

WORKING GROUP REPORT

CUSC Amendment Proposal CAP008

Codification Errors

**Prepared by the Governance Amendments Working Group
for submission to the Amendments Panel**

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DISTRIBUTION

Name	Organisation
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CUSC Parties	Various
Panel Members	Various
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1.0 SUMMARY AND RECOMMENDATIONS

The Working Group has evaluated the Amendment Proposal against the applicable CUSC objectives but was unable, as a group, to reach a unanimous recommendation on CAP008 – Codification Errors. Under its Terms of Reference the Working Group can only assess the Amendment Proposal against the applicable CUSC objectives. Although there was support within the Working Group for the issue raised by the Amendment Proposal, the Working Group noted that the effect of the Amendment Proposal would be to set the applicable CUSC objectives to one side in the case of Codification Errors. National Grid therefore felt that the Amendment Proposal must fail but this view was not supported by all the group members.

This report sets out the diverse views of Working Group Members only and the relevant issues that should be consulted on in the Industry. The diverse views on the principle of this amendment proposal meant that the Working Group did not identify an Alternative Amendment.

The CUSC Amendments Panel is invited to note:

- The diverse views within the Governance Amendments Working Group

And Endorse:

- That the Amendment Proposal be consulted on by National Grid in the wider Industry forum.

2.0 INTRODUCTION

At the 9th November 2001 CUSC Panel meeting British Energy proposed a change to Section 10 of the CUSC to introduce the concept of Codification Errors. The Amendment Proposal recognises the potential existence of and provides for the correction of each and any Codification Error which arise and are associated with the migration process from MCUSA to CUSC.

This Amendment Proposal was supported by other parties, which are acknowledged by British Energy in the CUSC Amendment Proposal form.

The CUSC Panel determined that the proposal should be considered and evaluated further by a Working Group and the Governance Amendments Working Group (GAWG) was established on the 9th November 2001. For information, at the same time it was also given an action to consider other amendment proposals namely CAP004 – ‘Cost Benefit Analysis CAP005 – ‘CUSC Panels Role and Reporting’, CAP006 – ‘Non Discrimination’, and CAP007 – ‘Role of Standing Groups’ each under separate terms of reference and these are considered in other Working Group reports.

This report considers CAP008 – Codification Errors (Annex 1 – Amendment Proposal form) only and summarises the views and issues raised during the course of the Working Group discussions. The Report has been prepared in accordance with the terms of the CUSC. An electronic copy of this document can be found on the National Grid website, at www.nationalgrid.com/uk/indinfo/cusc.

3.0 PURPOSE AND SCOPE OF WORKING GROUP

In accordance with the Terms of Reference for the Working Group (Annex 2), the Working Group considered the British Energy Amendment Proposal CAP008. The Working Group did not develop an Alternative Amendment.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

The Applicable CUSC Objectives are defined within Condition C7F of the Transmission Licence as:

- (a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1); and
- (b) in relation to any other proposed modification, the objectives set out in paragraph 1.

The objectives detailed in paragraph 1 are the efficient discharge by the licensee of the obligations under the Act and licence and to facilitate competition in the generation and supply of electricity and where consistent facilitating competition in the sale, distribution and purchase of electricity.

In relation to this amendment proposal, which details changes to Section 10, Transitional Issues, the objectives of (b) above (i.e. Paragraph 1 of the Transmission Licence), is the relevant objective against which this Amendment Proposal should be judged when deciding whether they are better facilitated. However, it should be noted that the proposal sets out to set aside the modification procedures as laid down by the Transmission Licence by creating a new category of change to be implemented directly without reference to the relevant objectives. The amendment proposal therefore also relates to (a) above.

Several members of the Working Group did not support the Amendment Proposal. The Amendment Proposal requires that for a certain categories of CUSC change (Codification Errors) the applicable CUSC objectives should be set aside. Some Working Group members noted that it was not possible to better facilitate the applicable CUSC objectives if they were set aside for certain changes and therefore fundamentally the CUSC Amendment Proposal could not be supported.

