

Governance Standing Group (GSG)

Minutes and Actions Arising from Meeting Held on 28th October 2010

Present:

| | | |
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| Garth Graham | GG | Chairman, SSE |
| Bali Virk | BV | Technical Secretary |
| Emma Clark | EC | National Grid Electricity Transmission |
| Steve Lam | SL | National Grid Electricity Transmission |
| Alex Thomason | AT | National Grid Electricity Transmission |
| Steven Eyre | SE | EDF Energy |
| Kathryn Coffin | KC | ELEXON |
| Robert Longden | RL | Wind Energy |
| Peter Bolitho | PB | E.ON UK |
| Stuart Cotten | SC | Drax Power Limited |
| Abid Sheikh | AS | Authority Representative (via teleconference) |

Apologies:

| | | |
|--------------------|-----|--------------------------------------|
| Merel Van der Neut | MK | Centrica |
| Kolfschoten | | |
| Barbara Vest | BVe | Association of Electricity Producers |

All presentations and supporting papers given at this GSG meeting can be found at:
<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/workingstandinggroups/gsg/>

1 Apologies for Absence & Introductions

317. Apologies were received from Barbara Vest and Merel Van der Neut Kolfschoten.

2 Approval of Minutes

318. The minutes from the meeting held on 23 September 2010 were approved and will be published on the National Grid website shortly.

Action: NGET to publish minutes on the National Grid website

3 Review of Actions

319. **Minute 284:** Publish the GSG minutes from the September 2010 meeting on the National Grid website.

Action: Complete

320. **Minute 285:** Add review of Initial Written Assessment costing to the GSG agenda for February 2011.

Action: GSG agenda item February 2011

321. **Minute 286:** GSG members to provide feedback on CUSC Initial Written Assessments (IWA).

Action: Complete

322. AT explained that the IWAs are a fairly new process that has been introduced into CUSC working practices to be used when a CUSC Amendment Proposal is raised and so far has been applied to CAP189 and to the recent governance amendments (CAP183 – CAP188). The GSG debated the value of the IWAs; PB expressed his views that he felt the process was

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bureaucratic and questioned what value it was adding. PB also raised a concern that the IWA could be used by a Code Administrator to influence the industry's views on an Amendment Proposal. AT explained to the group that the purpose of an IWA is to summarise the CUSC Amendment Proposal in plain English and thereby help the wider industry understand the CUSC Amendment Proposal better, especially smaller participants who may have limited understanding of the subject matter, in addition to limited resources and time to dedicate to furthering their understanding. The IWA is also designed to assist the Amendments Panel in its decision as to which route an Amendment Proposal should follow and to understand the timescales and potential industry resource involved. From a Code Administrator perspective, it has an additional benefit of helping the Code Administrator coordinate meetings and resources better.

323. SC commented that the IWAs help industry participants to understand the amendments process and plan any work that may be needed. PB asked whether the Code of Practice would require an IWA. PB stated that he believed IWAs were useful up to a point but may not be read if they became too weighty a document.
324. KC confirmed that for the BSC the IWA is a code requirement, AT stated that the requirement for CUSC IWAs is not codified. AT and KC confirmed that IWAs were not sent to Ofgem, except to the Authority Panel representative as part of the suite of Panel papers.
325. GG and RB stated that they found the IWAs a useful document. GG noted that IWAs may become more important after the Code Governance Review is implemented – e.g. in outlining any potential SCR interaction, any possible environmental impacts, whether a change could be progressed as self-governance etc.
326. SE asked if a Proposer has the chance to comment on the IWA prior to publication. AT confirmed that the IWA is written by the Code Administrator and noted that currently the timescales for submission of a new Amendment Proposal as set out in the CUSC are such that there is not necessarily an opportunity for the Proposer to comment on a draft. However, AT also noted that historically for the CUSC, some 95% of Amendment Proposals are raised by NGET and therefore it is a case of the National Grid Proposer speaking to the member of the Code Administrator team who would produce the IWA. KC confirmed that BSC working practice is to share the IWA with the Proposer before submitting it to the Panel.
327. BV confirmed that IWAs were introduced into the CUSC working practices following a request from CUSC Panel Members as some of the CUSC Panel Members have used them in their role as BSC Panel Members and found them to be a useful tool.
328. It was agreed that NGET would seek wider views on the use of IWAs and the value of producing them. AT asked for GSG members to seek feedback from industry colleagues to find out how widely used the CUSC IWAs are.

