



AMENDMENT REPORT VOLUME 1

Urgent CUSC Amendment Proposal CAP168

Transmission Access Under-use and reallocation of TEC

The purpose of this report is to assist the Authority in their decision of whether to implement Amendment Proposal CAP168

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|---------------|---------------------------|
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1.0 SUMMARY AND RECOMMENDATIONS

1.1 Executive Summary

1.1.1 CAP168 Transmission Access – Under-use and reallocation of TEC was proposed by ConocoPhillips and submitted to the CUSC Amendments Panel for consideration at their meeting on the 27th February 2009. CAP168 was given Urgent status to ensure it could be assessed by the Authority along side the other Transmission Access Amendment Proposals (CAP161-CAP166).

1.1.2 The CAP168 Original Proposal includes the following main features:

- The introduction of an under-use charge for Transmission Entry Capacity (TEC);
- Offering TEC to the market or System Operator (SO);
- A “use it or lose it” mechanism (Feasibility test);
- User commitment; and
- A capacity reduction charge

1.1.3 Through consideration of CAP168 by the Working Group the Original proposal has been developed. One Working Group Alternative Amendment known as Working Group Alternative Amendment One (WGAA1) has also been developed. This Alternative is the same as the Original except that the dead-band allowance for the under and over-use charges is 5MW rather than the greater of 10% of TEC or 5MW.

1.1.4 CAP168 has been developed against the background of the other Transmission Access Amendment Proposals (CAP161-CAP166). Given the timescales and make up of the Working Group it did not seem appropriate to repeat previous work from the Transmission Access Working Groups considering that CAP168 was given Urgent status in order to be assessed along side these other Amendment Proposals. Against the current baseline it is envisaged that CAP168 would incentivise Users to trade TEC under the CAP142 arrangements. However, should CAP168 be approved the Working Group recommends that CAP161-CAP163 should also be approved.

1.2 Working Group Recommendation and Vote

1.2.1 The Working Group has developed the Amendment Proposals (Original and WGAA1) to the extent possible given the Urgent timetable. Several substantial developments have been made to the Original Proposal through the discussions of the Working Group. However, the tight timescales have limited the ability of the Working Group to fully incorporate some aspects of the Original Proposal, in particular two day ahead notifications.

1.2.2 The Working Group recommended to the CUSC Panel at their meeting on 3rd April 2009 that:

- A Consultation Report containing the CAP168 Original Amendment and WGAA1 should proceed to wider Industry Consultation as soon as possible.
- The Working Group Report is accepted by the CUSC Panel and the Working Group is disbanded.

1.2.3 The Working Group voted on whether they believed the Amendment Proposals (Original and WGAA1) better, than the current baseline, facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Better | Not better | Abstained |
|----------|--------|------------|-----------|
| Original | 0 | 13 | 1 |
| WGAA1 | 1 | 11 | 2 |

1.2.4 The Working Group also voted on which version of CAP168 (Original and WGAA1) they believed best facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Best |
|-----------|------|
| Original | 4 |
| WGAA1 | 1 |
| Abstained | 9 |

1.2.5 Four members of the Working Group voted that the Original was the best. It should be noted that these members also voted that the Original was not better than the baseline. One Working Group member voted that WGAA1 was best. This member also believed that WGAA1 was better than the baseline.

1.2.6 Nine Working Group members abstained. One of these Working Group members abstained as they would have another opportunity to vote as they were on the CUSC Panel. One member abstained as given the precedent set under CAP170 they were concerned that the Alternative (WGAA1) should not have been raised under an Urgent CUSC Amendment. One member pointed out that the Alternative (WGAA1) would potentially free up more capacity but puts more of a risk on generators. This member abstained as the balance of impact of these two aspects is difficult to assess at this stage. Some members abstained because they believed neither the Original nor the Alternative (WGAA1) better facilitated the CUSC Objectives.

1.3 Amendment Panel Recommendation

1.3.1 The CUSC Amendment Panel voted on whether they believed the Amendment Proposals (Original and WGAA1) better, than the current baseline, facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Better | Not better |
|----------|--------|------------|
| Original | 0 | 9 |
| WGAA1 | 0 | 9 |

1.3.2 The CUSC Panel voted that neither the Original nor the Alternative Proposals are better than the current baseline. The reasons why CUSC Panel members voted they way they did are outlined in the minutes of the 15th May 2009 CUSC Panel meeting. In light of the vote the CUSC Panel therefore recommends to the Authority that both CAP168 Original and WGAA1 are

rejected. For the avoidance of doubt, if the Authority were to approve the implementation of either Amendment Proposal (Original or WGAA1) then this could be subject to Appeal to the Competition Commission by a party to the CUSC (if they so wished).

- 1.3.3 One member of the Panel did not believe that the report provided enough quality reasoning and analysis to demonstrate that either was better than the baseline. Some Panel members considered that in some aspects the Proposals ran counter to the Applicable CUSC Objectives.
- 1.3.4 The CUSC Panel voted on which of the proposals they believe best facilitates the applicable CUSC Objectives. The result of this vote is described in the following table:

| Proposal | Best |
|-----------|------|
| Original | 3 |
| WGAA1 | 1 |
| Abstained | 5 |

- 1.3.5 Three Panel members considered that of the two proposals the Original Amendment Proposal was the least worst. One member considered that the Original gave Users more flexibility over WGAA1. One Panel member considered that the 5MW dead-band proposed under WGAA1 was discriminatory. One Panel member noted that whilst both would potentially have a negative impact on the energy market the Original would have the least impact. One member voted that WGAA1 was the best. This member considered that WGAA1 would free up more TEC. Five members of the Panel abstained from the vote. These members disliked both proposals and could not describe either of the proposals as best.

1.4 National Grid Recommendation

- 1.4.1 National Grid has several concerns regarding this proposal. These are discussed in section 12 of this report. National Grid recommends that the Original Amendment Proposal and WGAA1 are rejected.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This Amendment Report has been prepared and issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State.
- 2.2 Further to the submission of Amendment Proposal CAP168 (see Annex 1) and the subsequent wider industry consultation that was undertaken by National Grid, this document is addressed and furnished to the Gas and Electricity Markets Authority (“the Authority”) in order to assist them in their decision whether to implement Amendment Proposal CAP168.
- 2.2 CAP168 was proposed by ConocoPhillips and submitted to the CUSC Amendments Panel for their consideration on 27th February 2009. The CUSC Amendment Proposal Form can be found in Annex 1 of this report.
- 2.3 The proposer requested Urgent status so that the proposal could be assessed along side the other Transmission Access related Amendment

Proposals. The Amendment Panel agreed that the proposal should have Urgent status and submitted a request for Urgent status. Ofgem agreed with the Urgent recommendation and the proposed timetable.

- 2.4 Due to the urgency of this proposal, time did not allow for a Working Group consultation. In order to have some wider industry input National Grid published a pre-consultation on the 10th March 2009 based on the Original Amendment Proposal. Seven responses were received and these were considered during the Working Group discussions. Whilst not a formal Working Group consultation, these responses can be found in Volume 2 of this report.
- 2.5 The Working Group met on the 13th March 2009, and the members accepted the Terms of Reference for CAP168 with minor amendments. A copy of the agreed Terms of Reference is provided in Annex 2. Two further meetings were held on the 19th and the 24th of March 2009. The Working Group considered the issues raised by the Amendment Proposal and considered whether the Proposal better facilitated the Applicable CUSC Objectives.
- 2.6 The CAP168 Working Group Report was submitted to the CUSC Amendments Panel meeting on 3rd April 2009. The Amendments Panel determined that CAP168 was appropriate to proceed to wider industry consultation by National Grid.
- 2.7 This document outlines the discussions held by the Working Group and the nature of the CUSC changes that are proposed. It incorporates National Grid's recommendations to the Authority concerning the Amendment. Copies of all representations received in response to the consultation have been also been included and a 'summary' of the representations received is also provided. Copies of each of the responses to the consultation are included in Volume 2 of this report.
- 2.8 The Amendment Proposals (Original and WGAA1) aim to incentivise Users to release TEC. Against the current baseline it is envisaged that CAP168 would incentivise Users to trade TEC under the CAP142 arrangements. However, should CAP168 be approved the Working Group recommends that CAP161-CAP163 should also be approved.
- 2.9 This Amendment Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, along with the Company Consultation, Working Group Report for CAP168 and the Amendment Proposal form:

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

3.0 PROPOSED CAP168 ORIGINAL AMENDMENT

This section describes ConocoPhillips' Original CAP168 Amendment Proposal and includes several clarifications and developments that have resulted from Working Group discussions. The Working Group discussions are summarised in section 4. The full text of the Original Amendment Proposal can be found in Annex 1.

3.1 Defect

- 3.1.1 This Amendment Proposal seeks to address a number of defects which, in the view of the proposer of CAP168, exist with the current entry access arrangements.
- 3.1.2 Under the existing transmission access arrangements a long queue of applications for new connection capacity has developed. There is significantly more demand for access than available unallocated capacity, and some generators may be constrained or delayed or even not able to develop owing to lack of secure transmission access in usable timescales. To compound matters there is presently little incentive for existing transmission access right holders to release TEC when it is not being used.
- 3.1.3 Although there is already scope for securing additional access (under CAP70 and CAP94) and for limited trading (CAP142) within-year, the proposer considers the current rules are deficient to deliver robust trading of TEC rights. There is currently no incentive for Users to give up TEC within year as the TNUoS charge for TEC is an annual charge and therefore a sunk cost within year. Consequently TEC holders can be unwilling or unable to give up TEC they know they will not use in the short to medium term but which they expect to need in the medium to long term as they could lose all future rights to that released capacity, hence no liquidity has developed in the TEC trading market. As a result the System Operator (SO) has an inaccurate picture of available system capacity and any local surplus.

3.2 Description of CAP168 Original Amendment Proposal

TEC Feasibility Test

- 3.2.1 As soon as practicable after each charging year each generator would need to show to the SO that it could meet a feasibility test. Demonstration of this would be in the first instance on the basis of historic output. Up to the previous five years of output would be reviewed. The test would be failed if the holder could not demonstrate their TEC (MW) has been used (or assigned to another user) in the previous two consecutive financial years, or three financial years in the previous five.
- 3.2.2 In the event that a TEC holder did not meet the test, the generator would be able to provide a rationale for reduced operation due to either (a) exceptional factors historically (e.g. long-term outage) or (b) change in future output due to remedial plans or new investment works such that it would be able to use its TEC (MW) in future years.
- 3.2.3 If the rationale provided by the TEC holder is not sufficient, the SO may require the production by the TEC holder of an engineering report at the TEC holder's cost. If there were still a dispute, there would then be an appeal to the Authority.

- 3.2.4 If after due process the Authority upholds the SO's assessment and the SO decided to reduce the TEC (MW) level then an adjustment would be made to the relevant bilateral contract.

Firm Weekly TEC Notification

- 3.2.5 The TEC holder would be required to provide a weekly TEC (MW) level notification. This would oblige them to submit to the SO their expected maximum MW capacity in any one settlement period in a given week. This notification should be provided five weeks ahead of the week in question. The notification would be provided on a weekly basis in accordance with the following timetable:

| Week 1 | | | | | | | Week 2 | | | | | | | Week 3 | | | | | | |
|----------|----------|---|---|---|---|---|----------|---|---|---|---|---|---|----------|---|---|---|---|---|---|
| M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S |
| | A | | | | | | | | | | | | | | | | | | | |
| | | | | | | | A | | | | | | | | | | | | | |
| Week 4 | | | | | | | Week 5 | | | | | | | Week 6 | | | | | | |
| M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S |
| | | | | | | | | | | | | | | B | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| Week 7 | | | | | | | Week 8 | | | | | | | | | | | | | |
| M | T | W | T | F | S | S | M | T | W | T | F | S | S | | | | | | | |
| C | | | | | | | | | | | | | | | | | | | | |
| B | | | | | | | C | | | | | | | | | | | | | |

A – Generators submit Weekly TEC Nomination by 16:00hrs

B – Week starts from 05:00hrs

C – Week ends at 04:59hrs

- 3.2.6 The TEC holder would also provide indicative maximum TEC estimates for the ensuing three subsequent weeks but these would be for information only. Details of Users weekly TEC notifications and estimates would be confidential.

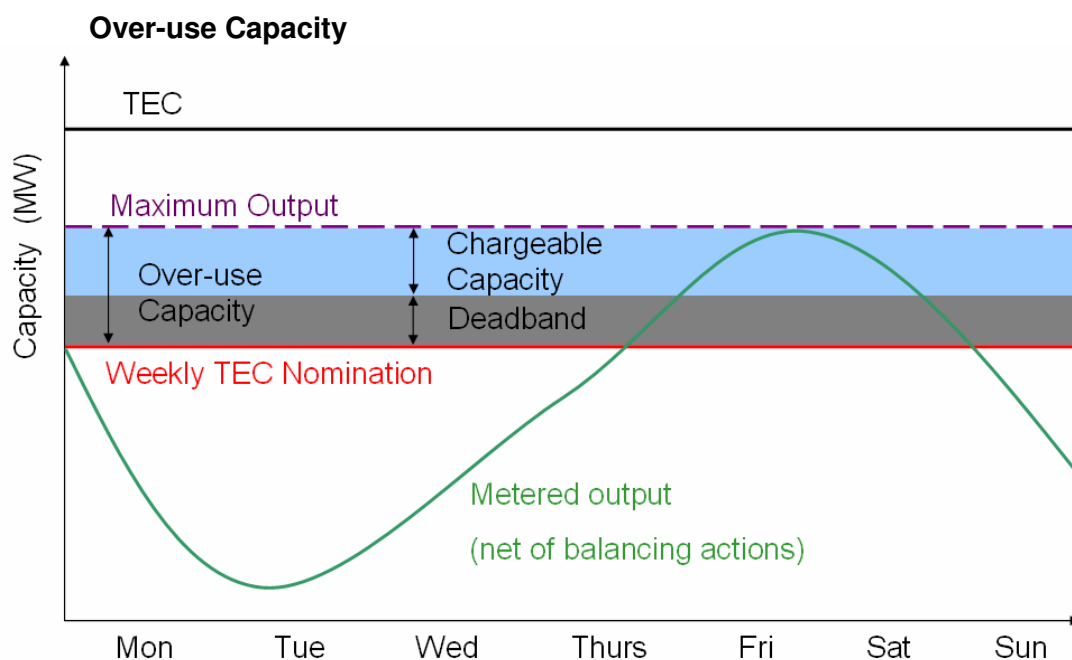
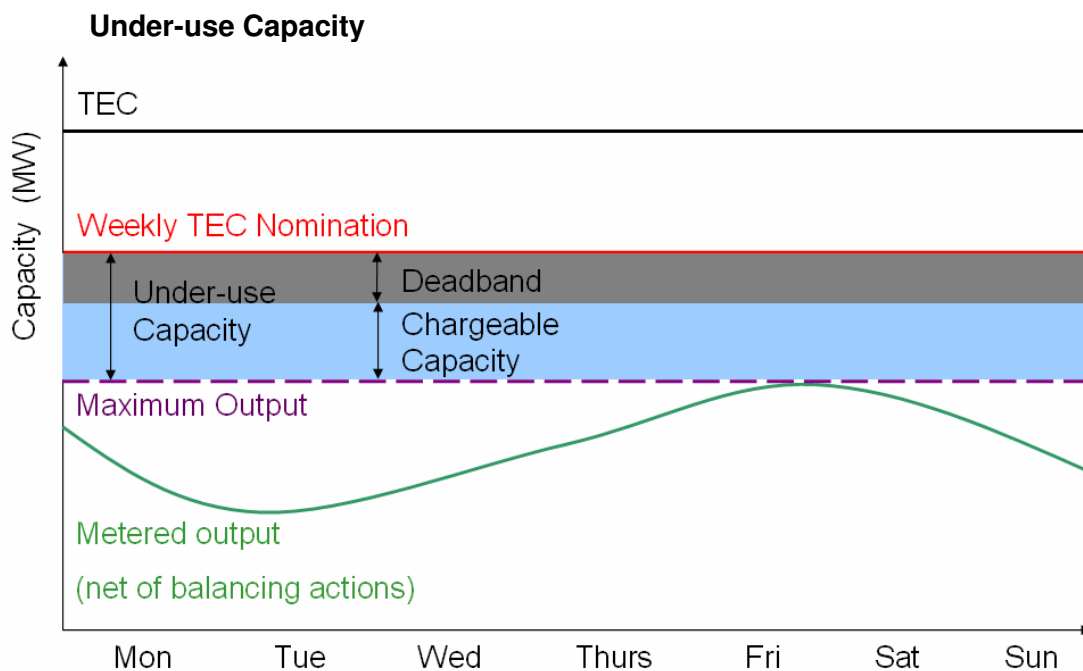
TEC Trading Arrangements

- 3.2.7 To ensure that other Users have the ability to use the capacity released CAP161-CAP163 would need to be approved alongside this Amendment.

Calculation of Under-use and Over-use Capacity

- 3.2.8 The under-use and over-use capacities shall be calculated as the difference between the firm weekly TEC MW notification (expected maximum MW capacity in any one settlement period in a given week) and the actual maximum capacity in any settlement period (MW average over a whole settlement period) in the given week net of any balancing service. Users who provided Balancing Services or provide BM actions (reserve or response) would have their under/over-use charge adjusted to take account of the capacity contracted to the System Operator. The proposal makes no allowance for plant that has modified TEC requirements due to short term trading to cover plant or demand shortfalls in the market.

- 3.2.9 Under-use occurs where the actual output (MW) is less than the notification (MW) and over-use occurs where the actual output (MW) is more than the notification (MW). For the avoidance of doubt Entry Overrun for output in excess of TEC held within a Users Bilateral Connection Agreement and described in CAP162 would be in addition to over-use under CAP168.

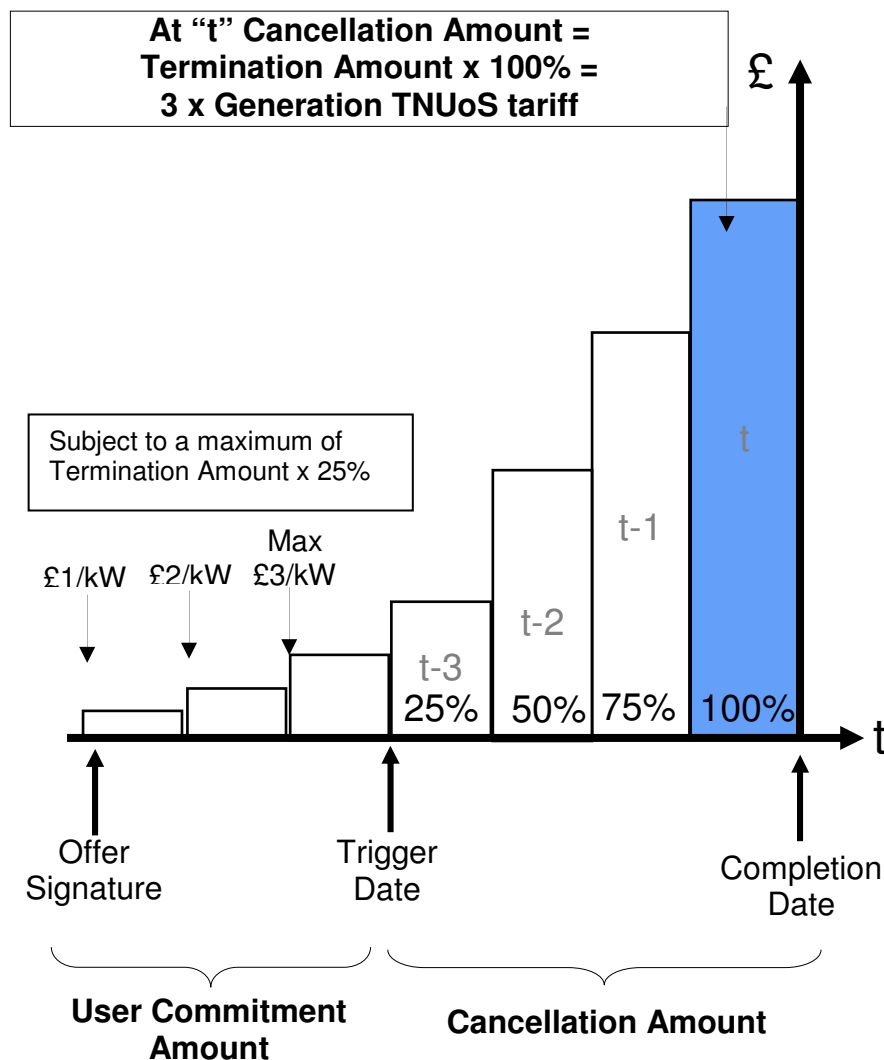


Calculation of Under-use and Over-use Charge

- 3.2.10 Under-use and over-use charges would be in addition to existing use of system payments and be developed under charging governance.
- 3.2.11 The under-use charge shall be applied as a function of any under-use (MW) capacity above a dead band of the greater of 5MW or 10% of the generators TEC (MW) holding.

Pre-commissioning User Commitment

3.2.12 Pre-commissioning Users would be required to provide the following profile of pre-commissioning liabilities and securities. Further details regarding user commitment can be found in Annex 7.



Post-commissioning User Commitment

3.3 Users would be required to give two full years notice of TEC (MW) capacity reduction. Where two years full notice has been given no transmission charges would be incurred once the plant has closed. If two years' full notice was not give the User would be liable for two years' worth of TNUoS charges in addition to the existing year.

4.0 SUMMARY OF WORKING GROUP DISCUSSIONS

4.1 Introduction of an Under-use Charge for TEC

4.1.1 Although the introduction of an under-use charge would need to be taken forward as a modification to the Charging Methodology, the under-use charge is a fundamental part of the Original CAP168 Amendment Proposal. Due to the fundamental nature of the under-use charge as part of the proposal the Working Group gave the matter consideration.

Negative Zones

4.1.2 The Working Group considered whether the charge should apply in negative charging zones. During its pre-consultation National Grid provided some analysis to show where capacity was being under used. This analysis can be found in Annex 5. In negative zones around 10% of TEC was unused. This was broadly the equivalent to Scotland (11%) but substantially more than positive zones in England and Wales (3%). This suggested to some Working Group members that there was a problem with User's overbooking TEC in negative zones.

4.1.3 In negative zones Users are incentivised to hold the correct level of TEC on an annual basis because the TNUoS model uses the TEC they hold to calculate their annual charge. If they hold more TEC than they require their tariff will be less negative, so when they come to be charged based on their output over winter they would be paid less. One member of the Working Group argued that this was similar to the incentive on Users in positive zones where a User's TNUoS charge was based on the TEC they had booked. If they held more TEC than they required then the charge calculated by the charging model would be greater. One member of the group noted that TNUoS did not incentivise Users to hold the correct level of TEC in the short term.

4.1.4 Some members of the Working Group were concerned about what would happen to Users whose charge changed from positive to negative or vice versa over a number of charging years. It was agreed this would not be a problem if positive and negative zones were treated similarly under CAP168.

4.1.5 On balance the Working Group agreed an under-use charge (based on the absolute (or modulus) of the charge) should be applied in negative zones on a similar basis to its application in positive zones. Further discussion regarding the level of the charge can be found in later in this report.

Plant Operation

4.1.6 Some members of the Working Group noting the technical aspects of power station operations believed that the MW capacity that the under-use charge was based on should allow a margin for headroom. This would mean that a User would not be charged for under-use if they had only used slightly below their TEC holding. The Working Group considered that giving each power station a margin (or dead-band) over the whole network would add up to a large amount of capacity but that this may be more relevant a concern for the feasibility test/"use it or lose it" arrangements than for charging.

- 4.1.7 A deminimis level of 5MW was proposed for the under-use charge. If applied to both the under and over-use charges this would lead to a total 10MW dead-band around the TEC notification. Some members of the Working Group suggested that having a dead-band level of 5MW on the under-use charge was not great enough for large generators. These members suggested that 10% of total TEC would be a more appropriate dead-band level. Other members of the Working Group suggested that having a 10% allowance may disadvantage smaller players. There was also some concern that having a level of 10% of TEC could dilute the intention of the amendment.
- 4.1.8 Following a vote the majority of the Working Group considered the dead-band level should be the greatest of 10% of TEC or 5MW. This would mean if a 500MW generator under used by 57MW the under-use charge would be a function of 7MW.
- 4.1.9 One Working Group member suggested that there should be a Working Group Alternative based on a 5MW dead-band only (in other word no ‘%’ allowance as described in 4.1.7-4.1.8). This became the basis of WGAA1. Further details of this Alternative can be found in section 5 of this report.
- 4.1.10 Respondents to the pre-consultation (see Volume 2) and some members of the Working Group highlighted the unique operation of some generation plant types. The Working Group considered that some Users may need their full TEC but may not use it very often because they are peaking plant or held in reserve. The Working Group considered whether some Users should be exempt from the under-use charge.
- 4.1.11 Working Group members were concerned with the interaction between the shorter term energy market and ability to provide energy and reserve services to either the System Operator or other market players. One Working group member pointed out that some 3-6 GW is traded base load day ahead. This results in the potential re scheduling of a significant number of BMU's. Plant that ultimately delivers this energy will only be able to know its full TEC (MW) requirement after trading has taken place. Trading can take place up until gate closure. The CAP168 Amendment Proposal would significantly affect the operation of this section of the market with a significant reduction in short term liquidity. Any changes to the plant availability or demand after the five week ahead TEC (MW) nomination would not be able to be catered for without the addition of over/under use costs.
- 4.1.12 One Working Group member suggested that the introduction of CAP168 would not reduce short-term liquidity. This Working Group member suggested that if unused TEC is reallocated it might increase liquidity.
- 4.1.13 Some Working Group members thought that the modification was designed for plant that has very predictable running patters such as base load CCGT. One Working Group member voiced concern that the proposed under/over use charges should be levied based on weekly actual TEC (MW) use against forecast TEC (MW) use will inevitably seriously penalise windfarms whose output is difficult to predict on anything other than a very short term basis. This member was concerned that the CAP168 Amendment Proposal, as drafted, would most probably prompt windfarms to forecast their weekly TEC (MW) requirement equal to the windfarm installed (MW) capacity which would mean that for every week where the wind has been insufficiently strong to generate at full (MW) capacity then the windfarm would incur an under use charge on top of its regular TNUoS charges. This Working Group member

suggested that the granularity for applying these under/over use charges should be over a whole year for windfarms in recognition of the special nature of this form of generation and believed that windfarms should be treated as an exemption in this respect in view of their inability to accurately forecast output.

- 4.1.14 Some Working Group members considered the CAP168 Amendment Proposal was not suitable for a market where changes in demand and generation need to be catered for after the week ahead period. There was a discussion as to whether plant that operates in the short term (after week ahead) would be catered for. The proposer suggested that peaking plant could be excluded from the under and over-use charges. Peaking plant would be defined as plant that runs for less than 500 hours in a charging year. Some members believed this exemption was necessary to ensure security of supply. Other members considered that 500 hours was not well defined enough.
- 4.1.15 The Working Group agreed Users providing Balancing Services to the SO would have the MW capacity associated with those services netted with their actual output MW so would avoid the charge where appropriate i.e. if the System Operator instructed reduced output this should not incur a charge.
- 4.1.16 Some Working Group members considered that National Grid took into account the type of plant being connected when they planned the network according to the GBSQSS. It was considered that National Grid would make conservative assumptions. If Users made decisions about how much TEC (MW) they required National Grid would have firmer information. The Working Group considered the charge could be seen as an information imbalance charge. It was noted that if approved CAP162 (overrun) in combination with TNUoS charges would already incentivise Users to better optimise TEC holding as Users could opt to pay for less TEC in the long-term and use over-run.