However, the counter view was presented that by acknowledging this issue now and by providing a process for its management this would avoid excessive time and resource at a later date if and when such an event occurred. The Amendment Proposal therefore better facilitated the applicable CUSC objectives on the grounds of efficiency in a similar way as is achieved in the Bilateral Agreements through letters of comfort provided by National Grid. This intent was fully supported by the group and they acknowledged that there may be unintended differences in codification from MCUSA to CUSC as implemented. However, they did not believe that it was possible or appropriate for this issue to be resolved within the CUSC framework. The applicable CUSC objectives are detailed in the Transmission Licence and changing the CUSC does not change the requirement on National Grid from its Licence.

Some Working Group members stated that there were existing provisions for amendment within the CUSC and where differences are identified between MCUSA and CUSC then these can be presented and assessed. Where they better facilitate the applicable CUSC objectives, then the change will be made. If the correction of such an error was detrimental to the facilitation of the applicable CUSC objectives then it should fail. As such, any errors identified should stand on their own merit.

In terms of the implementation of the Amendment Proposal there was concern as to the process to be followed if such a change was implemented. There would need to be a process for identifying and agreeing a codification error which would need to be laid down in the CUSC and agreed by all parties. Also the CUSC being a live document meant that subsequent changes may occur and therefore any codification error may not then 'fit' with the revised version of the CUSC. This would provide uncertainty to Users and in particular new entrants would need to be aware of the CUSC but also the MCUSA to understand how their rights and obligations might change in the future.

5.0 ALTERNATIVE AMENDMENT

The diverse views on the principle of this amendment proposal meant that the Working Group did not identify an Alternative Amendment.

6.0 PROPOSED IMPLEMENTATION AND TIMESCALES

Concern was raised over the impact that such a proposed change if implemented would have on active amendment proposals currently being considered and those already implemented.

No consideration was given to the implementation timescales.

7.0 IMPACT ON CUSC

In addition to the change to Section 10, the proposed amendment will require a definition to be developed for Codification Errors which will require changes to Section 11 and a detailed process to be followed which may require significant changes to Section 8. No other changes have been identified.

8.0 IMPACT ON INDUSTRY DOCUMENTS

8.1 Impact on Core Industry Documents

This amendment proposal will have no impact on other core industry documents.

8.2 Impact on other Industry Documents

This amendment proposal will have no impact on other industry documents.

Annex 1: CUSC Amendment Proposal CAP008

Amendment Proposal

Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the CUSC Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.

The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which 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, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Proposer will be informed by the Panel Secretary.

The completed form should be returned to:

Mark Cox
Panel Secretary
Commercial Development
National Grid Company plc
National Grid House
Kirby Corner Road
Coventry, CV4 8JY

Or via e-mail to:

CUSC.Team@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer which is a CUSC Party shall be deemed to have granted this Licence.)

4. Proposers Name:

(Name of party making the proposal. An Amendment Proposal may be made by a CUSC Party, a BSC Party or by "energywatch")

British Energy Generation Limited

5. Proposers Representative:

(The name of the person representing the Proposer (and his alternate) for the purposes of the Amendment Process)

Steve Phillips (or alternate John Capener)

6. Organisations Name and Address:

(Organisation on whose behalf the Amendment is proposed)

*British Energy Generation Limited, Barnett Way, Barnwood,
Gloucester, GL4 3RS*

In addition to BEGL, the following CUSC Parties listed alphabetically below are joint sponsors for this Amendment Proposal:

1. AES Drax Power Limited Selby, North Yorkshire, YO8 8PQ
2. Barking Power Ltd Barking Power Station, Chequers Lane, Dagenham, RM6 6PF
3. Deeside Power Development Company Ltd, Senator House, 85 Queen Victoria Street, London EC4V 4DP
4. Enron Direct Limited Enron House, 40 Grosvenor Place, London SW1X 7EN
5. First Hydro Company Bala House, Lakeside Business Village, St. David's Park, Deeside, Flintshire, CH5 3X
6. Humber Power Limited South Humber Bank Power Station, South Marsh Road, Stallingborough, North East Lincolnshire, DN41 8BZ
7. Teesside Power Limited Dunedin House, Columbia Drive, Thornaby, Stockton On Tees, Cleveland, TS17 6 BJ

7. Capacity in which the Organisation Proposes to make an Amendment:

(i.e. CUSC Party, BSC Party or "energywatch")

CUSC Party

8. Description of the issue or defect which the proposed Amendment seeks to address:

(This should be in reasonable, but not excessive detail)

There is a potential for codification errors which are unintended changes in effect which arise from the migration process from the MCUSA to CUSC and which only emerge in the future while the CUSC is in operation.

