

Amendment proposal:	Connection and Use of System Code (CUSC) CAP131: User Commitment for New and Existing Generators (CAP131)		
Decision:	The Authority ¹ has decided to reject this proposal ²		
Target audience:	NGET Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	13/10/2008	Implementation Date:	N/A

Background to the amendment proposal

Connection and Use of System Code (CUSC) Amendment Proposal 131 (CAP131): User Commitment for New and Existing Generators, and the alternative proposals emerged following lengthy industry discussions about possible solutions to deal with the large number of generators (particularly renewable generators) that have applied and are waiting for connection to the electricity transmission network. There is now a significant 'GB queue' of generators seeking connection to the system and being offered connection dates many years into the future by NGET Electricity Transmission (NGET), the Great Britain System Operator (GBSO). The significant increase in the number of generators wishing to connect to the system compared with historical levels is largely in response to the Government's financial support mechanism - the Renewables Obligation – for renewable generation. This has triggered a large volume of typically smaller generation developments to seek connection to the transmission system often in more remote parts of Great Britain, far away from the existing transmission system or where capacity on the existing system is limited. At the same time, there is also significant demand from other low carbon forms of generation such as nuclear and more conventional generation as energy companies seek to replace ageing conventional plant with newer, more efficient generation.

The existing connection arrangements are based on a "first-come-first-served" approach. The transmission licensees plan investment in new capacity based on their best view of the likelihood of these generation projects actually proceeding. They also look at whether existing power stations are likely to close and free up existing capacity for other generators. But many of the generation projects seeking - or even having signed - connection offers do not yet have the necessary planning permission to build their projects, or have finance in place.

Under the current arrangements, electricity generators who want to connect to the high voltage transmission system have to pay a relatively small application fee (approximately £35,000) to NGET. The GBSO then makes the generator a "connection offer" setting out the works required to connect it and an indicative connection date. If the generator accepts the connection offer it must provide a defined level of financial security for the period from when construction commences to completion. This security – known as Final Sums Liabilities (FSL) - is intended to cover all of the costs triggered by the generator's connection. They are designed to protect the transmission companies and ultimately customers from the risk that they may have to bear these costs if the generator cancels the project (e.g. due to failure to secure planning permission), does not connect, and the capacity cannot be reused. FSL broadly tracks the profiles of the costs incurred by the transmission licensees in building the necessary works to accommodate a generator. This usually means there is very little or zero security required in the run up to first build, with securities ramping up to a peak just before completion, after which point they fall away.

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

²This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

When there are a number of generators in the same location wishing to connect, an individual generator's FSL can be large, volatile and unpredictable as it can change if more generators come forward or some cancel their projects. Generators – particularly smaller renewable generators – have argued that the size and lack of certainty of the value of FSL can prevent them securing finance and connecting to the system. Ofgem chaired the Access Reform Options Development Group (ARODG)³ group to look at this issue. As an interim improvement, NGET subsequently introduced a revised form of financial security that new connecting generators could choose, called Interim Generic User Commitment (IGUC). This was based on charging a combination of an annually increasing payment for the duration between the connection offer being signed and a trigger date being met, and a subsequent fixed multiple of annual generation Transmission Network Use of System (TNUoS) charges, providing a more stable and predictable regime for connecting generators.

At the point where the generator connects to the system and procures access rights, the GBSO only has limited information on generators' closure intentions. Existing generators only have to give NGET five days' notice if they intend to close. This makes it more difficult for the transmission companies to plan their future investment, potentially causing unnecessary investment in expensive transmission infrastructure that have an impact on the environment, both visually and in terms of the carbon used to produce steel (e.g. for towers) and other materials used to build it, the potential leakage of very harmful greenhouse gases used to operate the system (such as SF₆ in transformers) and the carbon emissions associated with transmission losses.