Level of Charge

- 4.1.17 The Working Group had some concern that introducing an under-use charge changes the nature of the generators holding of TEC from, currently, a right to access the system to having an obligation to run. There is an important difference between an obligation to run and an incentive to make available unused TEC. The Working Group considered that any under-use charge should aim to incentivise users to give up TEC but not compel them to give it up. This would mean that Users could choose to pay the charge therefore meaning that they were not obliged to generate.
- 4.1.18 The Working Group discussed what a cost reflective basis would be for the under-use charge. Some members of the group considered that Users had already paid for the capacity through TNUoS so no additional costs were being caused by a User not generating. It was argued that paying TNUoS based on TEC already incentivised Users to book the correct amount of TEC they required. Users who did not generate up to their TEC had made a commercial decision to pay for that additional TEC.
- 4.1.19 One Working Group member considered that a generator who pays for 27% of investment but then does not use it should pay for the other 73% which demand Users would normally pay for. It was pointed out that this was correct overall but that the differentials between generator TNUoS tariffs

aimed to be 100% cost reflective, and therefore an under-use charge based on paying the other 73% was not a robust.

- 4.1.20 One member noted that in the short term under usage reduced real time cost and so conceivably the charge should be negative. Therefore a cost reflective basis for the charge could not be established. The Working Group focused on the effect of the charge and choosing a charge level that would produce the desired results.
- 4.1.21 The Working Group discussed the rationale behind having an under-use charge. The purpose of the charge would be to incentivise users to give up TEC which they are not using in weekly blocks, 5 weeks ahead of time. Some working group members argued that this could lead to a more efficient allocation of capacity if CAP161 was approved with this CAP168 Amendment.
- 4.1.22 The Working Group considered if the under-use charge should be based on TNUoS. The Working Group considered that the locational differences that were represented by the TNUoS charge were not relevant to the cost of under-use as they were asset based. Basing the charge on TNUoS would also cause problems in negative TNUoS zones. The Working Group concluded that a flat £/MW charge for all generators would be more appropriate.
- 4.1.23 The Working Group concluded it could not find a cost reflective basis for the charge, and therefore it was considered that the charge should be set at a level that would give a proportionate incentive to give up TEC which Users did not need. The charge would need to be justified on the basis that it facilitates effective competition. The group considered a number of values and concluded that basing the charge on £5/kW/year appeared to be an appropriate level to incentivise Users to give up TEC. Converted to a weekly based regime this represented approximately 10p/kW/week.
- 4.1.24 As noted above, the development of charges for over and under-use will be taken forward under Charging Governance. The Working Group noted that the charges would need to be justified against the relevant charging objectives, which include a need to develop charges which reflect, as far as reasonably practicable, the costs incurred by transmission licensees in their transmission businesses and facilitate effective competition.
- 4.1.25 Some Working Group members were concerned that without a cost reflective basis for the charge, it appeared to be a penalty. These Working Group members were further concerned that a cost-reflective long-term access regime together with the introduction of a cost-reflective short-term access regime (developed under CAP161, 162 and 163) should correctly incentivise generators to book an efficient level of long-term access rights (or TEC) and that the introduction of additional charges would tip the balance in favour of the short-term, leading to an inefficient outcome.

Charged Under-use Capacity

- 4.1.26 The Group considered what measure of capacity the under-use charge should be based on. One member suggested it should be based on the difference between TEC in a User's bilateral agreement and their maximum output during the year. Another member suggested that the maximum output maybe a suitable measurement to see how much TEC Users are using in the

long term so may be a suitable basis for the capacity measured for use it or lose it. It was considered this would be too weak a test to encourage users to release capacity within year. The Original proposal had suggested taking into account the three maximum outputs over the year. Some Working Group members also considered this may be too weak to encourage users to release TEC within year.

4.1.27 Analysis was performed by National Grid to look at how much TEC capacity was currently under-used. The following table shows how many GW of TEC in Users' bilateral agreements was not used when output is measured on the following basis: during the maximum output, 3rd maximum daily output and up to the 80th maximum daily output. This is the capacity which would be charged for under-use depending on how strong the test was. This analysis can be found in more detail in Annex 6.

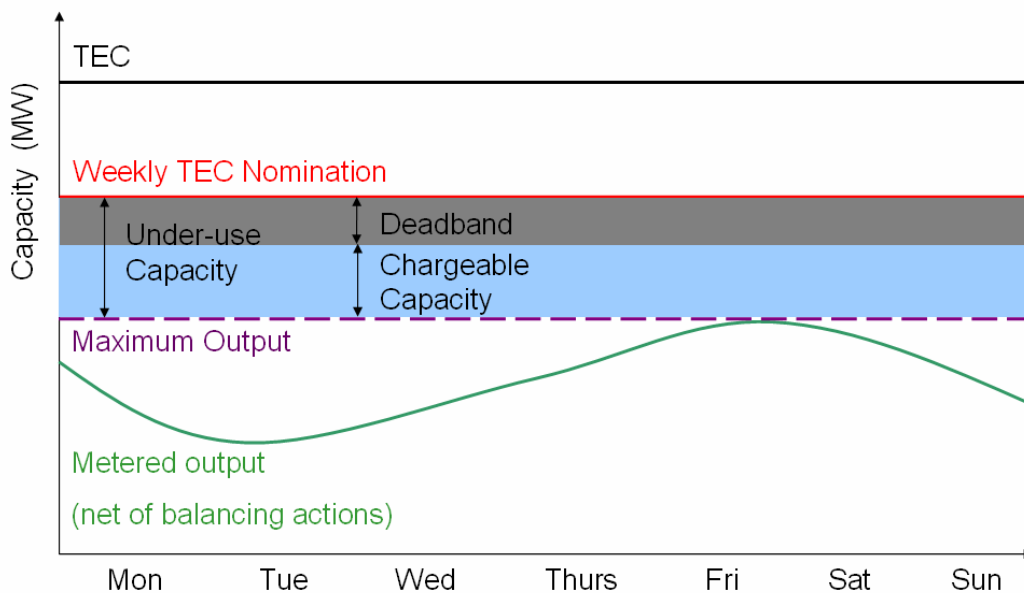
4.1.28

| | | | | | | |
|------------------------|----------|----------|-----------|-----------|-----------|-----------|
| X | 1 | 3 | 10 | 20 | 40 | 80 |
| Difference (GW) | 5.9 | 6.7 | 7.8 | 8.7 | 10.5 | 14.3 |

4.1.29 The Working Group considered that a year period was too large a granularity for under-use if the proposal sought to incentivise the release of capacity within year. The proposer put forward a further proposition to consider under-use based on a monthly period. After further discussions in the Working Group it was considered that weekly measurements of under-use capacity would be most appropriate. A week long block is consistent with one of the periods of short-term capacity release developed under CAP161.

4.1.30 The under-use capacity shall be calculated as the difference between the firm weekly TEC (MW) notification and the actual maximum average (MW) capacity achieved in any one settlement period in the given week net of any Balancing Services to the SO. Under-use occurs where the actual (MW) output is less than the notification (MW).

4.1.31 The Working Group debated whether Users' weekly TEC nominations should be published. Some members of the Working Group voiced concerns that the transparency of this data would have an impact on the energy market. Other Working Group members noted that if you publicised the information Users would have more information about what to bid into the SO release auction. One member pointed out that availability declarations are already an integral part of BMRS. The group considered publishing the information zonally although as some zones only have minimal Users in the information may still be too transparent. After a vote the Working Group agreed the information would be confidential.

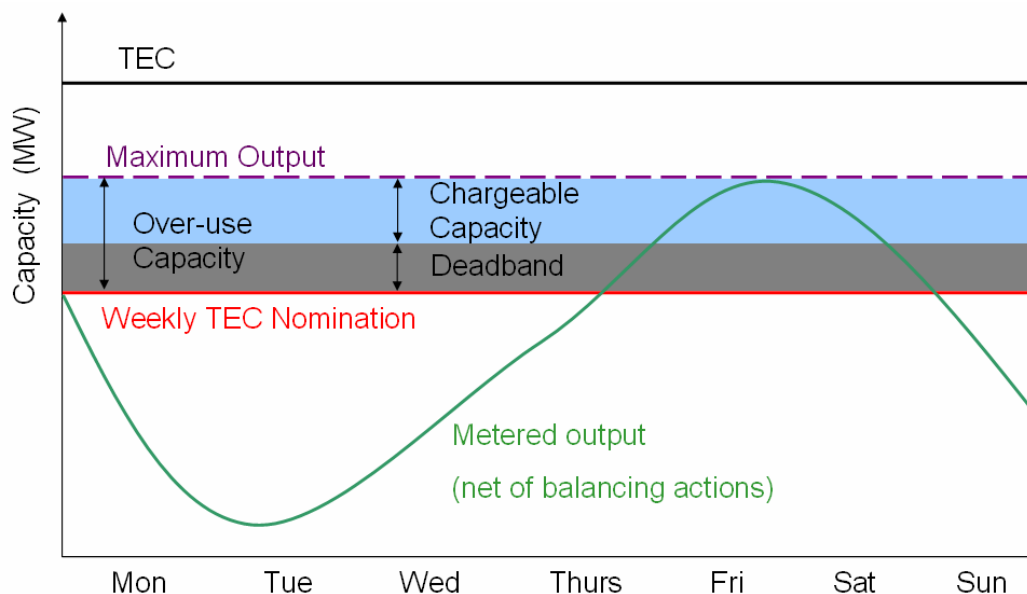


4.1.32 The Working Group recommends the charge for this under-use capacity would be £5/kW/year. It was considered that this charge would provide an incentive to give up TEC which was not needed without being penal. As the charge would be calculated on a weekly basis the charge would be 9.62p/kW/week (£5 divided by 52 weeks in a year). Again, the basis for this charge would be consulted on under the Charging Governance.

Charging for Over-use

4.1.33 The Working Group considered that being asked to provide a maximum output (MW) would be meaningless unless there was some consequence of generating above the maximum. If there was no consequence for going above the maximum, Users would be incentivised to notify a low maximum output (MW) to avoid an under use-charge, in the extreme leading to a zero notification.

4.1.34 To ensure Users were incentivised to provide a correct notification of maximum output, some Working Group members believed that the charges and dead-band for over and under-use should be equal. The Working Group decided that the charge for over-use should be based on the same principles as under-use. The over-use capacity shall be calculated as the difference between the firm weekly TEC notification (MW) and the actual maximum average capacity (MW) in any one settlement period in the given week net of any balancing actions. Over-use occurs where the actual output (MW) is more than the notification (MW). Overrun under CAP162 is independent to CAP168 and is not altered by this CAP168 proposal.



4.1.35 The Working Group recommends the charge for this over-use capacity would be £5/kW/year. As the charge would be calculated on a weekly basis the charge would be 9.62p/kW/week (£5 divided by 52 weeks in a year). The basis for this charge would be consulted on under the Charging Governance.

4.1.36 The proposer indicated that any money recovered from the under and over-use charge should flow back to Users through BSUoS. Some members of the Working Group were concerned that this was not a logical path for the revenue flows. This issue would be covered further during consultation under the charging governance however, revenue flow is a licence issue and this may necessitate a licence change.

4.2 Offering TEC to the System Operator and the Market

4.2.1 The Working Group considered it was important for a User to be able to show that they were willing to give up TEC within year in order to avoid the under-use charge. Users may be willing to give up the TEC to avoid an under-use charge and in some cases offering it to the market or giving it up to the SO would be the most efficient way to do this.

4.2.2 If a User offered TEC to the System Operator they would still be liable to pay for their TNUoS charge but they would not incur any under-use charges during the period which they had offered the TEC.

4.2.3 It was proposed that TEC holders would be obliged to provide the SO with an annual non-binding notification of any major planned works intended for the site in the subsequent year and their expected impact on the export capability and timing. The Working Group considered that this already takes place as part of the OC2 data submission hence it is not necessary to include as part of CAP168, its presence should however be noted when evaluating the suite of usage nominations under this proposal.

4.2.4 It was considered that if a User were offering to the market or giving to the System Operator blocks of TEC (MW) of at least one week duration and at up to a maximum of one year duration five weeks ahead then this would fit in with the timescales considered under CAP161 (SO release). Matching the

timescales would help these two mechanisms to work together (if both were to be implemented).

- 4.2.5 The Working Group considered whether two day ahead notifications should be considered. The Working Group agreed there was merit in the idea but there was insufficient time to explore this further under the Urgent timescales.
- 4.2.6 The Working Group considered that once a User had offered TEC to the SO, that same User would have the same right to it as any other User so would have to go through the SO release mechanism to get it back if CAP161 were approved.
- 4.2.7 The Working Group discussed the process for offering capacity to the Market. They agreed that where a User had advertised a volume of TEC (MW) on the bulletin board, on the 'standard' CUSC terms, priced only at its prevailing TNUoS price that this would be deemed, for the purposes of CAP168, to have met the requirements of 'offering the TEC to the market' even if no other User came forward and purchased some or all of the offered TEC.

4.3 TEC Trading Arrangements

- 4.3.1 The Working Group considered the current TEC trading arrangements. A number of members of the Working Group and respondents to National Grid's pre-consultation (see Volume 2) had had experience of the current trading arrangements. It was felt there was room for improvement in the current trading arrangements. One respondent to the pre-consultation had suggested that the trading arrangements should be changed so that only one member of the trade was liable for TNUoS charges. This option had been considered during the development of CAP142 and had been ruled out at the time. The Working Group also noting that the arrangements put forward under CAP163 for capacity sharing have only one party liable for the wider TNUoS charge.
- 4.3.2 The Working Group also discussed the other Transmission Access Amendment Proposals (CAP161-CAP166). CAP168 has been give Urgent status to ensure that it can be assessed along side the other Transmission Access Amendment Proposals. Transmission Access Working Groups One and Three spent much time discussing moving and trading TEC between points on the system. Some members of the CAP168 Working Group also noted that the potential for poor TEC exchange rates might effectively preclude the trading of TEC. The CAP168 Working Group agreed it would be inappropriate to repeat any previous work done on trading.
- 4.3.3 Given the timescales to develop CAP168 the Working Group concluded that new TEC trading arrangements could not be developed. As the ability for other Users to have access to the TEC released by CAP168 in the short term is fundamental to the proposal it would be desirable for CAP161-CAP163 to be approved if CAP168 were to be fully effective.

4.4 Feasibility Test

- 4.4.1 The Working Group considered how usage would be tested. One member suggested the maximum output (MW) of a Power Station during each financial year should be measured. The difference between the User's TEC in that year and their maximum output (MW) would be calculated. The historic profile of these differences would be reviewed at the end of each financial year. If the User has consistently not use a portion of their TEC for two years in a row or three years in five this TEC would be removed from the User. Some Working Group members believed that this was an appropriate test to see if Users were holding TEC which they were incapable of using. The Working Group noted that TEC (MW) is allocated on a station basis and that metered output would be measured from a BM unit and that therefore consideration should be made of an aggregate (MW) output to ensure that TEC has been reached.
- 4.4.2 The Working Group gave consideration to the ability to control output with sufficient accuracy to meet a TEC (MW) level and noted that without CAP162 in place, this CAP168 proposal could increase the likelihood of Users breaching their TEC. The SO would need to consider the materiality of the breach in such a case. One Working Group member did not consider this to be an issue.

Process

- 4.4.3 During discussions, the proposer submitted a further proposition for the process surrounding the feasibility test. The Working Group reviewed the process and agreed that it was appropriate. The final process can be found in paragraph 3.2 of this report.

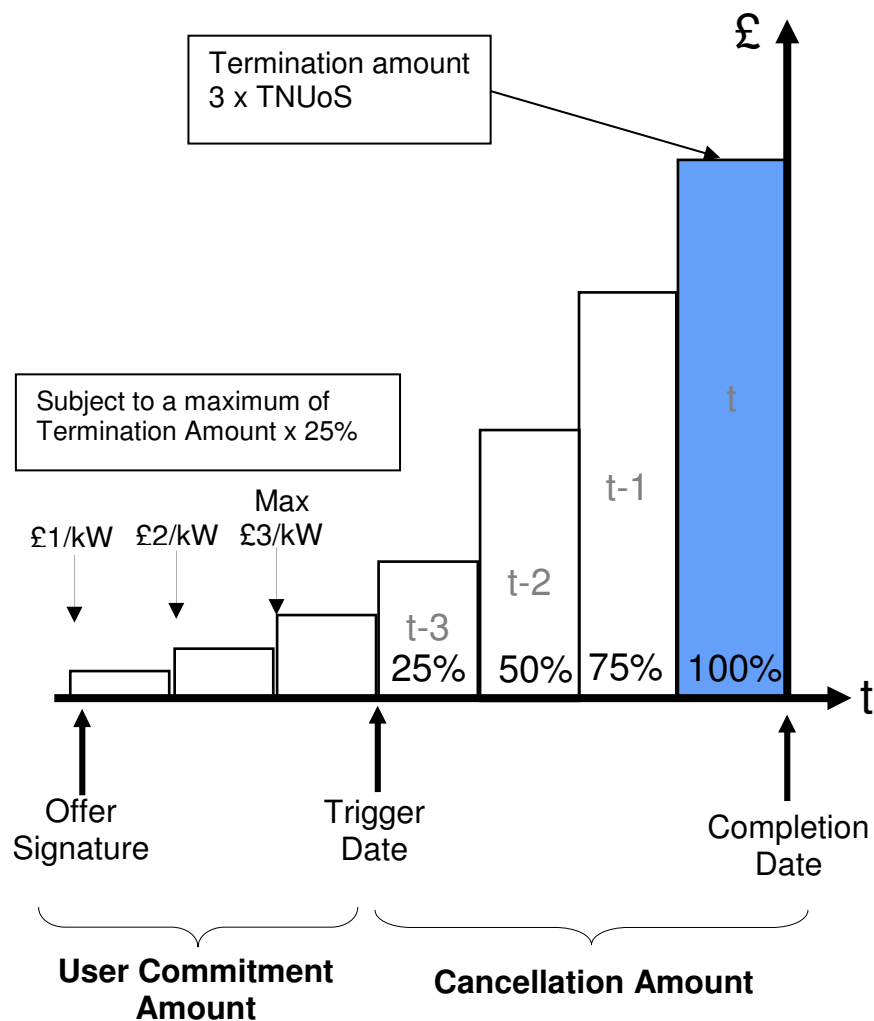
Retrospection

- 4.4.4 The Working Group considered if the feasibility test should be applied retrospectively. If the mechanism was applied retrospectively it would immediately free up TEC which was not being used. Some members of the Working Group argued that introducing an amendment which looked retrospectively introduced more regulatory uncertainty into the industry. It was also argued that it was not right to apply the mechanism to a period of time where Users were not aware of the incentive to generate and therefore have not had an opportunity to react to it.
- 4.4.5 The Working Group agreed that the feasibility test mechanism should not be applied retrospectively.

4.5 User Commitment

Pre-commissioning User Commitment

- 4.5.1 The amendment proposal suggested that new Users should be liable for three years worth of TNUoS. During Working Group Two discussions of CAP165 the following profile had been developed:



4.5.2 This profile was adopted for pre-commissioning liabilities and securities under CAP168. However, under the CAP168 proposal the termination amount would be three years worth of TNUoS rather than the eight years proposed under CAP165. Further details regarding this profile can be found in Annex 7.

4.5.3 The Working Group noted that under CAP165 several different Alternative Proposals were put forward for User Commitment. Some members of the Working Group argued we should include these as Alternatives under CAP168. The Working Group agreed that given the tight timescales these should not be included in CAP168.

Post-commissioning User Commitment

4.5.4 The Original CAP168 Amendment Proposal suggested that Users should provide two years full notice of it's intention to close. Where two years notice is given, no transmission charges should be incurred once the plant has closed. However, where only one year's notice was given, the plant would pay 50% of the transmission charges it would have incurred.

4.5.5 The Working Group considered if you had a two year notice period you should be liable for the full charges in those years rather than 50% of the charge. Users would be required to give two full years' notice of capacity

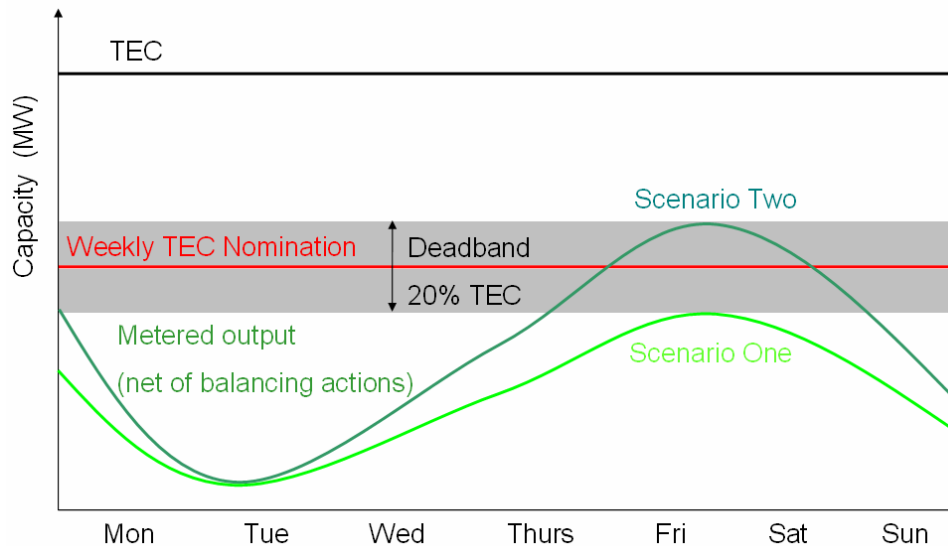
reduction. Where two years full notice has been given no transmission charges would be incurred once the plant has closed. If two years' full notice was not given the User would be liable for two years' worth of TNUoS charges in addition to the existing year.

- 4.5.6 As with pre-commissioning, the Working Group noted that under CAP165 several different Alternative Proposals were put forward for the length of the notice period. The Working Group agreed that given the tight timescales these should not be included in CAP168.
- 4.5.7 During the consideration of CAP165 securities for pre-commissioning Users were discussed. The CAP165 Working Group agreed that there should be no security post-commissioning. One member of the Working Group suggested that there should be provisions for post-commissioning security in CAP168. The CAP168 Working Group considered that as the CAP165 decision on security had been made recently and the Working Group was working under Urgent timescales we should not reconsider this decision at this stage. The Working Group agreed there would be no security post-commissioning in CAP168.
- 4.5.8 The Working Group agreed that Users would be required to give two full years' notice of capacity reduction. Where two years full notice has been given no transmission charges would be incurred once the plant has closed. If two years' full notice was not given the User would be liable for two years' worth of TNUoS charges (in addition to their current year's TNUoS liability). Further details regarding User commitment can be found in Annex 7.

5.0 WORKING GROUP ALTERNATIVE AMENDMENTS

5.1 Working Group Alternative Amendment 1 (WGAA1)

- 5.1.1 WGAA1 was proposed by ConocoPhillips and is the same as the CAP168 Original Proposal in all respects except that the dead-band for the under-use and over-use charges would be set at 5MW only and not the greater of 5MW or 10% of TEC (as outlined in 3.2.12 and 4.1.6-4.1.8 above for the Original). This gives a total dead-band of 10MW around the TEC notification.
- 5.1.2 Some members of the Working Group suggested that having a 10% allowance may disadvantage smaller players. There was also some concern that having a dead-band level of 10% of TEC could dilute the intension of the CAP168 Amendment Proposal.



- 5.1.3 The proposer of WGAA1 noted that to have a 10% deadband for both under and over-use would lead to a 20% band of error surrounding the Weekly TEC nomination. This is demonstrated in the above diagram. Therefore the deadband would be 200MW for a 1000MW generator. A user could generate at any level between the maximum in scenario one and scenario two and avoid a charge. The proposer noted this would effectively take away the incentive to give up TEC envisaged by CAP168.
- 5.1.4 A majority of the Working Group did not support the Working Group Alternative Amendment raised by ConocoPhillips. Following a discussion at the CUSC Panel meeting on 3 April, 2009, the Working Group Chairman utilised the provisions set out in CUSC 8.17.15 to develop this Working Group Alternative Amendment despite a lack of support from the majority of the Working Group. This decision was taken due to the Working Group Chairman's concern about the Proposer essentially losing control of the Amendment Proposal during the Working Group phase to the extent that the Proposer no longer believed that the Amendment Proposal met the original intent.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 6.1 The Working Group performed an assessment of CAP 168 Original against the Applicable CUSC Objectives;
- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and
 - (b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.

The following table does not describe the agreed view of the entire Working Group but summarises views made by Working Group members for and against the proposal in terms of the Applicable CUSC Objectives.

| Efficient discharge of licence conditions | |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Promotes | Demotes |
| | <p>Introduces a charge which is not based on cost reflectivity and could therefore be considered to be a penalty.</p> <p>Introduces double charging for access.</p> <p>Cost-reflective long-term and short-term access regimes should incentivise efficient TEC bookings. The introduction of arbitrary charges on long-term rights holders tips the balance and would cause inefficient outcomes in terms of TEC bookings and ultimately levels of transmission investment.</p> <p>Power stations will be forced to run at full output to prove TEC requirement each year even if this is not the most efficient course of action (economically or environmentally).</p> <p>Information forthcoming from weekly declarations are only another source of information for SO, over and above outage information provided under OC2 etc. It does not "free up" the equivalent amount of capacity. Benefits are overstated.</p> <p>Deadband and running hours exemption will restrict additional capacity that can be released further. Latter provides incentive to keep hours below arbitrary limit of 500 hours.</p> |

| Facilitates competition | |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Facilitates | Frustrates |
| | <p>Additional administration, including associated risk assessment required in making declarations, will demote competition. This will affect operators with less/smaller plant more as they cannot benefit from economies of scale.</p> <p>Creating timescales for capacity requirements will impact energy markets and could significantly reduce short term liquidity.</p> <p>Proposal does not include sufficient investment certainty for new connections.</p> <p>The proposal is only workable for those plants with predictable generation patterns.</p> <p>May have implications for security of supply.</p> <p>Arbitrary costs mean a penalty for those who cannot provide accurate estimate 5 weeks out. As this is arbitrary and not based on underlying costs caused or saved, it gives these parties an unfair competitive disadvantage.</p> <p>Limited additional capacity will be released as for the reasons stated under licence obligations above. Therefore, it will not facilitate the trading of short term access in the manner suggested.</p> |

- 6.2 The Working Group performed an assessment of CAP 168 WGAA1 against the Applicable CUSC Objective(s);
- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and
 - (b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.

The following table does not describe the agreed view of the entire Working Group but summarises views made by Working Group members for and against the proposal in terms of the Applicable CUSC Objectives.

| Efficient discharge of licence conditions | |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Promotes | Demotes |
| <p>Gives Users an extra incentive to release TEC which they do not require.</p> | <p>Introduces a charge which is not based on cost reflectivity and could therefore be considered to be a penalty.</p> <p>Introduces double charging for access.</p> <p>Cost-reflective long-term and short-term access regimes should incentivise efficient TEC bookings. The introduction of arbitrary charges on long-term rights holders tips the balance and would cause inefficient outcomes in terms of TEC bookings and ultimately levels of transmission investment.</p> <p>Power stations will be forced to run at full output to prove TEC requirement each year even if this is not the most efficient course of action (economically or environmentally).</p> <p>Information forthcoming from weekly declarations are only another source of information for SO, over and above outage information provided under OC2 etc. It does not “free up” the equivalent amount of capacity. Benefits are overstated.</p> <p>Running hours exemption will restrict additional capacity that can be released further and provides incentive to keep hours below arbitrary limit of 500 hours.</p> |

| Facilitates competition | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Facilitates | Frustrates |
| <p>Gives Users an extra incentive to release TEC which they do not require.</p> <p>Facilitates the trading of short-term access.</p> <p>Facilitates the connection of new Users.</p> | <p>Additional administration, including associated risk assessment required in making declarations, will demote competition. This will affect operators with less/smaller plant more as they cannot benefit from economies of scale.</p> <p>Creating timescales for capacity requirements will impact energy markets and could significantly reduce short term liquidity.</p> <p>Proposal does not include sufficient investment certainty for new connections.</p> <p>The proposal is only workable for those plants with predictable generation patterns.</p> <p>May have implications for security of supply.</p> <p>Arbitrary costs mean a penalty for those who cannot provide accurate estimate 5 weeks out. As this is arbitrary and not based on underlying costs caused or saved, it gives these parties an unfair competitive disadvantage.</p> |

7.0 PROPOSED IMPLEMENTATION

- 7.1 The Working Group propose CAP168 Original or WGAA1 should be implemented on the 1st April 2010 if an Authority decision is received by 1st December 2009 or 1st April 2011 if a decision is received after 1st December 2009 but before 1st December 2010. This implementation date is consistent with CAP161-CAP163. CAP168 only becomes fully effective when these are in place. IS changes would also be required to accommodate over usage and under usage. For the purposes of this report it has been assumed these would be completed in the same timescales as those for CAP161-CAP163.