9. Description of the proposed Amendment and of its nature and purpose:

(This should be in reasonable but not excessive detail)

To recognise the potential existence of and provide for the correction of each and any "codification errors" which arise in the future and are associated with the process of migration from the MCUSA to CUSC.

10. An indication of those parts of the CUSC which would require amendment in order to give effect to (or would otherwise be affected by) the proposed amendment and an indication of the nature of those amendments or effects.

(This should be given where possible)

Please refer to the attachment for suggested, indicative changes/additions to be incorporated to appropriate paragraphs of section 10 of the CUSC to give effect to the proposed amendment.

Please note that it is the principle of the Amendment Proposal that is to be reviewed and approved by an appropriate review/consultation process to be determined by the CUSC Amendment Panel.

This indicative text is a suggested solution which may or may not be considered exhaustive in its detail and scope.

11. Reasons why the Proposer believes that the proposed Amendment would better facilitate achievement of the Applicable CUSC Objectives as compared with the current version of the CUSC with background information in support thereof.

The Proposer considers that the proposed amendment would better facilitate the achievement of the applicable CUSC Objectives since it would better facilitate the efficient discharge by NGC of its obligations under the Act and the Transmission Licence.

In addition the Proposer considers that this Amendment Proposal (AP) would accord with repeated assurances given during the development of the CUSC that the intention of the Code was to replicate the existing arrangements except in a number of clearly defined instances. However, it should be noted that for this specific AP, the Proposer does not regard the requirement to "better facilitate achievement of the Applicable CUSC Objectives" as the correct criteria against which this AP should be measured.

The issue is one of ensuring that there is an appropriate acknowledgement and recognition within the Transitional Issues (section 10) that in the preparation and migration from MCUSA to CUSC there may be some differences identified in the future which are associated with the content of the CUSC (as at the CUSC Implementation Date) which when compared with the original MCUSA source documentation results in a different conclusion as a consequence of the interpretation applied.

Inclusion of this 'Codification Error' amendment proposal provides safeguards for both NGC and CUSC Parties by establishing the concept of "Codification Errors" and permits this specific category of amendments to be addressed and rectified. It will also permit the correction of any erroneous and/or deleterious effects on those CUSC Parties who were previously MCUSA signatories at the CUSC Implementation Date.

Identification of this category of issues and resolution should be provided for within the Amendments review process and it is envisaged that any permitted party should be able to raise an appropriate Amendment Proposal to enable the "codification error" to be formally reviewed and assessed thus creating increased transparency to the benefit of all CUSC Parties. This amendment category would also bring the CUSC amendment process into line with best regulatory practice of correcting errors and would facilitate the reduction of regulatory uncertainty and increased confidence in both CUSC design and its processes.

12. An indication of the impact of the proposed Amendment on Core Industry Documents.

(This should be given where possible)

None

13. An indication of the impact of the proposed Amendment on relevant computer systems and processes used by CUSC Parties.

(This should be given where possible)

None

14. A statement to the effect that the Proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel a Proposer shall grant a Licence in accordance with Clause 8.15.7 of the CUSC.

(A signature to this effect must be given by a Proposer, which is not a CUSC Party)

Proposer is a CUSC Party.

Attachment to Amendment Proposal

CODIFICATION ERRORS

10.13 CODIFICATION ERROR

Where there is a difference in effect between the provisions of the CUSC and the documents in force immediately prior to the CUSC Implementation Date which were amended to form the CUSC, which is not a difference intended to result from the Designation of the CUSC (examples of which are the intentional changes made to governance and dispute resolution) and which is not a difference due to an amendment to the CUSC occurring after the CUSC Implementation Date, the provisions of the CUSC shall be amended to correct such difference (the "**codification error**").

