



**CONSULTATION ALTERNATIVE
CONSULTATION DOCUMENT
CUSC Amendment Proposal CAP 131
User Commitment**

***The purpose of this document is to
consult on Consultation Alternative
Amendment Proposals CAP 131
with CUSC Parties and other interested
Industry members***

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1.0 SUMMARY AND VIEWS

Executive Summary

- 1.1 CAP131 User Commitment was proposed by National Grid and submitted to the Amendments Panel on 29th September 2006.
- 1.2 The CAP131 Amendment Proposal applies to TEC Users and seeks to add a new Schedule 4 in the CUSC defining the principles of “User Commitment”. The new section would transparently define the charge a TEC User would face in terminating its Construction Agreement and therefore the level to be secured during the Construction Programme for infrastructure works. Other changes would also be made to Section 6 of the CUSC to increase the period existing TEC Users would be required to notify National Grid in advance of reductions to TEC.
- 1.3 During the CUSC Working Group discussions six Alternative Amendments were raised, all of which were deemed by a majority of the Working Group to better facilitate the applicable CUSC objectives when compared to either the current arrangements or the original amendment proposal. These alternatives are referred to as A1, A2, A3, B1, B2 and B3 with the “A” variants including Section 6 changes and the “B” variants excluding them.
- 1.4 The CAP131 consultation document was published by National Grid on 16th March 2007 on the CUSC website and copies sent to Core Industry Document Owners and CUSC Parties. Respondents were invited to submit comments by 13th April.
- 1.5 National Grid received a total of 23 responses to the consultation for CAP131 which contained a variety of diverse views. The table below summarises the results:

WGAA	Support
A1	0
A2	0
A3	2
B1	3
B2	2
B3	7
None of the WGAAs	1
No preference specified	6
Divided opinion	2

- 1.6 In addition, a total of six Consultation Alternative Amendments (CAAs) were raised (a non-CUSC party also raised a CAA, but it was identical to one of the other CAAs) and are the subject of this document. Some legal text modifications and National Grid’s comments specifically on the CAAs are included in this Report. National Grid will respond in detail to the views and comments raised by all respondents when comments on the Consultation Alternative Amendments have been received.

National Grid's View

- 1.7 National Grid continues to believe that WGAA A1 without further modification by the CAAs best achieves the relevant CUSC objectives and recommends that the CUSC be modified to reflect the changes from 1st October 2007 provided that an Authority decision can be made before July 17th 2007. Otherwise the subsequent date for implementation should be 1st April 2008 as this would allow the revised User Commitment sums to be aligned with the bi-annual security period timelines.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This is a consultation document 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 CAP131 and the subsequent consultation, this document seeks views from industry members relating to the Consultation Alternative Amendment proposals for CAP131.
- 2.3 CAP131 was proposed by National Grid and submitted to the CUSC Amendment Panel for consideration at their meeting on 29th September 2006. The CAP131 Working Group Report was submitted to the CUSC panel meeting on 23rd February 2007. Following evaluation by the Working Group the Amendments Panel determined that the issue should proceed to wider industry consultation by National Grid.
- 2.4 Consultation and invited views on CAP131 concluded on 13th April 2007. The Consultation Alternative Amendments to CAP131 were proposed by RWE, RES, BWEA (non-CUSC Party), Wind Energy, DONG (2 alternatives), and Farm Energy.
- 2.5 Under the terms of the CUSC there is a requirement for a further period of Consultation to be undertaken in order to allow the Industry to consider the proposed Consultation Alternative Amendments.
- 2.6 This consultation document outlines the Consultation Alternative Amendments and discusses the rationale for the Amendments and whether in National Grid's view, they better facilitate the applicable CUSC objectives. Representations received in response to this Consultation Alternative Report and the original Consultation Report will be included in National Grid's Amendment Report that will be furnished to the Authority for their decision.
- 2.7 This Consultation Alternative Report document has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at www.nationalgrid.com/uk/Electricity/Codes/ along with the Original Consultation Report, the Working Group Report for CAP131 and the Amendment Proposal form. This document invites views on the Consultation Alternative Amendments and the **closing date is 21st May for responses**.