8.0 IMPACT ON NATIONAL GRID IS SYSTEMS AND RESOURCES

- 8.1 Due to the Urgent timescales National Grid has not had time to perform a full assessment of the impact of CAP168 (Original and WGAA1) on IS systems and resource. We recognise that there would be similarities between the requirements for CAP168 and CAP161-CAP163. As we do not recommend that the Amendment is made we have not initiated further investigation. If the Authority requires further information this could be provided on request given a suitable lead time.

9.0 IMPACT ON THE CUSC

- 9.1 CAP168 (Original and WGAA1) requires amendments to Section 3, Section 5, Section 6, Section 9, Section 10 and Section 11 of the CUSC. New schedules would be needed for the Pre commissioning cancellation charge, capacity reduction charge, in lieu of notice charge and security provisions.

10.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 10.1 CAP168 (Original and WGAA1) has an impact upon the STC as a process for amending agreements will need to be developed.
- 10.2 CAP168 (Original and WGAA1) has an impact upon the Grid Code as the information exchange for CAP168 is operational and so should be submitted under the Grid Code.

Impact on other Industry Documents

- 10.3 It is envisaged the revenue flows should be passed through BSUoS. There may be changes required to a number of documents to facilitate this.
- 10.4 The charge for over and under-use will be contained in the charging statements.

11.0 WORKING GROUP VIEW / RECOMMENDATION

- 11.1 The Working Group has developed the Amendment Proposals (Original and WGAA1) to the extent possible given the Urgent timetable. Several substantial developments have been made to the Original Proposal through the discussions of the Working Group. However, the tight timescales have limited the ability of the Working Group to fully incorporate some aspects of the Originals Proposal, in particular two day ahead notifications.

- 11.2 The Working Group recommended to the CUSC Panel that:

- A Consultation Report containing the CAP168 Original Amendment and WGAA1 should proceed to wider Industry Consultation as soon as possible.
- The Working Group Report is accepted by the CUSC Panel and the Working Group is disbanded.

- 11.3 The Working Group voted on whether they believed the Amendment Proposals (Original and WGAA1) better, than the current baseline, facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Better | Not better | Abstained |
|----------|--------|------------|-----------|
| Original | 0 | 13 | 1 |
| WGAA1 | 1 | 11 | 2 |

- 11.4 The Working Group voted on which version of CAP168 (Original and WGAA1) they believed best facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Best |
|-----------|------|
| Original | 4 |
| WGAA1 | 1 |
| Abstained | 9 |

- 11.5 Four members of the Working Group voted that the Original was the best. It should be noted that these members also voted that the Original was not better than the baseline. One Working Group member voted that WGAA1 was best. This member also believed that WGAA1 was better than the baseline.
- 11.6 Nine Working Group members abstained. One of these Working Group members abstained as they would have another opportunity to vote as they were on the CUSC Panel. One member abstained as given the precedent set under CAP170 they were concerned that the Alternative (WGAA1) should not have been raised as an Urgent CUSC Amendment. One member pointed out that the Alternative (WGAA1) would potentially free up more capacity but puts more of a risk on generators. This member abstained as the balance of impact of these two aspects is difficult to assess at this stage. Some members abstained because they believed neither the Original nor the Alternative (WGAA1) better facilitated the CUSC Objectives.

12.0 NATIONAL GRID INITIAL VIEW

- 12.1 Creation of an additional charge will have a negative interaction with the efficient long run charge (based on incremental asset costs) and short run charges (based on incremental operational cost). Effectively this will adjust the balance of holdings to an inefficient level. This interaction will result in suboptimal decisions by network operators and generation companies, with the ultimate risks and costs borne by end consumers.
- 12.2 Considering the transportability of access National Grid believes that most new developments will seek assurance in the form of long term rights. A functioning secondary market can provide an efficient counter to long term access, and can provide an efficient route to market for aging plant and a useful economic product for low load factor plant with a flat profile. However, it is not desirable to force a secondary market, parties should chose to operate in the market based on the true costs and opportunities.
- 12.3 The proposal fails to address the divergence between the cost and the value of transmission on a constrained network. In order to encourage parties to release rights the incentive needs to be comparable to the value which users place on them. Furthermore, under the current regime new parties would essentially be distressed buyers, with the potential for incumbents to extract value from transmission.
- 12.4 More accurate information available to the System Operator on the usage of access, rather than the availability of generation (which is already a Grid Code and therefore licence requirement), would have additional value. However, we are not convinced that under the currently wholesale trading arrangements that it would be efficient for portfolio players to nominate which plant was likely to be operating several weeks in advance of gate closure.

This will introduce additional risk and complexity and lead to the need for additional hedge arrangements. This issue was discussed in the Working Group with general agreement that access released close to real time would have much less value to either the System Operator or new entrants.

- 12.5 Whilst the exchange of information and managing information imbalance risk may be a manageable for larger portfolio players, the proposals introduces a potentially inefficient burden on small parties and therefore could be considered a barrier to entry.
- 12.6 The application of an arbitrary charge with reference to a date whilst the normal energy market is still trading will create inefficiencies in the energy market. Whilst the date on which the charge is applied is logical, in relation to a proposed process in CAP161, this does not detract from its potential consequences on energy trading. This will create a disjoint in energy trading due to solely to this process and introduce additional risks in the wholesale market arrangements.
- 12.7 National Grid recommends that the Original Amendment Proposal and WGAA1 are rejected.

13.0 INDUSTRY VIEWS AND REPRESENTATIONS

13.1 Responses to the National Grid Pre-Consultation

13.1.1 Due to the period for Working Group development and assessment being shorter than usual the Working Group was unable to have a Working Group consultation. To ensure that the wider industry had the opportunity to provide input into the Working Group development and assessment National Grid conducted a pre-consultation on the Original Amendment Proposal as written. National Grid provided the responses to this pre-consultation to the Working Group for further consideration. A copy of the pre-consultation responses is available in Volume 2 of this report.

13.1.2 The following table lists the responses:

| Reference | Company |
|----------------|------------------------------|
| CAP168-NGPC-01 | EDF Energy |
| CAP168-NGPC-02 | Immingham CHP LLP |
| CAP168-NGPC-03 | Rio Tinto Alcan |
| CAP168-NGPC-04 | RWE |
| CAP168-NGPC-05 | Scottish and Southern Energy |
| CAP168-NGPC-06 | Sembcorp |
| CAP168-NGPC-07 | Uskmouth Power |

13.2 Responses to the National Grid Consultation

13.2.1 The following table provides an overview of the representations received on the Company Consultation. Copies of the representations are contained in Amendment Report Volume 2.

| No. | Company | View | File Number |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------|---------------------|
| 1 | BWEA | Unsupportive | CAP168-CR-01 |
| <p>BWEA does not think this is the time to be bringing forward under-developed proposals that do not have a clearly defined objective, such as CAP168. The proposal had changed in the Working Group. It seems to be acting as an information imbalance charge which will penalise less predictable generators. BWEA fails to see how this bears any resemblance to the original intent of CAP168 and this raises serious questions of the governance process.</p> | | | |
| 2 | Centrica | Unsupportive | CAP168-CR-02 |
| <p>Centrica are concerned that generators may be able to avoid the under-use charge and TEC reduction by increasing their output at relevant times even though this may not be the most economic and efficient way to run their power station. TEC is not a commodity that can be freely traded. Short term TEC products are unlikely to be bankable for developers. Different generators have different abilities to provide an accurate forecast of their weekly TEC MW. As relevant factors are outside the control of the generator the proposal would give some generators an unfair competitive advantage. Further justification and/or development may be required in a number of areas. Centrica is not convinced the circumstances surrounding CAP168 warrant urgent status. Urgent status makes it difficult for a Working Group to properly assess a modification proposal.</p> | | | |
| 3 | ConocoPhillips / Immingham CHP LLP | Unsupportive of Original Supportive of WGAA1 | CAP168-CR-03 |
| <p>ConocoPhillips believe the merits primarily arise under applicable objective (b) and better facilitate competition. This is because CAP168 Alternative:</p> <ul style="list-style-type: none"> ▪ removes TEC from parties that cannot or will not be able to use it; ▪ incentivises users to release TEC which they are not likely to use on a medium-term basis (such as commissioning delays or planned outages); ▪ stimulates secondary trading of TEC, which is an important objective; ▪ should enable the more efficient use of access by both existing users and by connecting parties in the queue, thereby stimulating competition; ▪ given many imminently connecting parties utilise lower carbon technologies, should help reduce emissions; and ▪ would lower BSUoS charges as under-use payment will be offset against it. <p>Other benefits occur under applicable objective (a), because the proposal:</p> <ul style="list-style-type: none"> ▪ enables more efficient use of existing transmission capacity; ▪ in doing so should reduce risks of asset stranding and customers incurring unnecessary costs; and ▪ should also create more efficient investment signals for new capacity. <p>ConocoPhillips are disappointed these benefits are not set out in the report.</p> <p>The CAP168 Original fails to capture the intention of the high level change proposal. The Original disproportionately favours scale players.</p> <p>ConocoPhillips believe CAP168 has merit without CAP161-CAP163. Explicit criticisms of the current TEC trading arrangements should be included in the report.</p> | | | |

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------|---------------------|
| <p>If effective secondary markets can be created, more fundamental higher risk changes to the TEC regime could be avoided. Access rights made available through reallocation and resale would be bankable and would stimulate new entry.</p> <p>Concerned about the procedures of the Working Group, which in effect mean, a core group of members with strong opinions can take-over the change proposal. The timetable was poorly structured.</p> | | | |
| 4 | E.ON | Unsupportive | CAP168-CR-04 |
| <p>The rationale for the TEC feasibility test too closely links the rights that generators hold with the system that the transmission company build to accommodate them. The test would incentivise generators to run for one period during the year, this does not seem economically or environmentally efficient. If a generator purchases an access product but does not use it, then it loses out in that it paid for something it didn't need. This in itself should be an incentive not to buy too much TEC. There are good reasons why a generator may run at lower than its full TEC. The weekly TEC notification would provide minimal additional information to the System Operator. If the charge does not reflect an underlying cost caused, then it will represent a penalty. The declaration will also add further to participants costs of operating in the market.</p> | | | |
| 5 | EDF Energy | Unsupportive | CAP168-CR-05 |
| <p>Any charging mechanisms for under-use of TEC turn this right of access into an obligation to generate which we view as a fundamental and undesirable shift from the baseline. Users are already sufficiently incentivised to book the correct level of TEC; a feasibility test introduces an unnecessary administrative burden for no benefit to transmission planning or system operation. Charging for under-use of TEC is arbitrary and penal, as it is not possible to determine a cost reflective charge. The proposal will impact on the energy market; in particular, it is likely to significantly reduce short term liquidity. The proposer identifies a defect in TEC trading arrangements, which in EDF Energy's view could be addressed by CAP161-163 or by a simple amendment to charging arrangements for Temporary TEC transfer (CAP142). The short time available to the Working Group to develop this proposal is particularly concerning.</p> | | | |
| 6 | GDF Suez | Unsupportive | CAP168-CR-06 |
| <p>The additional administration cost, both on generators and the System Operator implicit in these proposals needs to be fully assessed against benefits. Generally the penalties associated with under-run would seem to provide an incentive to generate inefficiently to satisfy the test criteria. The proposal is detrimental to competition in that it does not properly consider the variety of generation assets within the GB infrastructure and merit order related contributions from all plant to security of supply. The proposal seems to disproportionately benefit plant with predictable generation patterns. It would seem that CAP168 would introduce a perverse incentive with regards to generator's environmental obligations.</p> | | | |
| 7 | InterGen | Unsupportive | CAP168-CR-07 |
| <p>InterGen agrees there is presently little incentive for existing transmission holders to release TEC when it is not being used. However, InterGen does not agree that the current CAP168 proposal will effectively address this. Since users already pay for their full TEC capacity it does not appear appropriate to introduce an under-use charge since this will effectively charge twice for the same capacity. There are legitimate reasons why a generator may hold extra TEC (above an average generation level). The urgent status has hampered proper development of this proposal.</p> | | | |

| | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------|---------------------|
| 8 | International Power / First Hydro | Unsupportive | CAP168-CR-08 |
| <p>The proposal does not recognise the true nature of TEC. TEC is tradable only at a very local level. Some 3-6 GW is traded base load day ahead and International Power believes this proposal will damage liquidity in this area. Demand forecasts change significantly from the week ahead stage to real time and this changing demand is met by suppliers fine tuning their contract book to meet the expected supply requirement. Wind power plant will be penalised by the proposal. The costing of under/over run has no justification. The fact that there are no costs associated with under running undermines the premise of the proposal. TEC released on a short term basis is unlikely to be bankable and is unlikely to lead to additional generation being able to connect.</p> | | | |
| 9 | Scottish Power | Unsupportive | CAP168-CR-09 |
| <p>Scottish Power does not accept this proposal should have been granted urgency. Adoption of the urgent process severely restricted the time for the Working Group to develop and assess the proposal. CAP161-CAP163 if approved should be given time to demonstrate their effectiveness before the requirement for further action is considered. The introduction of a method for removing transmission access would increase the uncertainty faced by generators. Generators are currently incentivised to hold the optimum level of TEC through the TNUoS charges. Aspects of the proposal change the nature of TEC from a right to generate to an obligation. The under-use charge would result in users paying twice for their access (TNUoS plus under-use charge).</p> | | | |
| 10 | Scottish and Southern Energy | Unsupportive | CAP168-CR-10 |
| <p>SSE do not accept that CAP168 should have been granted urgency or that it is possible to have an alternative to CAP168. There are legitimate reasons why power stations have TEC holdings above their short term usage. Users five weeks out are highly unlikely to know what their firm weekly TEC level is going to be. TEC parties may not be able to freely trade and "extra" TEC they hold due to poor exchange rates. This issue could be further compounded if the GBSO is incentivised to further frustrate the trading of "extra" TEC between parties. It is a serious deficiency with CAP168 that a cost reflective charge has not been developed.</p> | | | |
| 11 | Uskmouth Power | Unsupportive | CAP168-CR-11 |
| <p>Predictable base load generators would gain a competitive advantage if CAP168 or WGAA1 were implemented. Short term liquidity would be destroyed due to the introduction of the TEC nomination process. Uskmouth Power dislikes the introduction of double counting for access which this proposal creates. As a consequence of CAP168 receiving urgent status and being fast tracked through the Working Group greater assessment shall be required under the impact assessment.</p> | | | |

13.3 Views of CUSC Panel members

13.3.1 The CUSC Amendment Panel voted on whether they believed the Amendment Proposals (Original and WGAA1) better, than the current baseline, facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Better | Not better |
|----------|--------|------------|
| Original | 0 | 9 |
| WGAA1 | 0 | 9 |

13.3.2 The CUSC Panel voted that neither the Original nor the Alternative Proposals are better than the current baseline. The reasons why CUSC Panel members voted they way they did are outlined in the minutes of the 15th May 2009 CUSC Panel meeting. In light of the vote the CUSC Panel therefore recommends to the Authority that both CAP168 Original and WGAA1 are rejected. For the avoidance of doubt, if the Authority were to approve the implementation of either Amendment Proposal (Original or WGAA1) then this could be subject to Appeal to the Competition Commission by a party to the CUSC (if they so wished).

13.3.3 One member of the Panel did not believe that the report provided enough quality reasoning and analysis to demonstrate that either was better than the baseline. Some Panel members considered that in some aspects the Proposals ran counter to the Applicable CUSC Objectives.

13.3.4 The CUSC Panel voted on which of the proposals they believe best facilitates the applicable CUSC Objectives. The result of this vote is described in the following table:

| Proposal | Best |
|-----------|------|
| Original | 3 |
| WGAA1 | 1 |
| Abstained | 5 |

13.3.5 Three Panel members considered that of the two proposals the Original Amendment Proposal was the least worst. One member considered that the Original gave Users more flexibility over WGAA1. One Panel member considered that the 5MW dead-band proposed under WGAA1 was discriminatory. One Panel member noted that whilst both would potentially have a negative impact on the energy market the Original would have the least impact. One member voted that WGAA1 was the best. This member considered that WGAA1 would free up more TEC. Five members of the Panel abstained from the vote. These members disliked both proposals and could not describe either of the proposals as best.

ANNEX 1 –CAP168 CUSC Amendment Proposal

| CUSC Amendment Proposal Form | CAP: 168 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <p>Title of Amendment Proposal:</p> | |
| <p>Transmission Access – Under-use and reallocation of TEC</p> | |
| <p>Description of the Proposed Amendment (<i>mandatory by proposer</i>):</p> | |
| <p>In summary the proposed arrangement would work as follows.</p> <p>CAP168 centres on the introduction of an under-use charge for transmission entry capacity (TEC).</p> <p>Incentivised by an under-use charge (additional to TNUoS payments) based on a pre-set multiple of TNUoS payments, parties would make available TEC they do not require by assigning the right to use such TEC to third parties on a bilateral basis. This might be on either a temporary basis within-year or for longer-term blocks of a year (or both). In the case of within-year provision already exists under CUSC 6.34 for CUSC parties to offer unwanted TEC to other grid users but only in certain defined circumstances, and this has not been utilised. Consequently CAP168 would introduce a daily and a weekly access product. Annual blocks could also be sold individually or in multi-year bundles under this proposal.</p> <p>The assignee would assume the TNUoS liability (proportionate if within-year) and the associated liability for any subsequent under-use in respect of the assigned TEC.</p> <p>Alternatively usage rights could be returned to National Grid, who could facilitate the market in access rights as part of the proposed incremental capacity release mechanism (CAP161).</p> <p>In the event of under-use charges being incurred for a period of time (say, two years) as a result of a TEC holder failing to assign or return unused capacity, a further “use it or lose it” mechanism would be introduced. This would require the return of that capacity to National Grid unless the TEC holder is able to evidence a requirement for its use in the subsequent year or to confirm that it has offered to sell the unused capacity on reasonable terms into the market.</p> <p>Rights would continue to be defined nodally, so provisions would be needed to establish exchange rates for annual or forward TEC trades. The CAP142 bulletin board could be developed to allow willing buyers and sellers to meet and trade if CAP161 were not implemented. However if CAP161 were implemented there would be interaction between this proposal and SO incremental release.</p> <p>All TEC holders would be obligated to provide surety in the form of a user commitment amount over the period prior to the trigger date and a cancellation amount between the trigger date and the completion date. This would be structured in the same way as under the relevant elements of CAP165, which would replace the existing final sums regime. Similarly, user commitment charges and cancellation charges would be applied.</p> <p>A capacity reduction charge would also be introduced to incentivise orderly notification of withdrawal of generation from the system in the event such notice is not given. Other aspects of the user commitment principles as proposed by CAP165 would also be adopted.</p> <p>Fuller notes on how the proposal would work are attached.</p> | |
| <p>Description of Issue or Defect that Proposed Amendment seeks to Address (<i>mandatory by proposer</i>):</p> | |
| <p>Under the existing transmission access arrangements a long queue of applications for new connection capacity has developed. There are significantly more applications than available unallocated capacity, and some generators may be constrained or delayed or even not able to</p> | |

develop owing to lack of secure transmission access. Much of this generation “in the queue” is low carbon. This situation has arisen at a time when the UK requires connection of significant amounts of new generation capacity due to its ageing generation fleet, to deal with expected plant withdrawals to comply with environmental regulations and to meet demanding renewables and CHP targets.

To compound matters there is presently little incentive for existing transmission access right holders to release TEC when it is not being used. Such instances include:

- planned or unplanned outages
- when there is uncertainty around the timing of commissioning of new plant
- where an operator considers there is potential for increasing future output beyond current expected operating conditions
- where an operator wishes to come off the system for a period of time for commercial reasons, perhaps because of operating limits imposed by the Large Plant Combustion Directive (LCPD), and
- where an operator considers there are strategic reasons to preserve unused capacity perhaps because it has future plans for additional generation.

Although there is already scope for securing additional access (under CAP70 and CAP94) and for limited trading (CAPI42) within-year, the proposer considers the current rules are deficient to deliver robust trading of TEC rights. Consequently TEC holders can be unwilling to give up TEC they know they will not use in the short to medium term but which they expect to need in the medium to long term as they could lose all future rights to that released capacity, and as a result the system operator has an inaccurate picture of available system capacity and any local surplus.

The proposal entails the introduction of a mechanism—an under-use charge—that will foster the more efficient use of TEC and “enhanced access rights trading” for TEC holders and those looking to increase TEC to provide greater flexibility during periods of under-utilisation of transmission capacity. It is designed to:

- encourage more efficient use of existing network capacity, by
 - causing currently unused TEC to be released to make spare transmission capacity available to other grid users, including those in “the queue”
 - freeing up TEC when maintenance or other prolonged outage occurs or where an operator’s view of likely operating or commodity pricing parameters changes
 - providing financial incentives to encourage users to better manage their TEC to reflect the level of expected usage
- in so doing stimulate TEC trading
- through freeing up access to the grid, enable the execution of more efficient balancing actions by the system operator, potentially reducing total balancing costs
- use any additional monies arising from under-use or resale of TEC by the system operator to offset total balancing costs.

Additionally proposals already in process also have merit in terms of encouraging more efficient allocation of TEC. However CAPI68, especially if implemented with some combination of CAPI61-164 (but not either CAPI65 or CAPI66), would provide:

- much stronger incentives for existing TEC holders to release unused or surplus capacity on the

transmission grid, and

- a more orderly, enduring approach for making available unused transmission access rights in a timely manner.

Consequently by implementing CAPI68 in combination with CAPI61-164 DECC and Ofgem objectives for TAR can be achieved without a disproportionate upheaval to the current transmission access arrangements. Such an approach would therefore mitigate unnecessary risks and delays to new investment.

CAPI68 also takes on board the fundamental requirement that generators need to have certainty over their access to the system in order to ensure a route to market for their power. To achieve this, they already commit significant monies to guarantee the necessary investment on the network to accommodate their expected production, and a developer already provides significant funding for the local works needed to connect it. It has also led to the development of final sums liability arrangements whereby the generator also underwrites investment in the wider system in return for TEC—that is, rights to capacity and its use—that are in effect renewable annually.

Impact on the CUSC (*this should be given where possible*):

The impact on the CUSC would include, but may not be limited to, changes in Section 2 (Connection), 3 (Use of System), 6 (General Provisions) and 9 (Interconnectors). There would also be consequential changes required to Section 11 (Interpretation and Definitions), and potentially to the CUSC Schedules and Exhibits.

Impact on Core Industry Documentation (*this should be given where possible*):

No impact on Core Industry Documentation has been identified, but it is suggested that potential impacts would be reviewed during the assessment of the proposed amendment.

Impact on Computer Systems and Processes used by CUSC Parties (*this should be given where possible*):

CUSC parties' models of the financial viability of new existing power stations and interconnectors would need to take into account the revised arrangements. Any necessary system, process and operational changes would need to be assessed. If CAPI61 in particular but also CAPI63 were implemented, the additional requirements arising from implementation of CAPI68 should be minimal.

Details of any Related Modifications to Other Industry Codes (*where known*):

The interaction with the current charging mechanism has been addressed in the proposal. It is recognised that many of the issues identified in the various GB ECM pre-consultations that closed late 2008 would apply equally. Further there would need to be additional changes to the charging methodology statement to implement under-use charges.

Justification for Proposed Amendment with Reference to Applicable CUSC Objectives** (*mandatory by proposer*):

The proposal has real merit under the CUSC applicable objectives on its own (that is, without implementation of any or all of CAPI61 -164).

The proposed amendment would better facilitate the achievement of Applicable CUSC Objective (a), the efficient discharge by the licensee of the obligations imposed upon it under the Act and by the licence, in that the more efficient use of transmission capacity will create more efficient investment signals. In turn this would result in consequentially reduced risk of transmission asset

stranding, and would better allow National Grid as the relevant licensee to discharge its obligation under the Act to develop and maintain an efficient, co-ordinated and economical system of electricity transmission.

The proposed amendment would also better facilitate the achievement of Applicable CUSC Objective (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 as:

- existing and new generators would be required to provide equivalent levels of user commitment thereby ensuring the equitable treatment of the two groups, and
- existing unused capacity could be reallocated with certainty to new entrants permitting earlier connection in some instances boosting competition and removing a barrier to entry.

More generally the mechanism would facilitate creation of an efficient access capacity trading market that would increase use of the existing grid, facilitate the flow of new projects onto the system and their earlier timing thus helping tackle the queue and reinforcing other measures underway, and therefore deliver significant competitive benefits.

Given these impacts CAP168 would also facilitate progress against politically critical low carbon targets (further reinforcing beneficial efficiency impacts). It would create strong incentives on capacity hoarders to release capacity and enable unused capacity to be released into the market or returned to the SO. It would also add a more orderly, certain process than allowing over-run without securing the underlying access right, with particular benefits for new entrants who would not be able to rely on the proposed overrun arrangements under the proposed CAP162.

By introducing CAP168 in combination with other changes—notably incremental system operator release (CAP161) and capacity sharing (CAP163)—it would deliver additional benefits to those listed above under the applicable objectives.

| | |
|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Details of Proposer: Organisation's Name: | ConocoPhillips |
| Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch") | CUSC Party |
| Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address: | Maureen McCaffrey ConocoPhillips 020 7408 6785 maureen.mccaffrey@conocophillips.com |
| Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address: | Nigel Cornwall Cornwall Energy 01692 407865 nigel@cornwallenergy.com |
| Attachments—Yes If Yes, Title and No. of pages of each Attachment: Further detail on proposal—4 pages. | |

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:

Bali Virk
Panel Secretary
Commercial Frameworks
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Or via e-mail to: bali.virk@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 Electricity Transmission plc Licence under Section C7F, paragraph 15. Reference should be made to this section when considering a proposed amendment.

Attachment – further description

Incentivised by an under-run charge, access rights trading needs to accommodate a range of possible outcomes where a TEC holder may wish to:

- release unused TEC for a period less than a year¹
- release unused TEC on a longer-term, annual basis, and/or
- in some circumstances divest unused TEC rights where they are no longer required.

Further, in the interests of open access, the proposer believes there should be a mechanism to deal with situations where a TEC holder retains capacity despite incurring under-use charges for a period of time and where the TEC holder might not be able to demonstrate a certain future requirement for its use.

