

**Notes and Actions Arising from Governance Standing Group
Held on 6 September 2004
NGT House, Warwick**

Present:

Bob Brown	BB	Chairman
Damian Bach	DB	NGT (Legal representative)
Steve Drummond	SD	EDF Trading
Mark Duffield	MD	NGT Representative
Simon Goldring	SG	Centrica
David Lane	DL	Clear Energy
Georgina Lawrence	GL	Ofgem (Observer)
Neil Smith	NS	E.On

Introductions/Apologies for Absence

1. Apologies were received from Steve Phillips, Malcolm Taylor and Lindsey Paradine.

Terms of Reference

2. The Governance Standing Group (GSG) had been asked to reconvene by the CUSC Panel for two reasons. Firstly to act as the Working Group for CAP075 to further consider the detailed legal text that would, if implemented, give effect to the Working Group Alternative Amendment (WGAA) developed at the first meeting of the CAP075 Working Group. Secondly the GSG was asked to discuss an issue raised within the BSC governance relating to Implementation Dates and whether the issue had any impacts within the CUSC.

Consideration of CAP075 Working Group Alternative Amendment legal text

3. MD began by summarising the main issue identified with the legal text for the CAP075 WGAA. This issue was primarily concerned with the revised use of the definition “Resigning Panel Member”. The WGAA was specifically designed to avoid the scenario where a Panel Member who ceases to hold office other than by tendering their resignation could nominate a replacement Panel Member. A concern was raised that there may be persons who fall under the category “Resigning Panel Member” due to bankruptcy etc before any potential implementation of the Working Group Alternative Amendment. After any such implementation these “Resigning Panel Members” may also be inadvertently conferred with the right to nominate their successor.
4. MD went on to suggest that there may be a natural safeguard in the original WGAA legal text which stipulated that a “Resigning Panel Member” may only nominate their replacement at the same time as they submit their resignation. Should a Panel Member not submit their resignation and become a “Resigning Panel Member” for instance through bankruptcy then they would not submit a letter of resignation and so would not be able to nominate their successor.

5. However if this potential safeguard was not deemed robust enough by the GSG and that therefore changes were required to the legal text then MD stated that perhaps the legal text could be amended by replacing the term “Resigning Panel Member” with another term for instance “Departing Panel Member”. Thus after any potential implementation of the CAP075 WGAA there could be no ambiguity as it would only be “Departing Panel Members” that would have the right to nominate.
6. The group agreed that a change was required. SD suggested that the introduction of a further defined term “Departing Panel Member” wasn’t suitable, as it did not serve to add further clarity and in many ways confused matters further. Instead SD proposed that the text move away from the use of defined terms and rely on the wording in 8.5.1 “a panel member who resigns from office by notice delivered to the Panel Secretary”.
7. SG agreed with the suggestion that the text move away from the use of defined terms and proposed that the legal text be structured such that it states the process that would be followed should a Panel Member resign, or a Panel Member be removed from office due to any other provisions of 8.5.1. In this way the fact that a Panel Member resigns is stated just the once in the code, then the process to be followed would be described in further paragraphs that are clearly referenced and follow consequentially from a previous clause.
8. The GSG agreed that this was the most appropriate method to take forward. MD and DB agreed to consider the proposed method in full and to circulate a revised draft of the legal text by Tuesday 7th September. BB also suggested that a revised Working Group Report to reflect that fact that the GSG had met a further time also be circulated. MD agreed to this also and stated that the amended Working Group Report would be circulated alongside the revised legal text

Action: MD

Consideration of Implementation Dates

9. MD began by presenting the issue to the GSG. The issue originated in discussions held by the BSC Governance Standing Modification Group where it was noted that there was potential for the BSC and the Transmission Licence to conflict. The issue centred on the fact that the Transmission licence obliges a BSC Modification Report to propose an Implementation Date. The BSC then appears to tie the Authority to this Implementation Date such that should the Authority decide to approve a BSC modification then it must be implemented on the proposed Implementation Date. If this Implementation Date has already passed however then the Authority cannot approve a modification even though it may better facilitate the applicable BSC objectives as it would be impossible to implement by the Implementation Date.
10. MD went on to state that similar provisions exist within the Transmission Licence that refer to the amendment of the CUSC and within the CUSC itself. Crucially however the CUSC does not explicitly refer to an Implementation Date as a defined term and as such there appears to be more flexibility within the CUSC Arrangements on this issue.