Given some of the problems with the existing connection regime, and following publication of the Energy White Paper in May 2007, Ofgem and BERR launched a joint review of transmission access, the Transmission Access Review (TAR), in July 2007 to tackle broader issues with the connection of generation to the transmission system. The TAR final report, setting out the conclusions of the review, was published on 26 June 2008, and provides the Gas and Electricity Markets Authority's⁴ (GEMA or the Authority) views on issues relating to the transmission access regime, including user commitment. During the TAR process, NGET has raised CUSC Amendment Proposals CAP161 to 166, which touch on a range of measures associated with transmission access, user commitment and financial security. CAP165: Finite Rights, in particular deals with similar issues to those addressed by CAP131.

The amendment proposal

In September 2006 NGET submitted an amendment proposal to the CUSC Panel to alter the arrangements for calculating the securities faced by new and existing generators. The proposal (and its various alternatives) seeks to change the arrangements for generators connecting to and using the GB transmission system, including those generators connecting via the distribution system with bilateral connection agreements with NGET. These changes are related to the monies that a generator must provide to secure the costs of works undertaken to connect them and ultimately to protect customers from incurring unnecessary costs. The proposal also seeks to introduce a principle whereby existing generators also provide commitment for using the system so network assets can be more readily used by other parties in the event they reduce their export capacity.

CAP131 seeks to introduce an enduring change to the financial liabilities faced by new and existing users. As a high level principle, CAP131 would reduce the amount of

³ Access Reform Options Development Group was a working group set up and chaired by Ofgem in April 2006 to tackle transmission access issues and identifying potential reform.

⁴ Ofgem is the office of the Gas and Electricity Markets Authority. Ofgem and the Authority are used interchangeably throughout this letter.

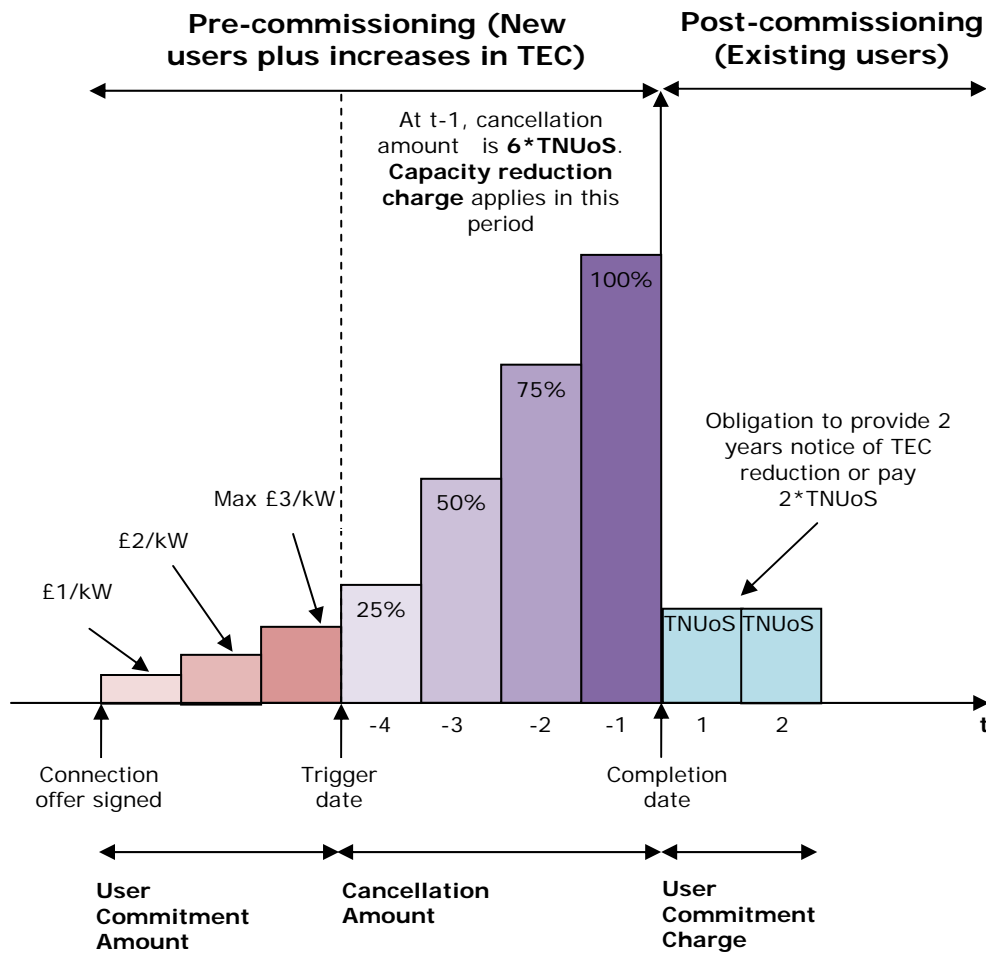
security cover provided by the industry to around 50% of its current level, in keeping with the IGUC methodology. Certain variants of the proposal, including the original, also seek to introduce an additional charge for any generator that does not provide NGET with two years notice of any reductions in their required Transmission Entry Capacity (TEC). All the proposals would introduce a new section to the CUSC entitled 'User Commitment'.