The methodology proposed by CAP168 incorporates the following key features:

- all existing TEC holders maintain their existing TEC rights in circumstances where they are being used
- all TEC holders with a connection agreement (that is connecting and operating parties) would be obligated to provide surety in the form of a user commitment amount over the period prior to connection (that is, when they are in the queue), and such surety would be structured as per the proposed user commitment principles under CAP165
- post commissioning the TEC holder would pay TNUoS “in the usual way”
- there would be a new under-use charge (in essence an access imbalance charge) that would be levied on the difference between a generator’s reported maximum demand on at least three separate days across the year (and not just over the triad period) in a given year and its booked TEC reflected in the bilateral connection agreement
- the under-use charge would apply in positive charging zones² and should be based on a multiple of the sum of the relevant zonal TNUoS charge (the locational charge plus the residual element) foregone by not using the full booked TEC
- the multiple would be not less than one and a half times the applicable TNUoS charge but a more cost-reflective rationale could be examined²
- TEC holders would be able to assign TEC for a minimum of a day³ on either a fixed duration or in multiple annual strips to third parties seeking increased or new TEC
- to facilitate liquidity and flexibility within-year a daily and weekly access product would be available
- standard contracts would be established as a CUSC exhibit for assignment of TEC
- extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it would also be used to help offset BSUoS
- alternatively the monies could be ring-fenced and used by the system operator to invest in operational enhancements

¹ There is a consensus that existing within-year products (which concern only unallocated TEC), namely Short-term TEC and Limited Duration TEC, have not created the necessary flexibility, and have seen limited use. The Temporary TEC Exchange introduced under CAP142 has not been used.

² No additional mechanism is needed for generation in negative zones as there is already an incentive to generate to achieve TNUoS payments.

² To incentivize the release of genuinely unused TEC, this multiple or charge could be scaled up over time (for instance to two times in year two).

³ There would need to be a mechanism to ensure that a user could not sell a single day’s capacity to avoid one year’s under-run charges.

- if an operator were exposed to under-use charges in excess of a defined level of TEC for more than two consecutive years [or three years in five], procedures would be initiated to compel the TEC holder to release the unused capacity into the market or reassign the TEC on a permanent basis to the system operator unless the TEC holder could evidence a clear requirement for it in the third [or a subsequent] year
- all existing holders of TEC would be required to give two years' notice of their intention to reduce or withdraw capacity (other than through the TEC assignment mechanism outlined above)
- the CAPI42 bulletin board would be used to enable willing buyers to transact with willing sellers⁴ and could also be extended to publicise both unused TEC and closure declarations⁵
- developers or new generation schemes would be able to subscribe for new TEC "in the usual way", subject to meeting user commitment requirements.

The detailed rules would depend on whether the offer of assignment of TEC rights was:

- within-year or for annual rights
- triggered by sustained under-utilisation.

In more detail:

Short-term (within-year)

- to the extent an operator does not require it, it can already under CAPI42 offer this to the market but only on a temporary basis, and a third party purchaser could be identified and the access right for the defined period sold
- an alternative option under CAPI68 would be to offer the TEC back to the system operator
- if CAPI61 were approved blocks would be made available in one week or one day blocks
- if CAPI61 were not approved, TEC for a period of four weeks to fifty one weeks would be offered but CAPI68 would extend this facility to daily or weekly blocks⁶
- under either approach an exchange rate mechanism for trades would need to be applied
- the TNUoS charges payable by the assignee in relation to the transferred TEC should be calculated on the same basis that the initial holder would have faced on the transferred TEC over the relevant part of the year covered by the assignment
- a mechanism would be required to establish proportionate charges where daily and weekly blocks were traded
- the purchaser would be subject to any under-use in the same way as the seller would have been (again taking into account any daily or weekly availability)
- the under-use charge would be calculated relative to the three highest demands recorded by the user across the year *during the period for which it holds the TEC* irrespective of whether they occurred over the triad period
- this charge should be based initially on a multiple of one and a half times the appropriate TNUoS charge.

Annual strips

- an operator may make available to the market their excess TEC to any other operator who requires TEC (at which time TEC and all its rights and obligations will be transferred) in annual "strips"³

⁴ Consideration should be given to broadening the scope of the exchange to cover all unbooked capacity.

⁵ Alternatively CAPI61 mechanisms could be used for release of TEC assigned back to the SO if that change were approved.

⁶ In other words anything less than a year and anything prescribed as the minimum under CAPI42.

- as within-year an option would be to offer the TEC back to the system operator
- the TNUoS charge payable by the assignee in relation to the transferred TEC should be the same that the initial holder would have faced on the assigned capacity
- for annual traders there would be no need to provide for part usage of the capacity within year
- there would need to be an under-use charge applied in the event the reallocated TEC was not used by the purchaser, again levied in the same way that the charge would have applied to the initial TEC holder
- this charge should also be based on a multiple of one and a half times the appropriate TNUoS charge.

Use it or lose it

- if the same TEC is not used or assigned for two years continuously [or three years in five] and the operator cannot provide evidence to the system operator that it will use the capacity in the third year [or a subsequent relevant year] and has taken reasonable steps to offer the unused TEC to the market, the operator could be required to offer that TEC back to the system operator or to other grid users on a permanent basis
- further if any plant incurs under-use charges for at a defined level in any two year period [or any three years in five] its TEC could be reduced to the level where the under-use would not have incurred
- to the extent an operator holds TEC that has been assigned by another operator under the reallocation mechanism, the assignee would pay the TNUoS liability and be charged for any under-use on the transferred TEC holding.

Closing Plant

Closing plant shall be required to give two years' full notice of its intention to close. Where two years' notice is properly given, no transmission charges should be incurred once the plant has closed. However where only one year's notice is given, the plant will pay 50% of the transmission charges it would have incurred. These charges would be incurred even if the associated TEC were subsequently sold to the system operator or into the market.

New Plant

All operators commit to pay three years' worth of TEC going forward; this aggregate sum shall be subject to the existing CUSC security arrangements, but with the amounts adjusted in the event that any TEC is reassigned. The trigger point and other definitions would be as proposed under CAPI65. TEC reservations may not exceed that that the plant of the owner could physically produce and would be a value less than the contracted CEC.

SO buy-back

The CAPI68 proposal has assumed that unused rights are sold bilaterally or returned to the SO to avoid under-use charges. Options involving SO buy-back could also be addressed during the assessment.

³ CAPI42 applies only to within-year trades.

ANNEX 2 – CAP168 Working Group Terms of Reference

Working Group Terms of Reference and Membership

TERMS OF REFERENCE FOR CAP168 WORKING GROUP

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP168 tabled by ConocoPhillips at the Amendments Panel meeting on the 27th February 2009.
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. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and report on the following specific issues:
 - Introduction of an under-use charge for TEC
 - TEC trading arrangements
 - Facilitation of TEC trading
 - Exchange rates
 - Within-year trading
 - Annual trading
 - Process for offering TEC to SO
 - “Use it or lose it” mechanism
 - User commitment
 - Capacity reduction charge
 - Reserve

-Interaction with other proposals

6. The Working Group is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAAs) 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.
7. The Working Group should become conversant with the definition of Working Group Alternative Amendments which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual Member of the Working Group to put forward a Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. There is an obligation on the Working Group Members to propose the minimum number of Working Group Alternatives where possible.
9. All proposed Working Group Alternatives should include the proposer(s) details within the Final Working Group Report, for the avoidance of doubt this includes Alternative(s) which are proposed by the entire Working Group or subset of members.
10. The Working Group is to submit their final report to the CUSC Panel Secretary on the 1st April 2009 for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 3rd April 2009.

MEMBERSHIP

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

| | |
|--------------------------|-------------------------------|
| Chair | Hédd Roberts |
| National Grid | Patrick Hynes |
| Industry Representatives | James Anderson |
| | Bob Brown |
| | Michael Dodd |
| | Richard Ford |
| | Garth Graham |
| | Paul Jones |
| | Robert Longden |
| | Simon Lord |
| | Deborah MacPherson |
| | Maureen McCaffrey |
| | Rekha Patel |
| | Bill Reed |
| | Louise Schmitz |
| | Merel van der Neut Kolfshoten |
| | Barbara Vest |
| | Charles Williams |

Authority Representative Konrad Keyserlingk
Technical Secretary Sarah Hall

NB: Working Group must comprise at least 5 Members (who may be Panel Members)

12. The Chair of the Working Group and the Chair of the CUSC Panel must agree a number that will be quorum for each Working Group meeting. The agreed figure for CAP168 is that at least 8 Working Group members must participate in a meeting for quorum to be met.
13. A vote is to take place by all eligible Working Group members on the proposal and each Working Group Alternative, as appropriate, as to whether it better facilitates the CUSC Applicable Objectives and indicate which option is considered the BEST with regard to the CUSC Applicable Objectives. The results from the vote shall be recorded in the Working Group Report.
14. Working Group Members or their appointed alternate is required to attend a minimum of 50% of the Working Group Meetings to be eligible to participate in the Working Group vote.
15. The Technical Secretary is to keep an Attendance Record, for the Working Group meetings and to circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the Final Working Report.
16. The membership can be amended from time to time by the CUSC Amendments Panel.

RELATIONSHIP WITH AMENDMENTS PANEL

17. 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.
18. The Working Group shall seek the Amendments Panel advice if a significant issue is raised during the Consultation process which would require a second period of Consultation in accordance with 8.17.17.
19. 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

20. 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

21. The Working Group Chairman shall prepare a final report to the 3rd April 2009 Amendments Panel responding to the matter set out in the Terms of Reference.
22. A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.
23. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
24. The Chairman (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

ANNEX 3 – WORKING GROUP ATTENDANCE REGISTER

| Name | 13/03/09 | 19/03/09 | 24/03/09 |
|-------------------------------|-----------------|-----------------|-----------------|
| Hêdd Roberts | ✓ | ✓ | ✓ |
| Sarah Hall | ✓ | ✓ | ✓ |
| James Anderson | ✓ | ✓ | ✓ |
| Bob Brown | ✓ | ✓ | ✓ |
| Micheal Dodd | ✓ | x | ✓ |
| Richard Ford | ✓ | x | ✓ |
| Garth Graham | ✓ | ✓ | ✓ |
| Patrick Hynes | ✓ | ✓ | ✓ |
| Paul Jones | Peter Bolitho | ✓ | ✓ |
| Robert Longden | ✓ | ✓ | ✓ |
| Simon Lord | ✓ | ✓ | x |
| Deborah MacPherson | x | x | x |
| Maureen McCaffrey | ✓ | ✓ | ✓ |
| Rekha Patel | x | ✓ | ✓ |
| Bill Reed | ✓ | ✓ | ✓ |
| Louise Schmitz | James Evans | ✓ | ✓ |
| Merel van der Neut Kolfshoten | Dave Wilkerson | ✓ | x |
| Barbara Vest | ✓ | x | x |
| Charles Williams | ✓ | x | x |

| Observers | 13/03/09 | 19/03/09 | 24/03/09 |
|--------------------|-----------------|-----------------|-----------------|
| Nigel Cornwall | ✓ | ✓ | x |
| Ricky Hill | ✓ | x | x |
| Konrad Keyserlingk | ✓ | ✓ | ✓ |
| Paul Mott | ✓ | x | x |

ANNEX 4 – RESULT OF WORKING GROUP VOTE

The Working Group voted on whether they believed the CAP168 Amendment Proposals (Original and WGAA1) better, than the current baseline, facilitates the Applicable CUSC Objectives. The results of the vote are described in the following table:

| Proposal | Better | Not better | Abstained |
|----------|--------|------------|-----------|
| Original | 0 | 13 | 1 |
| WGAA1 | 1 | 11 | 2 |

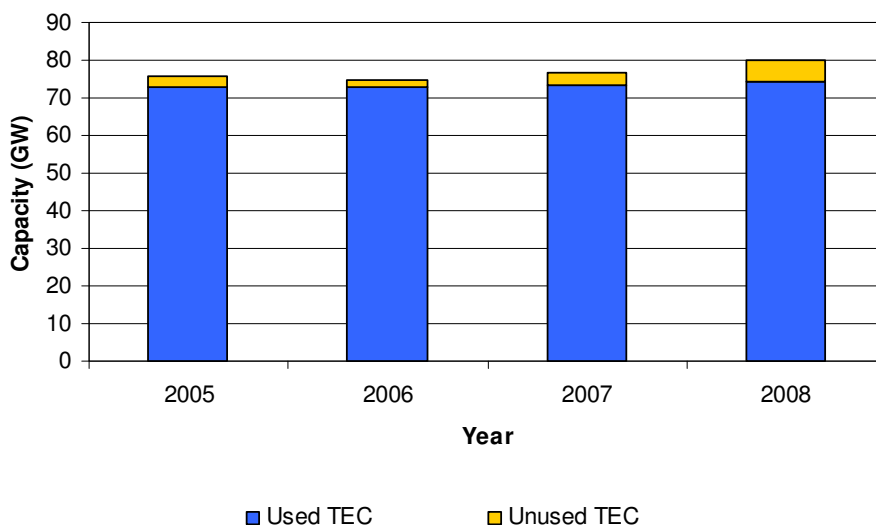
The Working Group voted on which version of CAP168 (Original and WGAA1) they believed best facilitates the Applicable CUSC Objectives. The results of this vote are described in the following table:

| Proposal | Best |
|-----------|------|
| Original | 4 |
| WGAA1 | 1 |
| Abstained | 9 |

ANNEX 5 – ANALYSIS FROM NATIONAL GRID PRE-CONSULTATION

To aid the consideration of this amendment National Grid has provided some initial analysis to give an indication of the historic levels of capacity which could have been subject to an under-use charge.

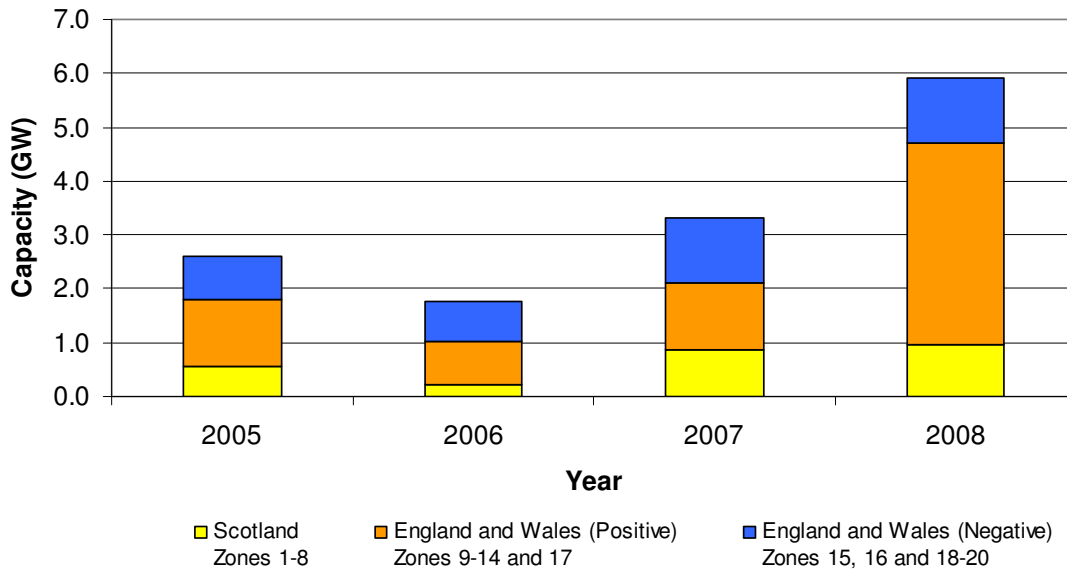
This initial analysis compares the maximum metered output of each generator in a year with their booked TEC. The difference between the metered output and the TEC has been used to calculate the level of unused TEC for each generator. The used TEC of all generators has been summed together and the unused TEC of all generators has been summed together to give the following graph.



| Capacity (GW) | 2005 | 2006 | 2007 | 2008 |
|-------------------|------|------|------|------|
| Unused TEC | 2.6 | 1.8 | 3.3 | 5.9 |
| Used TEC | 70.3 | 71.1 | 70.0 | 68.4 |
| Total TEC | 72.9 | 72.9 | 73.3 | 74.3 |

This analysis shows that in previous years between 1.8 and 5.9 GW could potentially have been charged for under-use if no action was taken to release this capacity to other users. The proposal suggests using the three maximum outputs. Using three maximum outputs would potentially make more capacity chargeable under the new arrangements.

The following graph shows the amount of unused TEC since 2005 in GW. The information is split into three categories. The Scotland category includes those generators currently in TNUoS tariff zones one to eight. England and Wales has been split to show how much of the unused TEC is in TNUoS tariff zones with a negative tariff and how much is in positive zones.



| Capacity (GW) | Zones | 2005 | 2006 | 2007 | 2008 |
|-------------------------------------|--------------|------|------|------|------|
| Scotland | 1-8 | 0.6 | 0.2 | 0.9 | 0.9 |
| England and Wales (Positive) | 9-14, 17 | 1.2 | 0.8 | 1.2 | 3.8* |
| England and Wales (Negative) | 15,16, 18-20 | 0.8 | 0.8 | 1.2 | 1.2 |

*The trebling in unused TEC between 2007 and 2008 in positive zones in England and Wales is due to two large generators being on outage during 2008.

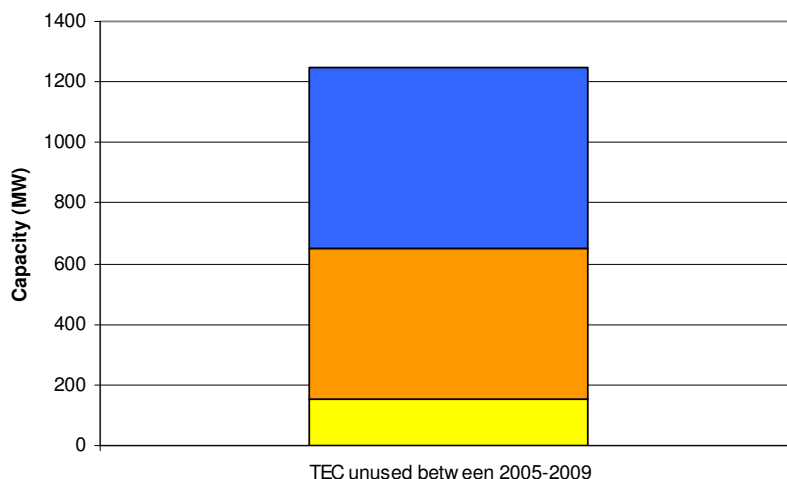
The majority of unused TEC is in positive zones in England and Wales as this is where the majority of generation is situated. The unused TEC is approximately 3% on average of the total TEC in positive zones in England and Wales. Although less TEC is unused in Scotland and the negative zones in England and Wales a greater percentage of TEC is unused. In Scotland 11% of TEC is unused and 10% is unused in negative zones in England and Wales.

ANNEX 6 – FURTHER ANALYSIS

Consistent Under-use

At the CAP168 Working Group meeting on the 13th March 2009 National Grid took an action to analyse how much TEC was consistently not being used.

Data from 88 generators between January 2005 and February 2009 was reviewed. The amount of TEC which had consistently not been used during this period was approximately 1.25 GW. This is calculated by looking at the difference between the maximum metered output of each generator since January 2005 and their booked TEC. The following graphs show how this is distributed zonally and by plant type.



■ Scotland
■ England and Wales (Positive)
■ England and Wales (Negative)

Zones 1-8 Zones 9-14 and 17 Zones 15, 16 and 18-20



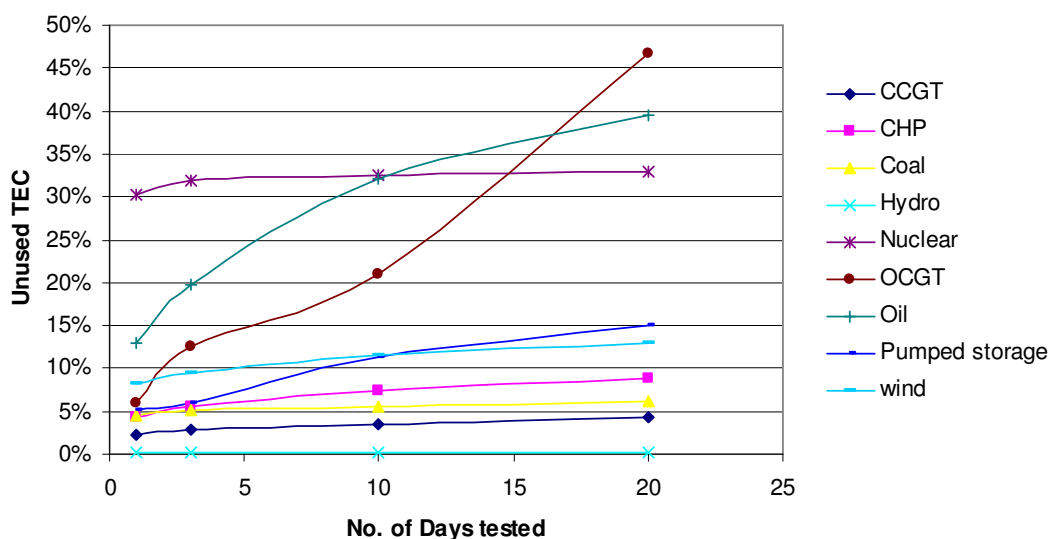
■ CCGT ■ CHP ■ Coal
■ Hydro ■ Nuclear ■ OCGT
■ Oil ■ Pumped Storage ■ Wind

Under-use Capacity

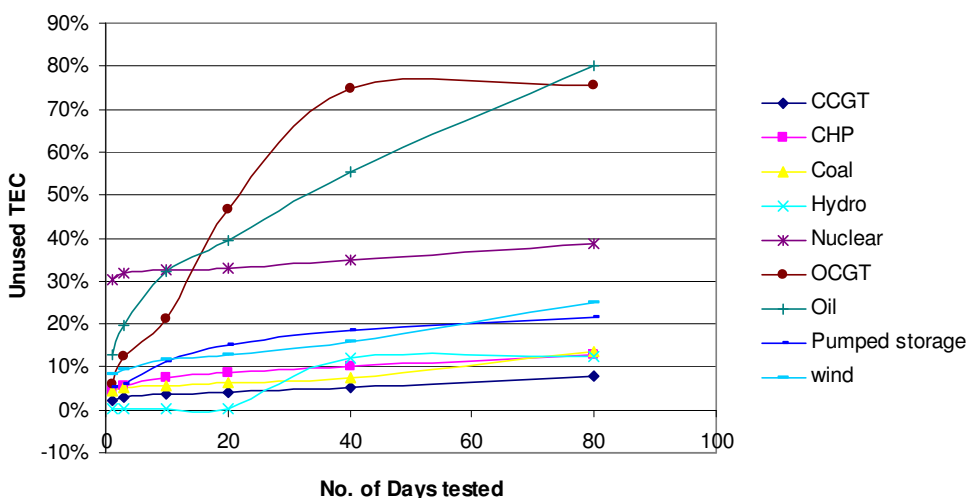
It was suggested at Friday's Working Group meeting that considering a Users output on three days may not be a severe enough test to measure the capacity which the under-use charge should be levied upon. The following analysis looks at the maximum, the third greatest daily output to the 80th greatest daily output. In 2008 the difference between TEC and the X greatest daily output was:

| X | 1 | 3 | 10 | 20 | 40 | 80 |
|-----------------|-----|-----|-----|-----|------|------|
| Difference (GW) | 5.9 | 6.7 | 7.8 | 8.7 | 10.5 | 14.3 |

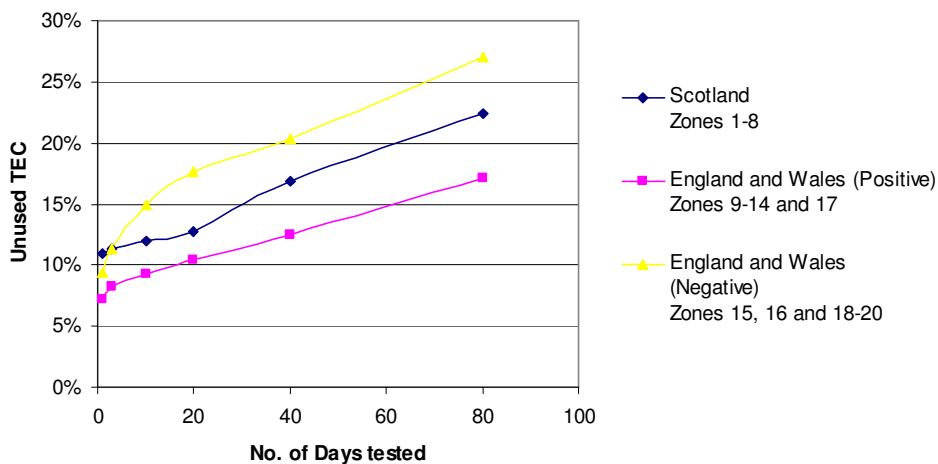
The following graph shows the percentage of TEC in Users' bilateral agreements not used during the maximum output, the third greatest daily output, the 10th greatest daily output and the 20th greatest daily output by different plant types.



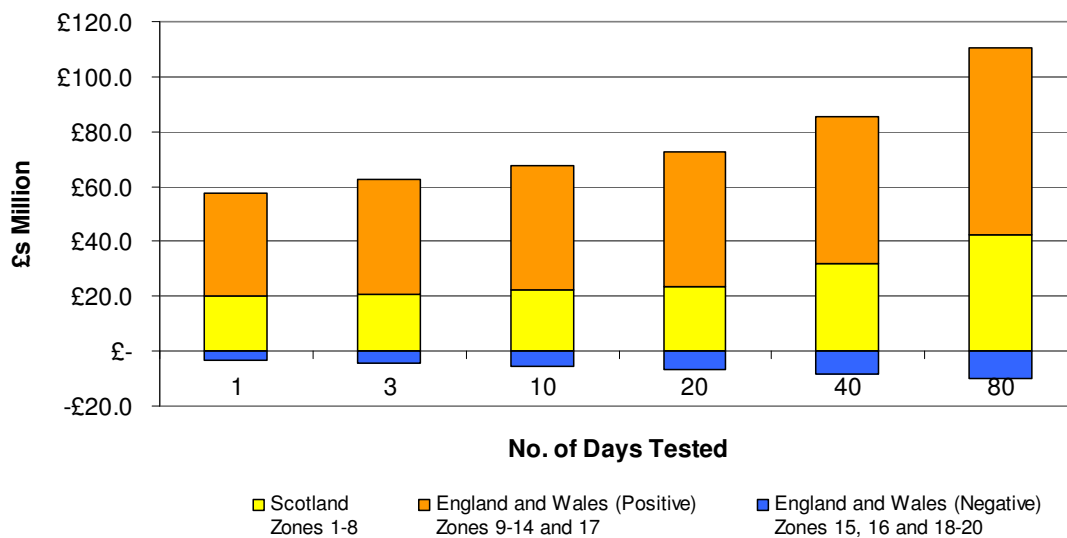
An additional two data points were measured at 40 and 80 to provide the group with further information.



This graph shows data from 2008. During this year two nuclear plants had outages. This has brought the average up for nuclear plants.



After seeing the first draft of this analysis a further request was made to see the level of money which would have been recovered had an under-use charge of 1.5 x TNUoS been in place.