11. DL then gave further background to the BSC issue and stated that the issue has arisen in relatively few circumstances, pointing to BSC modification P82 – Introduction of Zonal Transmission Losses on Average Basis, the Authority decision on which was delayed due to a judicial review. Therefore it is rare for this issue to arise as the timetables allowed are usually quite broad and allow for the timely implementation of approved amendments. It was noted by the group that moving forward the environment into which amendments are submitted is such that disputes are possibly more likely and as such this issue may well become more prevalent. GL pointed to the fact that Regulatory Impact Assessments (RIAs) may now be required with certain amendments as one instance where timetables could be put under further pressure.
12. SD then asked whether the issue needed to be addressed at this point in time especially with regard to the CUSC. The existing process whereby the Authority have a finite amount of time to make a decision on an Amendment seems to work well in the large majority of cases and has the benefit of providing market certainty as to the date upon which an amendment will be implemented. The fact that a proposal may have to be rejected by the Authority should it become “timed out” is not as efficient as it could be, however the amendment could then be resubmitted at a later date.
13. There was general agreement that the concept of a fixed Implementation Date that provided market certainty was beneficial. SG agreed with SD that the fact that a CUSC Amendment is rejected on the grounds of it being “timed out” is not as satisfactory as it should be. Given the existing provisions within the code that allow CUSC amendments to be granted Urgent status and others that allow for the assessment process to be expedited, this shouldn't be too onerous however. SG stated his opinion that it was better to have the benefits of the fixed Implementation Date and the risk that an amendment may need to be resubmitted in the event it is timed out, rather than to lose the certainty of the fixed Implementation Date.
14. BB then suggested with regard to the need for the Authority to occasionally carry out RIAs, that any proposed implementation date within the CUSC Amendment Report to be set to account for a RIA being required. Then if the Authority ultimately determined that a RIA was not necessary for the proposed amendment and the amendment approved then there should be a process in place to bring forward the implementation date in the Amendment Report if necessary. It was noted by the GSG that such a facility to bring forward the implementation date of an approved CUSC amendment did not currently exist within the CUSC and that this potentially could form the basis of a future CUSC Amendment proposal.
15. The group was in general agreement regarding the conclusions reached in the debate. BB then summarised these and suggested they form the basis of a report to the CUSC Panel.
 - The existing process is sufficiently robust under the present circumstances.
 - That the concept of a fixed implementation date is seen as beneficial and should be retained.

- That a CUSC amendment proposal could be introduced to allow for the implementation date of an Approved CUSC Amendment to be brought forward or extended if necessary.

MD agreed to draft this paper and to circulate by 10th September.

Action: MD

16. SG raised a point regarding a practice used when setting implementation dates that are tied to events such as software releases. In these circumstances it is relatively common for an implementation date to contain words to the effect that “should the Authority approve this amendment before D1/M1/Y1 then the amendment should be implemented on D2/M2/Y2. If the Authority approves this amendment after D1/M1/Y1 then the amendment should be implemented on D3/M3/Y3. SG asked whether this was consistent with the transmission licence that states an Amendment Report should include “the date with effect from which such amendment (if made) is to take effect”. Given that this statement refers to the date in the singular, is an implementation date that is constructed of two separate but mutually exclusive dates legally acceptable? MD agreed to consult with NGT legal on this aspect and to report back to the GSG. The GSG agreed that this requirement also meant that the concept of a “rolling” implementation date such as “3 months following any direction of the Authority to approve this Amendment” would not be consistent with the licence obligations.

Action: MD

Draft