Whilst there are 33 variations of CAP131 that the Authority has had to consider, with the exception of slight nuances to, for example, the provisions for those generators with Bilateral Embedded Generation Agreements (BEGAs) and generators in different investment zones, the amendment proposals are assembled by turning off and on (or proposing alterations to) the following key principles:

- **User Commitment Amount** – this is an annual £/kW charge (increasing each year) for each year a *new* generator is in the GB Queue without connection works commencing. This is designed to reduce the number of highly speculative connection requests that are unlikely to proceed.
- **Cancellation Amount** – this is the amount a *new* generator has to pay if it cancels the project during the transmission connection construction phase and would replace the existing FSL. Under CAP131 and most alternatives it is based on a simple multiple of annual transmission network use of system charges.
- **Capacity Reduction Charge** – this is the amount a *new* generator must pay if it reduces the amount of transmission capacity it requires once it is in the GB Queue. It is designed to provide generators with incentives to provide NGET with accurate information and not to overstate how much capacity they require when making a connection application.
- **User Commitment Charge** – this is the amount that *existing* and *new* generators (once connected) would have to commit to pay NGET. Under CAP131 users have to commit to pay 2 years annual use of system charges (i.e. to give NGET two years notice of closure). This is designed to provide generators with stronger incentives to provide the transmission licensees with better information about intended closures that could free up transmission capacity.

These key features are shown graphically below in figure 1:

Figure 1 – key features of CAP131



The original proposal aims to remove project-specific transmission works costs and replace these with a generic profile of securities using TNUoS charges. The value of TNUoS would depend upon the value of Transmission Entry Capacity (TEC) that a project requires and would therefore still reflect the magnitude of impact a project may have. Any generator seeking to connect to the system would have their securities calculated using the same methodology. This approach aims to be predictable, and on aggregate, lowers the amount generators have to secure, in comparison with the current arrangements, thus eliminating the uncertainty and volatility of the current FSL. Certain variants of the proposal, including the original, also seek to introduce an additional charge for any generator that does not provide NGET with two years notice of any reductions in their TEC. All the proposals introduce a new section to the CUSC entitled 'User Commitment'.

In addition to the original proposal, six working group alternatives (A1, A2, A3, B1, B2 and B3) have been proposed and six consultation alternatives (C, D, E, F, G and H) have also been raised. Some alternatives can be combined with other alternatives to provide further combination options. Overall there are 33 proposals to be assessed. For more information on the features of all 33 proposals, please see the Final Amendment Report (AR) and the Authority's CAP131 IA⁵. The following table illustrates the key features of all 33 amendment proposals:

⁵ The CAP131 IA is available at the following link:
http://www.ofgem.gov.uk/Licensing/ElecCodes/CUSC/Ias/Documents1/080606_CAP131_IA_final.pdf

