



AMENDMENT REPORT VOLUME 2

CUSC Amendment Proposal CAP170 Category 5 System to Generator Operational Intertripping Scheme

This document contains consultation responses

Amendment Ref	CAP170
Issue	1.0
Date of Issue	24 March 2009
Prepared by	National Grid

ANNEX 1 - REPRESENTATIONS RECEIVED DURING CONSULTATION

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 3 March 2009, requesting comments by close of business on 13 March 2009).

Representations were received from the following parties:

File Number	Company
CAP170-CR-01	Association of Electricity Producers
CAP170-CR-02	British Wind Energy Association
CAP170-CR-03	Centrica
CAP170-CR-04	DONG Energy
CAP170-CR-05	EdF Energy
CAP170-CR-06	Eon UK
CAP170-CR-07	International Power
CAP170-CR-08	Nuclear Decommissioning Authority
CAP170-CR-09	Renewable Energy Association
CAP170-CR-10	RWE
CAP170-CR-11	Scottish Power
CAP170-CR-12	Scottish Renewables
CAP170-CR-13	Scottish and Southern Energy
CAP170-CR-14	USKmouth

CAP170-CR-15	Consultation received Private & Confidential
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13th March 2009

David Smith
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Dear David

Response to Connection and Use of System Code and Grid Code Consultations on CUSC Amendment Proposal CAP170 Category 5 System to Generator Operational Intertripping Scheme

Thank you for the opportunity to respond to the consultations on the Connection and Use of System Code (CUSC) Amendment Proposal CAP170. The Association of Electricity Producers represents generating companies in the UK with our membership comprising a wide range of technologies utilising fossil, nuclear and renewable sources of energy. Between them, members will undertake a vast majority of the investment needed to meet the Government's targets for renewable energy for 2010 and 2020. Members also include a number of non-generators. Members operate in a competitive electricity market and they have a keen and active interest in ensuring its success, not only in delivering power at the best possible price, but also in meeting environmental requirements.

Members agree that the significant increase in constraint costs is a cause for concern, but are puzzled as to why the issue was left till mid February to be addressed via an

urgent National Grid Electricity Transmission (NGET) review process. The potential for increased costs has been known about for as long as the planning for the Cheviot outage programme has been underway. NGET began publically to discuss the impact of constraints and outages as early as October 2007 when the issue was raised at the Balancing and Settlement Code Panel meeting. Those who have participated in discussions around the development of the System Operator Incentive Scheme for 2009/10 have been discussing potential mitigation since the review of 2008/09. Ofgem participates in this process too albeit late in the development cycle. As it would appear that this may have contributed significantly to Ofgem's sudden concern about the increased level of forecast constraints perhaps it would be timely to review Ofgem's future timetable for engagement. In addition we would appreciate additional information on why NGET's use of commercially negotiated intertrips has been defective? Presumably the use of commercial intertrips when compared with alternative means of managing the constraints such as acceptance of bids and offers in the balancing mechanism, particularly across the currently derogated non compliant Cheviot boundary, has been more economic and efficient. We note NGET has issued a brief update indicating its intention to investigate ways to align the SO-TO incentives. An early indication of industry involvement in this process would be appreciated together with a timetable for implementation.

The CUSC panel agreed to the urgent treatment of CAP170 on the grounds of the potential for significant commercial impact on both industry and consumers. However, this has resulted in a suboptimal process leaving little opportunity for full industry consideration of the issues, and potential for the development of alternative approaches, which may have emerged had the opportunity for improved industry input been agreed¹. The omission of Working Group deliberations during the brief eight day industry review period is disappointing with the prospect of any post implementation review being limited and of little value. Clarification of whether Ofgem intends, or is able to, carry out a Regulatory Impact Assessment post implementation is also required.

CAP170 has long term implications for our members in that it sets a dangerous precedent which will result in significant change to Bilateral Connection Agreements (BCA) without party agreement. The proposal changes the way in which amendments to the BCA's may be delivered in future by including new Implementation section 4.2A.8 into the CUSC legal text. Historically, change to the BCA could be automatically invoked only for 'routine change'. If approved, this new section virtually removes any ability to refuse variation to a BCA, in this case for the introduction of a Category 5 Intertrip. Members do not feel that such an approach is reasonable as this is proposing

¹ CAP170 was issued at 21:15 hours 3rd March effectively leaving only 8 days for industry consultation

to change the nature of what are currently commercially negotiated agreements to mandatory NGET invoked instructions on receipt of approval from the Authority. There is no guarantee that such provisions will be solely limited to such an event in the future or that there would always be only one derogated non-compliant transmission boundary. In light of the extent of change required in order to deliver the government's renewable energy aspirations this forms a dangerous change of direction and one which may have serious negative impact on the ability to attract investment in UK generation capacity due to the considerably increase in regulatory risk.

Section 3.9 of the consultation mentions the use of a methodology that will be used to determine which Users will be required to provide Category 5 Intertripping schemes and that this will be based upon a cost benefit analysis, considering aspects such as installation costs and the costs associated with the administered scheme. This is the extent of detail within the consultation and is too little to understand the full impact or benefit. As a minimum the proposal should have included a high level view of the methodology to be used to select targeted sites, what indicative are forecast using this approach, on which parties those costs would fall and cost recovery timescales and mechanism. An indication of when further detail is intended to be made available would be appreciated, which should include linkage to the System Operator/Transmission Operator Incentive Scheme and proposed governance framework.

We are led to believe that CAP170 was developed by NGET to address issues raised by Stuart Cook Ofgem in his letter to Alison Kay 16th (or 17th) February 2009² entitled 'Managing Constraints on the GB Transmission System'. Ofgem raises several concerns within that document. It would be of interest to know whether NGET has responded formally other than to raise the CUSC amendment, or firmed up views expressed at the 24th February 2009 Operational Forum regarding further options for change. Transparency around all such deliberations would be much appreciated.

Early industry engagement, rather than further urgent actions, is expected in order to ensure delivery of robust and appropriate solutions. In addition an indication of the 'shelf life' of proposals would be useful. For example, the Ofgem letter states that developments being considered in the context of the Transmission Access Review (TAR) may help mitigate the level of constraint costs, but delivery of such initiatives, being developed by NGET together with the industry, will not be in place until April 2010 at the earliest. Is it the intention that, if approved, CAP170 would subsequently be removed from the CUSC on the successful implementation of TAR related change?

² Two dates stated because there were two versions of the letter.

Finally we note that CAP170 has been raised to assist in the management of constraint costs in respect of a derogated non-compliant boundary. Members seek reassurance that the derogation applied to the Cheviot boundary is still valid given this proposed change.

If you wish to discuss any aspects of our response please contact Barbara Vest, Head of Electricity Trading on 07736 107 020

Yours sincerely

By email

David Porter OBE
Chief Executive

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13th March 2009

Dear CUSC Team,

***Consultation response
CAP 170 Company Consultation***

BWEA was established in 1978 and is the representative body for companies active in the UK wind energy market. Its membership has grown rapidly over recent years and is now approaching 500 companies, representing the vast majority of connected capacity.

The UK has a rich variety of renewable energy resources and the largest wind resource in Europe. Wind energy currently supplies approximately 1.5 million homes in the UK. It is important to support and encourage the growth of the sector and associated benefits.

BWEA might typically welcome the opportunity to respond to a consultation, but given the haste of CAP 170, we feel that "opportunity" is not quite the right word.

The process

The modification proposal itself may be short but the issues that need to be considered are complex and merit a longer timeframe than CAP 170 allows. We understand and appreciate that Ofgem is concerned about the potential for constraint costs to rise. However, we are very worried by the nature in which these concerns are being addressed.

Ofgem appears to be railroading changes through the CUSC because it can, rather than because they have been justified. There has been ample opportunity to progress these kinds of changes in the proper timescales, but instead they come shortly after a shelved competition law investigation into constraint costs.

If there are concerns about the operation of the market for constraint services in Scotland, then these should be set out clearly, and debated properly. What we have had is a confidential investigation into constraint costs followed by some unsubstantiated claims about inappropriate costs and a few graphs on bid and offer prices, with no debate.

Furthermore, there has been no debate or concern expressed about other sources of rising constraint costs, i.e. which are completely unrelated to the Cheviot Boundary.

BWEA also shares a widespread concern about forcing major and commercially material changes to generators' contracts. Under any circumstances this kind of change would necessitate very careful consideration. We simply have not seen any credible or substantiated case for urgency that would justify such a major move.

We also share the concern that these proposals could result in forced installation of an intertrip scheme at any time.

Finally, BWEA is uncomfortable commenting on proposals which will have an immediate commercial impact on a certain group of generators. We would stress that we have not directly consulted these affected generators and trust that they will make their own representations.

Mitigating constraint costs

BWEA is supportive of measures to manage constraint costs where they are unjustifiably high. Some of the proposals in the Transmission Access Review (TAR) seek to target additional constraint costs variously onto new connectees or generators in constrained areas, and a good proportion of our membership would be affected by these proposals. BWEA has welcomed the opportunity for its members to connect earlier than would otherwise have been the case, but has been very concerned about those members paying a cost over which they have no leverage.

In this respect, BWEA would very much welcome a proper and open review of constraint costs and the operation of the Balancing Mechanism. By any standard, CAP 170 and the other rushed proposals on constraint costs do not constitute a "proper and open review".

Working Group review

The consultation refers to the obligation under the CUSC to have a Working Group review of CAP 170 post implementation. Surely this review would be more meaningful if the changes proposed under CAP 170 were countenanced under time-limited, specific circumstances and were held accountable to the outcome of any review. Instead, our understanding is that CAP 170 is envisaged as a lasting measure that would extend beyond the Cheviot Boundary.

For the avoidance of doubt, BWEA is appalled at the way in which these changes are being progressed.

CAP 170

Specifically on the CAP 170 proposals BWEA would note that:

- (1) The remuneration and treatment in energy settlement set out in CAP 076 is complex and may be out of date for current market conditions. BWEA would ask that these proposals are clearly explained and worked through for all of the generators that could be affected by CAP 170.

