

**CAP044 - Report to the CUSC Amendments Panel**

1. The CUSC Panel at its 22 November meeting agreed to reconstitute the Governance Standing Group (GSG) to:
  - consider CAP 44 as a working group; and
  - review the provisions of Annex A of the CUSC which concerns the election of users Panel members as a standing group.

Terms of reference are at attachments A1 and A2 respectively.

2. The group has met once, on 13 December, to discuss CAP44, and this paper is an initial report to the Panel on this matter.

**The Problem**

3. The Proposal CAP 44 seeks to amend Annex 8A.4 to make it clear that the election arrangements currently in place to cater for “Resigning Panel Members” also applies to “Resigning Alternate Members”. “Resigning Alternate Members” would also become a new defined term in the CUSC. The CUSC Amendments Panel agreed in principle at its meeting on 25 October that the fact that the CUSC does not deal with the problem of “Resigning Alternate Members” is a pitfall in the current Code which requires a solution.
4. The proposer, NGC, argues that the amendment to Annex 8A.4 to extend election arrangements currently applying in the event of Resigning Panel Members also to Resigning Alternate Members would improve efficiency in the amendment procedures. It would ensure that National Grid could more efficiently discharge its obligations in the amendment process by reducing the likelihood of inquorate CUSC Amendments Panel Meetings as well as improving the choice of Alternate Members available to Panel Members in the event that they were unable to attend Panel meetings.
5. The text of the amendment proposal is at attachment B.

**Possible solutions**

6. In considering this matter, it is important to note that the proposer, NGC, has identified a defect discussed at earlier Panel meetings and has proposed one solution for correcting the deficiency. From the outset of the group’s discussions, it has been apparent that there is a variety of possible mechanisms for addressing the defect, and the proposer has been supportive of the desire to explore the options for address against stated criteria that fit with the applicable objectives.
7. Five possible solutions have been identified and explored by the GSG:

- A - The original modification proposal, based on a partial election by CUSC parties who voted for alternates who have vacated the alternate role (“partial solution”)
  - B - Election based on a poll of all eligible CUSC parties (“full election”)
  - C - Co-option of alternatives by the Panel
  - D - Co-option of alternatives by the Panel following calls for nominations for candidates from CUSC signatories
  - E - More frequent elections, say annual, which might have the effect of reducing the erosion of the alternate Pool.
8. Each of the possible approaches received support from at least one GSG member at least as the basis for its further evaluation.

### Evaluation criteria

9. In addition to the applicable objective described in Paragraph 6 of Condition C7F of the Transmission Licence, which relates to the efficiency of the CUSC amendment procedures, the GSG considered that some more specific evaluation criteria should be adopted to guide its deliberations. Whilst these cannot of course hold precedence over the applicable objective in Paragraph 6 of Condition C7F, they nonetheless enable a more detailed assessment of the options. They are:
- enables practicality/workability (ie: the solution will work whatever happens to the market structure);
  - facilitates linkage with voting parties (though not accountability as the role is explicitly non representational); and
  - minimises unnecessary complexity.
10. Against these criteria each GSG member except the chairman was asked to state a preference or preferences for one or more of the five options.
11. The options received support as follows:

Option	Member 1	Member 2	Member 3	Member 4	Member 5	Member 6
A					✕	
B	✕					
C	✕	✕		✕	✕	
D	✕	✕	✕		✕	✕
E						✕

12. Overall, most members of the group felt that cooption was the best route but with more support for the option based on the variant whereby CUSC parties are asked for initial nominations. Based on its deliberations, the GSG is minded to develop an Alternative Amendment based on nomination/cooption, that is option D, in its report.

13. The Group anticipates that the number and forcefulness of consultation responses would be a useful indicator to the regulator about the balance of interest amongst the signatories regarding this issue.

#### **Views of Working Group Members**

14. The majority of Working Group Members support the approach described in this Report. However one Working Group Member indicated in response to the draft of this Report that he might want to change the ranking of the options set out in the table in paragraph 11 above in the light of the intention of the election arrangements and the ability for them to work in all situations, without giving unintended powers to unrepresentative or inappropriate groups.

#### **Conclusion**

15. The Alternative Amendment based on option D requires development by the Group and further discussion is required with the Group Member who might want to change his earlier ranking. The CAP044 Working Group/GSG (2) is meeting after the Panel on 24 January. The CUSC Panel is therefore invited to note this preliminary report from the Working Group and determine under Paragraph 8.17.12 of the CUSC that the issue be referred back to the Working Group for further analysis with a revised timetable and any revised terms of reference and then proceed to wider consultation by National Grid.

Nigel Cornwall  
January 2003

## Attachment A1

### TERMS OF REFERENCE FOR CAP044 WORKING GROUP

#### Responsibilities

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP044 tabled by National Grid at the Amendments Panel meeting on 22<sup>nd</sup> November 2002.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the applicable CUSC objectives. These can be summarised as follows:
  - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
  - (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.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

#### Scope of Work

4. The Working Group must consider the issues raised by the Amendment Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. The Working Group is responsible for the formulation and evaluation of any Alternative Amendments arising from Group discussions which would, as compared with the Amendment Proposal, better facilitate achieving the applicable CUSC objectives in relation to the issue or defect identified. The Working Group shall have due regard to Core Industry Documents and other industry documents in the evaluation of the Amendment Proposal and any Alternative Amendment.
6. The Working Group is to submit their final report to the CUSC Panel Secretary on 16 January 2003 for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 24<sup>th</sup> January 2003.