Action: ALL to report back at next meeting on wider feedback received on the IWA

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329. **Minute 220: GSG to consider issues associated with the applicability and relevance of analysis undertaken during the process before a decision is made.** Review after conclusion of CAP179 Working Group.

Action: Ongoing

330. **Minute 249: NGET to remind Ofgem about post-implementation response.** AT circulated Ofgem's email response to this action to the GSG members.

Action: Complete

GG reiterated that a House of Lords Select Committee report in November 2007 stated that the post-implementation review criteria should be established when the change is raised, not set after the event. GG also stated that given the importance of the matters that were likely to be the subject of an SCR that perhaps, as a minimum, all SCR directed Amendment Proposals might be the subject of a post-implementation review.

331. **Minute 293: GSG to consider potential KPIs further and discuss at the November GSG.**

Action: Agenda item for November 2010 GSG meeting

332. **Minute 278:** NGET to get a view from its Legal team, with regards to publishing a summary of a confidential response including the company name, and whether this impediment is in the CUSC or the Electricity Act. **On agenda, item 4.**

333. **Minute 297: NGET to update Terms of Reference to include SE as member of the GSG.** Completed.

Minute 297: GG to seek CUSC Panel approval of revised GSG Terms of reference at September Panel. Completed.

Action: Complete

334. **Minute 298: NGET to annotate copy of Terms of Reference to note which items are closed and provide reference to GSG minutes.** BV circulated an annotated version of the Terms of Reference detailing the closed actions making reference to the GSG minutes that they were closed off in.

Action: Complete

335. GG informed the GSG that he will provide an update at the CUSC Panel meeting on Friday 29 October on the completed items within the GSG Terms of Reference, and asked if NGET would circulate two copies of the GSG Terms of Reference to the CUSC Panel (the original and annotated versions). The GSG also agreed for both versions to be published on the National Grid website.

Action: BV to circulate two versions of the GSG Terms of Reference, original and the annotated version to the CUSC Panel members/ NGET to publish both versions on the National Grid website

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336. **Minute 303: GG/AT to draft protocol for the appointment of CUSC Panel Chairman. NGET to seek internal advice on relevant process or restrictions.** On agenda, item 5.
337. **Minute 311: NGET to circulate a link to the Commercial Balancing Services Group.**
Action: Complete
338. **Minute 313 – NGET to circulate draft updated Transmission Charging Methodology Forum Terms of Reference (TCMF).**
Action: Complete
339. AT informed the GSG members that the TCMF Terms of Reference were a draft which was produced in July 2010. In January 2011, the governance of changing methodologies will form part of the CUSC, if CAP188 is approved by Ofgem.
340. The GSG members discussed the future governance of the TCMF and AT confirmed to GSG members that the TCMF will remain an industry discussion forum and not a Standing Group in the sense of existing CUSC governance.
341. GG suggested that NGET could schedule future TCMF meetings alongside other forums such as the Cross Codes Electricity Forum or the NGET User Seminars. KC agreed that engagement in the Cross Codes Forum was possible through the Webinar facility that ELEXON currently uses. This would be more efficient than paying for presenters to travel up and down the country with additional costs for hotels. GG said the industry meetings should try and minimise the cost and where possible try and arrange back to back meetings. AT recognised the benefits of running industry meetings together, but noted that when trying to schedule meetings back to back, the established scheduling of the existing TCMF meetings (Thursday mornings) would need to be taken into account. Factors to consider when scheduling meetings together include the length, location and attendee lists of other industry meetings.
342. AS informed the group that the DCMF are considering creating a standing issues group for DNOs and others to talk through possible charging methodology modifications.

4 Private & Confidential Responses

343. A private and confidential response was received to the CAP170 "Category 5 System to Generator Operational Intertripping Scheme" Company consultation and the response was included in the Final Amendment Report to the Authority. Neither the private and confidential response contents or the name of the party involved were to be disclosed to the CUSC Panel and no reference to the contents of the response or party involved was to be made available to the industry.
344. At the May 2010 GSG meeting this topic was debated further and GSG members asked NGET to ask their lawyers if there are any restrictions imposed by the 1989 Electricity Act that would not allow NGET to publish the company name, and summary of a private and confidential response. BV confirmed that the legal advice received confirmed that the main prohibition

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against disclosing confidential consultation responses is contained in section 8.22.1 of the CUSC and that there is a general prohibition against disclosure of information that NGET has obtained in its role as a licensee contained in section 105 of the Utilities Act. BV confirmed that the provisions within the CUSC state responses marked "private and confidential" can only be disclosed to the Authority within the Final Amendment Report to the Authority.