- (2) Supplementary to (1), it is not clear to us the extent to which CAP 076 is designed to compensate generators for lost energy sales, and whether any compensation is limited to a 1-1.5 hour Balancing Mechanism Window period. In any event, there appears to be no compensation for lost Renewable Obligation Certificates (ROCs), should the tripped generator be a renewable generator.
- (3) BWEA understands that the new Category 5 definition would encompass any GB Queue advanced generators. Our understanding is that treatment as Category 5 would be an improvement on Category 1 and no remuneration, which has been the implied position to date. In that respect we are warm to discussion on administered prices, but are somewhat concerned that the option to strike a commercially agreed bilateral contract has not been put forward. New renewable generators should improve the options available to National Grid, and in so doing widen the market for intertrip services. It is difficult to understand why administered prices are proposed as the sole solution in the context of an expanding market.
- (4) There is no information provided on how often certain generators might be tripped, for how long they might be off-line and how these parameters feed through to commercial impact.

BWEA considers that much greater clarity is required on how users will be affected commercially and technically and whether there is a need to differentiate treatment and remuneration by technology or other circumstances. In view of these uncertainties, BWEA is extremely surprised that Ofgem has informally indicated (at the Operational Forum) that it will probably not conduct an impact assessment on these proposals.

In summary, BWEA does not have sufficient information to come to a view on the merits or otherwise of the detail of the CAP 170 proposals. BWEA has some very serious concerns about the process by which CAP 170 came to be categorised as "urgent".

If you would like to discuss any aspect of this response, please don't hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Gordon Edge', written in a cursive style.

Dr Gordon Edge, Director of Economics & Markets, BWEA

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9th March 2009

Response to CUSC Amendment Proposal (CAP170) – Category 5 System to Generator Operational Intertripping Scheme

Dear David,

Thank you for the opportunity to comment on the above proposal. While we support actions to address the forecast constraint costs there are a number of serious consequences arising as a result of this modification proposal that need to be addressed. These are covered in more detail below but in summary our key issues include:

- The timescales made available for such a fundamental change to the CUSC
- The removal of the generators' rights to refuse variations on a Bilateral Connection Agreement (BCA) and the associated significantly increased regulatory risk that may deter investors.
- The degree of reasonableness of the modification proposal given the existing contractual commercial arrangements,
- The lack of details surrounding other operational solutions NGET has considered to minimise the impacts of the constraints, particularly during an outage period.
- The lack of details on how the new intertrip process will be administered in practice. Operation of all intertrips needs to be transparent and fair.
- The proposal, in its current form, does not better facilitate the CUSC Objectives.

Timescales Due to “Urgent Status”

With over 6 million electricity consumers, the management of constraint costs is a serious issue for Centrica. However, implementing an inappropriate solution can create even bigger issues for the wider industry, and customers, especially if investor confidence is irreparably damaged.

We do not believe that 8 working days to fully analyse and assess the impact of this amendment is sufficient, especially given the legal precedents this proposal would set, as identified below. We are concerned that there has been no opportunity to consider the wider implications of CAP170, and / or an opportunity to develop better alternatives. In particular, we are disappointed that this proposal was not raised and assessed properly as part of the recent SO Incentives activity for 2009/10, which was begun early in 2009. The forecast level of constraints in 2009 has been a known issue for some time given the Cheviot outage plans (and precedent in 2008).

Legal Issues

The current proposal fundamentally changes the way in which amendments to the Bilateral Connection Agreements (BCAs) are achieved by the inclusion of a new Implementation Section (4.2A.8) into the CUSC legal text. To date, changes to the BCAs have only been applied automatically for 'routine

change'. Based on our initial review, we believe that this new section virtually removes any ability to refuse variation to a BCA, which suggests the agreement is anything but "bilateral". In our view, if this text remains it will result in significant change to CUSC and BCAs, introducing an unacceptable level of unquantifiable regulatory risk to all connecting parties. Investors may well be unwilling to sign such agreements under such conditions.

Due to the timescales, we have not been able to conduct a detailed review of the complex legal issues noted above, and as a result Centrica reserves its position on this matter until it has conducted further work. On this basis we have no option but to oppose implementation of this modification.

Alternatives

It is not clear whether alternatives can be raised and it appears there is no time for a Working Group assessment. Given the seriousness of the issue we feel it is appropriate to make some additional recommendations for consideration. These aspects would ordinarily have been discussed as part of the Working Group and are outlined below.

Specifically, this proposal changes the nature of current legitimate, commercially negotiated agreements and imposes mandatory NGET-invoked instructions on receipt of approval from the Authority, without recognition of the subsequent impacts on the parties involved. The provisions are permanent and applicable to any derogated boundary; there is no guarantee that the use of these provisions would be reserved solely to address the issues occasioned by the current Scottish constraints and not invoked in the future or that there would always be only one derogated, non-compliant transmission boundary. On this basis we believe the approach to be disproportionate and unreasonable. It may have serious negative impacts on the ability to attract investment in UK generation capacity as it would increase considerably the regulatory risk faced by investors.

Introducing Category 5 Intertrips into future BCAs may be appropriate, as per the current process and providing the proposed Implementation clauses (4.2A.8) are **not** included. This would allow generators to assess the risk of these intertrips and liabilities at a stage in the process when they have the choice to decline the connection and the conditions imposed.

For existing generators with commercial intertrip contracts, consideration could be given to introducing the Category 5 Intertrip once the existing contractual arrangements are time expired or via an existing break clause. We recommend that NGET urgently review all existing commercial intertrip contracts and identifies when these arrangements are due to end and, where they exist, the timing and content of any break clauses. This information should be provided to Ofgem and shared with industry in an anonymised form to inform the process and assist the development of alternative, more proportionate measures.

Finally, we still believe there are a number of operational solutions NGET could utilise to reduce the impact of an outage constraint and we would like to understand better which of these NGET is, or has, considered and progressed to date. For example, one way to reduce the impact of an outage is to utilise evening and weekend working to minimise the duration. NGET should provide details of its activities to identify and explore such alternatives, and demonstrate that all reasonable steps have been taken internally to minimise the outage impacts.

Cost Benefit Analysis

The cost benefit analysis referred to in Section 3.9 only considers the costs to NGET and does not take into account the additional costs for generators in necessary switch and plant modifications. These may be considerable, as may the wear and tear that needs to be factored in to any revised arrangements. We recommend that a full assessment of the all the costs and benefits is undertaken.

Intertrip Payments

Given the proposed extension of the intertrip mechanism under the CUSC, we believe it is appropriate to review the associated standard intertrip payments at the same time. They are outdated, inadequate, and are not properly reflective of the generator's costs associated with an intertrip. Intertrips significantly reduce a plant's operating hours and / or starts between maintenance periods, and expose businesses to significant and highly volatile imbalance risks. In addition, different plant technologies have different trip "recovery" issues, for example a nuclear plant will require more time to re-commission after an intertrip than (say) a hydro plant. The operational Intertrip Payments under the CUSC are neither reasonable nor cost and risk reflective and we believe that this is further evidence that there has been insufficient consideration of all the details in this modification proposal. We recommend that NGET urgently publishes to industry and Ofgem the assumptions / reasoning behind the £400k payment and how this might be updated, so Ofgem is able to evaluate this modification with all the relevant details before them.

We would also seek clarity on the process to be applied where there are a number of options for exercise of operational intertrips along the same derogated non-compliant boundary. For example, if the payment/cost to each candidate is administered, what criteria will be applied to determine which generator would be tripped off, and how would it be ensured that over time the approach is transparent and non discriminatory? A clearly-defined process will be needed for generators to understand the risks to their plant and businesses and for NGET to demonstrate fairness. This needs to be available well in advance of the application of any such process to enable such factors to be incorporated into the business case for any new plant or extensions to existing plant.

Conclusion

In conclusion, Centrica does not support this modification as currently proposed. As stated previously, the need to reduce constraint costs is evident, and in principle the introduction of a Category 5 Intertrip, as defined, (and without any special Implementation Clauses to force the requirement into existing arrangements) can help reduce these costs. However more consideration on its longer-term implications, especially the way in which it is implemented, priced and operated, is needed to ensure the solution is fair and reasonable.

We would also press NGET for the need for greater consultation surrounding intertrips (both commercial and operational) as a whole, to ensure affected parties are treated fairly while ensuring investment in the network remains an attractive proposition, helping to secure the GB network now and in the future. An eight day consultation in this case is not appropriate and Centrica would urge particular caution to ensure the decisions made are appropriate and not open to legal challenge, destabilising the industry for all stakeholders.

If, despite such concerns this modification is implemented (to protect network users by limiting constraint costs, associated with exceptionally high intertrip prices, during the approaching outage on the Cheviot boundary), we would strongly urge that it is done on a time limited basis and an immediate Working Group is set up to properly evaluate alternative options which might be more appropriate on an enduring basis.

If you have questions regarding the response please do not hesitate to contact me.

Yours sincerely,

Ben Appleby
Industry Development Analyst

11 February 2009

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Dear Bali

Consultation CAP170 Category 5 Intertripping Schemes

Thank you for the opportunity to comment on the above document as issued on 3 March 2009. This response is made by DONG Energy A/S on behalf of DONG Walney (UK) Ltd, Gunfleet Sands Ltd and Gunfleet Sands II Ltd.

We note the specific proposal to introduce a new category of intertrip which we understand would only apply (currently) to the Cheviot Boundary. We have no comment on the principle behind the new category of intertrip but consider that it would be beneficial to make a further change as this new class of intertrip may affect Users with Generating Units, CCGT Modules or Power Park Modules which can take advantage of the newly approved Grid Code modification F/08. This allows generators to reduce output within a short timescale (typically less than 10 seconds) to achieve the desired system effect, however the relevant breakers must still be opened for the "trip" to be compliant with the Grid Code and for payments to be made under the CUSC.

It is intended that this facility would be used by DONG Energy with a number of its wind farms as it significantly reduces the mechanical stress impact on the turbines. However, to then require the Power Park Module breakers to be opened is highly undesirable as it would not keep the wind farm's voltage control facility in operation to the benefit of the reactive power balance in the grid or allow for rapid up-regulation of active power if required.

We have proposed in our response to the corresponding Grid Code amendment (B/09) that at the same time as the new category of intertrip is introduced, the opportunity is taken to revise the Grid Code to clarify that if the desired effect of down regulation is achieved without opening the breakers, they would not have to be opened.