#### Membership

7. It is recommended that the Working Group has the following members:

Chair National Grid	Nigel Cornwall Richard Dunn
Industry Representatives	Malcolm Taylor Dick Cecil Simon Goldring Jane Butterfield Steve Phillips

Authority Representative	Mathew Buffey
Technical Secretary	Richard Dunn

8. The membership can be amended from time to time by the CUSC Amendments Panel.

### Relationship with Amendments Panel

9. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event 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, unless determined otherwise by the Amendments Panel, 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 Working Group Chairman shall prepare a report to the January 2003 Amendments Panel responding to the matter set out in the Terms of Reference.
13. A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.
14. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
15. The Chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

## Attachment A2

### Governance Standing Group - Terms of Reference Paper

#### Introduction

1. Following discussion at the Panel meeting of the issues raised in September and October 2002, the Panel agreed on 22 November to establish a Governance Standing Group (2) to consider these issues further and bring forward recommendations to the Panel.
2. This paper outlines the working arrangements and terms of reference for the Governance Standing Group (2) (GSG2).

#### Proposed Membership of the Elections Standing Group

3. At the 22 November 2002 Amendments Panel meeting, the Amendments Panel agreed to establish the GSG (2) with the same membership as the Governance Standing Group (1) (GSG1) that was established earlier in 2002, subject to changes in employer, responsibilities etc. since GSG1. The membership is therefore:

Chair National Grid	Nigel Cornwall Richard Dunn
Industry Representatives	Malcolm Taylor Dick Cecil Simon Goldring Jane Butterfield Steve Phillips
Authority Representative Technical Secretary	David Edward Richard Dunn

#### Meeting Administration

4. The frequency of GSG2 meetings shall be defined as necessary by the GSG2 Chair to meet the scope, objectives and time-scales as defined by the Amendments Panel.
5. National Grid will provide technical secretary resource to the GSG2 as appropriate and handle administration arrangements such as venue, agenda and minutes etc.
6. The existing dedicated page under the CUSC section of the National Grid Industry Information website will be used for GSG2. This will enable GSG2 information such as minutes and presentations etc to be available to a wider audience.

#### Scope of Work and Process

7. The specific areas for review are:
  - (i) The provisions of Annex 8A of the CUSC - Election of Users' Panel Members; and in particular
  - (ii) To consider more effective alternatives to the voting arrangements contained in Paragraph 8A.3 measured against the applicable CUSC objectives.
8. In addition to better facilitating achievement of the applicable CUSC Objectives any alternative voting arrangements that the Working Group may recommend in due course should preferably exhibit the following features wherever possible:
  - Be practicable and workable, not unduly complex, auditable and capable of being readily understood within the electricity industry and beyond;

- Be unaffected by future mergers and acquisitions within the electricity industry as far as possible;
  - Facilitate linkage with voting parties and in particular so that the transferable votes of smaller parties also contribute to the election of Users' Panel Members in addition to the votes of the larger parties.
9. It should be noted that, in accordance with Section 8 of the CUSC, the GSG2 as a standing group under the Amendments Panel, cannot itself propose an amendment to the CUSC.

#### **Relationship with Amendments Panel**

10. The GSG2 shall seek the views of the Amendments Panel before taking on any significant amount of work. The GSG2 Chairman should contact the CUSC Panel Secretary.
11. Where the GSG2 requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the GSG2 Chairman should contact the CUSC Panel Secretary.

#### **Meetings**

12. The GSG2 shall develop and adopt its own internal working procedures and provide a copy to the Panel Secretary.

#### **Reporting and Timescales**

13. The GSG2 shall consider the scope and objectives above and provide verbal updates to the Panel at each Amendments Panel meeting.
14. A Standing Group report will be presented to the Panel not later than the 21<sup>st</sup> February 2003 reporting back on the issues and scope detailed above.