3.0 THE CONSULTATION ALTERNATIVE AMENDMENTS

- 3.1 National Grid received six Consultation Alternative Amendment proposals. One Consultation Alternative (CAA C) was significantly different from the Working Group Alternative Amendments.

- 3.2 The remaining five Consultation Alternative Amendments were refinements of the existing WGAAAs and retain the underlying principles. These will be referred to in the remainder of this document as CAA D, CAA E, CAA F, CAA G and CAA H.

CONSULTATION ALTERNATIVE AMENDMENT “C” – Capped Net Final Sums

- 3.3 RWE provided a detailed Consultation Alternative Amendment proposal, the complete version of which can be found in Annex 1. Whilst the Consultation Alternative is based on the arrangements considered under CAP131, it includes two key principal differences from the Original Amendment proposal and all of the WGAAAs. The first key difference is rather than using Generation TNUoS as an investment proxy, it proposes that final sums during the maximum 4-year period prior to connection are based on an assessment of the expected costs of investment at the time of the offer and that the level of these final sums remain capped throughout the project until completion. The second significant difference is that if a user terminates an agreement then the actual costs in carrying out the works attributable to that user will be calculated. Any over-securitisation against actual costs would be refunded to the User, but conversely all Users would be exposed to any under-securitisation.
- 3.4 In order to implement this Consultation Alternative Amendment, the following changes to the User Commitment Principles would be required:

Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

Where:

- ~~Cancellation Amount_t is the liability due on termination of a Construction Agreement in the full relevant year~~
- ~~TEC is the Transmission Entry Capacity requested (in kW)~~
- ~~Generation TNUoS_z is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the Statement of Use of System Charges or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the User's application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by The Company to the User in the Offer).~~
- ~~X is a multiplier and is established by The Company at the beginning of each Transmission Price Control Period. For Offers made during the period April 2007 to April 2012 it will be six.~~
- ~~T_t is a fraction which varies according to the number of full years from the Completion Date to the Trigger Date. In the full 12-month period(t) prior to the Completion Date T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.~~

Value Added Tax will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be **the figure that the company reasonably believe is the** based on the applicable Generation TNUoS tariff at the time of the **Offer**. ~~Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.~~ actual cost of carrying out the relevant transmission **Construction Works** in relation to the User's request. The **Cancellation Amount** will be capped at the level described in the **Offer**. In the event of termination, The Company will review the costs incurred and return to the User the difference between the capped Cancellation Amount and the actual costs incurred, if any.

3.5 The Construction Agreement would also require the following high level changes:

- The definition of Cancellation Amount would change to a specified amount arrived at in accordance with the User Commitment Principles and without need to reference Cancellation Periods.
- Create new definition of "Actual Cancellation Amount" being the same definition as that for Final Sums but losing words before "the aggregate of" and instead of cross referring to clause 2.4.1 specifying "consents costs"
- Add new clause to Clause 9 (Cancellation Charge) similar to Clause 9.3.3 (Final Sums) providing for the Company to issue the User with a statement showing the Actual Cancellation Amount and providing for repayment with interest at Base Rate where this is less than the Cancellation Amount paid.
- Edit 11.3 (TEC Users) to reflect adjustment between Cancellation Amount and Actual Cancellation Amount
- Simplify Appendix R

3.6 In justifying the rationale for its proposal, RWE provide a number of arguments. Against the applicable CUSC Objective (a. efficiency) RWE note the following points:

3.6.1 The Alternative may result in a marginal reduction in cost-reflectivity versus the existing arrangements in circumstances where the outturn costs significantly vary from the level of costs indicated at the time of the offer or where the duration of the works is greater than 4 years.

3.6.2 The use of cost reflective fixed final sums would replicate the market signal given by the current arrangements in relation to the identification of locations that minimise the cost of connections to the transmission system. The WGAAAs arguably dilute this signal.

3.6.3 The RWE Alternative introduces the concept of "risk sharing" by other users which applies when the "efficient" cost of connections is greater than the original level secured under a Construction Agreement. The approach provides appropriate incentives on NGET to deliver connections at costs that are secured, but allows NGET to recover cost overruns efficiently in the event of a user terminating their Construction Agreement.