In terms of the CUSC we think that it is then important to clarify that provided the down regulation is achieved without opening the breakers, the “trip” payment would still be made. We therefore suggest adding a new paragraph 4.2A.9 as follows:

4.2A.9 Automatic Reduction in Output

Where a **User’s Bilateral Agreement** allows for the automatic reduction in the output of the **User’s Generating Unit(s)** or **CCGT Module(s)** or **Power Park Module(s)** prior to the automatic tripping of the relevant circuit breaker in accordance with **Grid Code** paragraph CC6.3.18, and such automatic reduction occurs in response to a signal from signal from the **System to Generator Operational Intertipping Scheme**, such automatic reduction shall be considered to be the same as the relevant **Circuit Breakers(s)** being tripped for the purposes of:

- a) the **User’s** obligations under Paragraph 4.2A.2.1(c),
- b) **The Company’s** obligations under Paragraph 4.2A.2.2(c),
- c) the calculation of SE_{sj} under Paragraph 4.2A.3, and
- d) the payments to be made by **The Company** to the **User** under Paragraphs 4.2A.4(b) and 4.2A.4(c).

We have raised this issue in our comments on CUSC modification CAP170 where we seek to maintain the intertrip payment even if the breakers are not opened.

Yours sincerely



A R Cotton

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CAP 170 Company Consultation Response on behalf of EDF Energy

Executive Summary

- We recognise that forecast constraint costs for 2009/10 of £262m is high, however to reduce this number we need to understand what the main causes are and target them correctly:
 - The only enduring solution is to allow National Grid to proceed with reinforcements.
 - If the costs are excessive due to certain participants exercising market power, then Ofgem should use their powers under the Competition Act (1998) to investigate. We could only support CAP170 if it targeted only those parties found to be exercising market power, as in its current form it is too wide ranging.
 - In its present form CAP170 proposes fundamental changes to the GB market structure that in EDF Energy's view fail to tackle the underlying causes of high constraint costs.
- We are extremely concerned with the process being followed to introduce CAP170 as it does not permit adequate industry consideration of the issues involved.
- Notwithstanding the materially adverse impacts of high constraint costs, we do not agree that CAP170 should be treated as urgent, because we believe this will sacrifice the quality of any enduring solution for speed of implementation, for what would be a poor solution
- CAP170 does not better facilitate the applicable CUSC objectives as it will distort the market for Intertrips and is price discriminatory as it does not reflect the opportunity costs of the range and size of generating units connected to the system.
- The consequences of forcing administrative prices on the industry and effectively cancelling commercial agreements will increase regulatory uncertainty and could influence plant investment decisions.

Discussion of defect

National Grid has forecast constraints for 2009/10 of £262m and it is Ofgem’s view (17th February 2009 letter to National Grid) that National Grid should seek to reduce both the size and costs of constraints. The only enduring solution to reducing the volume of constraints is to strengthen the transmission system and it is our view that, where it is optimal to do so, National Grid should proceed with this reinforcement.

Solutions to address the issue of high constraint costs in the interim require an understanding of the reasons for the constraint volumes and costs.

EDF Energy believes that the underlying regulatory issue behind Intertrip arrangements is multi dimensional that cannot be solved by Intertrip reform alone. Generator market power relates to location, time and the characteristics of the generation asset itself. From EDF Energy’s perspective the problem is as much about the *behaviour* associated with active constraints as the charging arrangements themselves. This is summarised in figure 1.

Figure 1 Classification of Constraint costs

Classification of constraint costs			
	[1] Compliant cost	[2] Extra volume attributed to derogation	[3] Extra cost attributed to behaviour
Cheviot [B6]	All circuits have a level of operational cost, such as during outages.	If the circuits have derogation against the planning standards the transfer capacity is not enough, leading to a greater volume of constraints and greater cost even if generators price competitively and run in line with spreads available in the forward market.	If the circuits are susceptible to constraint conditions, generators have the power to [1] create constraint volume through over or under despatching plant in the forward market and [2] increase the price through bids-offers in the balancing mechanism

←-----£Xm-----→ ←-----£Ym-----→ ←-----£Zm-----→

1. £Xm is the cost that would naturally be incurred even if the circuits were compliant;
2. £Ym is the extra costs of constraints (difference in marginal cost of the plant taken off, and that brought on including any cost of additional reserve, etc);
3. £Zm is the additional profits some generators in the constrained area have been able to achieve through bidding behaviour.

We believe the cost of granting the derogation [£X+£Y] is a reasonable cost on the proviso that behaviour that exacerbates the costs (£Z) has been eradicated.

Therefore there is merit in implementing something that will remove the behaviour that exacerbates both the volume and cost of constraints on the derogated boundary thus reducing the cost of constraints.

Neither the CAP170 amendment proposal nor the company consultation document adequately demonstrates that a defect exists within the CUSC. However, Ofgem’s letter dated 19 January 2009 informing industry of its decision to close the competition act investigation into Scottish Power and Scottish & Southern Energy, states ‘We have concerns with the behaviour observed during the periods under investigation. In particular it appears that both SP’s and SSE’s output has been much more expensive than that of comparable generators in England & Wales at times of constraint.’ The letter also states ‘There is also evidence that in at least

some cases, SP and/or SSE may have behaved in ways that exacerbated, and in some cases created, constraint situations in relation to Scotland.’ These observations by Ofgem confirm in our view that this third component of costs is an issue and EDF Energy believes that this is the real defect that needs to be addressed.

CAP170 does not distinguish between the two components of reasonable costs that might reasonably be expected in managing a transmission constraint and the additional costs that arise from a generators ability to abuse a constraint. Instead, this proposal seeks to create a charge that aims to reallocate all of the cost (reasonable or otherwise) of the derogated boundary [FY+Zm] to all generators north of the boundary. Using such a blunt tool will simply penalise all generators north of the boundary and fails to specifically deal with the underlying cause contributing to increased constraint costs.

If the cost of constraints is disproportionately large due to certain participants exercising market power, then it is our view that Ofgem should use its powers under the Competition Act (1998) to investigate this matter fully and deal with the defect through established regulatory processes. We also note that, in August 2005, the Authority determined, against National Grid’s view, that it was appropriate to convert existing operational Intertrip schemes, serving the “Cheviot boundary” into commercial contracts. It appears that CAP170 is attempting to reverse this decision but, in our view it is too wide-ranging and could produce a number of undesirable results

EDF Energy therefore finds that although CAP170 has the potential to reduce constraint costs, it is too wide-ranging in its potential application and in an attempt to deal with the underlying factors that have contributed to increased constraint costs, and it discriminates against generators who have behaved impeccably.

Process

The modification process itself raises two important issues. Firstly administered prices mark a departure from our existing regulatory arrangements and secondly the urgency of the proposal will sacrifice speed for quality of solution.

Departure from market philosophy

Great Britain has adopted a market approach to generation and supply. Where there has been no prospect of competition price controls have sought to replicate competition. CAP170 does not follow this formula. Investment decisions have been made on the understanding that this market model will persist and accepting that there will be an appropriate and understandable level of regulatory risk. The administered solution presented here prevents commercial negotiation and hence price discovery of the true value of the service. The £400K limit may effectively prevent scarcity rents, but it is an arbitrary number and takes no account of the true costs to the generator. Parties are unable to contribute to meaningful debate on the proposed solution as under the current CUSC Governance process (since CAP160) no consultation alternatives which could refine or working group discussion are permitted. We do not consider this modification was intended to prevent proper industry consideration of future rule changes. Given the lack of industry discussion it is essential that Ofgem produce a Regulatory Impact Assessment (RIA) with regard to CAP170. This proposal clearly falls within the definition of important in respect of Ofgem’s obligations to conduct an RIA on such matters.

Level of Urgency

National Grid has requested urgency for this proposal solely due to the 17th February 2009 letter from Ofgem. This letter not only contains an implicit view that Ofgem considers National Grid may be in breach of its Transmission License and the Electricity Act but also that Ofgem considered proposals should be raised urgently.

It was well understood prior to the introduction of BETTA that the “Cheviot boundary” would be subject to constraints and in August 2005, Ofgem confirmed this in their determination document (C18/R/12/A). In March/April 2007 the “Cheviot boundary” received a derogation from the GB SQSS by the Authority.

On 5th June 2008, initial proposals for SO Incentives indicated that total forecast network constraint costs would be £125m for 2008/09. This was increased to £194m in the subsequent consultation of 27th November 2008 consistent with the prevailing market prices at that time. At this time, National Grid provided an initial forecast of constraint costs for 2009/10 of £307m which was revised downwards to £258m on 27th February 2009.

We therefore conclude that Ofgem had sufficient time to invite National Grid to raise any non-urgent proposals and suggest that the Industry is now being penalised for a lack of regulatory oversight throughout 2008 with respect to forecast constraint costs. The issue of solving the constraints in Scotland is complex (see figure 1) we would not want to sacrifice *quality* of solution for speed by simply replacing one set of sub optimal solutions with another.

Proposal CAP170

Under CAP170 National Grid will be permitted to revise commercial agreements that it has entered into, in good faith, with existing Generators. Generators currently providing Intertrip services will have constructed their business cases taking due regard of the risks and expected return on investment. If Generators had been aware of the regulatory risk that CAP170 brings, i.e. that they would in the future receive administered payments for these services rather than commercially agreed payments, then they may not have agreed to provide an Intertrip.

CAP170, if approved, would set a dangerous precedent; National Grid could swap an agreed commercial contract for one with an administered price, for any service and prevent the party from withdrawing provision of that service. This would render Bilateral Contract Arrangements (BCAs) meaningless for both existing plant and those looking to invest in new capability. We consider that this poses a significant risk to the development of new Generating capability, at a time when there is an urgent requirement for investment to meet a forecast energy gap and to meet the Government’s declared renewable objectives. On this point alone the proposal does not better facilitate the CUSC objectives as it would potentially act as a barrier to market entry, contravening objective (b) to facilitate effective competition in the generation and supply of electricity.

The proposal utilises the existing payment scheme as determined by CAP076 in 2005. This payment scheme is not cost-reflective and is price discriminatory for different classes of Generator. It takes no account of costs in terms of capacity and marginal cost of the unit and the time to return to service. A £400k flat fee covers a 100 MW wind farm, a 500 MW nuclear plant and a 500 MW coal plant for very different periods of time. Furthermore it could discourage new entrants into the market for Intertrips.

CAP170 provides no indication of any merit order which National Grid would use to activate Intertrip schemes and for all these reasons we believe the proposal is price discriminatory. We therefore again conclude that this proposal does not better facilitate objective (b) of the CUSC.