Table 1 – key features of all 33 amendment proposals

Alternative	User Commitment Amount	Cancellation Amount	Capacity Reduction Charge	User Commitment Charge	Combination Option?
Original	✓	✓	✓	✓	×
A1	✓	✓	✓	✓ but no allowance for earlier reduction on payment	E, F, G, H
A2	✓	✓ - re-zoned TNUoS tariff	✓	✓ but no allowance for earlier reduction on payment	E, F, G, H
A3	✓	✓	×	✓ but no allowance for earlier reduction on payment	E, F, G, H
B1	✓	✓	✓	×	E, F, G, H
B2	✓	✓ - re-zoned TNUoS tariff	✓	×	E, F, G, H
B3	✓	✓	×	×	E, F, G, H
C	✓	✓ - capped net final sums	×	×	×
D	✓ - based on actual pre-construction costs	✓	×	✓ but no allowance for earlier reduction on payment	A3
E	✓ - scaled according to investment zone	✓ - scaled according to investment zone	✓ - scaled according to investment zone	✓	A1, A2, A3, B1, B2, B3
F	✓	✓ - discounted by £3/kW for BEGAs	✓	✓	A1, A2, A3, B1, B2, B3
G	✓ - for transmission connected generation, × - for BEGAs	✓	✓	✓	A1, A2, A3, B1, B2, B3
H	✓	✓ - revised trigger date	✓	✓	A1, A2, A3, B1, B2, B3

Whilst there were 33 alternatives presented to the Authority, because of the way the existing CUSC process works, none of the Consultation Alternative Amendments (CAAs) are subject to the same assessment process that working group alternatives are. This means that a considerable number of amendment proposals presented to the Authority had not been fully assessed.

We are also concerned that NGET (in its roles as Chair) and the working group did not seek to analyse and reject many of these alternatives by more rigorous assessment and analysis against the relevant objectives of the CUSC and NGET's relevant licence obligations. We expect the industry to bear this in mind when considering and developing CAP161 to 166 and future CUSC amendments. It is important for the credibility of the governance arrangements and the role that NGET and the industry play in them that a more manageable number of amendments will be presented to the Authority in due course. Similarly the Industry Codes Governance Review may help to streamline the CUSC assessment process, as will the implementation of CAP160: Improvements to the Assessment of Amendments.

CUSC Panel⁶ recommendation

Due to the number of options, the CUSC Amendments Panel meeting on 29 June 2007 was asked to rank each of the amendment proposals relative to the applicable CUSC objectives. Overall, Working Group Alternative Amendment (WGAA) B3 was ranked as best facilitating the applicable objectives. The CUSC Amendments Panel also voted that WGAA B1 also better facilitated the applicable objectives. Neither WGAA B1 nor WGAA B3 includes the User Commitment Charge, whilst WGAA B1 also does not include the Capacity Reduction Charge element. In all other respects these two amendments are identical to the original amendment proposal. The remaining 31 out of 33 amendment proposals were considered not to better facilitate the applicable objectives by the CUSC Amendments Panel.

The Authority's CAP131 Impact Assessment

Where section 5A of the Electricity Act 1989 ("the Act") applies, the Authority must either carry out and publish an impact assessment or publish a statement setting out its reasons for believing that it is unnecessary for it to undertake an impact assessment. Section 5A(2) sets out the matters which would determine whether or not a proposal is "important" for the purposes of section 5A. These are where the implementation of a proposal would be likely to do one or more of the following:

- a. involve a major change in the activities carried out by the Authority;
- b. have a significant impact on market participants in the gas or electricity sectors;
- c. have a significant impact upon persons engaged in commercial activities connected to the gas or electricity sectors;
- d. have a significant impact on the general public in GB or in a part of GB; and
- e. have significant effects on the environment.

Having considered the Final AR in respect of CAP131, we considered that a decision in relation to the matters contained therein, would be important for the purposes of Section

⁶ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

5A of the Electricity Act, and an Impact Assessment would be necessary. The Authority published its CAP131 IA on 6 June 2008.