3.6.4 "Conservative" estimates of expected liabilities by NGET could be referred to Ofgem. (Users are able to refer final sums liabilities to Ofgem

today so there is no change versus the original and this is no benefit over the WGAAAs)

- 3.7 Against the applicable CUSC Objective (b. competition) RWE note the following points:

3.7.1 Under the current clustered arrangements the volatility and high level of final sums creates significant project risk. There is no doubt that fixing the risks associated with connections to the transmission system under CAP131 RWE Alternative will have a beneficial effect for new projects, particularly in relation to financing. (This resolves volatility, as do the WGAAAs but not the absolute level of final sums which can be high. First come first served could also mean an individual User may face the costs of significant infrastructure reinforcement on its own – this could be very high, with or without a cap).

3.7.2 CAP131 RWE Alternative addresses one of the key issues associated with the current connection arrangements: the joint and several liabilities introduced as a consequence of clustering and the potential for users to have to secure up to 100% of the clustered works if other users terminate. CAP131 RWE Alternative will introduce a fixed level of liability throughout the duration of the connections works with appropriate levels of risk sharing, thereby facilitating new entry and competition.

- 3.8 National Grid's view is that this Consultation Alternative Amendment does not address one of the main drivers behind CAP131. Although, like the WGAAAs, it does remove volatility from the final sums profile, it does not address the absolute level of those liabilities that can be achieved through the 50% sharing factor which is an implicit feature of the generic WGAAAs. In addition, by retaining the “first come first served” cost reflectivity, albeit capped, it does not resolve the extreme instance where for example a small wind farm triggers and is forced to secure very significant infrastructure works just by the random chance it happens to apply at the wrong time. Further, retaining the final sums methodology is not as transparent to Users as the generic methodology which has the appeal of the maximum liability being broadly predictable even before a User makes an application. Estimating and fixing a “cost reflective” profile up to four years before placing contracts could lead to significant differences between amounts secured and actual costs. Indeed to the extent that required works change, there is scope for these differences to be quite large.

- 3.9 We believe therefore that although Consultation Alternative Amendment C better achieves the applicable CUSC objectives than the current baseline, all the WGAAAs have additional benefits. The CAA proposal would also require substantial changes to the Construction Agreement legal text which have not been included in this consultation report.

CONSULTATION ALTERNATIVE AMENDMENT “D” – Cost Reflective User Commitment Amount

- 3.10 This Consultation Alternative Amendment proposal was raised by two parties; Non-CUSC Party British Wind Energy Association (and therefore according to the CUSC this would not normally be a Consultation Alternative Amendment proposal since only CUSC Parties may raise Alternative Amendments) and CUSC Party Renewable Energy Systems Group (RES).

- 3.11 The amendment proposes to replace the £1/kW, £2/kW, £3/kW User Commitment Amount with “security against the actual pre-construction costs of the local connection incurred by National Grid” to WGAAAs A3 and B3. National Grid has interpreted this to mean that users would secure final sums before the Trigger Date on the basis of six monthly estimates as today.
- 3.12 The following changes would need to be made to the relevant part of the User Commitment Principles to implement this CAA:

User Commitment Amount

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW – the sum notified to the User by The Company which reflects the actual pre-construction costs.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

Value Added Tax will be payable on the **User Commitment Amount** in each **Cancellation Period**.

- 3.13 The Construction Agreement would also require the following high level changes:
- Amend definition of “User Commitment Amount” so it is similar to the existing definition of Final Sums but by reference to “local works”
 - Create definition of “Local Works”
 - Amend Section 9 (Final Sums) and Appendix M (Final Sums) to cover User Commitment Amount so estimated and secured on 6 monthly intervals and reconciled as per Clause 9 (Final Sums).
 - Simplify Appendix R
- 3.14 RES believes that although it is satisfied with the analysis provided for using Generation TNUoS as an investment proxy there is less evidence to support the User Commitment Amount levels and that they are essentially arbitrary and not cost reflective. It argues that requiring users to secure the actual pre-construction costs would be a more proportionate response. The BWEA does not expand on why it believes the above amendment would improve A3 or B3.
- 3.15 National Grid believes that in the current climate, the cost reflective regime is not working and that therefore a different approach is required – one that requires a sensible financial commitment. In the current cost reflective regime there are many projects that are not required to provide any commitment whatsoever, which may be exacerbating the GB Queue. National Grid accepts that on a case by case basis, the User Commitment Amount will not