We consider that the proposed legal text for CAP170 is contradictory and defective. On one hand it suggests that CAP170 will apply to existing Intertrip providers whilst also suggesting that National Grid will be permitted under a methodology to revise a party's BCA. This methodology is not transparent as it has not been provided for review or comment. Such a methodology could be discriminatory and therefore CUSC objective (b) is not met.

Conclusion

EDF Energy believes that there is a real issue to be dealt with in minimising constraint costs and the efficient operation of the market. However the blunt approach proposed in CAP170 of applying a flat fee that covers all types and sizes of generating plant is arbitrary and potentially discriminatory. EDF Energy therefore does not support the implementation of this modification.

EDF Energy also has concerns that administered prices mark a departure from our existing regulatory arrangements and secondly the urgency of the proposal will sacrifice speed for quality of solution.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Linford".

Denis Linford
Director of Regulation

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Friday 13th March 2009

Dear David,

CUSC Amendment Proposal CAP170 – Category 5 System to Generator Operational Intertripping Scheme

Thank you for the opportunity to respond to the above consultation. This response is on behalf of E.ON UK and E.ON Energy Trading.

E.ON UK does not support the implementation of CAP170.

Urgency

We note that this Amendment Proposal arose from a letter from Ofgem to National Grid sent on 17th February 2009. The urgent status of this proposal is specifically linked in part to the imminent start of the Cheviot Outage Programme (paragraph 3.1 of Consultation Document Volume 1 refers). It is difficult to understand the requirement for urgency on these grounds, given that the planned Cheviot Programme outage dates were known when the Derogation from the SQSS was granted and revised by the Authority in March and April of 2007.

The changes required to CUSC by this Amendment Proposal, and consequentially to the Grid Code, are detailed and potentially complex, and merit Working Group development before consultation. Use of the urgent amendment process in the CUSC is inappropriate for changes of this complexity, especially given the interactions across different codes and with the Procurement Guidelines. The Amendment Proposal should ideally have been raised much earlier to avoid this situation.

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Nature of the Defect

Our understanding was that this amendment was raised solely in response to Ofgem's letter of the 17th February asking National Grid to address expected high levels of costs incurred on the Cheviot boundary and within Scotland in the next charging year (Annex 2 to the Consultation Document, the first paragraph of the section "Description of Issue or Defect that Proposed Amendment seeks to Address" refers). Instead, the intent of this Amendment Proposal appears to be to alter radically the terms for installing what have up to now been commercial intertrips at any Derogated Non Compliant Transmission Boundaries (Annex 2 to the Consultation Document, the final paragraph of the section "Description of Issue or Defect that Proposed Amendment seeks to Address" refers). It is unclear as to why the amendment has been drafted so widely if the issue identified by Ofgem relates only to a specific part of the network. If National Grid believes that this issue could arise in future at another point in the network and should be addressed in anticipation, then this should be the subject of a separate modification, raised under normal timescales, that allows proper consideration by a working group and the wider industry.

Implementation and Impact on Existing Power Stations

The retrospective nature of this proposal is of serious concern. The intention appears to be to impose Category 5 Intertrips on existing as well as new Power Stations. Existing Power Stations will not have accounted for the increased Risk of Trip in their financial modelling or in the relevant company Board approvals process, thus this Proposal undermines the basis upon which investment was made, and increases the uncertainty of future investment. Existing Power Stations may already have existing Commercial Intertrip contracts with National Grid, and it is unclear how those pre-existing contracts would be treated if this Proposal were to be implemented.

The fact that a whole section of new legal text is required in the CUSC to allow the retrospective change to Bilateral Connection Agreements highlights the extent of the precedent that this change would set were it to be implemented. This precedent is wholly unacceptable.

The Consultation Document also makes reference to a methodology which will be used to determine which Users will be required to provide Category 5 intertrips. This methodology and its application are inherently part of this Proposal, and it should have been published with this Consultation. The methodology should not only cover installation costs, but also all generator

costs associated with a Category 5 Intertrip.

Further issues with the Category 5 Intertrip Proposal

The Consultation document refers several times to the use of intertrips being a “necessity” for managing derogated boundaries. The original derogation and its revision issued by the Authority in March and April 2007, and available on the public register, make no reference to the use of intertrips on managing the flows across the B6 Cheviot boundary. Indeed, the derogation letter notes that all those concerned expect the boundary flows to remain compliant with Section 5 (Operation). Will NGET and the Authority be reviewing the derogation to ensure that it remains appropriate?

It may true that use of an administered price intertrip may be for NGET a cost effective way of increasing flows across a boundary, provided the intertrip does not operate. It is not clear that intertrips are always the most economic solution when taking into account the generator’s costs.

As mentioned above, this Amendment Proposal has been raised and deemed to be urgent for the treatment of one specific derogated transmission boundary. It is incomprehensible that this boundary is not defined clearly and specifically, especially in the light of the changes which would be imposed upon generators in the event this Proposal is approved. Generators have no control over the planning and operation of the Transmission System under the SQSS, and there is no transparency of requests for derogation from the SQSS. If implemented, this proposal would allow NGET and the Relevant Transmission Licensees to apply for further boundary derogations instead of reinforcing the Transmission System, and impose further Category 5 intertrips. Because of the lack of time for consideration given to industry, this ill defined drafting is of significant concern.

We are concerned about the lack of certainty regarding the removal of the requirement for Category 5 Intertrips upon expiry of the derogation. Given the proposed definitions, it is surely more than “envisaged” that schemes will be removed when the nature of the boundary changes. If the proposal is implemented, it must in fact be certain that a Category 5 intertrip could not exist without a derogated boundary.

The payment terms are proposed to be the same as those developed for Category 2 and Category 4 Intertrips. These payment terms may not be appropriate for the technologies of the Power Stations deemed by NGET’s

methodology to be required to provide Category 5 intertrips. Any power Station of any technology type could be deemed to be required a Category 5 Intertrip, and the payments require review to ensure that they are appropriate. The Urgent process applied to this Amendment Proposal makes a review of payments impossible.

Assessment against CUSC Objectives

We disagree that the introduction of Category 5 Intertrips would better allow the efficient discharge of licence obligations. It may provide an efficient mechanism for addressing costs incurred at a particular congestion point on the network which was created by specific and unique circumstances at the commencement of BETTA. However, it is by no means certain that its wider application, as envisaged by the wording of CAP170, would result in more efficient design and operation of the network as a whole.

We also disagree that the Amendment Proposal facilitates effective competition– if anything as a general rule the introduction of administered prices limits competition rather than facilitates it. Intertrips do not increase market certainty; they increase the risk of generator trips, which in the light of the events of 27th May 2008 is not necessarily a good thing.

Conclusion

Any change introduced with so little time for consideration and consultation should be drafted as tightly as possible to address the exact difficulty perceived. This principle has not been followed in the preparation of CAP 170, and so E.ON UK cannot support it.

If you have any queries, please do not hesitate to contact me on the above number.

Yours sincerely

Claire Maxim
Trading Arrangements



First Hydro Company is part of a joint venture between International Power plc and Mitsui & Co., Ltd.

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13th March 2009

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Dear David,

CAP170 Category 5 System to Generator Intertripping Scheme

International Power (IPR) is responding to your consultation on behalf of First Hydro Company, Saltend Cogeneration Company Ltd, Rugeley Power Ltd, Deeside Power Development Company Ltd and Indian Queens Power Ltd.

We share industry concerns over the (well-signalled) rising costs of constraints, and support efforts to improve the efficiency of constraint resolution. These issues have been debated in some depth over the last two years as part of National Grid's development of its SO Incentive scheme. Therefore we are unclear why Ofgem has asked National Grid to bring forward this proposal, on an urgent basis, and at a very late stage ahead of the next incentive year. The issues around constraints are significant and fuller debate and consultation with market participants is warranted.

We do not support the proposed change, which seeks to remunerate certain commercial intertrip services via an administered payment route, and utilise these services as a more routine tool for managing network constraints.

Our concerns fall into several key areas.

- The proposal is being progressed via the Urgent CUSC route. This fast track route does not allow for alternatives or changes to the legal text after the initial consultation. We do not believe that the Urgent CUSC route is appropriate for what is such a significant and fundamental change to the market arrangements. We believe that proper debate via the normal working group process is essential, with the ability to raise alternatives if appropriate. Therefore, in our view the proposal should be withdrawn.

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- We believe that one effect of the proposal would be to undermine the operation of the Balancing Mechanism and place providers of BM services in direct competition with the administered arrangements. Where a sufficient number of providers are available a competitive market will develop and provide the lowest cost solution. Setting administered prices potentially creates a dangerous precedent for our “market-based” arrangements, increasing commercial risks for market participants. Furthermore, prescribed prices have the potential to dampen signals to invest in new transmission assets.
- The implementation of this proposal will effectively invalidate any existing commercial intertrips agreements. These commercial agreements were presumably freely entered into by willing parties, with the payment rates taking account of the (minimal) levels of compensation that are available should the trip operate in practice. Disconnection could last for many weeks with compensation being limited to a refund of TNUoS. Again, this could set a worrying precedent that may undermine any commercial agreements for services with National Grid.
- We do not think that the proposed levels of compensation following the operation of intertrips bear any relationship to the commercial risks faced by a generator in this situation. Following a trip the affected party is only allowed to generate with consent from National Grid. This potentially may prevent the generator from operating in the market for many weeks or months. The post trip level of compensation is limited to the initial trip fee and the return of TNUoS after 24 hours. This puts the party with an intertrip at significant disadvantage compared to another party (potentially behind the same constraint) who is able to generate, with bid compensation if generation is curtailed. We do not feel the arming fee (£48k/year) is an appropriate level of compensation to cover this level of risk, or reflect the firm access arrangements that are a core principle of the BETTA market.
- The method outlined to implement new Category 5 intertrips under this proposal is draconian in its nature and does not contain appropriate checks and balances. Furthermore, the proposed arrangements do not deal with the technical or commercial aspects of implementation. A new intertrip that is initiated on a National Grid breaker (which is a possibility proposed under this modification) has significant safety implications for a generating unit, where station supplies could be lost as well as the main generation unit. The method of assessing and charging the costs (insurance, installation costs and plant modifications) is not covered by the modification (but would presumably be borne by National Grid?).