ANNEX 7 – FURTHER DETAILS OF USER COMMITMENT

Pre-Commissioning User Commitment

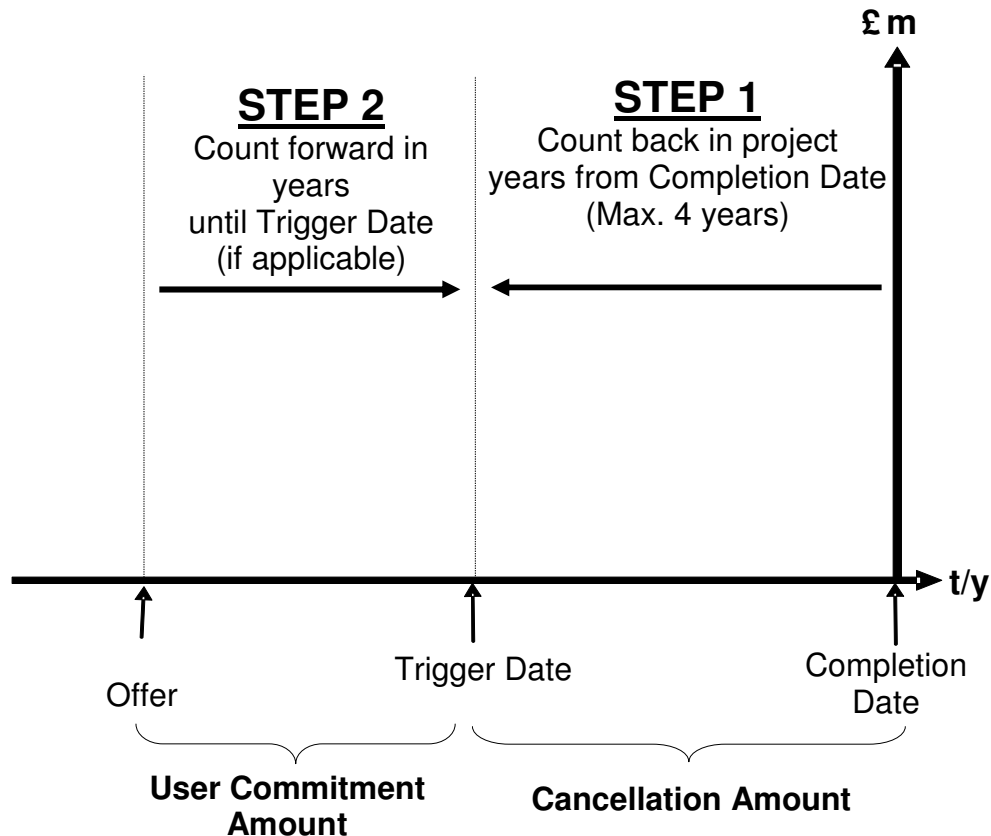
The CAP168 proposed arrangements for pre-commissioning generators (and for post-commissioning generators that request additional wider entry access rights) requiring transmission works seek to replace the current liabilities for cost reflective final sums with non-refundable generic liabilities. An aim would also be to share the risk of inefficient investment associated with generation termination between the generators that introduce risk, and all other Users.

The generic liabilities incurred would be a non-refundable termination charge equal to three times the relevant generation TNUoS tariff. Under CAP168, this multiplier would set not just the termination liability pre-commissioning but also the minimum number of years of wider entry access rights to the transmission system that a newly commissioned User would be liable for. Therefore, under CAP168 the potential termination liability immediately prior to commissioning and immediately post commissioning would be equivalent (at three years' worth of TNUoS). Further details regarding the post commissioning User commitment are considered later in this annex.

These arrangements would only apply to wider transmission entry access rights. Separate, but similar, arrangements would apply to infrastructure comprising generators' local connections to the wider system. Additionally, for parties not booking entry access rights (e.g. DNOs), the current cost reflective final sums arrangements will continued to be applied for transmission reinforcement works.

The offer will set out two types of payments that would be due in the event of termination: User Commitment Amounts before the Trigger Date, and Cancellation Amounts between the Trigger Date and the Completion Date. The process is illustrated in the diagram below:

Calculation of timescales for pre-commissioning termination payments



It can be expected that following the Trigger Date, the majority of applications for new or increased wider entry access rights will result in a Completion Date within four years. It should be noted that under the CAP168 arrangements, National Grid will retain the right in the Construction Agreement to delay the Completion Date owing to unforeseen circumstances beyond its control.

User Commitment Charge

Between the Offer Date and Trigger Date, termination of wider transmission entry access rights requested would result in the levying of a User Commitment Charge based on User Commitment Amounts. The User Commitment Charge will be non-refundable.

User Commitment Amounts would be calculated using a generic methodology, based on a value of £1/kW commencing upon signature of the Construction Agreement. This would increase by £1/kW following each full year up to the Trigger Date, subject to a cap of £3/kW. Should a User terminate its Construction Agreement prior to the Trigger Date the User's User Commitment Charge would therefore be calculated as follows:

$$\text{User Commitment Charge} = \text{TEC}_r \times \text{UCAM}_t$$

Where:

- TEC_r is the reduction in wider entry access rights in kW.
- UCAM_t is the relevant User Commitment Amount which varies according to the number of full years from the Offer Date:

- In the first year (i.e. $t = 1$) $UCAM_t = \text{Min} (\text{£}1/\text{kW}, TA \times 25\%)$, where TA is the Termination Amount (see below);
- Where $t = 2$, $UCAM_t = \text{Min} (\text{£}2/\text{kW}, TA \times 25\%)$; and
- Where $t \geq 3$, $UCAM_t = \text{Min} (\text{£}3/\text{kW}, TA \times 25\%)$.

In negative TNUoS charging zones or zones with marginally positive charges 25% of the Termination Amount described below will be less than £3/kW. In such zones User Commitment Amounts would be capped to 25% of the Termination Amount. This would lead to User Commitment Amounts being zero in negative charging zones.

User Commitment Amounts where they are calculated by reference to TNUoS tariffs will be calculated and fixed at the time the connection offer is signed. The actual TNUoS tariff used will be that TNUoS tariff that would have prevailed on the last day that that offer could have been signed.

Cancellation Charges

Under CAP168 once the Trigger Date has been reached, termination of wider transmission entry access rights requested would result in the levying of a Cancellation Charge based on Cancellation Amounts. The Cancellation Charge will be non-refundable.

The Cancellation Amount in each year is a percentage of the Termination Amount, which is the higher of zero and three times the relevant TNUoS charges. The Cancellation Charge would therefore be calculated as follows:

$$\text{Cancellation Charge} = TEC_r \times CAM_t$$

Where:

- TEC_r is the reduction in wider transmission entry access rights in kW.
- CAM_t is the relevant Cancellation Amount which varies according to the number of full years from the Completion Date:
 - In the year prior to the Completion Date (i.e. t) $CAM = TA \times 100\%$, where TA is the Termination Amount;
 - Where $t = -1$, $CAM = TA \times 75\%$;
 - Where $t = -2$, $CAM = TA \times 50\%$; and
 - Where $t = -3$, $CAM = TA \times 25\%$.

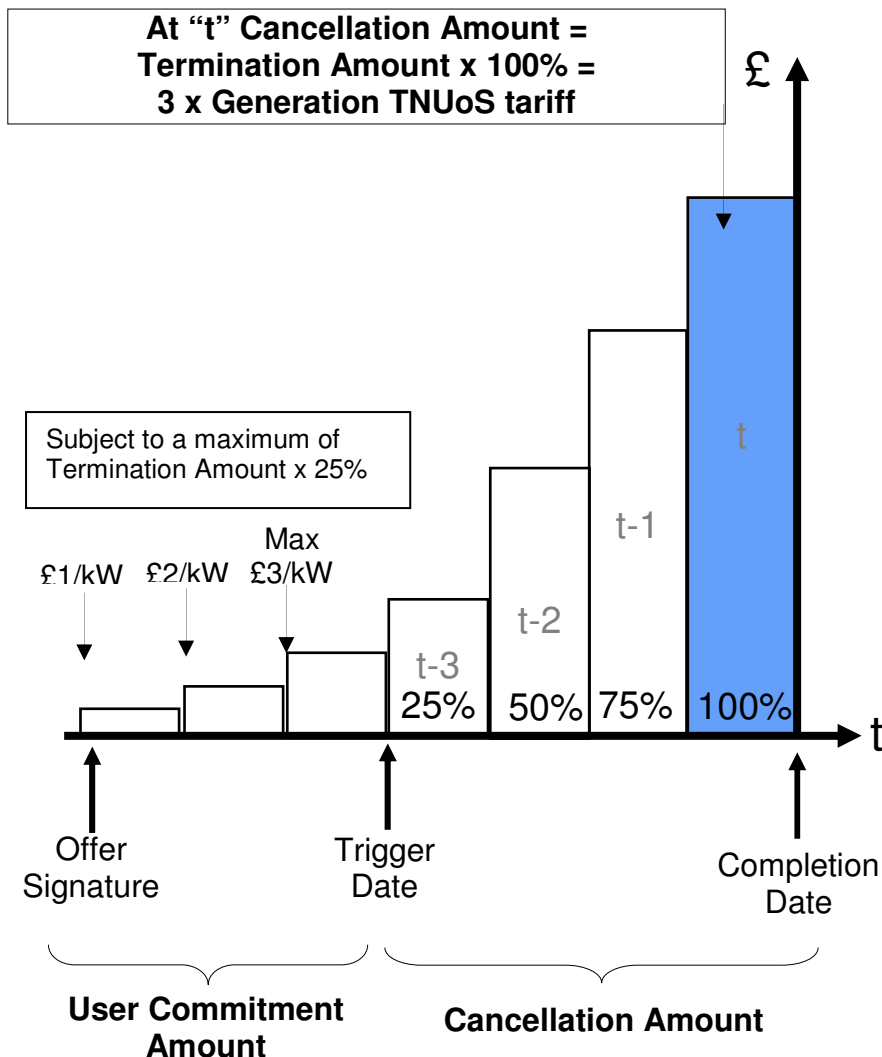
$$\text{Termination Amount} = \text{Max} (0, (\text{GenTNUoS}_z \times X))$$

Where:

- GenTNUoS_z is the relevant zonal Generation TNUoS tariff calculated and fixed at the time the connection offer is signed. The actual TNUoS tariff used will be that TNUoS tariff that would have prevailed on the last day that that offer could have been signed. If a project is not located in a Generation TNUoS Charging Zone, then the appropriate Generation TNUoS tariff will be calculated by National Grid as part of the application process in accordance with the Charging Methodology.
- X is a multiplier, initially taking the value three, although it may be appropriate that this be amended in subsequent transmission price control periods.

The liabilities described above can be summarised in the diagram below:

Generic capacity reduction Liabilities for new or increased wider entry access rights



Charges based on User Commitment Amounts and Cancellation Amounts would not apply to projects where there are no transmission asset works.

Capacity Reduction Charges

In addition to the above charges applicable at termination of a User's Construction Agreement, Capacity Reduction Charges will also become liable if the User reduces its wider transmission access rights prior to the Completion Date or Trigger Date.

Should a User reduce its wider transmission access rights prior to the Trigger Date it shall become liable to pay the following Capacity Reduction Charge:

$$\text{Capacity Reduction Charge} = UCAM_t \times (TEC - TEC_c)$$

- Where $UCAM_t$ is the relevant User Commitment Amount which varies according to the number of full years from the Offer Date:
 - In the first year (i.e. $t = 1$) $UCAM_t = \text{Min} (\text{£}1/\text{kW}, TA \times 25\%)$, where TA is the Termination Amount (see below);
 - Where $t = 2$, $UCAM_t = \text{Min} (\text{£}2/\text{kW}, TA \times 25\%)$; and
- Where $t \geq 3$, $UCAM_t = \text{Min} (\text{£}3/\text{kW}, TA \times 25\%)$. TEC is the TEC figure (expressed in kW) stated in Appendix C to the Users Bilateral

Agreement effective immediately prior to the requested reduction in TEC; and,

- TEC_r is the revised TEC figure (expressed in kW) following the TEC reduction

Should a User reduce its wider transmission access rights on or after the Trigger Date but before the Completion Date it shall become liable to pay the following Capacity Reduction Charge:

$$\text{Capacity Reduction Charge} = CAM_t \times (TEC - TEC_r)$$

- CAM_t is the relevant Cancellation Amount which varies according to the number of full years from the Completion Date:
 - In the year prior to the Completion Date (i.e. t) $CAM = TA \times 100\%$, where TA is the Termination Amount;
 - Where $t=-1$, $CAM = TA \times 75\%$;
 - Where $t=-2$, $CAM = TA \times 50\%$; and
 - Where $t=-3$, $CAM = TA \times 25\%$.
- TEC is the TEC figure (expressed in kW) stated in Appendix C to the Users Bilateral Connection Agreement or effective immediately prior to the requested reduction in TEC
- TEC_r is the revised TEC figure (expressed in kW) following the TEC reduction

Security

The introduction of generic User Commitment Charges and Cancellation Charges defined in the CUSC, to replace the existing final sums regime defined in Construction Agreements, will also require the introduction of provisions to define the level of financial security that should be held in relation to these potential liabilities.

In the event a Capacity Reduction Charge becomes payable, the amounts secured in respect of the User Commitment Charge or Cancellation Charge will be re-calculated by reference to the new TEC level, post-reduction.

Transition

If CAP168 is approved, existing Users will have the choice to remain in their existing security and liability arrangements or to move across onto the new CAP168 arrangements. Users applying for a new connection or an increase in wider transmission access rights post any implementation of CAP168 will be subject to the CAP168 arrangements.

Should existing Users choose to migrate to the new CAP168 arrangements this will require a Trigger Date to be set, and the calculation of User Commitment Charges or Cancellation Charges (as applicable), for all pre-commissioning projects in progress at implementation. The security required for each User will be calculated in accordance with the revised Section 3 of CUSC, and therefore additional Security Cover may be required. Equally, in situations where less cover is required, security will be returned to Users.

Changes to the Trigger Date or Completion Date – Impact on Pre-Commissioning Liabilities

Where the Construction Programme or the Construction Works or Transmission Entry Capacity subsequently change from that in the original Construction

Agreement the following principles will apply in respect of reassessing the Trigger Date and the Cancellation Charge.

Where such change is as a result of The Company's exercise of its rights under the Construction Agreement then:

- Where there is a delay to the Completion Date, and the Trigger Date has not passed there will be a corresponding delay to the Trigger Date and the profile of the User Commitment Amount and the Cancellation Amount revised accordingly in line with the above principles. If the Trigger Date has already passed, the profile of the Cancellation Amount will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new Completion Date.
- Where there is no delay to the Completion Date, but the Construction Works change, The Company will review the appropriateness of the Trigger Date and if appropriate, change this. The profile of the User Commitment Amount and Cancellation Amount will be revised on the principles set out above to reflect the change in Trigger Date.
- Where there is a reduction in a User's Transmission Entry Capacity the Cancellation Charge shall be revised to reflect the reduced MWs.

A revised Appendix R to a User's Construction Agreement will be issued by The Company to the User showing the new profile.

Where such change is as a result of the User's request a revised Appendix R to a User's Construction Agreement will be issued by the Company to the User. Notwithstanding any change in the Construction Works or Completion Date:

- Where the revised Construction Programme alters the period of full years between the date of signature of the original Construction Agreement and the Trigger Date the User Commitment Amount will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Programme; or
- The Cancellation Amount will be frozen at the prevailing level and remain at that level for the period of the slippage.

Post-commissioning User Commitment

It is proposed, under CAP168, that new Users would be liable for a minimum three years worth of TNUoS charges. Under CAP168, post-commissioning User commitment would be given by a liability on all Users to pay TNUoS for a Commitment Period. This commitment period would be two years.

By the 31 March (or prior working day if this falls on a non-working day each year, each generator would have to decide whether to:

- (a) Remain on the system for another two years
 - No action would be required by the generator
 - National Grid would receive TNUoS for the generator for at least the following two years
 - National Grid would have a signal that further investment is viable in the applicable area; or
- (b) Decide to leave the system after the next two years
 - The generator would submit a "Commitment Notice"

- National Grid would receive TNUoS from the generator each year for the next two years only
- The generator would leave the system at the end of the two years. For clarity, an example would be:
 - Generator submits a Commitment Notice on 31 March 2011
 - Generator does not have the option to remain on the system beyond the second year of the notice period (31st March 2013), unless they successfully reapply for new TEC capacity
- At the end of the Notice period, the generator would relinquish their wider transmission access rights and would have to reapply (just as a new User would) for wider transmission access rights in the future. For the avoidance of doubt the generator would reapply at any point up to (and beyond) the two year notice period. In the example they could reapply from the 1st April 2011 for wider transmission access up and matching (but not exceeding) their LCN.

A generator could choose to relinquish their long term wider transmission access rights early at any time. However, the generator would have to pay National Grid the greater of:

- (a) Any outstanding commitment for the current year, plus either:
 - If no Commitment Notice has been received, the relevant commitment for the next two years
 - If a Commitment Notice has been received, the relevant commitment for the remainder of the notice period; or
- (b) Zero

A generator relinquishing their wider transmission access rights would have to reapply for a connection if they wish to obtain such rights in the future.

- They can only rejoin if there is capacity available
- All Users wishing to obtain wider transmission access rights will have equal priority (as between new Users and previous Users)

ANNEX 8 – LEGAL TEXT TO SUPPORT THE PROPOSAL

CAP 166 (Transmission Access – Under-use and reallocation of Transmission Entry Capacity): Summary Sheet of Proposed Amendments

1. Overview of Changes

- 1.1 The legal drafting being proposed to implement CAP 168 essentially consists in introducing additional concepts associated with Transmission Entry Capacity namely a process to “test” whether TEC has been utilised and if not to reduce it, a process for notification of TEC to be utilised per week with payment of an additional charge (to be described in the Charging Statements) for utilisation over or under this nominated MW and user commitment (also the subject of CAP 165 and 166) during construction and minimum notice period (or payment in lieu) on notice of reduction in TEC or Disconnection.
- 1.2 There is an original amendment proposal and one alternative (WGAA1)
- 1.3 In summary the drafting for the original proposal consists of changes to;
 1. CUSC Section 3 (by summary) re under and over use
 2. CUSC Section 5 (by redline) re In lieu of Notice Charge and Notice Period for Disconnection
 3. CUSC Section 6 (by summary) re in Lieu of Notice Charge and Notice Period for TEC Reduction
 4. CUSC Section 6 Appendix 3 (new appendix) re TEC Utilisation Test
 5. CUSC Section 9 (by summary) re under and over use
 6. CUSC Section 10 (Transition)
 7. CUSC Section 11 (by summary)
 8. Schedule 2 Exhibit 3XX (Construction Agreement) (new exhibit) re Pre Commissioning Cancellation Charge
 9. Schedule 4 (new exhibit) re Pre Commissioning Cancellation Charge, Capacity Reduction Charge, In Lieu of Notice Charge and security provisions
- 1.3 The drafting for the WGAA1 is the same as that for the original proposal with the exception of the following definitions:

**“Over-Use
Capacity”**

the difference in MW between

(1) the **Actual TEC Output MW** net of the **Over-Use
Factors MW**; and

(2) the **Weekly TEC MW**;

less 5MW;

**“Under-Use
Capacity”**

the difference in MW between

(1) the **Weekly TEC MW**; and

(2) the **Actual TEC Output MW** net of the **Under-Use
Factors MW**,

less 5MW;

**Proposed Amendments to CUSC Section 3 under
CAP 168**

Add the following new Section as Part IV of Section 3

Part IV – Under-Use and Over-Use of Transmission Entry Capacity

3.28 Notification of Transmission Entry Capacity

3.28.1 By 16.00 hours on the Tuesday of each **TEC Week** each **User**, acting in the category of a **Power Station** directly connected to the **GB Transmission System** or an **Embedded Power Station** with a **Bilateral Embedded Generation Agreement**, shall submit to **The Company** the **User's Weekly TEC Notification** and **Indicative TEC Estimates**.

3.29 Calculation of Under-Use and Over-Use of Transmission Entry Capacity

3.29.1 Within 2 months of the end of each **Financial Year** **The Company** will calculate for each **User's Power Station** whether for any **TEC Week** within that **Financial Year** any **Over-Use** or **Under-Use** has occurred and if so the **Over-Use Capacity** and **Under-Use Capacity** and notify the **User** accordingly.

3.30 Under-Use Charges and Over-Use Charges

3.30.1 The **User** shall be liable for **Under-Use Charges** in respect of **Under-Use Capacity** in any **TEC Week** throughout the **Financial Year**. The **Under-Use Charges** shall be invoiced as soon as practicable after the end of the **Financial Year** and shall be payable by the **User** in accordance with **CUSC** Paragraph 6.6 as a charge payable other than monthly.

3.30.2 The **User** shall be liable for **Over-Use Charges** in respect of **Over-Use Capacity** in any **TEC Week** throughout the **Financial Year**. The **Over-Use Charges** shall be invoiced as soon as practicable after the end of the **Financial Year** and shall be payable by the **User** in accordance with **CUSC** Paragraph 6.6 as a charge payable other than monthly.

General - Renumbering

Please note that as a result of the other proposed amendments the clause numbering in **CUSC** may be changed prior to CAP 168 being implemented.

CUSC - SECTION 5
EVENTS OF DEFAULT, DEENERGISATION,
AND DISCONNECTION

CONTENTS

- 5.1 Duration and Termination
- 5.2 Emergency Deenergisation
- 5.3 Generic Events of Default and Deenergisation
- 5.4 Site Specific Deenergisation and Disconnection
- 5.5 Balancing Services Use of System Charges: Events of Default
- 5.6 Notice to Disconnect
- 5.7 Disconnection
- 5.8 Not Used
- 5.9 Non-Embedded Customers
- 5.10 Relevant Interruptions

CUSC - Section 5

Events of Default, Deenergisation, Disconnection and Decommissioning

5.1 DURATION AND TERMINATION

5.1.1 Licensed CUSC Parties

Upon either:

- (a) termination of all **Bilateral Agreements, Mandatory Services Agreements and Construction Agreements** entered into by a **User** and cessation of any other right to use the **GB Transmission System** pursuant to Paragraph 3.8 or Paragraph 9.23; or
- (b) a **User** having a **Licence** but not yet being connected to or otherwise using the **GB Transmission System**, until such time as the **User** accepts an **Offer** to connect to or use the **GB Transmission System**,

a **User** with a **Licence** shall be or continue to be a **CUSC Party** but shall not (except in the case of Paragraph 5.1.5) have any further rights and obligations for the period of such dormancy under the **CUSC** (and shall be a "**Dormant CUSC Party**") until the execution (or other entering into) of a **Bilateral Agreement** or commencement / recommencement of its right to use the **GB Transmission System** pursuant to the **CUSC**. Termination or expiry of a particular **Bilateral Agreement, Mandatory Services Agreement or Construction Agreement** shall not, of itself, cause the relevant **User** to become a **Dormant CUSC Party**.

- 5.1.2 A **Dormant CUSC Party** may once it ceases to have a **Licence** which requires it to be a party to the **CUSC Framework Agreement**, by prior notice to **The Company** cease to be a **CUSC Party** from the date specified in such notice, on which date it shall cease to be a party to the **CUSC Framework Agreement**.

5.1.3 Non-Licensed CUSC Parties

Upon termination of all **Bilateral Agreements, Mandatory Services Agreements and Construction Agreements** entered into by a **User** and cessation of any other right to use the **GB Transmission System** pursuant to Paragraph 3.8 or Paragraph 9.23, a **User** without a **Licence** shall cease to be a

CUSC Party from the date of cessation of the last such agreement or right to use, and shall on that date cease to be a party to the **CUSC Framework Agreement**.

5.1.4 A person ceasing to be a **CUSC Party** or becoming a **Dormant CUSC Party** shall not affect any rights or obligations of any **CUSC Party** which may have accrued to the date of termination or dormancy under the **CUSC**, any **Bilateral Agreement** or **Mandatory Services Agreement** or **Construction Agreement** or the **Charging Statements** or otherwise and shall not affect any continuing obligations of any other **CUSC Party** under the **CUSC**.

5.1.5 **Embedded Exemptable Large Power Station**

A **User** in respect of an **Embedded Exemptable Large Power Station** shall (unless **The Company** agrees otherwise in writing, such agreement not to be unreasonably withheld or delayed), once it has acceded to the **CUSC Framework Agreement** continue to remain a **CUSC Party** and shall not be treated as a **Dormant CUSC Party** notwithstanding the provisions of Paragraph 5.1.1.

5.2 **EMERGENCY DEENERGISATION**

5.2.1 **Emergency Deenergisation by The Company**

If, in the reasonable opinion of **The Company**, the condition or manner of operation of the **GB Transmission System** or a **User's System** or an **Interconnector** poses an immediate threat of injury or material damage to any person or to the **Total System** or to any **User's System** or to the **GB Transmission System**, **The Company** shall have the right to:

- (a) **Deenergise** that **User's Equipment**, or
- (b) request the owner of the **Distribution System** to which that **User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Deenergise** that **User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**),

if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

5.2.2 **Emergency Deenergisation by a User**

If, in the reasonable opinion of a **User**, the condition or manner of operation of the **GB Transmission System**, the **Total**

System or any other **User's System** poses an immediate threat of injury or material damage to any person or to its **User's System** or **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) that **User** shall have the right to **Deenergise** its **User's Equipment** or equipment for which that **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**), if it is necessary or expedient to do so to avoid the occurrence of such injury or damage.

5.2.3 Post Emergency Reenergisation

The Company or, as the case may be, the **User** shall **Reenergise** the **User's Equipment** at the **Connection Site** (or, in the case of the **User** the site of connection) or **The Company** shall request the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Reenergise** the **User's Equipment** at the site of connection, in each case as quickly as practicable after the circumstances leading to any **Deenergisation** under this Paragraph 5.2 have ceased to exist.

5.3 **GENERIC EVENTS OF DEFAULT AND DEENERGISATION**

5.3.1 Generic Events of Default

It shall be an **Event of Default** if:-

- (a) a **User** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by **The Company**, notified to that **User** and corrected within 2 **Business Days** thereafter) any amount properly due or owing from that **User** to **The Company** pursuant to the **CUSC** or any **Bilateral Agreement** and such failure continues unremedied for 7 **Business Days** after the due date for payment; or
- (b) in respect of a **User**:-
 - (i) an order of the High Court in England and Wales or an order of the Court of Session in Scotland is made or an effective resolution passed for its insolvent winding up or dissolution; or
 - (ii) a receiver (which expression shall include an administrative receiver within the meaning of section 251 Insolvency Act 1986) of the whole

or any material part of its assets or undertaking is appointed; or

- (iii) an administration order under section 8 of the Insolvency Act 1986 is made or if a voluntary arrangement is proposed under section 1 of that Act; or
- (iv) a **User** enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or
- (v) any of the events referred to in (i) to (iv) above has occurred and is continuing and a **User** is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 save that such sections shall have effect as if for £750 there was inserted £250,000 and a **User** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by that **User** with recourse to all appropriate measures and procedures),

and in any such case within 28 days of his appointment the liquidator, receiver, administrative receiver, administrator, nominee or other similar officer has not provided to **The Company** a guarantee of future performance by the **User** of the **CUSC** and all **Bilateral Agreements, Construction Agreements and Mandatory Services Agreements** to which the **User** is a party in such form and amount as **The Company** may reasonably require.

5.3.2 Generic Deenergisation upon an Event of Default

Provided that at the time the failure specified in Paragraph 5.3.1(a) is still continuing or the circumstances referred to in Paragraph 5.3.1(b) still exist **The Company** may having given 48 hours notice of an **Event of Default Deenergise** all of the **User's Equipment** which is the subject of a **Bilateral Agreement** with that **User** or may as appropriate instruct the operator of a **Distribution System** to **Deenergise** such **User's Equipment** or in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power across the **Interconnector** by or on behalf of that **User** provided that prior to **Deenergisation** the

User may refer the matter to the **Dispute Resolution Procedure**.

5.3.3 BSC Deenergisation

The Company shall **Deenergise** the **User's Equipment** if it is so instructed by the **BSC Panel** at any time in accordance with the provisions of the **Balancing and Settlement Code**.