In our IA we set out our concerns with the way in which CAP131 was assessed and submitted to the Authority. We considered that CAP131 illustrated the defects in the current industry process. We also stated that we were not convinced the industry had properly considered whether the proposals were consistent with requirements under relevant European legislation (e.g. Directive 2003/54/EC – the IMED), domestic legislation (e.g. section 9 of the Act) and the transmission licence (e.g. Standard Condition C7 of NGET's licence) that relate to the prohibition on discrimination between users of electricity networks so that variants that are inconsistent with the current statutory framework are eliminated. The relevant prohibition in NGET's transmission licence is reflected in Standard Condition C7 - 'Prohibition on discriminating between users' which provides that in the provision of use of system or in the carrying out of works for the purpose of connection to the GB transmission system, the licensee shall not discriminate as between any persons or class or classes of persons. The Final AR does not consider sufficiently the issue of discrimination in the treatment between new and existing generators, and did not for example contain any analysis or evidence in support of the proposition that new and existing users are different (and so may be treated differently under the CAP 131 proposals), or if relevantly similar, the objective justification for the difference in treatment under the CAP 131 proposals. To enable the Authority to make its decision, this analysis is required under CUSC objective (a)⁷. It is also required under CUSC objective (b)⁸ which reflects section 9 of the Electricity Act, as facilitating effective competition requires, amongst other matters, non-discriminatory treatment between users.

In the IA, we undertook a quantitative and qualitative assessment of the costs and benefits wherever possible. We also gave detailed consideration to wider impacts in accordance with our statutory duties. Given the complexity, there are considerable uncertainties associated with quantifying and measuring these costs and benefits. We did not, therefore, give undue weight to the quantitative analysis in this document given these uncertainties.

CAP131 would in most cases introduce a lower and more stable level of security for new generators wishing to connect to the system. This may promote competition by reducing a barrier to entry to the market for new generators. However it may increase the risk to existing generators and customers of having to pay higher transmission charges if new generators cancel projects and the financial security does not cover the transmission costs already incurred.

CAP131 may also enable more effective management and prioritisation of connection offers in the GB queue. In response to the new charges proposed, generators who have not secured finance or planning permission may withdraw from the queue or reduce the amount of requested capacity until they are more confident in their projects. This would help the transmission companies plan and develop their systems more efficiently. It may also help generators who have funding and planning permission in place to connect more quickly, promoting competition. However, these provisions are in broad terms already offered by the voluntary IGUC methodology.

The introduction of a User Commitment Charge could also provide better information to transmission companies about the closure plans of existing generators and about transmission capacity being freed up. Given generators are in a much better position to know the probability that they will close (and the factors that will influence this) than

⁷ Applicable CUSC objective a - the efficient discharge by the licensee of the obligations imposed upon it under Act and the licence.

⁸ 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.

NGET is when it assesses what requirements there are on the transmission system, placing incentives on generators to reveal this information could enable the transmission companies to plan and operate the system more efficiently and avoid unnecessary investment in new capacity if existing capacity will be freed up, as well as allow new generators to connect sooner. However, the CUSC Panel did not think this element of the CAP131 proposals would better facilitate the CUSC objectives as explained in further detail below.

The key issue raised by all of the proposals is whether the different treatment of new and existing generators under CAP131 and the alternative proposals would give rise to **undue** discrimination. Undue (or unlawful) discrimination is that which consists of treating relevantly similar parties differently or relevantly different parties in the same way without objective justification. Our Impact Assessment considered whether certain types of new and existing users are relevantly similar (or not), and if so whether there are good reasons why new generators should be treated differently to existing users – such as whether new generators have a higher risk of failing to connect than the risk that an existing generator closes - and sought views from the industry. Our view is that the discrimination question is engaged as it may be argued that certain types of new and existing generators are relevantly similar, though the proposals seek to treat them differently.

Our initial view was that the proposer had failed to demonstrate that there are sound, objective reasons for the proposed differential treatment of new and existing users which we set out in the IA and so all of the proposals may give rise to undue discrimination. We stated that we were minded to reject all of the proposals. We did, however, request views from the industry on why existing and new generators are sufficiently different to justify differential treatment.