In summary IPR is extremely concerned over the wider potential implications of this change and does not support the proposed amendment or the proposed method of implementation in the Bilateral Connection Agreement.

We believe that commercial intertrips services should only be entered into by willing participants and not forced upon users of the transmission system without their consent. In other words it is not acceptable to impose on generators a significant risk of disconnection from the system with minimal levels of compensation.

Yours sincerely,

Simon Lord,
Transmission Services Manager

Virk, Bali

From: david.m.ward@magnoxnorthsites.com
Sent: 13 March 2009 15:53
To: .Box.Cusc.Team
Subject: Response to National Grid Consultation CAP170

To:
CUSC Team
National Grid

By email

Response to the Urgent Consultation on CAP 170

This email is a response on behalf of the Nuclear Decommissioning Authority (NDA) to the urgent consultation on CAP 170 ("Category 5 System to Generator Operational Intertripping Scheme"). The NDA is the owner of the former Magnox, UKAEA and BNFL sites, which currently include two directly connected large power stations, one embedded large power station, one embedded small power station, several directly connected demand sites, and a number of distribution-connected demand sites. Magnox North Ltd operates some of those sites for the NDA

General Comment

This amendment proposal directly affects generation in Scotland, (north of the Cheviot boundary). The NDA does not own or operate any power stations in Scotland so would not be directly affected by the proposals in CAP170. However the NDA, like all users, could be indirectly affected if the proposals in CAP 170 are implemented, as they are clearly intended to limit certain constraint costs, and hence may reduce BSUoS charges for all users.

As CAP 170 may reduce BSUoS charges at certain times, the NDA does not oppose the amendment as a whole, but has concerns about a number of issues as described below.

Urgent Status

It is difficult to understand why CAP 170 was considered to merit urgent status. The issue of constraints on the transmission system between Scotland and England was well known in the industry well before BETTA, and the way that BETTA was introduced could be seen to exacerbate the constraints issue. It was also well understood in the industry that works to relieve the constraints after BETTA started would necessarily cause additional constraints while the works were being carried out. Consequently, it seems strange to require an urgent modification to the CUSC, more than four years after BETTA started, to alleviate a problem that was known about long before.

It is to be hoped that this will not become the custom for future CUSC modifications. Significant modifications require a significant amount of time to be properly considered.

Cost Reflectivity

CAP170 introduces administered payments for Category 5 intertrips, similar to those for Category 2 and 4 intertrips. Administered payments are fair and reasonable, ONLY if they are cost reflective for the parties affected.

The issue with the proposed administered payment arrangement is that it overcompensates smaller and more flexible generating units, and undercompensates larger and less flexible generating units. This is not economically efficient. It also places an apparent incentive on the System Operator to intertrip larger generating units in preference to a larger number of smaller generating units.

Paragraph 3.9 of the consultation document refers to a cost benefit analysis being used to determine which users will be required to provide a category 5 intertrip. This cost benefit analysis should consider the costs to the generator, and not just the costs to

the system operator.

Where the administered payments would not cover the generator's costs, then the intertrip should not be used.

Retrospective Action on Bilateral Contracts.

A worrying aspect of CAP 170 is the principle of compulsory retrospective modification of a bilateral agreement. This is a dangerous precedent, and should be used only as a last resort. Whilst CAP170 currently only applies to generating plant in Scotland, the principle could be extended in future to other parts of the GB network. The NDA would vigorously oppose any proposal to introduce intertripping arrangements on its generating units, none of which has a system-to-generator intertrip at the moment,

These comments are not confidential.

Regards

David Ward

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----- End of message

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Views expressed in this email are not necessarily those of Magnox North Limited.

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13th March 2009

Dear Sir,

Response to consultation on CAP 170

The Renewable Energy Association is pleased to be able to offer its comments on your consultation on CAP 170. As you are aware our members work on all types of renewable power and heat projects. In an ideal world modifications such as this should not need to be introduced in such a compressed timescale. Having said that we wish to be pragmatic and given the circumstances we offer our comments constructively as follows.

We have been enthusiastic supporters of the use of intertripping schemes in order to make the most efficient use of transmission system capability and therefore agree with the principle encouraging their wider use. With respect to the current proposal to make them compulsory in one area of Great Britain we have two specific comments.

Payments

Whilst ideally these should be fixed by a competitive market we understand the reasons for moving away from that in this instance. On the basis that the intention is not to make any generator be out of pocket as a result of fitting intertripping facilities we would like the payment provisions to have a safeguarding clause along the lines of "If a generator can demonstrate that it incurs costs greater than those given in table 4 (payment rates) for either having an intertrip armed or for an intertrip operating then it will be reimbursed at those higher rates rather than those given in table 4."

Treatment of generators that have an existing intertripping scheme

Where a generator has negotiated a commercial intertripping scheme that performs technically as a Category 5 scheme would then it is not acceptable that the provisions of this amendment should be used to change the commercial arrangements for the existing scheme.

This would send all the wrong messages to generators and would penalise any that have voluntarily made an effort to reduce costs for all by entering into commercial arrangements to install an intertripping scheme. We would assume that the terms of such agreements were satisfactory for both NGC and the generator and to undo them would discourage generators from entering into these arrangements in the future, to the detriment of all parties. We therefore think that an extra sentence should be added to paragraph 4.2A.8.2 to make it clear that this provision only applied in cases where there was no existing scheme with essentially the same technical functionality as what would be adopted as a category 5 scheme.

Please let us know if you would like to discuss any aspects of this letter further.

Yours faithfully,

Gaynor Hartnell,
Director of Policy, REA.

Hedd Roberts
Development Manager,
Electricity Charging & Access
National Grid Electricity Transmission plc
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Name Bill Reed
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Friday 13th March 2009

Email: cusc.team@uk.ngrid.com

CUSC Amendment Proposal CAP170 Category 5 System to Generator Operational Intertripping Scheme – RWE Response

Dear Hedd,

- 1 Thank you for the opportunity to comment on the CUSC Amendment Proposal CAP170 Category 5 System to Generator Operational Intertripping Scheme consultation. This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply and Trading GmbH and RWE Innogy.
- 2 We do not support implementation of CAP170 and this letter sets out our views in relation to the CUSC objectives.
- 3 We do not believe that CAP170 will improve CUSC Objective (a) in relation to the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence for the following reasons:

- 3.1 CAP170 appears to have been introduced in response to the letter from Ofgem dated 17th February regarding constraints on the GB transmission system. This letter highlighted that the forecast costs of constraints on the GB transmission system were set to rise by 10% from the 2008/09 level to £262m in 2009/10. In this context it would be appropriate for National Grid to provide information on the extent to which constraint cost savings have been and can be delivered through the use of commercial intertrips when compared with alternative means of managing the constraints such as acceptance of bids and offers in the balancing mechanism, particularly across the currently derogated non compliant Cheviot boundary. We assume that the arming of a commercial intertrip has been more economic and efficient when compared with the alternatives available. This data should enable an economic comparison to be made between the cost

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savings arising from administered arrangements envisaged under CAP170 when compared with the cost of a service delivered through a commercial scheme or through alternative constraint management measures. This data should enable market participants to understand the level and extent of any efficiency savings envisaged under CAP170 and determines the extent to which the proposal can better meet CUSC Objective (a).

- 3.2 Following on from the economic data, further information is required to understand the clear technical reasons for the introduction of a Category 5 intertrip or to understand the circumstances under which a commercial intertrip can be deemed to be a non commercial Category 5 intertrip. A Category 5 intertrip scheme should only be designated if there are clear system or competition related issues that require the arming of a specific intertrip scheme to alleviate these. This is the case for all other forms of intertrip (Category 1-4) defined in the Grid Code. Since the proposed amendment fails to define the specific system or competition related requirement for the intertrip scheme we do not believe that it can better meet CUSC Objective (a).
- 3.3 We are concerned that the requirement for an intertrip scheme across a derogated non compliant transmission boundary is inadequately explained. We note that the current derogation notice in relation to the Cheviot boundary identifies a number of specific circuits. We assume that these circuits are also defined in the relevant bilateral agreements in relation to current commercial intertrips, though we have no information to support this. However, we would note that the specific reason for the arming of the intertrip appears to be outages that are taking place across the derogated boundary. In other words, the intertrip is only required as a consequence of outages related to reinforcement works and would not normally be required as a result of the derogation. The fact that the intertrip costs are incurred across the boundary during the outage season appears to confirm this suspicion. As a result we do not believe that the new category of intertrip addresses the nature of the requirement and that it is detrimental with respect to CUSC Objective (a).
- 3.4 We note from the amendment report that CAP170 has been introduced to reduce overall costs of resolving a constraint on the transmission system by introducing an administered scheme to replace what appears to be a commercial service. We do not believe that this is an appropriate response to a cost incurred in operating the transmission system. Indeed, we believe that if CAP170 were to be introduced it would set an unfortunate precedent in that the SO would seek administered prices in circumstances where costs, in their view, are high. While we have concerns about the costs of resolving system constraints we would note from information in the consultation document that the overall costs of resolving constraints across the Cheviot boundary are roughly proportionate to the costs of resolving constraints in England and Wales (paragraph 3.3). We do not believe it is efficient to impose administered terms on parties merely because costs appear high and therefore do not believe that the amendment proposal better meets CUSC Objective (a).
- 3.5 We do not believe that CAP170 addresses the specific issues arising at the Cheviot boundary in relation to the management of transmission outages required to deliver major system reinforcement. In particular while the boundary remains derogated with respect to power flows from Scotland we believe that the reason for the intertrip scheme arises because of transmission outages required by the relevant transmission owner (TO) to undertake system reinforcement. In other words the costs incurred are specific to the outage requirements of the TO rather than the system operator and there should be appropriate incentives on the TO to minimise these (though for example, weekend working, timing of outages etc). While these costs may not be appropriately managed at the current time, we believe that CAP170 would be detrimental to the efficient

management of the costs since the sharp price signals with respect to the efficient management of TO outages would be lost. Therefore we do not believe that CAP170 can meet CUSC Objective (a).