5.3.4 Generic Disconnection

If the **Event of Default** under Paragraph 5.3.2 or 5.3.3 is still continuing six months after the later of **Deenergisation** and the conclusion of the **Dispute Resolution Procedure** in favour of **The Company**, **The Company** may **Disconnect** all that **User's Equipment** at each **Connection Site** where that **User's Equipment** is connected and:-

- (a) the **User** shall remove any of the **User's Equipment** on, in the case of **Connection Sites** in England and Wales, **The Company's** or, in the case of **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land(as appropriate) within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate);
- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate);
- (c) the **User** shall pay to **The Company** forthwith all **Termination Amounts**
- (d) the **User**, where acting in the category of a **Power Station** or **Interconnector Owner** directly connected to the **GB Transmission System** or an **Embedded Power Station with a Bilateral Embedded Generation Agreement**, shall pay to **The Company** forthwith the **In Lieu of Notice Charge**; and
- (e) the **User** if unlicensed shall cease to be a **CUSC Party** or if licensed shall become a **Dormant CUSC Party**, as the case may be, and Paragraph 5.1 shall apply.

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5.4 SITE SPECIFIC DEENERGISATION AND DISCONNECTION

5.4.1 Site Specific Breach by the User

If a **User** shall be in breach of any of the provisions of the relevant **Bilateral Agreement**, or the provision of the **CUSC** in relation to that particular connection to and/or use of the **GB Transmission System**, or (other than in relation to a **Supplier**, a **Small Power Station Trading Party**, an **Interconnector User** or an **Interconnector Error Administrator**) of the provisions of the **CUSC** enforcing the provisions of the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4), and such breach causes or can reasonably be expected to cause a material adverse effect on the business or condition of **The Company** or other **Users** or the **GB Transmission System** or any **User Systems** then **The Company** may:-

- (a) where the breach is capable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and requiring the **User** within 28 days after receipt of such notice, or within any longer period agreed between **The Company** and the **User** to remedy the breach, the agreement of **The Company** not to be unreasonably withheld or delayed; or
- (b) where the breach is incapable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and the reasons why the breach is incapable of remedy and requiring the **User** within 5 **Business Days** after receipt of such notice to undertake to **The Company** not to repeat the breach.

5.4.2 Grid Code Procedures - Future Compliance

Whenever **The Company** serves a notice on a **User** pursuant to Paragraph 5.4.1, **The Company** and the **User** shall discuss in good faith and without delay the nature of the breach and each shall use all appropriate procedures available to it under the **Grid Code** (including testing rights and the procedures set out in **OC5** (Testing and Monitoring)) in an attempt to establish as quickly as reasonably practicable a mutually acceptable way of ensuring future compliance by the **User** with the relevant provision of the **Grid Code**.

5.4.3 Site Specific Deenergisation

- (a) If:
 - (i) a **User** fails to comply with any valid notice served on it by **The Company** in accordance with Paragraph 5.4.1(a) or is in breach of any

undertaking given in accordance with Paragraph 5.4.1(b) and such breach causes or can be reasonably expected to cause a material adverse effect on the business or condition of **The Company** or other **Users** or the **GB Transmission System** or any **User System**; or

- (ii) five **Business Days** have elapsed since the date of any valid notice served on the **User** in accordance with Paragraph 5.4.1(b) and no undertaking is given by the **User** in accordance with Paragraph 5.4.1(b);

The Company may:

- (iii) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate **Deenergise** the **User's Equipment**; or
- (iv) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate request the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or such **User's Customers** (as the case may be); or
- (v) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector**,

upon the expiry of at least 48 hours prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied and that neither party has referred the matter to the **Dispute Resolution Procedure**. In such event **The Company** may:

- (aa) **Deenergise** the **User's Equipment**, or

- (bb) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or the **User's Customers** (as the case may be), or
- (cc) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or to procure the cessation of the transfer of power by or on behalf of that **User** across the **Interconnector**,

forthwith following completion of the **Dispute Resolution Procedure** and final determination of the dispute in **The Company's** favour, subject to **The Company** having given, in the case of **Deenergisation** of an **Embedded Small Power Station**, the relevant **User** not less than 24 hours prior written notice and at the expiry of such notice the breach concerned remaining unremedied.

- (b) If the **User** fails to comply with the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4 of the **CUSC**) and the **Authority** makes a final order or a confirmed provisional order as set out in sections 25 and 26 of the **Act** against the **User** in respect of such non-compliance which order the **User** breaches **The Company** may in respect of the relevant **Connection Site(s)** or site(s) of connection:
 - (i) **Deenergise** the **User's Equipment**, or
 - (ii) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**),

upon the expiry of at least 48 hours prior written notice to the **User** provided that at the time of expiry of the

notice the **User** continues to fail to comply with the order.

5.4.4 Consequence on Transmission Licence

If a breach of the nature referred to in Paragraph 5.4.1 continues to the extent that it places or seriously threatens to place in the immediate future **The Company** in breach of the **Transmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in breach of its transmission licence **The Company** may:

- (a) **Deenergise** the **User's Equipment**, at the relevant **Connection Site**,
- (b) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or such **User's Customer** (as the case may be), or
- (c) request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector**,

upon the expiry of at least 12 hours, prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied.

5.4.5 Generic and Site Specific Reenergisation Disputes

- (a) If following any **Deenergisation** or cessation of use of an **Interconnector** pursuant to this Paragraph 5.4 or Paragraph 5.3.2 the relevant **User** applies to **The Company** for the **User's Equipment** to be **Reenergised** or for **The Company** to issue instructions that the **User's Customers** be **Re-energised** or for **The Company** to issue instructions to the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected that it be **Re-energised** or to the relevant **Interconnector**

Owner that transport of power across the **Interconnector** can restart, **The Company** shall notify its consent to the **User's Equipment** being **Re-energised** or transport across the **Interconnector** restarting forthwith upon the breach of the **CUSC** or the relevant **Bilateral Agreement** which give rise to the **De-energisation** either:-

- (i) being remedied; or
- (ii) ceasing to be material; or
- (iii) in the case of a **De-energisation** under 5.4.3 ceasing to be of a nature which can reasonably be expected to cause a material adverse effect on the business or condition of **The Company** or other **Users** of the **GB Transmission System**; or
- (iv) in the case of a **De-energisation** under Paragraph 5.4.4 ceasing in **The Company's** opinion to place or seriously threaten to place in the immediate future **The Company** in material breach of the **Transmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in material breach of its transmission licence,

and shall forthwith **Re-energise** the **User's Equipment** or issue instructions.

- (b) If **The Company** shall refuse to **Re-energise** the **Users Equipment** or to issue instructions that the **User's Customers** be **Reenergised** or to issue instructions to the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected that it be **Reenergised**, or to the relevant **Interconnector Owner** that transport of power can restart, or if the **User** is offered terms by **The Company** which the **User** does not accept, this shall be recognised as a dispute over the terms for connection and use of system which may be referred by the **User** to the **Authority** for determination under Standard Condition C9 of the **Transmission Licence**. If the **User** accepts any terms offered by **The Company** or determined by the **Authority** **The Company** shall **Reenergise** the **Users Equipment**, or request the owner of the **Distribution**

System to which either the **User's Customers** or the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is/are connected to **Reenergise** the same or the relevant **Interconnector Owner** to restart that transport of power, forthwith after any request from the **User** for **The Company** to do so.

5.4.6 Specific Events of Default

Events of Default

5.4.6.1 Any of the following events shall constitute an **Event of Default**:

- (a) If the breach which led to any **Deenergisation** pursuant to this Paragraph 5.4 remains unremedied at the expiry of at least 6 months after the date of such **Deenergisation**, **The Company** may declare by notice in writing to the **User** that such breach has become an **Event of Default** provided that:
 - (i) all disputes arising out of the subject-matter of this Paragraph 5.4 which are referred to the **Dispute Resolution Procedure** have been finally determined in favour of **The Company**; and
 - (ii) any reference to the **Authority** pursuant to Paragraph 5.4.5(b) hereof has then been finally determined in favour of **The Company** or any terms settled pursuant to such procedure have not been accepted by the **User**.
- (b) If any or all of the **Events of Default** in Paragraph 5.3.1 has or have occurred.

Security Event of Default - User Meets The Company Credit Rating

5.4.6.2 In the case where a **User** meets **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

- (a) If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory

to **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.2(c) of the **CUSC**.

(b) If having provided security satisfactory to **The Company** pursuant to Part III of Section 2 and Paragraph 5.4.6.2(c) of the **CUSC**:

(i) the **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of the **CUSC** (or the relevant **Bilateral Connection Agreement**) takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;

(ii) any party who may at any time be providing security to **The Company** pursuant to the provisions of the **CUSC** (or the relevant **Bilateral Connection Agreement**) fails to pay to **The Company** any sum demanded pursuant thereto.

(c) (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or

(ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**) (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection

with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal of the advances under such arrangement immediately due and payable; or

- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 (pounds sterling one million) or such greater figure specified in any **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or re-financed by the **User** within a period of 28 days following the date upon which it was so declared due and payable,

and in any of (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of the relevant **Bilateral Connection Agreement** and which arise under the **CUSC**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice.

Provided that (in relation to Paragraphs (i) or (ii) or (iii) above) if at any time after the putting in place of security under this Paragraph the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This

waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in Paragraph (i) and/or (ii) and/or (iii) subsequently occurring.

Security Event of Default - User Does Not Meet The Company Credit Rating

5.4.6.3 In the case where a **User** does not meet **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

- (a) (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sums due or to become due to **The Company** within the next period of 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or
- (ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**), (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 (pounds sterling one million) or such greater amount specified in any **Bilateral Connection Agreement**) has become due and payable prior to the stated date of

maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced by the **User** within a period of 28 days following the date upon which it was so declared due and payable.

And in any one of (i) or (ii) or (iii) the **User** fails:-

- (aa) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or a **Letter of Credit** in favour of **The Company** and **Valid** at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (bb) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit, a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding any one of (i) or (ii) or (iii) if at any time after the putting in place of security under this Paragraph 5.4.6.3(a) the

User shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Paragraph 5.4.6.3(a) subsequently occurring.

- (b) If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Part III of Section 2 or Paragraph 5.4.6.3(a) or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Paragraph 2.22.
- (c) If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- (d) If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.3(a) fails to pay **The Company** any sum demanded in any **Notice of Drawing** pursuant thereto.

5.4.7 Specific Event of Default Disconnection

Once **The Company** has given a valid notice of an event of default pursuant to Paragraph 5.4.6 provided that the **Event of Default** is continuing **The Company** may give notice of

termination to that **User** whereupon the relevant **Bilateral Agreement** or right to use the system shall terminate and:

- (a) **The Company** shall in relation to such an **Event of Default** of a **User** in relation to a **Connection Site**:
- (i) **Disconnect** all the **User's Equipment** at the **Connection Site**; and
 - (ii) the **User** concerned shall remove any of the **User's Equipment** on, in the case of **Connection Sites** in England and Wales, **The Company's** or, in the case of **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land (as appropriate) within six (6) months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the relevant **User**; and
 - (iii) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate).

Such **User** shall (notwithstanding any longer time for payment which but for such termination the **User** may have for payment pursuant to the **CUSC** or the relevant **Bilateral Agreement**) within 14 days from the date of termination pay to **The Company** all amounts due and owing on the date of such termination and be liable to pay to **The Company Termination Amounts** and, where the **User** is acting in the category of a **Power Station or Interconnector Owner** directly connected to the **GB Transmission System** the **In Lieu of Notice Charge** applicable to the **Connection Site**, such payments to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof;

- (b) (i) **The Company** shall request the owner of any **Distribution System** to which the **User** is connected to **Disconnect** all the **User's**

Equipment or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the site of connection;

- (ii) **The Company** shall in relation to such an event of default of a **User** acting as a **Supplier** request the owner of the **Distribution System** to which any of that **User's Customer's** are connected to **Disconnect** such **User's Customer's**;
- (iii) **The Company** shall in relation to such an **Event of Default** of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transfer of power across the **Interconnector** by or on behalf of that **Interconnector User**; and

the **User** shall be obliged to pay to **The Company** forthwith the **Use of System Charges** due under the **CUSC** or the relevant **Bilateral Agreement** up to the end of the **Financial Year** in which **Termination** occurs and also, in the case of a **Bilateral Embedded Generation Agreement**, the **In Lieu of Notice Charge**.

5.5 **BALANCING SERVICES USE OF SYSTEM CHARGES: EVENTS OF DEFAULT**

5.5.1 Breaches

Notwithstanding any other provisions of this Paragraph 5.5 and/or Paragraph 5.3 of the **CUSC**, in relation to the payment of the **Balancing Services Use of System Charges** the following shall constitute breaches under the **CUSC** and/or the relevant **Bilateral Agreement**:-

- (a) the **User** in question shall fail to provide or maintain or renew in accordance with Paragraph 3.21 or Paragraph 9.22.3 (as appropriate) the requisite amount of **Security Cover**; or
- (b) the **User** shall fail to pay any sum payable by the **User** in respect of **Balancing Services Use of System Charges** to **The Company** within 3 **Business Days** of its due date; or

- (c) an event of default under Paragraph 5.3.1(b) of the **CUSC** has occurred provided always that the final Paragraph of Paragraph 5.3.1(b) of the **CUSC** referring to the provision of guarantees shall not apply.

5.5.2 Events of Default

Forthwith upon the occurrence of any of the breaches specified in Paragraph 5.5.1 then notwithstanding any other provisions of the **CUSC** or of any **Bilateral Agreement** to which the **User** is a party, and in addition to any rights it may have under the terms of the **CUSC**, **The Company** may upon reaching a bona fide conclusion that the reason for the failure by the **User** under Paragraph 5.5.1 is other than an administrative or banking error (having taken into account representations if any of the **User** made within 24 hours after the request therefor is made to the **User** by **The Company**, which request **The Company** shall be obliged to make) by notice to the **User** declare such breach an event of default.

5.5.3 Deenergisation by User

If **The Company** declares an **Event of Default** under Paragraph 5.5.2 the **User** shall forthwith and in compliance with the instructions of **The Company** or (in the case of any connection to a **User System**) the owner of the **User System** to which the **User's Customers** are connected, **Deenergise** itself and/or its **Customers** or in the case of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector** as the case may be.

5.5.4 Deenergisation by The Company/User System Owner

If the **User** shall fail to take such action as is referred to in Paragraph 5.5.3 within 48 hours after the date of any such notice referred to therein **The Company** shall be entitled to:-

- (a) request the owner of the **User System** to which the **User's Customers** and/or the **User** are connected, to **Deenergise** the **User's Customers** and/or the **User** (as the case may be) and to use all reasonable endeavours to effect or (as the case may be) give instructions to give effect to such **De-energisation** as quickly as practicable having regard to all the

circumstances affecting such **De-energisation** (including any operational difficulties and relevant **Licence** duties); and/or

- (b) **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at any **Connection Site(s)** which serves only the **User** or a customer of the **User**; and/or
- (c) where the **User** is an **Interconnector User** request the relevant **Interconnector Owner** to cease or procure the cessation of the transfer of power by or on behalf of the **User** across the **Interconnector**.

5.5.5 BSUoS Event of Default

5.5.5.1 **The Company** may terminate the relevant **Bilateral Agreement** and all others to which the **User** is a party and revoke the **Use of System Supply Confirmation Notice** and **Use of System Interconnector Confirmation Notice** forthwith by notice to the **User** if:-

- (a) **The Company** has given a valid notice of default pursuant to Paragraph 5.5.2; and
- (b) such event of default remains unremedied at the expiry of the later of:-
 - (i) the period of 6 months from the date of such notice; and
 - (ii) where the **User** disputes bona fide the event of default and has promptly brought and is actively pursuing proceedings against **The Company** to determine the dispute, the date on which the dispute is resolved or determined.

Upon termination pursuant to this Paragraph the **User** shall pay to **The Company** the **Termination Amounts** calculated in accordance with the **Charging Statements** and where the **User** is acting in the category of a **Power Station** or **Interconnector Owner** directly connected to the **GB Transmission System** or an **Embedded Power Station** with a **Bilateral Embedded Generation Agreement**, the **In Lieu of Notice Charge** and shall disconnect all the **User's Equipment** at the **Connection Site** and:

- aa) the **User** concerned shall remove any of the **User's Equipment** on, in the case of **Connection Sites** in England and Wales, **The Company's** or, in the case of **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land (as appropriate) within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and
- bb) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate); and
- cc) the provisions of Paragraph 5.4.7 shall apply *mutatis mutandis*.

5.5.5.2 The service of a notice under Paragraph 5.5.5.1 and/or the expiry of a notice given under Paragraph 5.6 shall not relieve the **User** of its obligation under Paragraph 3.9.3 or Paragraph 9.10 or any **Bilateral Agreement** to which the **User** is a party to pay any outstanding **Balancing Services Use of System Charges** in respect of any **Settlement Day** which fell prior to the issue or expiry of (as the case may be) such a notice but for which the **Payment Date** fell after the date of the termination of the relevant **Bilateral Agreement** (or use of system not subject to a **Bilateral Agreement**).

5.6 NOTICE TO DISCONNECT

5.6.1 Without prejudice to Paragraph 5.2.2, each **User**, other than a **User** acting in the category of a **Power Station or Interconnector Owner** directly connected to the **GB Transmission System** or an **Embedded Power Station** with a **Bilateral Embedded Generation Agreement**, shall, as between **The Company** and that **User**, give to **The Company** not less than 6 months written notice of any intention of the **User** to **Disconnect** the **User's Equipment**.

5.6.2 Without prejudice to Paragraph 5.2.2, each **User** acting in the category of a **Power Station or Interconnector Owner** directly

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connected to the **GB Transmission System** or an **Embedded Power Station** with a **Bilateral Embedded Generation Agreement** shall, as between **The Company** and that **User**, give to **The Company** not less than two **Financial Years** written notice of any intention of the **User** to **Disconnect** the **User's Equipment** provided that, subject to payment of the **In Lieu of Notice Charge**, **The Company** will alternatively accept written notice of not less than 6 months.

5.7 DISCONNECTION

5.7.1 If notice to **Disconnect** is given by the **User** under Paragraph 5.6 hereof the **User** may upon expiry of the period specified in such notice and not before **Disconnect** the **User's Equipment**. At the expiry of such period the relevant **Bilateral Agreement** shall terminate and the following provisions shall apply.

5.7.2 The **User** shall be liable forthwith on the date the relevant **Bilateral Agreement** so terminates to pay to **The Company**:-

- (a) **Connection Charges** and/or **Use of System Charges** to the end of the **Financial Year** in which termination occurs all such charges becoming immediately due and payable upon the termination of the relevant **Bilateral Agreement**; and
- (b) **Termination Amounts** applicable to the **Connection Site**; and
- (c) where applicable, the **In Lieu of Notice Charge**

such payments to be made within 28 (twenty eight) days of the date of **The Company 's** invoice in respect thereof.

5.7.3 Within 6 months of the date of such termination or such longer period as may be agreed between **The Company** and the **User** in the case of **Connection Sites** in England and Wales, and/or between the **Relevant Transmission Licensee** and the **User** in the case of **Connection Sites** in Scotland:

- (a) the **User** shall remove any of the **User's Equipment** on, in the case of **Connection Sites** in England and Wales, **The Company's** or, in the case of **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land (as appropriate); and
- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee**

removes, any of the **Transmission Connection Assets** on the land of the **User** concerned.

5.8 Not Used

5.9 NON-EMBEDDED CUSTOMERS

5.9.1 This Paragraph 5.9 provides for additional **Deenergisation** provisions which only apply in relation to **Users** acting in their category of connection and/or use as **Non-Embedded Customers**.

5.9.2 If the following condition ceases to be satisfied in respect of the **Supplier** supplying the **Connection Site** **The Company** may give written notice of that fact to the **User** and unless within 5 days of receipt of such notice the **User** advises **The Company** that it has contracted with an alternative **Supplier**, **The Company** shall be entitled to **Deenergise** the **Non-Embedded Customer's User's Equipment**:-

“the **Supplier** being authorised by a current **Supply Licence** to supply electricity to the premises to be supplied with electricity through the **Connection Site**.”

5.9.3 If there ceases to be a subsisting right of **Use of System** by a **Supplier** at the **Connection Site** who is liable to **The Company** for **Use of System Charges** in respect of **Demand** attributable to the **Connection Site**, **The Company** shall be entitled to **Deenergise** the **User's Equipment**.

5.9.4 Where:

- (a) the **Supplier** is in breach of the **CUSC** relating to the supply to the **Connection Site** and accordingly **The Company** is permitted under the **CUSC** to **Deenergise** the **User's Equipment**; or
- (b) an **Event of Default** under Paragraph 5.6 has occurred in relation to the **Supplier** with whom the **User** has a **Supply Agreement** and the relevant event is still continuing or the relevant circumstances still exist,

The Company may **Deenergise** the **User's Equipment** upon the expiry of at least 48 hours prior written notice to the **User** provided that at the time of expiry of such notice the breach concerned remains unremedied or (as the case may be) the reason permitting **Deenergisation** continues or the relevant **Event of Default** is still continuing and neither **The Company** nor the **Supplier** has referred the matter to the **Dispute Resolution Procedure**. In such event, **The Company** may **Deenergise** the **User's Equipment** forthwith following

completion of the **Dispute Resolution Procedure** and final determination of the dispute in **The Company's** favour.

- 5.9.5 If a breach of the nature referred to in Paragraph 5.9.4 continues to the extent that it places or seriously threatens to place in the immediate future **The Company** in breach of the **Transmission Licence** and/or places or seriously threatens to place in the immediate future any **Relevant Transmission Licensee** in breach of its transmission licence, **The Company** may **Deenergise the Non-Embedded Customer's Equipment** at the **Connection Site** upon the expiry of at least five (5) **Business Days** prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied.

5.10 RELEVANT INTERRUPTIONS

- 5.10.1 In the event of a **Relevant Interruption** where the **Affected User** has not otherwise received compensation under the **Balancing and Settlement Code** **The Company** shall be liable to pay the **Affected User** upon request the **Interruption Payment** for the **Interruption Period**.
- 5.10.2 The **Interruption Payment** shall be paid by **The Company** to the **Affected User** within 28 days of the date of agreement as to the amount of the **Interruption Payment**.
- 5.10.3 The **Affected User** will take all reasonable steps to minimise the effect (and therefore the amount of the **Interruption Payment** sought as a consequence) of the **Relevant Interruption** on the operation of its business.
- 5.10.4 **The Company** shall as soon as reasonably practicable after the end of the **Interruption Period** notify the **Affected User** where the **Relevant Interruption** was in accordance with an **Emergency Deenergisation Instruction**.

END OF SECTION 5

**Proposed Amendments to CUSC Section 6 under
CAP 168**

Section 6 Paragraph 6.30.1 shall be amended as follows

6.30.1 Decrease in Transmission Entry Capacity after receipt of Operational Notification

6.30.1.1 Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site or site of connection** upon giving **The Company** ~~2~~ **Financial Years** notice, provided that **The Company** will accept, subject to payment of the **In Lieu of Notice Charge**, a lesser notice period of not less than **5 Business Days** prior to the start of the **Financial Year** in which the decrease is to take effect.

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Deleted: prior to 30 March in any **Financial Year**

6.30.1.2 **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.

6.30.1.3 The decrease in the **Transmission Entry Capacity** shall take effect on the expiry of the notice period.

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6.30.1.4 Where a notice period less than the **TEC Reduction Notice Period** is given the **User** shall be liable to pay to **The Company** the **In Lieu of Notice Charge** which shall be payable in accordance with **CUSC** Paragraph 6.6 as a charge payable other than monthly.

6.30.1.5 The **Transmission Entry Capacity** for the **Connection Site** or site of connection may be decreased by **The Company** as a result of the **TEC Utilisation Test Process** and upon such decrease taking effect the **User** shall be liable to pay to **The Company** the **In Lieu of Notice Charge** which shall be payable in accordance with **CUSC** Paragraph 6.6 as a charge payable other than monthly.

6.30.1.6 For the avoidance of doubt, notwithstanding a decrease in **Transmission Entry Capacity** within a **Financial Year** the **Transmission Network Use of System Charges** for that **Financial Year** will continue to be based on the **Transmission Entry Capacity** prior to such decrease.

The following shall be added as a new paragraph at Section 6 Paragraph 6.37

6.37 TEC Utilisation Test Process

The Company and each **User** in the category of a **Power Station** or **Interconnector Owner** directly connected to the **GB Transmission System** and an **Embedded Power Station** which is party to a **Bilateral Embedded Generation Agreement** shall undertake their respective obligations under the **TEC Utilisation Test Process**.

General - Renumbering

Please note that as a result of proposed amendments introduced by CAP 161, 162, 163, 165 and 166 the above clause may be moved to a new appendix (Appendix 3 of CUSC Section 3) prior to CAP 168 being implemented in which case above Clause will need to be relocated and renumbered accordingly.

CUSC Section 6 Appendix 3

Transmission Entry Capacity–TEC Utilisation Test Process

- 3.1 For each **User** that is connected to and/or using the **GB Transmission System** by means of **Transmission Entry Capacity** **The Company** shall be entitled to monitor the **Output** of the **Power Station Generating Units**.
- 3.2 As soon as practicable after the 1 April in each **Financial Year** (starting from the **First Test Year**) **The Company** shall assess the **Historic Output Data** in respect of each **User's Power Station**.
- 3.3 In the event that the **Historic Output Data** does not demonstrate that the **User** has itself utilised the **Transmission Entry Capacity** relating to the **Power Station** in either (a) the previous two consecutive **Financial Years** or (b) three out of the previous five **Financial Years** or (c) the **User** has not, within such **Financial Years**, otherwise made such **Transmission Entry Capacity** available to other **User's** **The Company** shall notify the **User** in writing to this effect. This notice shall also propose the MW level of **Transmission Entry Capacity** that **The Company** considers reflects the maximum MW figure demonstrated by the **Historic Output Data** in respect of the **Power Station Generating Units**.
- 3.4 The **User** shall within 15 **Business Days** of receipt of the notice given by **The Company** under Clause 3.3 either;
 - (a) provide a response to **The Company**:
 - (i) providing a rationale for the **Historic Output Data** by reference to exceptional factors such as long term outages; or
 - (ii) advising of future changes to the **Plant** and **Apparatus** at the **Power Station** (such as remedial works or new investment) which would enable the **User** to utilise its **Transmission Entry Capacity** in future years, or
 - (b) advise **The Company** that it accepts the position and give notice to **The Company** reducing its **Transmission Entry Capacity** to the MW level in the notice (or such other MW level as **The Company** and the **User** agree) effective from the next following 1 April.
- 3.5 Should **The Company** not be satisfied with the **User's** response under Clause 3.4(a) above **The Company** shall advise the **User** accordingly setting out its reasons and the **User** shall, where requested to do so by

The Company, obtain at the **User's** cost a report from an independent engineer in support of the **User's** response under Clause 3.4(a).

3.6 Where:

- (a) notwithstanding the **User's** response and the report of the independent engineer (if obtained) **The Company** remains of the view that there is no justification for the difference between the **Historic Output Data** and the level of **Transmission Entry Capacity** utilised by the **User** or future changes to **Plant and Apparatus** to enable the **User** to utilise the **Transmission Entry Capacity**; or
- (b) the **User** has not made any response to **The Company's** notice under Clause 3.3; or
- (c) the **User** having responded in accordance with Clause 3.4(b) has not given notice reducing its **Transmission Entry Capacity**,

The Company shall be entitled, subject to Clause 3.7, to amend Appendix C of the **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** to reflect the MW level of **Transmission Entry Capacity** which reflects the maximum MW figure demonstrated by the **Historic Output Data**.

3.7 Where **The Company** wishes to amend Appendix C as provided for in Clause 3.6 it shall notify the **User** in writing and where the **User** disagrees, shall, subject to the agreement of the **Authority**, refer the matter to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**. The withdrawal or reduction and amendments to Appendix C and the date they take effect shall be as set out in the **Authority's** determination.

**Proposed Amendments to CUSC Section 9 under
CAP 168**

Add the following new paragraph as 9.10.9 of Section 9 Part 1

9.10.9 Under-Use and Over-Use of Transmission Entry Capacity

CUSC Section 3 Part IV (Paragraphs 3.28 to 3.30 inclusive) shall apply to the **User** as if set out herein in full.