Responses to the CAP131 Impact Assessment

We received thirteen responses to the CAP131 Impact Assessment⁹. Of these thirteen responses, eleven disagreed with the Authority's minded-to position. One respondent supported the Authority's minded-to position because of recent improvements in queue management and the ongoing work associated with the TAR project. The remaining respondent partly agreed with Ofgem's position, but only on rejecting the user commitment charge. It saw benefit in the pre-commissioning user commitment provided by CAP131 as it would help rationalise the GB Queue.

The majority of respondents considered that it is appropriate for new and existing generators to be treated differentially. Some respondents noted that generators that are not yet connected pose a very real risk in terms of termination, particularly in the case of novel technology, whilst some existing generators have paid a sufficient amount of use of system charges to cover the costs of their connections several times over, so there is no stranding risk associated with them. However, in broad terms, the distinction drawn by respondents was that there are differences between the risks posed by pre- and post-commissioning generation projects, rather than new and existing. Several respondents considered that this nomenclature has not helped in the development and subsequent assessment of CAP131. Some respondents consider that without the post-connection element of CAP131, there is little contentious in CAP131 as it is just addressing an issue of pre-construction security.

Several respondents stated that it was important to replace FSL with a more stable and predictable form of security cover, to help facilitate new entry in the market. A number

⁹ All non-confidential responses can be found at the following link:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=11&refer=Licensing/ElecCodes/CUSC/Ias>

of respondents agreed that CAP131 would prevent speculative new entrants occupying places in the GB Queue which could otherwise be held by viable generators.

There were mixed views in relation to the existence of a User Commitment Charge. Some respondents considered that increasing the notice period for reducing TEC to 2 years, or indeed charging generators for not doing so would help improve the information available to NGET in planning the system. Other respondents did not consider that it was appropriate to increase the burden of user commitment beyond its existing level of a minimum of 5 days notice of a TEC decrease.

The Authority's decision

The Authority has considered the issues raised by the amendment proposal and the final AR submitted in July 2007. The Authority has considered and taken into account the responses to NGET's consultation on the amendment proposal which are attached to the AR¹⁰. Following publication of our Impact Assessment, we considered carefully all the views of respondents to that consultation in coming to our final decision on CAP131. The Authority has concluded that:

1. implementation of the amendment proposal would not better facilitate the achievement of the applicable objectives of the CUSC¹¹; and
2. rejecting the amendment is consistent with the Authority's principal objective and statutory duties¹².

Reasons for the Authority's decision

The current generation background shows that substantial volumes of renewable generation are seeking connection to the system, and will continue to do so if the government's renewable energy targets are to be met. This is largely driven by the substantial financial support provided to renewables through the Renewable Obligation. The changing generation background has made us look again at the issue of discrimination between new and existing generators in terms of security requirements in the context of CAP131. Given the substantially different economics of renewable generation plant (very low marginal cost once constructed and substantial financial support from the ROC mechanism¹³), there is an argument that those already with planning consent and finance in place are significantly lower risk than some existing generators (especially those that are close to the end of their planned life such as certain nuclear stations or are under restricted operating hours under environmental legislation such as the Large Combustion Plant Directive (LCPD)), and are therefore less likely to terminate and potentially strand transmission assets. As a consequence, there is an argument that these new generators should be required to provide the same or less security than existing generators to avoid any undue discrimination.

As we explained in the CAP131 Impact Assessment, all variants of CAP131 cause concern in relation to the differential treatment of new and existing generators, and we do not consider we have been provided with any additional analysis or evidence through the consultation responses to the IA that justifies objectively why, as a class, **new** generators are inherently different to **existing** generators such that the discrimination question does not arise. Similarly if it is considered that the discrimination question does

¹⁰ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

¹¹ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

¹² The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

¹³ For more information on the government's views on the economics of wind generation, please visit the government's recent consultation on potential invocation of section 185 of the Energy Act 2004: <http://www.berr.gov.uk/files/file46776.pdf>

arise, we have not been provided with justification as to why certain relevantly similar new and existing generators should be treated differently. This raises the question of whether new generators are more at risk of creating stranded assets than existing generators. As we stated in the IA, we have given the specific and very real example of a renewable generator with planning consents and financing in place putting system users at less stranding risk than a coal plant that is opted out of the LCPD and has a limited number of running hours remaining before it must close. None of the variants of CAP131 gives sufficient attention to different risk profiles of different types of generators in considering how to obtain financial security. Similarly, whilst several respondents note that new generators as a class are not comparable with existing generators in terms of the risks they pose if they do not connect or cease to generate, this has not been supported with analysis to show how for all generators of such a class they are indeed more at risk of imposing costs on consumers.