- 3.6 We remain concerned that under CAP170 the voluntary provision of an intertrip scheme appears to be translated into a compulsory scheme as a condition of connection in the event that National Grid and the Authority determine that a boundary should be subject to a derogation. We believe that this may have unintended adverse consequences on the voluntary provision of intertrip schemes to the extent that it may jeopardise the provision of such schemes elsewhere on the GB transmission system. On this basis we do not believe that CAP170 can better meet CUSC Objective (a).
- 4 We do not believe that CAP170 will better meet 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 for the following reasons.
 - 4.1 CAP170 will remove the incentive on the SO to develop innovative products and services on a commercial and competitive basis to resolve constraints on the transmission system. We are particularly concerned that the SO would regard an administered solution in circumstances where costs appear to be higher than the costs of resolving constraints in the balancing mechanism (through, for example, bids and offers). We note that National Grid state in the amendment report that the proposal would “offer a useful means to limit potential constraint costs” and that in their view will facilitate competition. We do not see how limiting constraint costs by administering commercial (therefore competitive) services can facilitate competition. Consequently we do not believe that this proposal can better meet CUSC Objective (c).
 - 4.2 National Grid assert in paragraph 4.1, that the proposal will remove exposure to the operation of bilateral negotiated schemes capable of being armed with respect to derogated non-compliant transmission boundaries. We believe that this is a worrying statement and suggests that any “bilaterally negotiated schemes” could be removed through a CUSC amendment. This precedent could seriously undermine CUSC Objective (C).
- 5 We note that National Grid are currently considering other measures such as locational BSUoS and capping of bids and offers to reduce the costs of constraints on the GB transmission system. While we await the details of such approaches we would caution that measures introduced in haste to address the costs may have wider ramifications and implications when considered in a GB context. We believe that this is the case with CAP170 and would urge caution in developing proposals that are not robust.
- 6 In addition we are concerned that CAP170 may have unintended consequences. For example, if the current commercial intertrip provision has been considered to be economic and efficient we would question whether CAP170 is capable of delivering any additional savings without increasing costs elsewhere on the GB transmission system.
- 7 If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely

By email

Bill Reed, Market Development Manager



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13 March 2009

Dear Sirs,

Response to Consultation on CAP170
Category 5 System to Generator Operational Intertripping Scheme

Thank you for the opportunity to respond to this Consultation Document. This response is submitted on behalf of ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Renewable Energy Ltd.

1. Consultation Response

Scottish Power considers that the proposed amendment will not better meet the Applicable CUSC Objectives and therefore should not be implemented for the following reasons:

- **The case for replacement of a competitive market mechanism with an administered scheme has not been made**
- **Unilateral replacement of existing commercial arrangements increases regulatory risk and will deter future investment**
- **The proposed amendment discriminates against Scottish generators**
- **The proposal will weaken market signals for greater infrastructure investment**
- **The proposed payment mechanisms are not cost reflective**
- **Implementation of the proposed amendment would be unlawful**

ScottishPower has consistently worked with National Grid on a supportive, proactive basis in the competitive market for provision of ancillary services and we will continue to do so. We are firmly of the view that this competitive market should be allowed to develop further rather than substituting competition with regulatory intervention.

Urgent Status

ScottishPower does not accept that this amendment proposal merited urgent status. National Grid and Ofgem have been aware of the actual constraint costs during the Cheviot outage period over the summer of 2008 and presented forecasts of anticipated costs for 2009/10 at the Operational Forum meetings throughout 2008. There was therefore no reason to wait until 3rd March 2009 before raising an amendment proposal with intended implementation for the financial year 2009/10. Indeed the failure to this date to take any action to mitigate the potential constraint costs either through commercial arrangements with the affected generators or to seek to discuss with the industry in a measured approach would indicate, as Ofgem's Director of

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Transmission stated in his letter to NGET dated 16 February 2009, a failure by National Grid (to date) in managing constraint costs in accordance with its statutory and licence obligations.

Against that context, it is particularly inappropriate for the industry to have been asked to consider such a fundamental change in a severely restricted and inadequate timescale. The use of the urgency procedure will thus deprive the CUSC Amendment Panel and parties, such as ScottishPower, who are directly affected by the proposed amendment of the opportunity properly to consider and make representations on its implications. Further, the absence of any Working Group has removed the possibility for alternative (more proportionate) proposals to be put forward to address the defects alleged in the Amendment Proposal (which we believe National Grid have failed to detail or indeed substantiate).

This proposal has the potential to profoundly impact investment in generation and network infrastructure should not be rushed through in a timescale which does not allow due consideration of these impacts.

The urgency of the timetable for CAP170 is unprecedented allowing less than 4 weeks from the proposal being raised to submission of the final report to the Authority. This contrasts with the timetable recently set for CAP168 – Under-use and reallocation of TEC – which is also being treated as an urgent amendment proposal but allows over 10 weeks from the proposal being raised to submission of the final report to the Authority.

Facilitation of CUSC Objectives

Section 4.1 of the Consultation Document purports to explain why the proposed amendment would better facilitate achievement of the CUSC Objectives. However, the reasons stated do not bear serious examination. Indeed, the proposed amendment would appear to be calculated (a) to promote or at least to facilitate inefficiency on the part of National Grid and (b) to distort effective competition on the generation market for the reasons more fully set out below.

Discrimination

This proposal represents a thinly-veiled discriminatory attack on generation plant in Scotland. The “Cheviot boundary” between Scotland and England is currently the only derogated non-compliant transmission boundary on the GB system. Generators in Scotland pay the highest Transmission Use of System charges in GB in order to secure firm access to the GB Transmission System. Where there has been insufficient investment in transmission infrastructure which compromises NGET's ability to fulfil its commitments to provide this firm access, it can (and does) resort to alternative commercial arrangements on a competitive basis with generators across the GB electricity market. This proposal attempts to restrict the opportunities available to generators behind the Cheviot boundary to participate in these commercial arrangements by unilaterally removing the entitlement to commercially negotiated intertrip payments and replacing that entitlement with payments administered by the CUSC. This discrimination adversely impacts the GB Balancing Mechanism as a whole.

Competition

The use of intertripping arrangements represents an alternative for the System Operator to the use of action in the Balancing Mechanism to resolve constraint issues and has been proven to be an effective and efficient alternative as demonstrated by the use of commercial intertrip arrangements in 2008/09. The imposition of administered pricing of intertrip arrangements will therefore distort competition in both the market for the provision of commercial intertrip services and in the Balancing Mechanism throughout GB. The cost of installing the equipment necessary to provide intertripping services is low and therefore does not represent an entry barrier to the market for this service. This has been evidenced by the recent entry of new parties to this market and it seems strange that National Grid is seeking to substitute an administered process for a competitive mechanism. A competitive pricing mechanism is designed to encourage new entry into a market. This is clearly happening at the moment and should be allowed to develop.

The removal of such a competitive service is not consistent with the Authority's principal objective to protect the interests of consumers wherever appropriate by promoting effective competition.

Regulatory Uncertainty

NGET's attempt to include operational intertripping as a requirement of the Bilateral Connection Agreements (BCAs) of Longannet and Cockenzie power stations was rejected in Ofgem's determination of August 2005. If the Authority is prepared to make unilateral changes to these agreements, future investors will be concerned that it will intervene in future markets to adjust returns and this will act as deterrent to investment. If the necessary investment required in generation in the UK does not materialise, this may compromise security of supply and result in the early retirement of plant.

Investment in Transmission Infrastructure

The inadequacy of the transmission infrastructure on the Cheviot boundary has not arisen as a result of the actions of generators in Scotland whether connected before or after the commencement of the BETTA arrangements in April 2005. National Grid has obligations to ensure that adequate investment is made in the GB transmission system and in this it has failed to fulfil its responsibilities as evidenced by the existing level of constraints and the projections that the Cheviot boundary will continue to be deficient in transmission capacity until 2015 and beyond (National Grid presentation at Operational Forum 24 February 2009).

Constraint costs provide an important signal and financial justification to the system operator and transmission owners of the need for further investment in the transmission system. There is a real risk that, by distorting the mechanism by which the financial impact of constraints costs is derived, and reflecting constraint costs back to users, the incentive on transmission owners and operators to invest in transmission infrastructure is weakened and that constraints persist for longer than necessary to the detriment of generators, consumers and the UK economy.

Payment for Category 5 Intertripping Scheme

It is proposed that payment for the Category 5 Intertripping Scheme will be in line with arrangements for the Category 2 and 4 schemes. However, no analysis has been provided to demonstrate that the arrangements under these schemes would be appropriate for a Category 5 scheme should this be introduced. In particular, no consideration has been given to the relative probability of intertrip arming and firing occurrences between the various intertripping schemes.

With the removal of the opportunity to provide commercial intertripping services behind a constraint, the System Operator needs to specify how it will determine which intertrip systems will be armed in the absence of a commercial "merit order". An objective methodology would be required to ensure that the burden is shared equitably between generators behind a constraint.

We note that a single Intertrip Payment value is proposed in Schedule 4 of the proposed legal drafting irrespective of the size or technology of the generating unit subject to the intertrip. This cannot be considered cost reflective as it takes no account of the greater imbalance exposure of larger generating units and those whose technologies may require a greater time to return to pre-intertrip levels of generation output. Further, the single payment takes no account of wear and tear or consequential damage resulting from the use of the intertrip and may no longer be reflective of current imbalance prices. Consideration of the proposal by a CUSC Working Group would have allowed such areas to have been fully explored.

Demonstration of the Perceived Issue or Defect in the CUSC

ScottishPower does not accept that National Grid has adequately demonstrated that there is a defect in the current arrangements and that the proposal would rectify this defect. By itself, the

cost of resolving constraints does not constitute a defect. The constraint costs highlighted in the proposal have arisen in the context of competitive procurement of intertripping services and balancing and therefore reflect the economic cost of resolving constraints and signal the requirement for investment in infrastructure. In the absence of a defect, there is no requirement for the proposed amendment.

The statement in the proposal (at 3.3) that the use of intertrips is “a necessity” is inaccurate and disregards the range of commercial alternatives which are available and should be used by the System Operator to resolve constraints if economically attractive. Intertrip services have been purchased to date by National Grid at certain times because they represent a more economic way of resolving constraints.

Implementation

The inadequacy of the urgent timetable is highlighted by the publication of the methodology to be used to determine which Users will be required to provide Category 5 Intertripping Schemes within the Procurement Guidelines consultation on 12 March with responses due by 9 April. This methodology is a key element in enabling users to evaluate the potential impact of this proposal upon their businesses and it is absurd to have given users only one day to consider this before the CAP170 response deadline. Furthermore, it is essential that sufficient time is allowed for responses to the Procurement Guidelines consultation to be considered before the final CAP170 report is submitted to the Authority.