CUSC - SECTION 10
TRANSITION ISSUES

CONTENTS

Deleted: Not used, removed on 15th February 2007, dedicated to Transitional Issues

- Part 1 **Not Used**
- Part 3 **Not Used**
- Part 3 **Not Used**
- Part 4 **Not Used**
- Part 5 **CUSC Amendment Proposal 168**

Part 5

10.1 INTRODUCTION

10.1.1 This Section 10 deals with issues arising out of the transition associated with the approval and implementation of **CUSC Amendment Proposal 168** (Under Use and reallocation of TEC).

10.1.2 The **Access Amendment Proposal** affects **User's** in the categories of **Power Stations** directly connected to the **GB Transmission System**, **Embedded Generators** with a **Bilateral Embedded Generation Agreement** and **Interconnector Owners** and references to **User** or **Applicant** in this Section 10 shall be construed accordingly.

10.1.3 In this Section 10:

- (a) the term "**Access Amendment Proposal**", shall mean **CUSC Amendment Proposal 168** (Under Use and reallocation of TEC);
- (b) the term "**Applicants**"; shall mean **Users** (or prospective **Users**) who apply during the **LCN Transition Period** for connection to and/or use of the **GB Transmission System**;
- (c) the term "**Bilateral Agreement Amendments**", shall mean the new Exhibit 3 (Construction Agreement) proposed by the **Access Amendment Proposal**;
- (d) the term "**Existing Final Sums/User Commitment Arrangements**" shall mean the existing provisions for payment on termination as set out in a **New Construction Agreement**;
- (e) the term "**168 Implementation Date**" shall mean the **Implementation Date** for the **Access Amendment Proposal** (unless it is provided to be different in relation to a particular provision),
- (f) the term "**Transition Period**", means the period from the **Relevant Date** and ending on and including the day before the **168 Implementation Date** (unless it is provided to be different in relation to a particular provision) and is the period with which this Section 10 deals;

- (g) the term “**New Construction Agreements**”, shall mean a **Construction Agreement** pursuant to which the **User** is not yet connected to and/or using the **GB Transmission System** at the **Relevant Date**;
- (h) the term “**Outstanding Applications**”, shall mean an offer yet to be made to a **User** or prospective **User** of a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or any agreement to vary the same and the associated **Construction Agreement** at the **Relevant Date** but where the application was made prior to the **Relevant Date**;
- (i) the term “**Outstanding Offers**”, shall mean an offer to a **User** or prospective **User** of a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or any agreement to vary the same and the associated **Construction Agreement** which has not been accepted at the **Relevant Date** but is still capable of being accepted; and
- (j) the term “**Relevant Date**” means the day on which the **Access Amendment Proposal** becomes an **Approved Amendment**.

10.1.4 Without prejudice to any specific provision under this Section 10 as to the time within which or the manner in which **The Company** or a **User** should perform its obligations under this Section 10, where **The Company** or a **User** is required to take any step or measure under this Section 10, such requirement shall be construed as including any obligation to:

- (a) take such step or measure as quickly as reasonably practicable; and
- (b) do such associated or ancillary things as may be necessary to complete such step or measure as quickly as reasonably practicable.

10.2 **New Construction Agreements**

10.2.1 Each **User** shall advise **The Company** as soon as practicable and in any event within one month (or such longer period as **The Company** and that **User** agree) of the **Relevant Date** of those **New Construction Agreements**; where it wants to

continue on the **Existing Final Sums/User Commitment Arrangements**.

10.2.2 where such notice is given then notwithstanding the implementation of the **Amendment Proposal** from the **168 Implementation Date** the arrangements on termination of the **Construction Agreement** or a reduction in **Transmission Entry Capacity** prior to the **Completion Date** as defined in the **Construction Agreement** shall be as set out between **The Company** and the **User** under the terms of the relevant **New Construction Agreement**.

10.2.3 Except where such notice has been given each **New Construction Agreement** shall be read and construed, with effect from the **168 Implementation Date**, such that:

- (a) the defined terms within it, and the effect of those defined terms, shall, in place of their respective meanings immediately before the **168 Implementation Date**, be deemed to have the meanings they would have had if those agreements had been entered into after the **168 Implementation Date**; and
- (b) the relevant Clauses and Appendices within the **Construction Agreement** are amended in the manner provided for (and in the case of the existing **Construction Agreement**, so that it is consistent with the new Exhibit) in the **Bilateral Agreement Amendments**.

10.2.3 Each **User** acknowledges and agrees that the provisions of Paragraph 10.2.2 shall apply notwithstanding the provisions in the **Existing CUSC Agreements** as to variation of those agreements.

10.3 Outstanding Applications

10.3.1 From the **Relevant Date** **The Company** will make the offer on the same basis as if such **Outstanding Application** had been made after the **168 Implementation Date** and consistent with the and **Bilateral Agreement Amendments** and to the extent practicable within the original timescales.

10.4 Outstanding Offers

10.4.1 From the **Relevant Date The Company** shall as soon as practicable make such amendments to the **Outstanding Offers** as necessary to make such **Outstanding Offer** consistent with the form and contents of **Offers** made after the **168Implementation Date**.

10.5 Applicants

10.5.1 From the **Relevant Date The Company** shall prepare the **Offers** in a form and manner consistent with the **Application and Offer Amendments and Bilateral Agreement Amendments**.

END OF SECTION 10

CAP 168 CUSC Sec 11

Proposed New Defined Terms

| | |
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| “Actual TEC Output MW” | the MW from the Settlement Period within the TEC Week with the highest MW Output (as averaged over the Settlement Period); |
| “Cancellation Period(s)” | the period(s) as set out in a User’s Construction Agreement by reference to which the Pre Commissioning Cancellation Charge payable is identified. |
| “CAP 168 Transition Period” | as defined in CUSC Section 10; |
| “Capacity Reduction Charge” | the charge payable by a User on a reduction in TEC during the construction period as calculated in accordance with Part Two of the User Commitment Principles ; |
| “Disconnection Notice Period” | written notice of not less than 2 Financial Years of a User’s intention to Disconnect ; |
| “First FS Security Period” | means the period from and including the day of signing of the Construction Agreement until the next following 31 st March or 30 th September (whichever shall first occur); |
| “First PC Security Period” | means the period from and including the day of signing of the Construction Agreement until the end of the first Cancellation Period ; |
| “First Test Year” | the 1 April being a) for Power Stations Commissioned at the Implementation Date for Proposed Amendment 168 two Financial Years from such date and (b) for all other Power Stations the date two Financial Years from the Financial Year in which the Power Station is Commissioned ; |
| “FS Security Period” | means the First FS Security Period and the Subsequent FS Security Periods ; |
| “FS Security Period End Date” | means the Completion Date as defined in a User’s Construction Agreement ; |
| “Historic Output Data” | shall mean for each Power Station the aggregated highest MW Output of the Generating Units in a Settlement Period within up to the five Financial Years preceding the Financial Year in which the TEC Utilisation Test is to be undertaken; |
| “In Lieu of Notice Charge” | the charge calculated in accordance with CUSC Schedule 4 and payable by a User on a reduction in TEC or Disconnection other than after, as appropriate, the TEC Reduction Notice Period or Disconnection Notice Period ; |
| “Indicative TEC Estimates” | are the User’s estimates of the Weekly TEC MW for the three TEC Weeks following the TEC Notification Week ; |

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| “Over-Use” | where in any TEC Week the Actual TEC Output MW net of the Over Use Factors MW is more than the Weekly TEC MW ; |
| “Over-Use Capacity” | the difference in MW between (1) the Actual TEC Output MW net of the Over-Use Factors MW ; and (2) the Weekly TEC MW ; less the greater of 5MW or the MW that is 10% of TEC ; |
| “Over-Use Charge” | the charge as calculated in accordance with the Statement of the Use of System Charging Methodology in respect of a User’s Over-Use Capacity ; |
| “Over Use Factors MW” | the MW provided by the User to The Company through Balancing Services or Balancing Mechanism actions during the Settlement Period from which the Actual TEC Output MW is taken; |
| “PC Security Period End Date” | shall mean the Completion Date as defined in a User’s Construction Agreement ; |
| “PC Security Period” | means the relevant Cancellation Period ; |
| “Pre Commissioning Cancellation Amount” | that element of the Pre Commissioning Cancellation Charge payable in the event of termination of a Construction Agreement and associated Bilateral Connection Agreement or Bilateral Embedded Generation Agreement on or after the Trigger Date but before the Completion Date within such Construction Agreement as calculated in accordance with Part 1 of the User Commitment Principles and in relation to a particular User as defined in its Construction Agreement ; |
| “Pre Commissioning Cancellation Charge” | that charge payable in the event of termination of a Construction Agreement and associated Bilateral Connection Agreement or Bilateral Embedded Generation Agreement prior to the Completion Date within such Construction Agreement as calculated in accordance with Part 1 of the User Commitment Principles and in relation to a particular User as defined in its Construction Agreement ; |
| “Subsequent FS Security Period” | means each subsequent period of six calendar months commencing on the last day of the First FS Security Period and continuing until the Final Sums Security Period End Date ; |
| “Subsequent PC Security Period” | means each subsequent Cancellation Period commencing on the last day of the First FS Security Period and continuing until the PC Security Period End Date ; |
| “TEC Notification Week” | is the TEC Week 5 weeks ahead of the TEC Week in which the Weekly TEC Notification has to be given; |

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| “ TEC Reduction Notice Period ” | written notice of not less than 2 Financial Years of a User’s intention to decrease its TEC ; |
| “ TEC Utilisation Test ” | the test undertaken by The Company through the TEC Utilisation Test Utilisation Process ; |
| “ TEC Utilisation Test Process ” | the process as set out in CUSC Section 6 Appendix 3 |
| “ TEC Week ” | a week starting at 5.00hrs on a Monday and ending at 04.59 hrs on the following Monday; |
| “ Trigger Date ” | the date, on which the Pre Commissioning Cancellation Charge is calculated on the basis of the Pre Commissioning Cancellation Amount instead of the User Commitment Amount and which, in relation to a particular User , is as defined in its Construction Agreement ; |
| “ Under-Use ” | where in any TEC Week the Actual TEC Output MW net of the Under-Use Factors MW is less than the Weekly TEC MW ; |
| “ Under-Use Capacity ” | the difference in MW between (1) the Weekly TEC MW ; and (2) the Actual TEC Output MW net of the Under-Use Factors MW , less the greater of 5MW or the MW that is 10% of TEC ; |
| “ Under-Use Charge ” | the charge as calculated in accordance with the Statement of the Use of System Charging Methodology in respect of a User’s Under-Use Capacity ; |
| “ Under-Use Factors MW ” | the MW provided by the User to The Company through Balancing Services or Balancing Mechanism actions during the Settlement Period from which the Actual TEC Output MW is taken and/or any MW made available by the User for use by other Users during such Settlement Period ; |
| “ User Commitment Amount ” | that element of the Pre Commissioning Cancellation Charge payable in the event of termination of a Construction Agreement and associated Bilateral Connection Agreement or Bilateral Embedded Generation Agreement before the Trigger Date within such Construction Agreement as calculated in accordance with Part 1 of the User Commitment Principles and in relation to a particular User as defined in its Construction Agreement ; |
| “ User Commitment Principles ” | the principles applied by The Company in the application and calculation of a User’s Pre Commissioning Cancellation Charge and/or Capacity Reduction Charge and/or In Lieu of Notice Charge such principles being set out in CUSC Schedule 4; |
| “ Weekly TEC MW ” | the User’s highest aggregated MW Output from the Power Station for a Settlement Period in the TEC Notification Week ; |

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| "Weekly TEC Notification" | the notification by the User of the Weekly TEC MW ; |
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Proposed Amendments to Existing Defined Terms

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| Operational Notification ": | the notice of that name given to the User by The Company under Paragraphs 1.5.5 or 3.2.6 7 of the CUSC or under a Construction Agreement ; |
| Definitions of "Bi annual Estimate" and "Secured Amount Statement" | Amend to include reference to Schedule 4 |

SCHEDULE 2 EXHIBIT 3 PART [xxx]

INDICATIVE

DATED [] 200[1]

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)

and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

Proforma for Power Station or Interconnector Owner Directly Connected to the GB Transmission System and Embedded Power Stations which are the subject of a BEGA

CONTENTS

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| 3 | Delays |
| 4 | Commissioning Programme and Liquidated Damages |
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CUSC v1.5

Appendix L Independent Engineer

Appendix N Third Party Works

Appendix R Pre Commissioning Cancellation Charge

[this will set out the Pre Commissioning Cancellation Charges as calculated in accordance with User Commitment Principles, the profile of the charge and from that the cancellation (and so security) periods.]

THIS CONSTRUCTION AGREEMENT is made on the [] day of [] 200[1]

BETWEEN

- (1) National Grid Electricity Transmission plc a company registered in England with number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] ("**User**", which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **GB Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **GB Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the Bilateral Connection Agreement have the same meanings, interpretations or constructions in this **Construction Agreement**.

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| “Bilateral Connection Agreement” | the Bilateral Connection Agreement entered into between the parties on even date herewith. |
| “Backstop Date” | the date specified as such in the Construction Programme . |
| “Bilateral Embedded Generation Agreement” | the Bilateral Embedded Generation Agreement entered into between the parties on even date herewith. |
| Cancellation Period(s)” | the [periods] [Financial Years] identified within the Cancellation Charge profile and specified in Appendix R. |
| “Capacity Reduction Charge” | the sum calculated in accordance with the User Commitment Principles payable by the User under Clause 2.17 and Clause 7 in respect of a reduction in Transmission Entry Capacity prior to the Completion Date . |
| “Charging Date” | the date upon which the Construction Works are first Commissioned and available for use by the User or if the Independent Engineer before, on or after the Commissioning Programme Commencement Date shall have certified in writing that the Transmission Connection Assets , are completed to a stage where The Company could commence commissioning and by such date the User’s Works shall not have been so certified then the date falling [] days after the date of such certification, provided that the Transmission Reinforcement Works are Commissioned and Seven Year Statement Works are completed as at that date. In the event that the Transmission Reinforcement Works are not so Commissioned and/or the Seven Year Statement Works are not so completed the Charging Date shall be the date on which they are Commissioned and/or completed as |

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| | appropriate. |
| “Commissioning Programme Commencement Date” | the date specified in the Construction Programme for the commencement of the Commissioning Programme or any substituted date fixed under the terms of this Construction Agreement |
| “Commissioning Programme” | the sequence of operations/tests necessary to connect the User’s Works and the Transmission Connection Asset Works/Transmission Reinforcement Works to the GB Transmission System for the purpose of making the User’s Works available for operation to be determined pursuant to Clause 2.10 of this Construction Agreement . |
| “Completion Date” | [] or such other date as may be agreed in terms of this Construction Agreement . |
| “Connected Planning Data” | data required pursuant to the Planning Code which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items. |
| “Consents” | in relation to any Works :- (a) all such planning and other statutory consents; and (b) all wayleaves, easements, rights over or interests in land or any other consent; or (c) permission of any kind as shall be necessary for the construction of the Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Works when completed. |
| “Construction Programme” | the agreed programme for the Works to be carried out by The Company and the |

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| | <p>User set out in detail in Appendix [J] to this Construction Agreement or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this Construction Agreement.</p> |
| "Construction Site" | the site where the Transmission Connection Asset Works are being undertaken by or on behalf of The Company ; |
| "Construction Works" | the Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works but excluding for the avoidance of doubt any Third Party Works . |
| "Dispute Resolution Procedure" | the procedure for referral to arbitration set out in Paragraph 7.4 of the CUSC . |
| "Event of Default" | any of the events set out in Clause 10 of this Construction Agreement as constituting an event of default. |
| "Final Sums" | the amount payable by the User on termination of this Construction Agreement being the aggregate from time to time and for the time being of:- <ol style="list-style-type: none">(1) all The Company Engineering Charges arisen prior to the date of termination;(2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by The Company in respect of any part of the One Off Works carried out prior to the date of termination of this Construction Agreement; |

- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **One Off Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (4) fees, expenses and costs due in accordance with Clause 2.4.1; and
- (5) interest on any such amounts from the date they were paid by **The Company** to the date of **The Company's** invoice at 2% over **Base Rate** from time to time and for the time being.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

“Independent Engineer”

the engineer specified in Appendix L to this **Construction Agreement**. Provided that:-

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

then such engineer as the President of the Institution of Engineering and

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| | Technology shall, on the application of either party, nominate shall be the Independent Engineer . |
| “Liquidated Damages” | the sums specified in or calculated pursuant to Appendix K to this Construction Agreement . |
| “Notice of Intent” | the notice issued by The Company pursuant to Clause 7.4.4 |
| “Notice of Reduction” | the notice issued by The Company pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised Transmission Entry Capacity . |
| “One Off Works” | the works described in Appendix B1 to this Construction Agreement . |
| “Pre Commissioning Cancellation Amount” | the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement on or after the Trigger Date such sum being that specified in the Table in Appendix R by reference to the Cancellation Period in which this Construction Agreement is terminated. |
| “Pre Commissioning Cancellation Charge” | the User Commitment Amount or Pre Commissioning Cancellation Amount as appropriate. |
| “Preliminary Request” | the request issued by The Company pursuant to Clause 7.4.1. |
| “Reduction Fee” | the fee payable by the User to The Company in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the Charging Statements as payable on a payment of actual costs basis in respect of a Modification Application . |
| “Seven Year Statement Works” | the works set out in Table B2 of the statement prepared by The Company |

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| | <p>pursuant to Standard Condition C11 of the Transmission Licence and issued by The Company in [] which in The Company's reasonable opinion are required to be completed before the Completion Date to ensure that the GB Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee's transmission licence prior to the Connection of the User's Equipment in terms of Clause 7.1 [or 7.2] of this Construction Agreement.</p> |
| "Third Party Works" | <p>the works to be undertaken on assets belonging to a party other than The Company or the User to enable The Company to provide or as a consequence of the connection to and/or use of the GB Transmission System by the User as specified in Appendix N.</p> |
| "Transmission Connection Assets" | <p>the assets specified in Appendix A to the Bilateral Connection Agreement.</p> |
| "Transmission Connection Asset Works" | <p>the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement.</p> |
| "Transmission Reinforcement Works" | <p>those works other than the Transmission Connection Asset Works, Seven Year Statement Works and One Off Works, which in the reasonable opinion of The Company are necessary to extend or reinforce the GB Transmission System in relation to and prior to the operation of the User's Equipment at the Connection Site for the purposes of its Transmission Entry Capacity and which are specified in Appendix H to this Construction Agreement.</p> |

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| “Trigger Date” | the date specified as such in Appendix R as it may be amended from time to time under the provisions of this Construction Agreement . |
| “User Commitment Amount” | the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement prior to the Trigger Date such sum being that specified in the Table in Appendix R by reference to the Cancellation Period in which this Construction Agreement is terminated. |
| “User Commitment Principles” | the methodology relating to the application and calculation of the Pre Commissioning Cancellation Charge and Capacity Reduction Charge set out in CUSC Schedule 4 as it may be amended from time to time. |
| “User’s Works” | those works necessary for installation of the User’s Equipment which are specified in Appendix I to this Construction Agreement . |
| “Works” | the Construction Works and the User’s Works . |

2. CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the

User shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.

2.3 The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates; or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and Appendix R to and all dates specified in this **Construction Agreement** and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required.

2.3.3 The **User** shall be regularly updated by **The Company** in writing or by such other means as the parties may agree as to progress made by **The Company** from time to time in the obtaining of relevant **Consents** pursuant to its obligations under Clause 2.2 or 2.3 of this **Construction Agreement**.

2.4.1 The **User** shall be liable to pay to **The Company** as part of any **Final Sums** due:-

- (a) all **The Company's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** in respect of the **One off Works**.

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.

2.4.2 Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.

2.5 The **User** shall have the right to terminate this **Construction Agreement** at any time upon giving not less than 7 (seven) days notice in writing to **The Company**. Upon such termination the provisions of Clause 11 shall apply.

2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement**. Upon such termination the provisions of Clause 11 shall apply.

2.7 Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. Each party shall deliver

to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.

- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendix R hereto and Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.

- 2.12 [The **User** shall apply to the Secretary of State for the Department of Energy and Climate Change as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for the Department of Energy and Climate Change shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]
- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between **The Company** and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between **The Company** and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in and Appendix R to this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 2007 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.]
- 2.16 **Third Party Works**
- 2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales

specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

- 2.16.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** and as a consequence Appendix R as necessary to reflect this.
- 2.16.3 Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the “**First User(s)**”) as a consequence of **Modifications** to the **GB Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.
- 2.16.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices R hereto and A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.
- 2.17 If at anytime prior to the **Completion Date** the **User** makes a **Modification Application** to reduce it’s **Transmission Entry Capacity** then on acceptance by the **User** of the resulting **Modification Offer** the **User** shall forthwith be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company’s** invoice in respect thereof.

3. DELAYS

- 3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.
- 3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate and The Company shall be entitled to amend Appendix R as necessary to reflect this.

4. COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

- 4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.
- 4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.
- 4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.
- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the

Commissioning Programme Commencement Date. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.

- 4.5 **Liquidated Damages** payable under Clause 4.4 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.6 The payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.7 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by the **Backstop Date** to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User**. Upon such termination the provisions of Clause 11 shall apply. .

5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.

- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
 - 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
 - 5.4.2 written confirmation as required under CC.5.2.1(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];
 - 5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.
- 5.5 If directly connected to the **GB Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.
- 5.6 If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **GB Transmission System** together with **Connected Planning Data** and a report certifying to

The Company that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

6. INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the **Independent Engineer** with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

- 7.1 If directly connected to the **GB Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement**

Works shall be **Commissioned** and (2) the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.

7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the **Transmission Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the [New] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **GB Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.

7.3 Not Used

7.4 **Transmission Entry Capacity Reduction**

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.

7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will

not reasonably be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .

- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement**

as it requires as a result of the reduction in the **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.

7.4.10 On the date that the **Notice of Reduction** takes effect the **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company's** invoice therefor.

8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1 to F5 to the **Bilateral Connection Agreement**.

9. SECURITY REQUIREMENTS and FINAL SUMS RECONCILIATION

9.1 Security

The **User** shall provide security to **The Company** in accordance with **CUSC** Schedule 4 in respect of the **User's** obligations to pay the **Final Sums** and **Pre Commissioning Cancellation Charge** to **The Company** on termination of this **Construction Agreement**.

9.2 Final Sums Reconciliation

9.2.1 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish **the User** with a statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and

- (b) by written notice to **the User** inform **the User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

9.2.2 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9.2.3 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a

willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

- 9.2.4 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

10. EVENT OF DEFAULT

Alternate provisions apply depending whether or not the **User** does (10A) or does not (10B) meet **The Company's** required credit rating on signing this **Construction Agreement**.

10A. Event of Default

Any of the following events shall constitute an **Event of Default**:-

- 10A.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, pursuant to this **Construction Agreement** and **CUSC** Schedule 4.
- 10A.2 If having provided security satisfactory to **The Company** pursuant to pursuant to this **Construction Agreement** and **CUSC** Schedule 4.

- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by **CUSC** Schedule 4 or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the User shall otherwise be in breach of any of its obligations in respect of security under to this **Construction Agreement** and **CUSC** Schedule 4;
- (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** and **CUSC** Schedule 4 takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;
- (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** and **CUSC** Schedule 4 fails to pay to **The Company** any sum demanded pursuant thereto.

10A.3 If

- (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or
- (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10A is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable

prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of this **Construction Agreement** and which arise under this **Construction Agreement**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with this **Construction Agreement** and **CUSC** Schedule 4.

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10A.3 the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

10A.4 Where any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring it shall be an **Event of Default** for the purposes of Clause 11 of this **Construction Agreement**.

10B **Event of Default**

10B.1 If

- (i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10B is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (ii) there is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for

concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to **The Company** within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;

(iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in either (i) or (ii) or (iii) the **User** fails:-

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** in favour of **The Company** and **Valid** at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10B.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in

paragraph (i) and/or (ii) and/or (iii) in this Clause 10B.1 subsequently occurring.

10B.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under this **Construction Agreement** and **CUSC** Schedule 4 or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under this **Construction Agreement** and **CUSC** Schedule 4.

10B.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.

10B.4 If any party who may at any time be providing or holding security in favour of **The Company** in respect of this **Construction Agreement** pursuant to this **Construction Agreement** and **CUSC** Schedule 4 fails to pay **The Company** any sum demanded in any **Notice of Drawing** pursuant thereto.

10B.5 Where any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring it shall be an **Event of Default** for the purposes of Clause 11 of this **Construction Agreement**.

10A.4/

10B.6 Once an **Event of Default** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and the provisions of Clause 11 shall apply:

11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

- (a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and

- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.
- 11.3 The **User** shall where this **Construction Agreement** terminates prior to the **[Charging] [Completion Date]** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company**:-
- (1) the **Pre Commissioning Cancellation Charge**; and
 - (2) **Final Sums** and on such termination shall be liable to pay a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**,

such payments in each case to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof and subject to adjustment in respect of **The Company's** estimate of **Final Sums** in accordance with Clause 9.2.

12. TERM

- 12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 2.16, 4.8 or 10 hereof.
- 12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the provisions of Clause 11 shall apply.
- 12.3 The associated **[Bilateral Connection Agreement or Agreement to Vary the Bilateral Connection Agreement]** will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.
- 12.4 Any provisions for payment shall survive termination of this **Construction Agreement**.

13. CUSC

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.24 (Counterparts), 6.25 (Governing Law), 6.26

(Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

Except as specifically provided for in this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

15. VARIATIONS

15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, 2.11, 2.13, 2.16 and 7.4 and Paragraph 6.9 of the **CUSC**.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity Transmission)
plc)

SIGNED BY)
[name])
for and on behalf of)
[User])

CUSC v1.5

**APPENDIX [B]
[Part 1]
ONE OFF WORKS**

CUSC v1.5

APPENDIX [G]
TRANSMISSION CONNECTION ASSET WORKS

CUSC v1.5

APPENDIX [H]
TRANSMISSION REINFORCEMENT WORKS

CUSC v1.5

**APPENDIX [I]
USER'S WORKS**

CUSC v1.5

APPENDIX [J]
CONSTRUCTION PROGRAMME

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

The amount of Liquidated Damages payable by The Company to the User pursuant to this Construction Agreement shall be:

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXX.

APPENDIX [L]

INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

CUSC v1.5

1.

APPENDIX [N]
THIRD PARTY WORKS

CUSC v1.5

APPENDIX [R]
PRE COMMISSIONING CANCELLATION CHARGE AND PROFILE

END OF SCHEDULE 2 EXHIBIT 3 PART [X]

SCHEDULE 4

USER COMMITMENT PRINCIPLES

Introduction

The purpose of this Schedule 4 is to specify the principles and set out the methodology used to calculate the **Pre Commissioning Cancellation Charge** (PART ONE) and **Capacity Reduction Charge** (PART TWO) and the **In Lieu of Notice Charge** (PART THREE) payable by **Users** in the categories of **Power Stations** or **Interconnector Owners** directly connected to the **GB Transmission System** who are parties to a **Bilateral Connection Agreement** with **The Company** and **Users** in the category of **Embedded Power Stations** who are parties to a **Bilateral Embedded Generation Agreement** with **The Company** and reference to **User** in this section shall be interpreted accordingly.

It also sets out in PART FOUR and PART FIVE the requirements and arrangements for security in respect of the **Pre Commissioning Cancellation Charge** and **Final Sums** for the **One Off Charge**.

For the avoidance of doubt this schedule does not apply to **Users** other than those described above.

