		

**Q8:** Are there any current roles which you consider unsuitable for a potential candidate to be undertaking? (such as existing Panel Member or Ofgem employee)

## **5. Scope of Role**

### **Job Description**

- 5.1 The GSG agreed that the ideal candidate will need to have relevant experience of chairing meetings of decision making bodies.
- 5.2 The GSG noted the role would include the following tasks that the Panel Chairman would need to undertake:
- Agree meeting agenda with Code Administrator
  - Chair monthly Panel meetings (and ad-hoc Special Panel meetings)



- Undertake Panel Chairman role in respect of the urgent process

### **Time Commitment**

- 5.3 The GSG considered the likely time commitment for the Panel Chairman, noting that the position would be part-time, involving approximately two and a half working days per month for a typical month. This would consist of one day's attendance at the Panel meeting and one and a half days to read the Panel papers, liaise with the Code Administrator and travel to and from the meeting. This would equate to 30 working days per annum. In addition to this, there would be a time commitment associated with urgent modifications. The GSG recognised it would be difficult to determine in advance how great the time commitment would be, however, based on recent experience, the GSG recommends that five working days per annum be budgeted for to take account of urgent matters<sup>1</sup>.

### **Consultation questions**

- Q9: Does the time commitment of 2.5 working days per month (30 working days per annum) seem appropriate for the Panel Chairman? If not, please provide your calculation and rationale.
- Q10: Does 5 working days per annum seem appropriate for "urgent" business for budget purposes? If not, please provide your calculation and rationale.

## **6. Views invited**

- 6.1 The GSG welcomes industry views on the matters set out in this consultation paper, by email to [cusc.team@uk.ngrid.com](mailto:cusc.team@uk.ngrid.com), by **5pm on Friday 14<sup>th</sup> January 2011**. For ease of reference, the consultation questions are reproduced below:
- Q1: Do you agree with the GSG's recommendation to use a Selection Advisor to help identify the candidate(s) to be the Panel Chairman?
- Q2: Do you have any views on the duration of the appointment of the Panel Chairman, such as a single term (of two years) only or two terms maximum or unlimited (e.g. able to be reappointed by the Authority, on the recommendation of the Panel, every two years)?
- Q3: Do you have any views on the possibility of Panel members being able to nominate a candidate each (instead of using a Selection Advisor) to help identify the candidate(s) to be the Panel Chairman?
- Q4: Do you agree with the GSG's recommendation to adopt Option 1?
- Q5: If not, which Option do you prefer and why?

---

<sup>1</sup> Recent urgent Amendment Proposals include CAP168 raised 27/02/2009; CAP170 raised 27/02/2009; CAP171 raised 25/03/2009; CAP172 raised 02/04/2009.

- Q6: Do you have any alternative Options?
- Q7: What are your views on the ideal candidate attributes? Please use the table below to indicate your preferences for each of the attributes. Please leave the box blank where you are neutral to the particular attribute.
- Q8: Are there any current roles which you consider unsuitable for a potential candidate to be undertaking? (such as existing Panel Member or Ofgem employee).
- Q9: Does the time commitment of 2.5 working days per month (30 working days per annum) seem appropriate for the Panel Chairman? If not, please provide your calculation and rationale.
- Q10: Does 5 working days per annum seem appropriate for "urgent" business for budget purposes? If not, please provide your calculation and rationale.

6.2 In addition to the questions posed in this consultation document, the GSG welcomes further views on the appointment process for the appointment of the independent Panel Chairman.

Q11: Do you have any additional views you wish the GSG to consider?

6.3 **Please note that unless you mark your response as confidential, it will be circulated to the Governance Standing Group and published on National Grid's website.**

## 7. Next Steps

- 7.1 The intention is to have the independent Panel Chairman in post in time for the results of the next Panel Election; this means the role would be effective from 1<sup>st</sup> October 2011. It is anticipated that the appointment process could take 4-5 months from commencement to the appointment of the successful candidate and it may be preferable for the new chairman to 'shadow' the current Chairman for a short period prior to commencing the role. In light of this the GSG is keen that an agreed process (such as that outlined in this paper) is put in place early in 2011.
- 7.2 The GSG will review the consultation responses and prepare a final paper with its recommendations to the Amendments Panel for its approval. The paper will include copies of all consultation responses, except where they have been marked as confidential.
- 7.3 The GSG will consider the responses at its meeting on 19<sup>th</sup> January 2011, with a view to finalising a recommendation paper to be discussed at the January 2011 Amendments Panel meeting.