**Attachment B**

<b>CUSC Amendment Proposal Form</b>		<b>CAP044</b>
<b>Title of Amendment Proposal:</b>		
Extension of Election Arrangements to Panel Alternates.		
<b>Description of the Proposed Amendment (<i>mandatory by proposer</i>):</b>		
This amendment proposes that the election arrangements contained in Annex 8A.4 relating to "Resigning Panel Members" should be extended to include Resigning Panel Alternates which should also become a defined term in the CUSC.		
<b>Description of Issue or Defect that Proposed Amendment seeks to Address (<i>mandatory by proposer</i>):</b>		
The Proposal to amend Annex 8A.4 to makes it clear that the election arrangements currently in place to cater for "Resigning Panel Members" also applies to "Resigning Alternate Members". "Resigning Alternate Members" would also become a new defined term in the CUSC. The CUSC Amendments Panel agreed in principle at its meeting on 25 October that the fact that the CUSC does not deal with the problem of "Resigning Alternate Members" is a lacuna in the current Code which requires a solution.		
<b>Impact on the CUSC (<i>this should be given where possible</i>):</b>		
Annex 8A.4 of the CUSC would require amendment to give effect to the change proposed.		
The draft text to give effect to this proposal is contained in Annex 1.		
<b>Impact on Core Industry Documentation (<i>this should be given where possible</i>):</b>		
None.		
<b>Impact on Computer Systems and Processes used by CUSC Parties (<i>this should be given where possible</i>):</b>		
None.		
<b>Details of any Related Modifications to Other Industry Codes (<i>where known</i>):</b>		
None.		
<b>Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (<i>mandatory by proposer</i>):</b>		
<p>The terms of the Transmission Licence require National Grid to establish and operate procedures for the modification of the CUSC, including the modification procedures themselves, so as to better facilitate achievement of the Applicable CUSC Objectives.</p> <p>Amendment to Annex 8A.4 to extend election arrangements currently applying in the event of Resigning Panel Members also to Resigning Alternate Members would improve efficiency in the amendment procedures. It would ensure that National Grid could more efficiently discharge its obligations in the amendment process by reducing the likelihood of inquorate CUSC Amendments Panel Meetings as well as improving the choice of Alternate Members available to Panel Members in the event that they were unable to attend Panel meetings.</p>		
<b>Details of Proposer:</b>		National Grid Company plc
Organisation's Name		

Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	Andy Balkwill National Grid Company plc 024 76423198 <a href="mailto:andy.balkwill@uk.ngrid.com">andy.balkwill@uk.ngrid.com</a>
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Emma Groves National Grid Company plc 024 76423053 <a href="mailto:emma.groves@uk.ngrid.com">emma.groves@uk.ngrid.com</a>
<b>Attachments (Yes/No):</b> Yes <b>If Yes, Title and No. of pages of each Attachment:</b> Attachment 1 – Draft Text to give effect to proposal. One page.	

**Notes:**

1. 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 Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
2. 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 Panel Secretary will inform the Proposer.

The completed form should be returned to:

Richard Dunn  
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](mailto: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 that is a CUSC Party shall be deemed to have granted this Licence).

3. Applicable CUSC Objectives\*\* - These are defined within the National Grid Company Transmission Licence under Section C7F, paragraph 15. Reference should be made to this section when considering a proposed amendment.

## Attachment 1

### Draft Text to give effect to the Amendment Proposal

#### ANNEX 8A ELECTION OF USER'S PANEL MEMBERS

##### 8A.4. VACANCIES

###### 8A.4.1 General

8A.4.1.1 If a **Panel Member** (the "**Resigning**" **Panel Member**) or an Alternate Member (the "Resigning" Alternate Member) ceases to hold office pursuant to Paragraph 8.5:

- (a) not less than 6 months before the expiry of the term of his office, Paragraph 8A.4.2 shall apply.
- (b) less than 6 months before the expiry of the term of his office, Paragraph 8A.4.3 shall apply.

8A.4.1.2 The provisions of Paragraph 8A.2.1.2 shall apply, mutatis mutandis, to any replacement **Panel Member** or Alternate Member under this Paragraph 8A.4.

###### 8A.4.2 Replacement for not less than 6 months

8A.4.2.1 Where this Paragraph 8A.4.2 applies, a replacement **Panel Member** or Alternate Member shall be elected (for the remainder of the term of office of the **Resigning Panel Member** or Resigning Alternate Member) in accordance with Paragraph 8A.2 and 8A.3 but subject to the further provisions of this Paragraph 8A.4.2.

8A.4.2.2 Only those Users who voted for the **Resigning Panel Member** or Resigning Alternate Member, or who did not vote for (and are not Affiliates of any User which voted for) any elected **Panel Member** or Alternate Member still serving, shall participate in the election by nominating candidates or submitting voting papers.

8A.4.2.3 **NGC** shall circulate to all **Users** a list of the **Users** who are to participate in the election.

8A.4.2.4 For the purposes of this Paragraph 8A.4.2 a **User** is considered (in any election of Users' **Panel Members** and Alternate Members) to have voted for an elected candidate where that **User** indicated a **Preference Vote** in favour of that candidate which was counted (under the first or second or third voting round or further round under Paragraph 8A.3.6, as the case may be) in electing that candidate.

8A.4.2.5 The timetable for the election shall be expedited and **NGC** shall prepare a timetable accordingly.

**8A.4.3 Replacement for less than 6 months**

8A.4.3.1 Where this Paragraph 8A.4.3 applies, the User which nominated the **Resigning Panel Member** or Resigning Alternate Member shall be entitled (by notice to **NGC**) to appoint a replacement **Panel Member** or Alternate Member for the remainder of the term of office of the **Resigning Panel Member** or Resigning Alternate Member.

**8A.4.3.3** If such **User** does not appoint a replacement, the position shall remain vacant until the next full election.

**11.3 DEFINITIONS**

"Resigning Alternate Member" as defined in Paragraph 8A.4.1