be cost reflective since the generic arrangements are designed to be cost reflective on average. A loss in cost reflectivity is the trade-off for higher certainty in moving to a generic regime. In addition, it would be inconsistent to retain a cost-reflective element for the User Commitment Amount whilst using a generic proxy for the more substantive post-trigger Cancellation Amount. National Grid believes that the evidence presented to the Working Group and published in the Working Group Report demonstrates that the generic User Commitment Amount is a reasonable approximation for pre-construction costs.

- 3.16 We believe therefore that although Consultation Alternative Amendment D better achieves the applicable CUSC objectives than the current baseline, all the WGAs better facilitate the relevant CUSC Objectives.

CONSULTATION ALTERNATIVE AMENDMENT “E” – Adjusted User Commitment Amount and Cancellation Amount

- 3.17 Consultation Alternative Amendment E was raised by Farm Energy on behalf of Channel Energy Limited, a CUSC party that is a joint venture between DONG Energy and Farm Energy Limited.
- 3.18 It proposes to flex the User Commitment Amount and Cancellation Amounts to incentivise generators to develop projects in areas of high opportunity as used in Chapter 9 of the Seven Year Statement. Thus projects in areas designated High or Very High investment opportunities would face only 30% of the User Commitment Amount and Cancellation Amount, projects in Medium areas 60% and projects in Low or Very Low areas 100%. Farm Energy also propose that the Capacity Reduction Charge is similarly adjusted.
- 3.19 The following changes would need to be made to the relevant part of the User Commitment Principles to implement this CAA:

User Commitment Amount

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be calculated by reference to the **User Commitment Amount Tariff (UCAT)** in Table 1 below:

Table 1: User Commitment Amount Tariff

SYS Investment Opportunity class	1st full 12 month period	2nd full 12 month period	3rd full 12 month period and up to Trigger Date
High or Very High	£0.3/kW	£0.6/kW	£0.9/kW
Medium	£0.6/kW	£1.2/kW	£1.8/kW
Low or Very Low	£1.0/kW	£2.0/kW	£3.0/kW

~~£1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.~~

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

Value Added Tax will be payable on the **User Commitment Amount** in each **Cancellation Period**.

Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * P_{Io} * X * T_t$$

Where:

- *Cancellation Amount_t* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS_z* is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *P_{Io}* is the Proportion relevant to the Investment Opportunity area as defined in the Seven Year Statement. The applicable Proportion is 30% in areas of High or Very High Investment Opportunity, 60% in areas of Medium Investment Opportunity and 100% in Low or Very Low Investment Opportunity
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T_t* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

Value Added Tax will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in

respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - (\text{TEC}_r * \text{UCAT}_t)$$

Where;

UCAT is the User Commitment Amount Tariff **described in Table 1 above**, and is ~~£1/kW in the first 12-month period from signature of the Construction Agreement, £2/kW in the following 12-month period and £3/kW thereafter until the Trigger Date.~~

$\text{TEC}_{(r)}$ is the revised TEC following reduction of TEC.

Post Trigger Date

$$\text{Capacity Reduction Charge}_{(t)} = \text{Cancellation Amount}_{(t)} - (\text{TEC}_{(r)} * \text{GenTNUoS}_{(z)} * \text{P}_{io} * X * T_{(t)})$$