PART ONE

1 PRE COMMISSIONING CANCELLATION CHARGE

1.1 Where a **Construction Agreement** and/or a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** between a **User** and **The Company** is terminated prior to the **Completion Date** (as defined in a **Construction Agreement**) such **User** shall be liable to pay to **The Company** the **Pre Commissioning Cancellation Charge**.

Please note for information, that such **User** shall on termination of a **Construction Agreement** prior to the **Completion Date** (as defined in such **Construction Agreement**) be liable, in addition to the **Pre Commissioning Cancellation Charge**, for **Final Sums** (as defined in its **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

1.2 The **Pre Commissioning Cancellation Charge** varies throughout the term of the **User's Construction Agreement** and **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement**.

- 1.3 The liabilities and levels of security required from a **User** in respect of the **Pre Commissioning Cancellation Charge** shall be calculated in accordance with this Schedule 4 Paragraph 2 and detailed in that **User's Construction Agreement**.
- 1.4 This Schedule 4 also sets out the types of security required
- 1.5 Value Added Tax will be payable on any **Pre Commissioning Cancellation Charge**.

2 PRE COMMISSIONING CANCELLATION CHARGE

Completion Date and Trigger Date

- 2.1 In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this will identify dates in the **Construction Agreement** as the **Completion Date** for the works and the **Trigger Date**.
- 2.2 Where there are no **Consents** required for the **Construction Works** the **Trigger Date** will be the date four calendar years prior to the **Completion Date** or the date of the **Construction Agreement** if this is less than four calendar years prior to the **Completion Date**.
- 2.3 Where **Consents** are required for the **Construction Works** the **Trigger Date** will be a date no later than four calendar years prior to the **Completion Date** or the date by which the **Consents** are expected.
- 2.4 Using the above principles **The Company** will identify a **Trigger Date** and a profile of the **Pre Commissioning Cancellation Charge** showing the **Pre Commissioning Cancellation Charge** due by reference to termination of the **Construction Agreement** within specified periods (the "**Cancellation Periods**"). This profile will assume a start on the last day that a **User** could accept the **Offer** and will be set out in the **Construction Agreement**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

- 2.6 Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Pre Commissioning Cancellation Charge**.
- 2.7 Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Pre Commissioning Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Pre Commissioning Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12 month periods from the new **Completion Date**.
- (ii) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Pre Commissioning Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.

2.8 Where such change is as a result of the **User's** request a revised **Pre Commissioning Cancellation Charge** profile will be issued by the **Company** to the **User** but notwithstanding any change in the **Construction Works** or **Completion Date**:

- (i) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised **Pre Commissioning Cancellation Charge** profile the revised **Construction Programme**; or
- (ii) The **Pre Commissioning Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

Transmission Network Use of System Tariffs

2.9 Where any **Pre Commissioning Cancellation Charges** are calculated by reference to TNUoS tariffs these tariffs will be calculated and fixed as the TNUoS tariff as on the last day that the offer for such **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** and any associated **Construction Agreement** could have been accepted. If such a tariff is not currently published, then the appropriate tariff will be calculated by **The Company** as part of the application process, in accordance with the **Statement of the Use of System Charging Methodology**.

Pre Commissioning Cancellation Charge

2.10 This is a **User's** liability on termination of a **Construction Agreement** prior to the **Completion Date**.

- 2.11 This in turn is different depending on whether the **Construction Agreement** is terminated before (the “**User Commitment Amount**”) or on or after (the “**Pre Commissioning Cancellation Amount**”) the **Trigger Date**.

User Commitment Amount

- 2.12 Should a **User** terminate its **Construction Agreement** before the **Trigger Date** it shall be liable to pay the **User Commitment Amount** calculated as follows:

User Commitment Amount = the lower of (TEC x UCA_t) or the sum equal to 25% of the Pre Commissioning Cancellation Amount

Where:

- *TEC* expressed in kW.
- *UCA_t* which varies according to the number of full years from the date of the Construction Agreement:
 - In the first year (i.e. t=1) $UCA_t = \text{Min} (\text{£}1/\text{kW}, TA \times 25\%)$,
 - where $TA = \text{Max} (0, (\text{GenTNUoS}_z \times X))$;
 - where *X* is a multiplier, initially taking the value three, although it may be appropriate that this be amended in subsequent transmission price control periods
 - Where t = 2, $UCA_t = \text{Min} (\text{£}2/\text{kW}, TA \times 25\%)$; and
 - Where $t \geq 3$, $UCA_t = \text{Min} (\text{£}3/\text{kW}, TA \times 25\%)$.

Pre Commissioning Cancellation Amount

- 2.13 Should a **User** terminate its **Construction Agreement** prior to the **Completion Date** but on or after its **Trigger Date** it shall be liable to pay the **Pre Commissioning Cancellation Amount** calculated as follows:

Pre Commissioning Cancellation Amount = TEC_r x CAM_t

Where:

- *TEC* expressed in kW.
- *CAM_t* which varies according to the number of full years from the Completion Date:
 - In the year prior to the Completion Date (t=0) $CAM = TA \times 100\%$,
 - where $TA = \text{Max} (0, (\text{GenTNUoS}_z \times X))$;
 - Where *X* is a multiplier, initially taking the value three although it may be appropriate that this be amended in subsequent transmission price control periods
 - Where t=-1, $CAM = TA \times 75\%$;
 - Where t=-2, $CAM = TA \times 50\%$; and
 - Where t=-3, $CAM = TA \times 25\%$.

PART TWO

1. CAPACITY REDUCTION CHARGE

Where **TEC** is decreased prior to the **Completion Date**, a **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** calculated as follows:

Capacity Reduction Charge Prior to the Trigger Date

- 1.1 In the event the **TEC** value in Appendix C of a **User's Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** is reduced prior to the **Trigger Date** by a **User** or as a result of a **Notice of Reduction** (as defined in the **Construction Agreement**) the **User** shall be liable to pay a **Capacity Reduction Charge** to **The Company** calculated as follows.

$$\text{Capacity Reduction Charge} = UCA_t \times (TEC - TEC_r)$$

- Where the UCA is calculated in accordance with Paragraph 2.13 above;
- TEC is the TEC figure (expressed in kW) stated in Appendix C to the Users Bilateral Agreement effective immediately prior to the requested reduction in TEC; and,
- TEC_r is the revised TEC figure (expressed in kW) following the TEC reduction

Capacity Reduction Charge on or after the Trigger Date but before the Completion Date

- 1.2 In the event the **TEC** value in Appendix C of a **User's Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** is reduced by a **User** or as a result of a **Notice of Reduction** (as defined in the **Construction Agreement**) on or after the **Trigger Date** but prior to the **Completion Date** the **User** shall be liable to pay a **Capacity Reduction Charge** to **The Company** calculated as follows.

Capacity Reduction Charge =

$$(CAM_t \times (TEC - TEC_r))$$

- Where CAM_t is calculated in accordance with paragraph 2.12(a) above.
 - TEC is the TEC figure (expressed in kW) stated in Appendix C to the Users Bilateral Connection Agreement or effective immediately prior to the requested reduction in TEC
 - TEC_r is the revised TEC figure (expressed in kW) following the TEC reduction
- 1.3 Following a reduction in **TEC**, and after payment of the **Capacity Reduction Charge**, **The Company** shall adjust the **Pre Commissioning Cancellation Charge** liabilities and associated security obligations to reflect the reduced **TEC**.

PART THREE

1. IN LIEU OF NOTICE CHARGE

- 1.1 In the event that the **TEC** value in Appendix C of a **User's Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** is reduced on or after the **Completion Date** by a **User** and such reduction is to take effect earlier than the **TEC Reduction Notice Period** the **User** shall be liable to pay an **In Lieu of Notice Charge** to **The Company** calculated as follows.

In Lieu of Notice Charge =

a sum equal to twice the difference between the Transmission Network Use of System Charges that would have been payable by the User by reference to the reduced TEC in the Financial Year in which the notice expires and the Transmission Network use of System Charges payable by the User in such Financial Year by reference to the TEC prior to its reduction.

- 1.2 In the event that on or after the **Completion Date** the **TEC** value in Appendix C of a **User's Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** is decreased pursuant to **The Company's** rights under **CUSC** Section 6 Appendix 3 or under the **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** the **User** shall be liable to pay an **In Lieu of Notice Charge** to **The Company** calculated as follows.

In Lieu of Notice Charge =

a sum equal to twice the difference between the Transmission Network Use of System Charges that would have been payable by the User by reference to the reduced TEC in the Financial Year in which the notice expires and the Transmission Network use of System Charges payable by the User in such Financial Year by reference to the TEC prior to its reduction.

- 1.3 Should a **User's Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** with **The Company** be terminated at any time on or after the **Completion Date** and such termination take effect earlier than the **Disconnection Notice Period** the **User** shall become liable to pay the **In Lieu of Notice Charge** calculated as follows.

In Lieu of Notice Charge = a sum equal to (a) the balance of the TNUOS Charges for the Financial Year in which termination occurs and (b) a sum equal to twice the Transmission Network Use of System Charges payable by the User in respect of the Financial Year in which the reduction in TEC takes effect

- 1.4 Valued added tax will be payable on any **In Lieu of Notice Charge**.
- 1.5 The charge shall be zero in negative generation charging zones and for the avoidance of doubt there will be no payment by **The Company** to the **User**.

PART FOUR

1. PRE COMMISSIONING CANCELLATION CHARGE CREDIT REQUIREMENTS

Where a **User** has a **Construction Agreement** it shall provide security for the **Pre Commissioning Cancellation Charge** in accordance with this Schedule 4 Part Four.

2. Each **User which has a **Construction Agreement** shall provide security in respect of each of its **Construction Agreement**:**

2.1 in the case of a **User** which meets **The Company Credit Rating** at the date of the **Construction Agreement** in accordance with Paragraph 3; and

2.2 in the case of a **User** which does not meet **The Company Credit Rating** at the date of the **Construction Agreement** or thereafter ceases to meet it, in accordance with Paragraph 4.

3. PROVISION OF SECURITY FOR PRE COMMISSIONING CANCELLATION CHARGE WHERE USER MEETS THE COMPANY CREDIT RATING

3.1 The **User** shall (a) as soon as possible after entering into a **Construction Agreement** and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the relevant **PC Security Period** until 28 days after the **PC Security Period End Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of no longer meeting **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain meeting **The Company Credit Rating** for at least 6 months 12 months.

3.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Paragraph 3.1 then **The Company** may require the **User** forthwith:

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

- (ii) to confirm to **The Company** that it shall provide the security referred to in Paragraph 3.4 below.

3.3 In the event of the **User**:

- (i) not meeting **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Paragraph 3.2(i) above an indicative long term private credit rating,

or if **The Company** becomes aware that:

- (iv) the **User** ceases to meet **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the User may not be able to maintain **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 3.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Paragraph 3.4.

3.4 The **User** shall within 21 days of the giving of a notice under Paragraph 3.3 or within 30 days of the **User** confirming to **The Company** under Paragraph 3.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** obligations to pay the **Pre Commissioning Cancellation Charge** arising in the event of, or which have arisen prior to, termination of this **Construction Agreement**. The security to be provided shall be in the amount of the **Pre Commissioning Cancellation Charge** as set out in the **Construction Agreement** for the relevant **PC Security Period**.

3.5 The form of security provided shall be of a type set out in Paragraph 5.

3.6 Until the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** provisions of Paragraph 4 shall apply in the Amending Agreement.

3.7 If the facts of circumstances giving rise to the obligation of the **User** to provide the security have ceased, then **The Company** shall release the security.

4. PROVISION OF SECURITY FOR THE PRE COMMISSIONING CANCELLATION CHARGE WHERE USER DOES NOT MEET OR CEASES TO MEET THE COMPANY CREDIT RATING

4.1 Each **User** hereby agrees that it shall at the start of the **First PC Security Period** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **PC Security End Date** (unless and until this **Construction Agreement** shall be terminated and the **Pre Commissioning Cancellation Charge** shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement) a security arrangement from time to time and for the time being as set out in Paragraph 5 to provide security for the **User's** obligation to pay the **Pre Commissioning Cancellation Charge** to **The Company** on **Termination** of the **Construction Agreement**

4.2 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

4.2.1 whether the amount as required at any time to be secured has been calculated in accordance with the **User Commitment Principles**; or

4.2.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

4.2.3 the lawfulness or otherwise of any termination or purported termination of the **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to this Schedule 4 and the **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute.

The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

- 4.3 If there shall be any dispute as mentioned in Paragraph 4.2 above the same shall, whether **The Company** shall have terminated the **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

5. **TIMINGS FOR AND TYPES OF SECURITY**

- 5.1 The **User's** obligation to pay the **Pre Commissioning Cancellation Charge** shall be secured by any one of the following:-

5.1.1 A **Performance Bond** or **Letter of Credit** from a **Qualified Bank** for the **Pre Commissioning Cancellation Charge** for a given **PC Security Period**, such **Performance Bond** or **Letter of Credit** to be **Valid** for at least that given **PC Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 5.2.3; or

5.1.2 A cash deposit in a **Bank Account** at least for the amount of the **Pre Commissioning Cancellation Charge** to be secured for a given **PC Security Period**, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 5.2.4; or

5.1.3 A **Performance Bond** from a **Qualified Company** for the amount of the for the **Pre Commissioning Cancellation Charge** to be secured for a given **PC Security Period**, such **Performance Bond** to be **Valid** for at least that **PC Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 5.2.3.

5.2. **GENERAL PROVISIONS**

5.2.1 Any **Notice of Drawing** to be delivered to Barclays Bank PLC or any other bank at which the **Bank Account** shall have been opened or a **Qualified Bank** or a **Qualified Company** may be delivered by hand, by post or by facsimile transmission.

- 5.2.2 If the **User** becomes aware that the bank issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, the **User** shall so notify **The Company** in writing as soon as it becomes so aware. If **The Company** becomes aware that the bank issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, **The Company** may notify the **User** to that effect in writing. Where the bank or the company so ceases to be either a **Qualified Bank** or a **Qualified Company** (as the case may be) as a consequence of **The Company** having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out **The Company's** reasons for having such doubt. The **User** shall within 21 days of the giving of such notice by **The Company** or the **User** whichever is the earlier provide a replacement **Performance Bond** and/or **Letter of Credit** from a **Qualified Bank** or **Qualified Company**, as the case may be, and/or provide a cash deposit in the required amount in a **Bank Account**. From the date the replacement **Performance Bond** or **Letter of Credit** or **Bank Account** cash deposit is effectively and unconditionally provided and **Valid**, **The Company** will consent in writing to the security which it replaces being released.
- 5.2.3 The following provisions shall govern the issuance, renewal and release of the **Performance Bond** or **Letter of Credit**:-
- 5.2.3.1 The **Performance Bond** or **Letter of Credit** shall be **Valid** initially for the **First PC Security Period**. Such **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Pre Commissioning Cancellation Charge** to be secured for that **PC Security Period**.
- 5.2.3.2 On a date which is at least 45 days (or if such day is not a **Business Day** then on the immediately preceding **Business Day**) before the start of each following **Subsequent PC Security Period** such **Performance Bond** or **Letter of Credit** shall be renewed so as to be **Valid** for not less than such **PC Security Period** and in the case of the last **PC Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the **PC Security Period End Date**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the amount of the **Pre Commissioning Cancellation Charge** to be secured during that **PC Security Period**.
- 5.2.4 The following provisions shall govern the maintenance of cash deposits in the **Bank Account**:-

5.2.4.1 The amount of the cash deposit to be maintained in the **Bank Account** shall be maintained from the start of the **First PC Security Period** at least to the end of the **First PC Security Period**. Such cash deposit shall be in the amount of the **Pre Commissioning Cancellation Charge** to be secured during that **First PC Security Period**.

5.2.4.2 If the amount of the **Pre Commissioning Cancellation Charge** to be secured from the start of each **Subsequent PC Security Period** is an amount greater than the amount then secured, the cash deposit in the **Bank Account** shall be increased to such greater amount on the date which is 45 days before the start of the given **PC Security Period**.

5.2.4.3 If the **Pre Commissioning Cancellation Charge** for a given **PC Security Period** is smaller than the amount then secured, the cash deposit in the **Bank Account** shall not be reduced to the amount so stated until the expiry of 7 days after the start of that given **FS Security Period** ("the **Release Date**").

5.2.4.4 The sum equal to the amount of reduction in the cash deposit in the **Bank Account** shall be paid by **The Company** to the **User** from the **Bank Account** on the **Release Date**.

5.2.4.5 Any interest accruing to the **Bank Account** shall be for the account of and belong to the **User** absolutely, and **The Company** agrees to take any steps required to be taken by it for the release from the **Bank Account** and payment to the **User** of such interest as soon as the same shall have been credited to the **Bank Account** and **The Company** shall have received notice of such credit.

5.3 Notwithstanding any provision aforesaid:-

5.3.1 The **User** may provide different securities to **The Company** at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the amount of the **Pre Commissioning Cancellation Charge** required to be secured for that **PC Security Period**.

5.3.2 The **User** may upon the expiry of at least 14 days prior written notice to **The Company**, substitute one type of security for another provided that unless **The Company** shall otherwise agree in writing such substituted security must be

Valid from the first day of the relevant **PC Security Period** and committed at least 45 days before this in the following manner:-

- (a) where a **Performance Bond** or a **Letter of Credit** is to substitute for other securities, it must be issued or given at least 45 days before the start of the **PC Security Period** to which it relates.
- (b) where a cash deposit in a **Bank Account** is to substitute for other securities, it must be deposited into the **Bank Account** at least 45 days before the start of the **PC Security Period** to which it relates.

5.3.3 Upon request by the **User** to **The Company**, securities substituted in the aforesaid manner shall, providing the substitute security shall be **Valid**, be released on the first day of the **PC Security Period** which the substitute security is securing. However, where the **Pre Commissioning Cancellation Charge** to be secured for any **PC Security Period** is less than the amount required to be secured in the preceding **PC Security Period**, the substituted security shall not be released until 7 days after the start of the **PC Security Period** that that substitute security is securing.

PART FIVE

FINAL SUMS CREDIT REQUIREMENTS

1. Where a **User** has a **Construction Agreement** it shall provide security for **Final Sums** in accordance with this Schedule 4 Part Five.

2. Each **User** which has a **Construction Agreement** shall provide security in respect of each of its **Construction Agreements**.

2.1 in the case of a **User** which meets **The Company Credit Rating** at the date of the **Construction Agreement** in accordance with Paragraph 3; and

2.2 in the case of a **User** which does not meet **The Company Credit Rating** at the date of the **Construction Agreement** or thereafter ceases to meet it, in accordance with Paragraph 4.

3. PROVISION OF SECURITY FOR FINAL SUMS WHERE USER MEETS THE COMPANY CREDIT RATING

3.1 The **User** shall (a) as soon as possible after entering into a **Construction Agreement** and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the relevant **FS Security Period** until 28 days after the **Completion Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of no longer meeting **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain meeting **The Company Credit Rating** for at least 6 months.

3.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Paragraph 3.1 then **The Company** may require the **User** forthwith:

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

- (ii) to confirm to **The Company** that it shall provide the security referred to in Paragraph 3.4 below.

3.3 In the event of the **User**:

- (i) not meeting **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Paragraph 3.2(i) above an indicative long term private credit rating,

or if **The Company** becomes aware that:

- (iv) the **User** ceases to meet **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 3.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Paragraph 3.4.

3.4 The **User** shall within 21 days of the giving of a notice under Paragraph 3.3 or within 30 days of the **User** confirming to **The Company** under Paragraph 3.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** obligation to pay the **Pre Commissioning Cancellation Charge** arising in the event of, or which have arisen prior to, termination of the **Construction Agreement**. The security to be provided shall be for an amount not greater than the **Final Sums** payable on termination and specified in writing by **The Company** to the **User** from time to time.

3.5 The form of security provided shall be of a type set out in Paragraph 5.

3.6 Until the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** provisions of Paragraph 4 shall apply in the Amending Agreement.

3.7 If the facts of circumstances giving rise to the obligation of the **User** to provide the security have ceased, then **The Company** shall release the security.

4. PROVISION OF SECURITY FOR FINAL SUMS WHERE USER DOES NOT MEET OR CEASES TO MEET THE COMPANY CREDIT RATING

4.1 Each **User** hereby agrees that it shall (a) forthwith upon signing the Construction Agreement provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **Completion Date** (unless and until the **Construction Agreement** shall be terminated and the **Final Sums** shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement) a security arrangement from time to time and for the time being as set out in Paragraph 5 to provide security for the **User's** obligation to pay **Final Sums** to **The Company** on termination of the **Construction Agreement**.

4.2 Final Sums: Provision of Bi-annual Estimate and Secured Amount Statement

4.2.1 **The Company** shall provide to the **User** with a **Bi-annual Estimate** showing the amounts of all payments required or which may be required to be made by the **User** to **The Company** in respect of **Final Sums** at the following times and in respect of the following periods:

(i) forthwith on the signing of the **Construction Agreement** in respect of the **First FS Security Period**; and

(ii) not less than 75 (seventy-five) days (or if such day is not a **Business Day** the next following **Business Day**) prior to each **Subsequent FS Security Period** until the **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid.

4.2.2 Such **Bi-annual Estimate** shall be accompanied by the **Secured Amount Statement** specifying the aggregate amount to be secured at the beginning of and throughout each **FS Security Period**.

4.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next

required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following **FS Security Period** nonetheless provide security in accordance with the provisions of this **Construction Agreement** in the same amount as the amount then in force in respect of the then current **FS Security Period**.

4.2.4 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for **Final Sums**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the sums due or which may become due or in respect of which the **User** has a liability to **The Company** for payment. **The Company** shall also be entitled to send the **User** further invoices for such sums not covered in previous invoices. The **User** shall pay **The Company** all sums so invoiced by **The Company** within 14 days of the date of **The Company's** invoice (s) therefor.

4.3 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

- 4.3.1 whether the amount as required at any time to be secured has been calculated in accordance with the **Construction Agreement**; or
- 4.3.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or
- 4.3.3 the lawfulness or otherwise of any termination or purported termination of the **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to this Schedule 4 and the **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

4.4 If there shall be any dispute as mentioned in Paragraph 4.3 above the same shall, whether **The Company** shall have terminated the **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Paragraph 4.3.1 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this paragraph 4.4 shall survive termination) and, in the case of Paragraphs 4.3.2 and 4.3.3 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

5. TIMINGS FOR AND TYPES OF SECURITY FOR FINAL SUMS

5.1 The **User's Payment** obligation to pay **Final Sums** shall be secured by any one of the following:-

5.1.1 A **Performance Bond** or **Letter of Credit** from a **Qualified Bank** for the **Final Sums** for a given **FS Security Period**, such **Performance Bond** or **Letter of Credit** to be **Valid** for at least that given **FS Security Period** as appropriate and to be renewed periodically where applicable in the manner stated in paragraph 5.2.3; or

5.1.2 A cash deposit in a **Bank Account** at least for the amount of the **Final Sums** to be secured for a given **FS Security Period** as appropriate, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 5.2.4; or

5.1.3 A **Performance Bond** from a **Qualified Company** for the amount of the for the **Final Sums** to be secured for a given **FS Security Period**, such **Performance Bond** to be **Valid** for at least that **FS Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 5.2.3.

5.2. GENERAL PROVISIONS

5.2.1 Any **Notice of Drawing** to be delivered to Barclays Bank PLC or any other bank at which the **Bank Account** shall have been opened or a **Qualified Bank** or a **Qualified Company** may be delivered by hand, by post or by facsimile transmission.

5.2.2 If the **User** becomes aware that the bank issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the

Performance Bond ceases to be a **Qualified Company**, the **User** shall so notify **The Company** in writing as soon as it becomes so aware. If **The Company** becomes aware that the bank issuing the **Performance Bond** or **Letter of Credit** ceases to be a **Qualified Bank** or that the company giving the **Performance Bond** ceases to be a **Qualified Company**, **The Company** may notify the **User** to that effect in writing. Where the bank or the company so ceases to be either a **Qualified Bank** or a **Qualified Company** (as the case may be) as a consequence of **The Company** having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out **The Company's** reasons for having such doubt. The **User** shall within 21 days of the giving of such notice by **The Company** or the **User** whichever is the earlier provide a replacement **Performance Bond** and/or **Letter of Credit** from a **Qualified Bank** or **Qualified Company**, as the case may be, and/or provide a cash deposit in the required amount in a **Bank Account**. From the date the replacement **Performance Bond** or **Letter of Credit** or **Bank Account** cash deposit is effectively and unconditionally provided and **Valid**, **The Company** will consent in writing to the security which it replaces being released.

5.2.3 The following provisions shall govern the issuance, renewal and release of the **Performance Bond** or **Letter of Credit**:-

5.2.3.1 The **Performance Bond** or **Letter of Credit** shall be **Valid** initially for the **First FS Security Period**. Such **Performance Bond** or **Letter of Credit** shall be for an amount not less than **Final Sums** to be secured for that **First FS Security Period**.

5.2.3.2 On a date which is at least 45 days (or if such day is not a **Business Day** then on the immediately preceding **Business Day**) before the start of each **Subsequent FS Security Period** such **Performance Bond** or **Letter of Credit** shall be renewed so as to be **Valid** for not less than such **FS Security Period** and in the case of the last **FS Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the last day of such **FS Security Period**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the amount of the **Final Sums** to be secured during that **FS Security Period**.

5.2.4 The following provisions shall govern the maintenance of cash deposits in the **Bank Account**:-

5.2.4.1 The amount of the cash deposit to be maintained in the **Bank Account** shall be maintained from the date of the **Construction Agreement** at least to the end of

the **First FS Security Period**. Such cash deposit shall be in the amount of the **Final Sums** to be secured during that **First FS Security Period**.

5.2.4.2 If the amount of the **Final Sums** to be secured from the start of each **Subsequent FS Security Period** is an amount greater than the amount then secured, the cash deposit in the **Bank Account** shall be increased to such greater amount on the date which is 45 days before the start of the given **FS Security Period**.

5.2.4.3 If the **Final Sums** for a given **FS Security Period** is smaller than the amount then secured, the cash deposit in the **Bank Account** shall not be reduced to the amount so stated until the expiry of 7 days after the start of that given **FS Security Period** (the "**Release Date**").

5.2.4.4 The sum equal to the amount of reduction in the cash deposit in the **Bank Account** shall be paid by **The Company** to the **User** from the **Bank Account** on the **Release Date**.

5.2.4.5 Any interest accruing to the **Bank Account** shall be for the account of and belong to the **User** absolutely, and **The Company** agrees to take any steps required to be taken by it for the release from the **Bank Account** and payment to the **User** of such interest as soon as the same shall have been credited to the **Bank Account** and **The Company** shall have received notice of such credit.

5.3 Notwithstanding any provision aforesaid:-

5.3.1 The **User** may provide different securities to **The Company** at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the amount of the **Final Sums** required to be secured for that **FS Security Period**.

5.3.2 The **User** may upon the expiry of at least 14 days prior written notice to **The Company**, substitute one type of security for another provided that unless **The Company** shall otherwise agree in writing such substituted security must be **Valid** from the first day of the relevant **FS Security Period** and committed at least 45 days before this in the following manner:-

(a) where a **Performance Bond** or a **Letter of Credit** is to substitute for other securities, it must be issued or given at least 45 days before the start of the **FS Security Period** to which it relates.

(b) where a cash deposit in a **Bank Account** is to substitute for other securities, it must be deposited into the **Bank Account** at least 45 days before the start of the **FS Security Period** to which it relates.

5.3.3 Upon request by the **User** to **The Company**, securities substituted in the aforesaid manner shall, providing the substitute security shall be **Valid**, be released on the first day of the **FS Security Period** which the substitute security is securing. However, where the **Final Sums** to be secured for any **FS Security Period** is less than the amount required to be secured in the preceding **FS Security Period**, the substituted security shall not be released until 7 days after the start of the **FS Security Period** that that substitute security is securing.