Our initial view on the criteria set out in this consultation for selecting an appropriate service provider for the Category 5 Intertripping Scheme is that they are merely a list of some factors and do not constitute a methodology for determining which Users will be required to provide Category 5 intertrips as promised in the CAP170 consultation paper. The criteria listed highlight the inconsistency of applying standard administered prices to a service providing significant benefit to the System Operator and are likely to result in the same generators being required to provide this service repeatedly without proper compensation reflecting the value of the service to the System Operator.

We note from the proposed legal drafting attached to the CAP170 consultation that National Grid is seeking to take powers under the CUSC to require amendment to existing BCAs to take effect within 5 Business days. There is already adequate provision for amendment to BCAs within section 2.9.3 and 6.9.3 of the CUSC which detail a process that allows adequate time for consideration by the affected User and the ability to refer any proposed amendment to the Authority for determination in the event of a dispute. Therefore, we do not see the necessity for the powers included in the legal drafting at 4.2A.8.

2. Lawfulness of Proposed Amendment

In addition to the responses to your consultation set out above, you should also know that ScottishPower considers that adoption and implementation of the proposed amendment would be unlawful for the reasons noted in the annex to this letter. We have written separately to the Authority expressing these same concerns.

I hope you find these comments useful. Should you have any queries on the points raised, please feel free to contact us.

Yours faithfully,

James Anderson
Commercial and Regulation Manager

ANNEX – LAWFULNESS OF PROPOSED AMENDMENT

This annex sets out, in high-level summary terms, the reasons why ScottishPower considers that the adoption and implementation of the proposed amendment would be unlawful. The summary is not designed to be exhaustive and we reserve the right to expand upon, or to supplement, the reasons specified below at a future stage.

Human Rights Act 1998

The proposed amendment purports to interfere with the rights and interests of a number of generators in a manner which would infringe their fundamental right to peaceful enjoyment of its possessions under Article 1 of Protocol 1 to the European Convention on Human Rights (**A1P1**). To that extent, approval of the proposed amendment by the Authority would be an unlawful act within the meaning of Section 6 of the Human Rights Act 1998.

By way of further explanation:-

- A number of generators enjoy contractual rights as regards (a) access to the GB transmission system and (b) the provision of commercial intertrip services to National Grid. They also have interests as proprietors of businesses which engage in the provision of such commercial services. These rights and interests constitute possessions for the purposes of A1P1.
- The adoption and implementation of the proposed amendment will result in interference with such generators' enjoyment of those possessions within the meaning of A1P1.

The interference does not meet the test for justification recognised under A1P1. In particular, it does not satisfy the requirements of legal certainty and proportionality imposed by A1P1. Specifically, there is no provision in the proposed amendment under which affected generators would be adequately compensated for the interference with their possessions.

Unlawful discrimination

The generators targeted by CAP170 have the right, as providers of ancillary services (including intertrip services) to National Grid, to be treated in a non-discriminatory manner as regards the procurement of those services. The sources of this right include Article 3 of the Internal Market in Electricity Directive (Directive 2003/54) and Standard Condition C16 of National Grid's transmission licence.

The adoption and implementation of the proposed amendment would violate this right in the following manner:-

- The generators who are the object of CAP170 participate in a GB-wide competitive market for the provision of ancillary services to National Grid.
- CAP170 treats the class of generators who are to provide the proposed administered intertrip services (the **Relevant Class**) differently (and adversely as regards ability to earn a commercial margin) in comparison to other participants in this market. Further, in so far as it appears to be targeted specifically at the main providers of commercial ancillary services in Scotland at present, CAP170 treats those providers differently to others in the Relevant Class. Lastly, the administered prices proposed to be paid under CAP170 for providing intertrip services treat all providers of those administered services in a similar fashion without regard to the different costs incurred by them in providing the services.
- This differential treatment has not been (and, we consider, cannot be) objectively justified by National Grid as required by law. In particular, there is no logical justification for requiring members of the Relevant Class to shoulder a substantially larger share of

the burden of managing constraints arising at derogated non-compliant boundaries than any other users of the GB system. There is also no logical justification for requiring the principal current providers of commercial ancillary services in Scotland to assume this burden to a larger extent than others in the Relevant Class. Finally, there is no logical rationale for failing to recognise, in the administered prices payable by National Grid, the different costs incurred by members of the Relevant Class in providing the proposed intertrip service.

- The discriminatory treatment of particular generators in this way will result in the distortion of competition within the GB market mentioned above.

Competition Act 1998

National Grid is, in so far as it is engaged in the procurement of ancillary services, a dominant undertaking within the meaning of Section 18 of the Competition Act. As such, it is prohibited from abusing this position of dominance, e.g., by imposing unfair or discriminatory purchase prices for such services.

The adoption and implementation of the proposed amendment would lead to the imposition by National Grid of (a) unfair and excessively low and (b) discriminatory prices for intertrip services contrary to Section 18.

Due process

As described earlier in our response, we are concerned at the failure of National Grid (to date) to observe the requirements of due process in developing and purporting to consult on the proposed amendment. We would expect the Panel and the Authority, having particular regard to its duties as regards the promotion of competition, to take the necessary steps to correct these deficiencies so as to ensure these requirements are complied with before CAP170 is considered for adoption.

Depending on the effectiveness of the steps taken by the Panel and the Authority in this regard ScottishPower considers that these procedural deficiencies may also render the adoption and implementation of the proposed amendment unlawful.



National Grid
Cusc.Team@uk.ngrid.com

13 March 2009

Dear CUSC Team

**CUSC Amendment Proposal CAP170
Category 5 System to Generator Operational - Intertipping Scheme**

Many thanks for the opportunity to respond to this amendment proposal to the CUSC.

Scottish Renewables is the trade body for the renewable energy industry in Scotland. We represent nearly 250 members all of whom want to see renewables a success in Scotland. You can find out more by visiting our website www.scottishrenewables.com.

National Grid has indicated that it has the opportunity to connect up to 450MW of new generation currently in the so called 'Scottish grid queue' ahead of their current connection dates. If given the go-ahead these projects will take up to three-years to build before connecting to electricity networks. In that time the Cheviot Boundary reinforcements will be completed and constraint costs will have fallen considerably.

Ofgem however have seen the 'early' connection of 450MW as a problem, despite its clear support for 'interim connect and manage' in the Transmission Access Review. It gave that support because it appeared to acknowledge the environmental benefits of connecting up to one gigawatt (GW) earlier than anticipated.

While the complexity and importance of the proposed modification are self-evident, it is not obvious that it is urgent nor, if it has become urgent, to what extent that urgency might be attributable to earlier inaction on the part of those promoting it.

We would also point out that CAP170 is divorced from the Transmission



Access Review process. It remains unclear to us how the CUSC amendments in question would interact with CAP170.

Even though we do not agree with the approach that is currently being taken we would support sensible measures to manage constraint costs, in a holistic manner. We would encourage the development of innovative products to do this, in a way that ensures interim connect and manage and enduring connect and manage will be successful. Indeed, most generators would accept constraint where it is properly defined and capped, not where it is open ended which appears to be the case with CAP170.

In particular, we can see why renewables generators benefiting from 'queue advancement' in the North of Scotland would agree to intertripping but we are not convinced that this justifies the significant changes being promoted through CAP170.

Therefore, we would prefer that National Grid negotiates its connections with new generators, including the provision of an intertripping service, on a commercial, bilateral basis. Intertripping is a useful tool and can provide a useful service and we believe that competition is better served if the market is able to determine a price for this service.

Given the above, and for the avoidance of doubt, we object to CAP170. This conclusion is further explained with the following key comments:

1. An urgent CAP is not the best way to debate the merits of such a fundamental issue and we are concerned about the way this issue has emerged and developed (as far as we are aware first raised in public at our January '09 Grid Conference, then the Scottish Parliament Energy Inquiry in February '09 to the February '09 Open Letter).
2. The concern about constraints expressed in the Ofgem Open Letter and also articulated in the consultation document are in large part due to the need for reinforcement to the Cheviot Boundary. As work to reinforce the line is to commence shortly this is a temporary problem. Scottish Renewables is concerned that this consultation is a reaction to a quantitative concern (the absolute scale of constraint payments over a prescribed period) rather than a qualitative assessment of its cause and period of impact. We are therefore concerned that the GBSO plans to take major powers for a localised, temporary problem.
3. The impact of mandatory intertrips needs to be better understood before



a clear position can be arrived at, especially when the administered prices methodology has still to be worked up.

4. The consultation paper is unclear whether generators would be compensated for loss of income, and in respect to renewables generators, whether there would be compensation for the loss of ROC income.
5. Alternatives to mandatory intertrips, (such as weekend working, outages timing, etc.) do not appear to have been considered nor has there been a thorough assessment of the current competitive intertrip market
6. Mandatory intertrips on existing and future generators may be viewed as discriminatory on both. There is, however, an objective justification – based on environmental benefits - to favour the prioritised connection of renewables generators.
7. The industry is rightly concerned that CAP170 has the power to amend bilateral agreements. Investments are made on the basis of these agreements and therefore CAP170 could generate enormous uncertainty for investors, especially when this kind of change is being promoted and delivered in the space of four weeks.

Therefore, given the above, we are not convinced that CAP170 promotes the efficient discharge of duties or effective competition.

If you would like any clarification on the points above please get in touch.

Yours sincerely

Jason Ormiston
Chief Executive
Scottish Renewables



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Our Reference:

Your Reference:

13th March 2009

Dear CUSC Team,

Company Consultation Document for CAP 170

This response is sent on behalf of Keadby Generation Ltd.; SSE Energy Supply Ltd.; SSE Generation Ltd.; Medway Power Ltd.; Slough Energy Supplies Ltd.; Airtricity Ltd. and Airtricity Generation (UK) Ltd.

We welcome the opportunity to respond to this CUSC Amendment Proposal Company Consultation for CAP170. Our comments are in four parts: on the merits; on the Applicable Objectives; on the process; and finally on some specific aspects of the proposal. For clarity, we firstly provide a summary of our views.