- 3.20 The CAA would also require a formal definition of Investment Opportunity Class in the Seven Year Statement.
- 3.21 The Construction Agreement would also require addition of new definitions in CUSC Section 11 for “Investment Opportunity Class” and “Investment Opportunity Area”. These would be defined by reference to those definitions (when introduced) in the Seven Year Statement.
- 3.22 Farm Energy believes that these changes would make CAP131 more consistent with the achievement of DTI targets for deployment of renewable energy because it incentivises developers to operate in areas with high potential for connection of new generation. It also believes that these changes provide a measure of cost reflectivity in National Grid’s own commitments within these areas where significant reinforcement is not required. Hence these proposals better meet the applicable CUSC objectives.
- 3.23 National Grid believe that the User Commitment Amount is about providing a suitable financial commitment from TEC Users wherever the power station is located. The Cancellation Charge however, by using Generation TNUoS tariffs as an investment proxy already includes locational incentives to Generators. Moreover, the proposed adjustments seem a little arbitrary. Although the generic methodology is less cost reflective, it still seeks to be cost reflective overall, subject to the 50/50 sharing with all users and applying these adjustments in the absence of further evidence would be inappropriate. In addition, achievement of DTI targets for renewable energy is not an applicable CUSC objective. Further, it is not normal practice for CUSC legal text to refer to documents outside the contractual framework such as the Seven Year Statement. We believe that these changes would reduce transparency and could lead to confusion in the application of Cancellation Charges if a terminating project in a given Investment Opportunity Area changed its status.
- 3.24 We believe therefore that Consultation Alternative Amendment E does not better achieve the applicable CUSC objectives compared to the current baseline or the WGAAs.

CONSULTATION ALTERNATIVE AMENDMENT “F” – Cancellation Amount for BEGAs to be discounted by £3/kW

3.25 Consultation Alternative Amendment F was raised by DONG Walney (UK) Ltd. It considers that all the proposed WGAs discriminate against embedded generators applying to use the transmission system by means of a Bilateral Embedded Generator Agreement (BEGA). DONG argues that such generators would have to pay the same User Commitment Amount and a Cancellation Amount as directly connected generators. This would be in addition to connection to the DNO network and for any Connection Asset works at the DNO/ TO interface. It proposes therefore that the Generation TNUoS tariff used as the investment proxy for the Cancellation amount should be discounted by £3/kW since this broadly reflects local connection costs which are already secured between the embedded generator and the relevant DNO.

3.26 The following changes would need to be made to the relevant part of the User Commitment Principles to implement this CAA:

Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

a.) For power stations directly connected to the GB System

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

b.) For embedded generators with a BEGA

$$\text{Cancellation Amount}_t = \text{TEC} * (\text{maximum}(0, \text{Generation TNUoS}_z - 3)) * X * T_t$$

Where:

- *Cancellation Amount_t* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS_z* is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T_t* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

Value Added Tax will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

- 3.27 National Grid contends that the User Commitment proposals described in the WGAAAs do not discriminate against Embedded Generators with a BEGA and that therefore CAA F is not appropriate. At present, both directly connected and embedded generators secure connection assets as cost reflective final sums liabilities. The difference is that embedded generators could trigger more connection assets. Clearly if embedded generators trigger more connection assets then it is appropriate that they secure them.
- 3.28 We believe therefore that Consultation Alternative Amendment F better achieves the applicable CUSC objectives when compared to the current baseline but does not better achieve the relevant CUSC objectives when compared to the WGAAAs.

CONSULTATION ALTERNATIVE AMENDMENT “G” – No User Commitment Amount for Embedded Generators

- 3.29 Consultation Alternative Amendment G was also raised by DONG Walney (UK) Limited and suggests that the User Commitment Amount should not apply for BEGA applications. This is on the grounds that the generator would additionally be contracting with the DNO for its connection, and the charges for this will be levied directly on the generator.
- 3.30 The following changes would need to be made to the relevant part of the User Commitment Principles to implement this CAA:

User Commitment Amount

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount**:

a.) **for Directly Connected Generators** will be £1/kW on termination during the first full 12-month period, and increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

b.) **for Embedded Generators applying to use the transmission system by means of a Bilateral Embedded Generator Agreement it will be zero.**

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

Value Added Tax will be payable on the **User Commitment Amount** in each **Cancellation Period**.