345. BV made two recommendations to the group; the first being the inclusion of a sentence in the Working Group or Company consultation pointing out that if responses are marked private and confidential they will not be shared with the panel/industry and may therefore not influence the debate to the same extent as a non confidential response.
346. The second recommendation is that the Code Administrator contacts the respondent in question to ask whether there is any part of the response that can be shared with the CUSC Panel and industry. KC confirmed that ELEXON uses this approach when they receive private and confidential information in responses.
347. The GSG members agreed that NGET should adopt both of the recommendations outlined by BV and in the covering email to the industry to make it explicit that all Working Group and Company Consultation responses will be published unless marked "private and confidential". Also NGET should include a sentence in the Working Group Consultation Response Proforma stating that responses marked private and confidential will not be shared with the CUSC Panel and industry and may therefore not influence the debate to the same level as a non private and confidential response.

Action: NGET to adopt the processes as detailed above

5 Protocol for the appointment of an independent CUSC Panel Chairman

348. GG circulated to the GSG members via email some thoughts on the process for appointing an independent CUSC Panel Chairman. The GSG members discussed using a Head Hunter (Selection Advisor) who would advertise the role in an open and transparent manner. The group discussed the various employment contract options that the CUSC Panel Chairman may be employed on, for example, a consultant contract or an employment contract with NGET. AT confirmed that the salary would be paid by NGET and the salary would then be recharged to CUSC Parties. The GSG agreed that a role outline would need to be written which would outline the number of days the Chairman would need to work a month and the technical experience needed to fulfil this role.
349. AT asked the GSG members if there was anyone in the industry who had been appointed through a similar process, and members pointed out that a similar process must have been held for the appointment for the BSC Panel Chairman. The GSG requested AS to provide some guidance from the appointment of the BSC Panel Chair by Ofgem and how this may apply in terms of the appointment of a CUSC Panel Chair.

Action: AS to provide guidance on the recent appointment process for the BSC Panel Chair

350. AT confirmed that she is waiting to speak to NGET Human Resources about the appointment process for a National Grid non executive director, which

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may provide a useful comparison for the appointment process for an independent CUSC Panel Chair.

351. It was agreed that the industry would need to be consulted on the process for appointing the Chairman and how the appointment process would work prior to Christmas 2010.
352. The GSG members agreed that the following timetable:
 - 5 November 2010 – GSG members to feedback any comments on the email from GG
 - 12 November 2010 - AT/GG to draft a consultation paper on the comments received from GSG members and circulate to GSG members for review
 - 17 November 2010 - Comments back from GSG members
 - 18 November 2010 - Paper submitted to CUSC Panel Secretary
 - Early December 2010 – Consultation to the industry

6. Review of Ofgem's detailed comments on the Code Governance Legal text

353. AT gave some background to the issue. NGET held Working Group meetings for the recent governance amendments, CAP183: Significant Code Review; CAP184: Self Governance; CAP185: Role of Code Administrator and CAP188 Governance of Charging Methodologies. At the Working Group meetings, National Grid presented various drafts of consolidated illustrative legal text and the Working Group members worked through these drafts and provided comments. The final draft of the legal text was sent out with the Company Consultations for CAPs 183, 184, 185 and 188 on 27th September 2010.
354. AT noted that Ofgem provided comments on the final draft of the legal text at the Company Consultation stage and that NGET had explained that the legal text at this stage is fixed. NGET spoke with Ofgem and agreed that the comments did provide further clarity on the legal text, but felt that the text in its final form would meet National Grid's licence obligations.
355. AT confirmed that the Draft Amendment Reports have since been published, including Ofgem's comments and that NGET will be running a Code Governance Review post implementation review in January 2010 when these comments will be addressed via a further Amendment Proposal.
356. GG informed GSG members that in the past legal text that has already been consulted on through the Company Consultation has not been allowed to change. KC queried what the point of consulting Parties on the legal text was if their comments could not be incorporated as the Company Consultation is sometimes the only opportunity the industry has to comment on the text. GG noted that this had been flagged up on a number of occasions previously, however the legal advice from National Grid was that changes to the legal text was not permitted once the Company Consultation had commenced. In light of recent events it seemed to the GSG that this approach should be reviewed.
357. AS asked if the GSG could concentrate on the eight fundamental issues highlighted by Ofgem in their comments to National Grid and which are listed below for ease of reference:

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- 1) 8.25.11 (Ofgem point 3): Self-Governance. Clarify that the Authority “may” rather than “shall” make a determination, in order to avoid fettering the Authority’s right to apply other provisions, for example, the proposed send back process.
 - 2) 8.25.12. Self-Governance. Clarify required that the Panel could not withdraw its Self-Governance statement if the Authority has determined that a Modification Proposal should follow the Self-Governance route.
 - 3) 8.25.14. Self-Governance Appeals. Clarify that the appeal window commences from the Panel’s determination itself and not from publication of the Panel’s determination, in line with the relevant licence condition.
 - 4) 8.25.15. Self-Governance Appeals. Clarify that the first stage in the appeal is for the Authority to consider whether the appeal satisfies the criteria, to avoid potential confusion that the whole appeal could be solved in one step, rather than it being a multi-step process.
 - 5) 8.25.18 (Ofgem point 3): Self-Governance Appeals. Clarify the appeal outcomes and delete the final sentence in this paragraph which replicates the previous paragraph in the text.
 - 6) Proposed new para 8.25.19: Self-Governance Appeals. Add a new paragraph to make it clear that one outcome of the appeal route is that Ofgem upholds the Panel’s original decision.
 - 7) 8.17.1: Significant Code Review (Ofgem’s first point in the second row in the table). We discussed whether the Panel could prevent an SCR-directed Modification Proposal from progressing by linking it to a second SCR which was ongoing at the same time, but was slightly related in subject matter. National Grid’s interpretation was that the Panel could not prevent such a Modification Proposal from progressing, but Ofgem suggested that the definition of “Standard CUSC Modification Proposal” may need amending to deal with two (slightly) related SCRs running on similar timescales.
 - 8) 8.16.11(d): Code Administration functions. Ofgem raised a concern over National Grid including a provision in the CUSC to allow it to charge parties for providing information, updated reports etc in relation to Charging Statements and CUSC Modifications. National Grid referred to the relevant licence conditions related to Charging Statements in C4, C5 and C6 and noted that, in practice, National Grid does not levy any charges, given that all information is made available on the website. The clause in the licence is a legacy clause dating back to the time when parties requested National Grid to provide multiple printed copies of the Charging Statements and National Grid was allowed to recover the costs of printing and postage.
358. KC questioned whether it should be the GSG discussing this or the Code Governance Review Working Group members that were originally involved in the production of the legal text. GG considered that the eight fundamental issues amongst the comments received from Ofgem should be discussed prior to January 2011 if that would give Ofgem comfort that their concerns are being addressed prior to them deciding on the merits of the Amendment Proposals in question. GG noted that the GSG was planning to undertake a detailed review of Sections 8 and 11 of the CUSC in January 2011 if the suite of Code Governance Review Amendment Proposals were implemented to

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ensure they are still 'consistent' following the recent significant changes to these two Sections.

359. AT said she envisaged that the eight fundamental issues would be addressed by one Amendment Proposal, taking each paragraph in detail. SC asked for clarification that if the proposed legal text for CAPs 183, 184, 185 and 188 have not been approved, is it possible to raise a new Amendment Proposal to address issues with the proposed legal text. AT confirmed that this would not be possible and that the development work would be done now, but the new Amendment Proposal would need to wait until the new governance amendments have been implemented.
360. AS stated that if all the comments on the legal text including the eight substantive issues are left until the GSG meeting in January 2011, it would likely take another three to four months to work on and from an efficiency point of view the work would need to start now.
361. KC stated that she had some concerns about not being involved in the Code Governance Review Working Group and now as a GSG member being asked to review the legal text. GG explained this had been done for the Transmission Access amendments. KC believed that the original Code Governance Review Working Group was better placed to comment on Ofgem's proposed changes.
362. AT confirmed that NGET will go through the eight fundamental issues raised by Ofgem, with NGET lawyers and send comments to the GSG members and Code Governance Review Working Group members.

Action: NGET to draft revised legal text and send to the GSG members and the governance Working Group members

7 Any Other Business

363. BV asked the GSG members if they had received the GSG meeting dates for 2011 that she had circulated, and members stated that there was confusion over the meeting date for January 2011. BV said she would send an updated version for the 2011 meetings.

Action: BV to circulate the 2011 meeting dates to the GSG group

364. EC informed GSG members that the CUSC Amendment Proposal form would be updated to reflect the CAP187 Code Governance Review: Environmental Assessment and the Relevant Objectives which was approved by the Authority on 19 October 2010 and implemented on 2 November 2010.

The GSG members suggested changes to the wording in order for the proposer to give a more thorough explanation.

Action: EC to update the CUSC Amendment Proposal form and publish the revised version on the National Grid website

8 Next Meeting

365. The next GSG meeting will held on 25 November 2010 in Warwick.