Note: In addition to the above proposed definition of a Codification Error, there is a requirement to establish a process to facilitate a transparent review and resolution of each and any such arising within the CUSC Amendment process.

Annex 2: Working Group Terms of Reference and Membership

CAP008: Codification Errors Governance Working Group - Terms of Reference Paper

Introduction

1. The current CUSC does not allow for the 'simple' remedy of any unintended codification error that has mistakenly occurred during the MCUSA to CUSC migration process. CUSC Amendment Proposal CAP008 seeks to modify this by amending the CUSC to recognise the potential existence of and provide for the correction of each and any codification errors that arise in the future. At the 9th November 2001 Amendments Panel meeting, the Amendments Panel determined that a Working Group (the Governance Working Group) should be established to consider Amendment Proposal CAP008. At the Panel Meeting, the Governance Working Group was also actioned to consider Amendment Proposals CAP004, CAP005, CAP006 and CAP007.
2. This paper outlines the process and terms of reference that the Governance Working Group should work to with respect to Amendment Proposal CAP008.

Proposed Membership of the Governance Working Group

3. At the 9th November 2001 Amendments Panel meeting, the Amendments Panel agreed the following membership for the Governance Working Group:

Chair:	Nigel Cornwall (Cornwall Consulting)
Other Members:	Dick Cecil (London Electricity) Jane Butterfield (PowerGen) Malcolm Taylor (AEP) Mike Metcalfe (National Grid) Steve Phillips (British Energy) Richard Ford (St. Clements) Simon Goldring (British Gas Trading)

Process

4. The Governance Working Group has been established and actioned to consider, inter alia, the amendment of the CUSC so that it recognises the potential existence of and provides for the correction of each and any codification error that arises in the future and that is associated with the process of migration from MCUSA to CUSC. CUSC Amendment Proposal CAP008 refers.
5. Condition C7F (Paragraph 6) of National Grid's Transmission Licence requires the licensee to establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives. In view of this, the Governance Working Group should consider how the proposed Amendment better accomplishes this requirement when compared to the current procedures.
6. The findings of the Working Group should be published on the CUSC Website.

Scope of Work

7. The Governance Working Group should consider the Amendment Proposal tabled by British Energy and consider any Alternative Amendment Proposals raised by the Governance Working Group or any other interested parties.
8. The Governance Working Group should consider, inter alia, how the Proposed Amendment would impact on:
 - (a) the CUSC itself (BE have provided some accompanying, indicative, draft legal text in CAP008); and
 - (b) on other codes/core industry documentation.

Relationship with Amendments Panel

9. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. The Working Group Chairman should contact the CUSC Panel Secretary.
10. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chairman should contact the CUSC Panel Secretary.

Meetings

11. The Working group shall develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

Reporting

12. The Governance Working Group Chairman should, in line with the CUSC, be responsible for producing a Working Group Report with recommendations. The report should be submitted to the Panel Secretary by 9th February 2002 for circulation to Panel Members and the Conclusions of such report should be presented to the Amendments Panel meeting scheduled for 22nd February 2002. The report should be written with reference to Section 8.17 of The CUSC.

Annex 3: Internal Working Group Procedures

Governance Amendment Working Group (CAP004-008)

Internal Working Procedures (for each CUSC Amendment Proposal)

1. Notes of each meeting will be produced by the Technical Secretary (provided by National Grid) and circulated to the Chairman and Working Group members for review.
 - (a) Meeting notes will be published on the National Grid CUSC Website following the review by Working Group members.
2. The Chairman of the Working Group will provide an update of progress and issues to the Amendments Panel each month as appropriate.
3. Working Group meetings will be arranged for a date acceptable to members of the group and will be held as often as required as agreed by the Working Group, in order to respond to the requirements of the Terms of Reference set by the Amendments Panel.
4. If within half an hour after the time for which the Working Group meeting has been convened the Chairman of the group is not in attendance, the meeting will take place with those present. A Chairman shall be appointed from those members of the Working Group present.
5. A meeting of the Working Group shall not be invalidated by any member(s) of the group not being present at the meeting.