- 3.31 National Grid believes that the User Commitment Amount should apply to all TEC Users, whether directly connected or embedded because it represents an appropriate financial commitment. The £1/kW, £2/kW and £3/kW amounts do reflect the average costs of pre-engineering works for those parties seeking to use the transmission system which would ordinarily be secured in full under the final sums regime. This Amendment Proposal therefore does better facilitate the relevant CUSC objectives when compared to the current baseline but does not better serve the applicable CUSC objectives compared to the WGAAAs since there is no justification to discriminate between different classes of TEC User.

CONSULTATION ALTERNATIVE AMENDMENT “H” – Trigger Date

- 3.32 Wind Energy (Services) Limited (“WES”) propose to amend the definition of the Trigger Date such that it is the later of:
- i. the date when the Company reasonably believes it will incur significant costs in relation to the last element of the Construction Works associated that that Offer; and
 - ii. the date on which the User receives planning consent for the new generating station.
- 3.33 Planning consent in this context means either local consent or approval from the Scottish Executive in Scotland or the equivalent in other parts of GB.
- 3.34 WES argue that the difference is key for projects with multiple deep upgrades. A project developer is exposed to the risk of major delay until the final phase of upgrades is consented. When work on that phase ultimately start, there is then a case for seeking increased commitments but not before.
- 3.35 The following changes would need to be made to the relevant part of the User Commitment Principles to implement this CAA:

Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. **The Trigger** Date will be specified in **Appendix Q** in the **User’s Construction Agreement** and will equate to the later of:

- a.) the date the Company reasonably believes it will incur significant costs in relation to the last element of the Construction Works associated with that Offer; and
- b.) the date on which the User receives planning consent for the new generating station

- 3.36 The Construction Agreement would also require the following changes:

- Create new definitions of “Significant Spend Date” and “Generating Station Planning Consent”.
 - Amend definition of Trigger Date so it is later of a) the Significant Spend Date and date of grant of Generating Station Planning Consent.
 - Additional Clauses to provide for User to confirm\provide copy of consent
 - Consequential changes to appendix R
- 3.37 WES states that the increase in commitment from the £1/2/3kW level to a multiple of a TNUoS is very substantial for projects in Scotland, where the majority of schemes in the Transmission queue are located. To require such increase when projects still lack consent would almost certainly lead to projects falling away. This should not be the intention of the regulations which are designed to promote competition. The Consultation amendment, by revising the Trigger date to allow consent to be obtained overcomes this problem and this better promotes effective competition.
- 3.38 National Grid notes the considerable time spent by the Working Group discussing this area and believes that the proposal whilst alleviating developer concerns to some degree would lead to unacceptable risk for all users. National Grid may be undertaking infrastructure works to enable a given application well in advance of a developer achieving planning consents and it is therefore important that those works are underwritten through the generic methodology by those users that require those works. This will remain a tension where it is quicker to build a new generating unit than a new transmission line. National Grid believes that the 50/50 sharing between new and all users inherent in the generic methodology already significantly reduces developer risk. National Grid believes that CAA H better achieves the applicable objectives compared to the current baseline but does not better facilitate them when compared to the WGAAAs.

4.0 PROPOSED IMPLEMENTATION

- 4.1 Any of the above Consultation Alternatives could be implemented in similar timescales to the WGAAAs, namely that the CUSC be modified to reflect the changes from 1st October 2007 provided that an Authority decision is made before July 17th 2007, otherwise the subsequent date for implementation should be 1st April 2008. This is so that the revised User Commitment sums can be aligned with the bi-annual security period timelines.

5.0 IMPACT ON CUSC AND OTHER INDUSTRY DOCUMENTS

- 5.1 Changes required to implement the Consultation Alternative Amendments have been described in the body of the text to this document. Additional legal text has not been provided in relation to the Construction Agreement in the interests of expediency, however it will be made available if Ofgem requests this documentation during the Regulatory Impact Assessment process.

6.0 INITIAL VIEW OF NATIONAL GRID

- 6.1 National Grid continues to believe that WGAA A1 without further modification by the CAAs best achieves the relevant CUSC objectives and recommends that the CUSC be modified to reflect the changes from 1st October 2007 provided that an Authority decision is made before July 17th 2007, otherwise the subsequent date for implementation should be 1st April 2008. This is so that the revised User Commitment sums can be aligned with the bi-annual security period timelines.