As we alluded to above, the key issue raised by all of the proposals is whether the different treatment of new and existing generators under CAP131 and the alternative proposals would give rise to undue discrimination. As such, an assessment of the appropriate level of user commitment for both new and existing generators is necessary so that any recommendations to the Authority to approve a proposal that has differential treatment are based on clear rationale, and where the issue of discrimination is engaged, any potential discrimination can be justified objectively. We note from responses to the IA that the working group did not directly assess whether or not new and existing generators was an appropriate distinction for different treatment of security cover. We have not seen a robust argument that the risk and impact of termination can be neatly categorised as between new and existing generators. We therefore think that this differential treatment, and potential undue discrimination, may not be consistent with EU and domestic legislation that relate to the prohibition on discrimination between users of electricity networks. Given the prohibition on discrimination in the transmission licence, the IMED, and the Act, as well as the issue of discrimination not being considered in detail in the final AR, and that our concerns have not subsequently been assuaged by responses to the IA consultation, on balance, we consider that CAP131 works contrary to *applicable objective a – the efficient discharge by the licensee of the obligations imposed upon it under the Act and the licence*. We also consider, on balance, that CAP131 works contrary to *applicable 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*. We do not think that CAP131 better facilitates competition as the difference in treatment between new and existing generators, which in some cases may be relevantly similar, has not been justified objectively, and by approving one of the proposals it would formalise in the CUSC a regime whereby new generators and indeed those generators increasing TEC would post considerably more cover than existing generators. To the extent that it distorts competition, it may be the case the provisions could hinder efficient new entry. Whilst differential treatment of generation types may be justifiable if it accurately reflects the relative risks of the two classes of generator, there is not compelling evidence to show this is the case. There is evidence that the opposite is true for certain types of new and existing generators. The implied conclusion of new generators being more risky than existing generators is, therefore, not correct.

In addition, those variants of CAP131 that explicitly favour treatment of a particular class of user, as in the case of generators with BEGAs, or generators in particular investment opportunity zones, would appear to run contrary to *applicable objective a - the efficient discharge by the licensee of the obligations imposed upon it under Act and the licence* (including anti-discrimination obligations), without objective justification for the differential treatment.

In the case of amendments that do not adopt the User Commitment Charge, and retain the existing arrangements, we continue to be concerned that adopting this approach

mandatorily in the CUSC could unduly discriminate between existing and new generators. In essence new generators would be treated substantially differently to existing generators and this would be formally enshrined in the CUSC. We do not think that formalising this approach would better facilitate the applicable objectives relative to the baseline as there would not be an appreciable improvement relative to the baseline, as generators already have the choice of opting for IGUC. Many variants of CAP131 do not materially differ from the existing IGUC, which was always recognised as being an interim measure and has its flaws. Formalising these flaws in the CUSC as the enduring basis for calculating security/liability is not an improvement relative to the current baseline. However, we are also aware that having two methodologies for security provision that generate significantly different results may create undesirable or unintended consequences. There have been cases where a generator, having applied under the FSL regime, moves across to IGUC in the event of termination to lower its security obligations. We do not think that parties should be able to move from one regime to the other to reduce their security exposure, and should bear the risks associated with their decisions, rather than consumers bearing those risks. Whilst in principle we think it is correct for the security arrangements to be laid out clearly in the CUSC, they should be better than the current baseline, and should be consistent with the licensee's obligations under the licence and wider duties under domestic and European legislation.