7.0 VIEWS INVITED

- 7.1 National Grid is seeking the views of interested parties in relation to the issues raised by Consultation Alternative Amendment Proposal CAP131.
- 7.2 Please send your responses to this consultation to National Grid by no later than **close of business on Monday 21st May**.

Please address all comments to the following e-mail address:

Beverley.Viney@uk.ngrid.com

Or alternatively, comments may be addressed to:

Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

ANNEX 1 – RWE Consultation Alternative Amendment Proposal

RWE Trading



CAP131 – Possible Consultation Alternative “User Commitment and Capped (net) Final Sums”

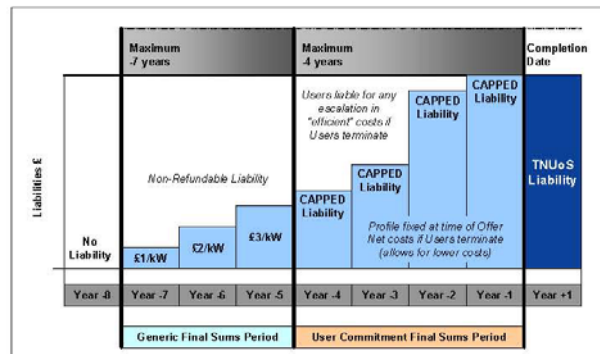
1 Introduction

1.1 As part of the CUSC Amendment process parties have the opportunity to propose alternative amendments. This note sets out a Consultation Alternative for CAP131.

2 The Alternative

2.1 The Alternative presented in this note is based on the arrangements considered under CAP131 and associated working group alternatives. This principal difference is that the final sums during the maximum 4-year period prior to connection are based on an assessment of the expected costs of investment at the time of the offer and set out in a bilateral agreement and/or construction agreement. Furthermore, the final sums remain capped at that level throughout the project until completion (unless an agreement is modified). The proposed arrangements are illustrated in Figure 1 below.

Figure 1: CAP 131 RWE Consultation Alternative



2.2 If a user terminates an agreement then the actual costs directly or indirectly incurred in carrying out the works and attributable to the user will be calculated having taken into account

- the benefit (if any) to be obtained or likely in the future to be obtained by any transmission licensee of any other person as a result of carrying out such works whether by reason of the reinforcement or extension of the GB transmission system and the provision of additional entry or exit points on such system or otherwise (transmission licence Condition C8, 4(a)); and
- the ability or likely ability of any transmission licensee to recoup a proportion of such costs from third parties (transmission licence Condition C8, 4(b)); and
- the cap provided to the users in the connection offer and subsequent bilateral agreement and/or construction agreement in accordance with CAP131 Consultation Alternative.

2.3 In the event that costs escalate to a level greater than the capped final sums liability in the bilateral agreement and/or construction agreement and a user terminates then other users will share the

associated costs if such costs have been efficiently incurred. If costs are lower then these are refunded in the event that a user terminates. This approach represents an appropriate allocation of security requirements between new and existing users.

Detailed Arrangements

- 2.4 The arrangements under CAP131 RWE Consultation Alternative for establishing Final Sums and the provision of secured amounts would be based on:
- The establishment of a connection offer with a contractually binding cost reflective level of Final Sums (User Commitment Final Sums) that takes into account all transmission works required to deliver the required capacity (MW) at the completion date;
 - The User Commitment Final Sums shall be applied for a maximum of four years (the User Commitment Final Sums Period) prior to the completion date;
 - For connection offers with a completion date more than 4-years but less than 7-years from the date of the offer final sums liabilities will be calculated generically based on annual amounts of £1/kw, £2/KW or £3/kw for each of the three years (the Generic Final Sums Period);
 - The generic final sums shall reflect the costs of transmission investment planning and obtaining transmission consents and shall be non-refundable in the event of termination by the User;
 - For connection offers with a completion date more than 7-years from the date of the offer there will be no final sums liability in any year prior to the period of liability for generic final sums;
 - The move from the generic final sums period to the user commitment final sums period shall be defined in relation to a key transmission milestone when this occurs less than 4-years prior to the completion date;
 - The user commitment final sums shall be capped during the duration of the agreement unless or until a modification by the User;
 - The user commitment final sums shall be calculated on a cost reflective basis. In the event of termination prior to the connection date, the User shall be liable for any net costs incurred by NGET during the user commitment final sums period capped at the applicable level of the user commitment final sums; and
 - Under this proposal the secured amounts would relate to the applicable level of Final Sums in each year (12-month) period prior to the completion date as set out in the relevant construction agreement.
- The CUSC Defect*
- 2.5 The current arrangements for connection to the transmission system have proved problematic both in terms of commitments from users and the liabilities associated with the works required to deliver new connections. The substantial queue for new connections has resulted in increasingly complicated arrangements to deliver transmission infrastructure through the creation of "clustered" works, where individual projects are grouped together to provide security for substantial "lumpy" investment on the transmission system. As a consequence new projects may be subject to large and volatile final sums liabilities which may in turn increase the risk of stranded assets or inefficient abortive works.
- 2.6 The CAP131 RWE Alternative proposal enables the transmission company and individual parties to enter into revised arrangements governed by the CUSC which provide for a rational economic and efficient approach towards the final sums liabilities for new projects particularly when they are associated with clustered works. The approach significantly reduces the risk of changes to final sums liabilities during the construction of a transmission connection. In addition the alternative requires a significant commitment to a known level of final sums liabilities at the commencement of the project.

3 Assessment against CUSC Objectives

3.1 Assessment against Objective (a) – “efficiency”

- 3.1.1 One of the key issues associated with the introduction of changes to the Final Sums arrangements is the move away from the fully cost-reflective arrangements in the current baseline to an approach based on the application of a fixed level of cost reflective final sums (with costs fixed at the time of the Offer). There is no doubt that this change has implications for Objective (a) and these are considered below.

Implications for “Stranding Risk”

- 3.1.2 CAP131 RWE Alternative may result in a marginal reduction in cost-reflectivity when compared with the current baseline in circumstances where the outturn costs significantly vary from the level of costs indicated at the time of the offer or where the duration of the works is greater than 4-years.

Market Signals

- 3.1.3 The use of cost reflective fixed final sums should replicate the market signal given by the current arrangements. In particular CAP131 RWE Alternative will maintain the strong incentive for users to identify locations that minimise the cost of connections to the transmission system. CAP 131 RWE Alternative allows for a consistent approach to be adopted towards all connections to the transmission system across GB.

“Risk Sharing”

- 3.1.4 CAP131 RWE Alternative introduces the concept of “risk sharing” by other users which applies when the “efficient” cost of connections is greater than the original level secured under a Construction Agreement. The CAP 131 RWE Alternative approach provides appropriate incentives on NGET to deliver connections at costs that are secured, but also allows NGET to recover cost overruns efficiently in the event of a user terminating their construction agreement.

CAP131 Alternative and “economic and efficient” offers

- 3.1.5 Given that NGET will be required to fix the level of liabilities at the offer stage, there may be concerns that offers will be based on a “conservative” estimate of expected liabilities. In this context it should be noted that NGET is required due regard to its licence obligations in preparing an offer. Furthermore, users have the ability to refer an offer to Ofgem in the event that they are concerned that NGET is not providing an offer in accordance with the transmission licence.

3.2 Assessment against Objective (b) – “Competition”

Project Risks

- 3.2.1 Under the current clustered arrangements the volatility and high level of final sums creates significant project risk. There is no doubt that fixing the risks associated with connections to the transmission system under CAP131 RWE Alternative will have a beneficial effect for new projects, particularly in relation to financing and will better achieve objective (b).

CAP131 Alternative and Clusters

- 3.2.2 CAP131 RWE Alternative addresses one of the key issues associated with the current connection arrangements: the joint and several liabilities introduced as a consequence of clustering and the potential for users to have to secure up to 100% of the clustered works if other users terminate. CAP131 RWE Alternative will introduce a fixed level of liability throughout the duration of the connection works with appropriate levels risk sharing, thereby facilitating new entry and competition.