We have previously set out that due to the existence of the EU Emission Trading Scheme and the shadow price of carbon, which place financial values on greenhouse gas emissions, the economic impact (in terms of costs and benefits) of these emissions can be accounted for when assessing amendment proposals. In terms of environmental impact, a relevant issue in the context of efficiency and competition, we recognise that greater reduction in CO₂ emission could potentially be achieved by adopting the CAP131 proposals, through earlier connection of renewable generation. We note one respondent considers that Ofgem's "minded-to" position on CAP131 is at odds with government's stated aims and objectives for renewable generation'. We do not agree. There are better ways of achieving the same aim of providing faster access to renewable (and other low carbon) generation, which would not discriminate unduly between classes of generator. Similarly, given IGUC already exists, and the other issues identified in the assessment of these proposals, in particular the concern regarding undue discrimination, our view is that environmental benefit and enhancing competition can be achieved via the current initiatives being taken forward under the CUSC amendment process and the follow up work of the Transmission Access Review. We therefore do not think that any of the variants better facilitate the applicable CUSC objectives, and in our view are not better than the current baseline, as, in particular the two amendment proposals voted in favour of by the CUSC Panel, do not add any material benefit to the current IGUC methodology.

As we explained in our impact assessment, if respondents are not able to demonstrate sound reasons for the apparent discriminatory treatment of new and existing users under any of the CAP131 proposals, we would look to the industry and NGET in particular to consider whether further amendments should be considered. We do not consider that there has been sound demonstration and explanation as to why the difference in treatment should be on the grounds of new and existing generators, when security should arguably be provided to cover the risk and impact of stranded assets associated with specific generators. There may be other ways of generically capturing these aspects in a proposal that does not require detailed assessment of every single project in the GB Queue, but we do not believe that this generic approach is necessarily predicated on differentiating between new or existing generators, as this may be unduly discriminatory. The evidence and analysis presented by the industry clearly identifies a range of issues with the existing connection arrangements and we would encourage NGET and the industry to consider whether further modification proposals should be raised. In making this assessment, NGET and the industry will need to consider whether these issues will be addressed through the suite of modification proposals already being considered (CAP161,

CAP162, CAP163, CAP164, CAP165 and CAP166) to reform the transmission access arrangements in the light of the Transmission Access Review.

Other relevant issues

We are rejecting CAP131 on the grounds of not better facilitating the applicable CUSC objectives. However, in reaching our decision we have also taken account of other practical concerns that, whilst not the dominant factor, nevertheless in our view lend some weight in favour of a rejection. A lot of work has been undertaken by Ofgem, government and industry to develop an enduring transmission access regime that can cope with the challenges it faces from a rapid increase in low carbon and renewable generation expected in the coming decades. Given these challenges and the changing landscape of transmission access the approach proposed under CAP131 to security and user commitment are likely to be superseded by the enduring access reform amendments. Considering the lead time of 6 months required from an Authority decision to implement revised connection agreements reflecting the new terms, it may be that CAP131 would be in place for only a few months or similarly short time before it was replaced. We do not think this would be an efficient use of industry resources, and would undermine investor confidence, particularly for smaller renewable generators, which we recognise as being an important part of an efficiently functioning market. In keeping with the principles of better regulation, we do not believe that multiple short-lived changes to the industry codes helps to reduce regulatory uncertainty, and want an enduring solution to be just that. We note that NGET, as chair of the CAP161-166 working groups, has confirmed in its response to the IA that the changes proposed in CAP131 would need to be revised in light of the current access proposals, irrespective of issues raised in Ofgem's Impact Assessment.

We do recognise that there is a problem associated with security provision and user commitment that needs resolving urgently. However, on the basis of the evidence that has been presented to us, we cannot satisfy ourselves that CAP131 is not unduly discriminatory or better facilitates the applicable CUSC objectives, nor that it is compatible with NGET's licence conditions on non-discrimination, or other relevant domestic and European legislation. We are therefore looking to the existing CUSC process to deliver change in a timely manner that accommodates the concerns we set out in this letter.



Steve Smith, Managing Director - Networks

Signed on behalf of the Authority and authorised for that purpose.