Summary conclusions

For the reasons we have outlined in this response, CAP170 does not, in our opinion better meet either of the two applicable CUSC Objectives when compared with the baseline. CAP170 should not be implemented.

We do not believe that a defect in the CUSC has been correctly identified or the case made as to why, if it does exist, how CAP170 solves that defect. Further, we believe that the imposition of a mandatory intertrip discriminatorily removes Scottish generators rights and imposes, on an unequal basis, risks to the operation of their plant. The methodology of how NGET will impose mandatory intertrips on generators and have those intertrips put into service has not been provided but is fundamental to the rights of those generators. We do not believe that it will be possible to put in place a methodology that does not discriminate between generators in how they install and have to put into service any mandatory intertrip scheme.

CAP076 established the four Categories of intertrips and commercial intertrips following due process. In addition, Ofgem determined the Cheviot intertrips as Commercial intertrips in July 2005, in light of the existence of the already-in-place derogation on the Cheviot boundary. CAP170 will unreasonably and retrospectively alter these commercial arrangements. The discriminatory nature of the application of CAP170 will undermine investor confidence in the market. We comment further on the merits of the proposed change below.

In light of the reasons we have outlined in this letter, we do not believe that CAP170 better meets either of the Applicable CUSC Objectives. However, we can see reasons why, if implemented, CAP170 would have a detrimental impact on the meeting of the Applicable CUSC Objectives.

For example, with respect to both Objectives (a) and (b), given the flawed and disproportionate way in which CAP170 was raised (and rapidly progressed) through the change process, it will profoundly alter investor confidence in building new power station assets in GB. This in turn, will result in a serious reduction in new plant being built which will lead to a reduction in competition in the generation of electricity and put at risk the security of electricity supplies in GB. We comment further on the applicable objectives below.

We believe that the process by which CAP170 was raised (at the specific direction of Ofgem) is flawed and has led to a prejudicial proposal that unfairly impacts on our business interests. Furthermore, the unreasonable way CAP170 was raised and the speed with which it has been progressed means this radical and wholly disproportionate change, if implemented, would have profoundly negative implications for the ongoing investment in new generation in the GB market, and could lead to an adverse impact on the security of electricity supplies in GB as a whole and Scotland in particular in the future.

We have been unfairly denied the opportunity to fully assess the impact this substantial change on our business and the market. As a result, we have serious concerns regarding the process and would not wish such a process to set a precedent for future industry changes. We comment on the process below.

Merits

First, **CAP076 established through due process the four Categories of intertrip and commercial arrangements for intertrips.** We note that CAP170 refers to four existing categories of intertripping schemes already included within the CUSC. However, whilst the existing four categories of intertripping schemes introduced by CAP076 (plus any commercial intertrip agreement) are voluntarily entered into by the CUSC Party concerned, it

is clear, with CAP170 (and the associated Grid Code B/09 change), that certain CUSC Parties will, disproportionately, be compelled to enter into the new Category 5 intertripping schemes introduced by CAP170, even if, prior to CAP170, they had entered into a commercial intertrip agreement with National Grid. This is a misappropriation of the rights of those generators.

To those that might seek to suggest that there is no compulsion contained within CAP170 we merely note that CAP170 simply does not work unless one or more CUSC Parties are compelled to have a Category 5 intertripping scheme. If this does not happen then there is NO “improvement” arising from CAP170 as CUSC Parties and National Grid would continue to utilise the existing intertrips arrangements either via (a) the existing four categories of intertripping schemes or (b) a commercial agreement, as permitted under the CUSC (and Grid Code) and determined by Ofgem in July 2005.

Second, **existing commercial agreements are to be unreasonably and retrospectively altered.** In a related point to the previous one, we note that, as a result of CAP170 being implemented, the current commercially agreed intertrip contracts (freely entered into by both the generator AND National Grid) that apply in Scotland (and behind other derogated boundaries in the future) will be unfairly, and materially, altered unilaterally by one party to those contracts, namely National Grid. The other party (the generator) will have, for example, no ability to:-

- a) meaningfully refuse to accept the proposed terms (as Ofgem has, by its letters of 16th-17th February, already fettered its discretion in terms of any generator appeal of the proposed Appendix F3 terms); or
- b) withdraw from that contract (now that the commercial basis on which it was entered into have so disproportionately altered).

Notwithstanding the questionable reasonableness of a monopoly provider unilaterally and retrospectively changing existing commercial contracts in this way, if CAP170 is implemented then it will, at a stroke, totally undermine the credibility of National Grid as a contractual counter party in the future. Why, going forward, would a generator freely enter into a contract at a price which covers (i) the legitimate costs he expects to incur to perform his contractual obligations; (ii) takes account of the increased risks arising from the contract; and (iii) includes an element of profit; when such a price can (indeed, given CAP170, one must assume will) retrospectively be altered by National Grid to their advantage?

Third, **CAP170 totally undermines investor confidence in the GB electricity market.** The radical nature of the proposed changes (for example, via CAP170, retrospectively introducing administered prices to those items, which up to now, had been commercially

agreed) that arise on the back of an Ofgem letter, coupled with the speed to be applied to the associated changes, strikes at the heart of investor confidence that the regulatory risks associated with GB electricity market arrangements are broadly stable enough in which to invest £Bns in new projects. That such radical proposals (as outlined in the Ofgem February letters) can occur with so little thought as to the consequences and with such speed calls into question future investments: with a seriously detrimental impact on the security of electricity supplies in GB going forward.

Fourth, CAP170 is **discriminatory in nature and application**. CAP170 only applies to derogated boundaries. As confirmed by National Grid at the February CUSC Panel and set out in paragraph 3.3 of the CAP170 Company Consultation document, “Cheviot boundary [is] presently the only derogated non-compliant [against GBSQSS] transmission boundary” in GB. Therefore the obligations arising from CAP170 (and the associated Grid Code B/09 change) will, upon implementation, ONLY apply to generators located in Scotland.

By unilaterally removing the ability for only those CUSC Parties with generation located in Scotland to avail themselves of either (a) the existing four categories of intertripping schemes or (b) a commercial agreement, as permitted under the CUSC (and Grid Code) and already determined on by Ofgem at BETTA, when compared with all other CUSC Parties (with generation located in England & Wales) this is clearly and demonstrably discriminatory to generators located in Scotland.

We therefore believe that CAP170, by removing the ability for generators in Scotland to compete on equal terms with generators in England and Wales, as set out in the BETTA legislation (even though ALL are suppose to be operating within a GB market), discriminates in its treatment of our Scottish generation assets in a wholly disproportionate and prejudicial way.

Fifth, **will CAP170 invalidate the Cheviot Derogation?** In looking at the Schedule Table that accompanies the Ofgem letter of 30th March 2007 concerning the Cheviot Derogation we note there are references, in the interim solutions that National Grid will take to address the issue, to intertrips: will the taking of such actions as proposed by CAP170 thereby invalidate the Cheviot Derogation letter: effectively making CAP170 ‘null & void’ upon implementation (there being no derogated boundary to which it can apply)?

Applicable Objectives

With regard to the applicable objectives, we note the comments that National Grid (as the proposer) have put forward and we provide our responses after each below.

“The proposer believes that CAP170 would better facilitate the CUSC Objectives:

(a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence;

Facilitating economic and efficient use of all intertrips which are capable of being armed with respect to derogated non-compliant transmission boundaries

There already exists an economic and efficient way of using intertrips with respect to derogated boundaries, namely via either a Category 1-4 or a commercially agreed intertrip scheme; therefore an additional mechanism is not needed – indeed it would be inefficient to add additional arrangements that are less efficient or economic than the existing arrangements. The derogated boundary existed when Ofgem determined the Cheviot intertrips as Commercial intertrips in July 2005.

Clarifying the responsibility and remuneration for intertrips capable of being armed with respect to derogated non-compliant transmission boundaries

No clarity is required as to (a) the responsibility or (b) the remuneration for intertrips being armed with respect to derogated boundaries. These exist today and the arrangements (in terms of process / responsibilities / remuneration) for either a Category 1-4 or a commercially agreed intertrip scheme are well understood by all parties to those agreements. Again it was clear in Ofgem's determination in July 2005 that the Cheviot intertrips on the already existing derogated boundary were Commercial intertrips. However, if National Grid is uncertain about these matters we are sure that generators would be (and we certainly are) willing to meet with National Grid, at the earliest opportunity, to provide them with whatever clarification they require.

Removing National Grid and industry exposure to the consequences of the operation of bilaterally negotiated schemes capable of being armed with respect to derogated non-compliant transmission boundaries

Is it the role of the CUSC to undo/rewrite bilaterally agreed commercial agreements that the proposer of CAP170 freely entered into: and are now seeking to, prejudicially, undo by 'slight of hand' by way of a flawed code change? We do not believe that it is. Again, these Cheviot intertrips were determined by Ofgem in July 2005 to be Commercial intertrips on the existing derogated boundary.

(b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.

Ensuring an enhanced level of market certainty with regards to processes, responsibilities and remuneration for intertrips capable of being armed with respect to derogated non-compliant transmission boundaries

No additional market certainty is required as regard to (a) the process or (b) the responsibility or (c) the remuneration for intertrips being armed with respect to derogated boundaries. These exist today and the arrangements (in terms of process / responsibilities / remuneration) for either a Category 1-4 or a commercially agreed intertrip scheme, are well understood by all parties to those agreements. However, if National Grid is uncertain about these matters we are sure that generators would be (and we certainly are) willing to meet with National Grid, at the earliest opportunity, to provide them with whatever clarification they require.

Limiting the potential BSUoS cost for all parties, by limiting the cost of intertrips capable of being armed with respect to derogated non-compliant transmission boundaries”

Whilst we can see that there might, theoretically, be some benefits along the lines suggested by the proposer, the lack of time (or detailed assessment by a Working Group) has severely hampered our ability to assess this matter. We are therefore ‘neutral’ on whether CAP170 would better achieve Objective (b) for the reason suggested by the proposer, but rather believe there are strong reasons that it would not better achieve objective (b),

- i) The proposal and arguments supporting CAP170 (including the alleged requirement for its urgent status) make no reference to any beneficial effect of competition which has arisen out of the commercial provision of intertrip services. SSE has entered into an agreement for a new intertrip service in Scotland that offers, we believe a substantial reduction in the cost to NGET for the provision of an intertrip service. This has arisen because of the commercial incentive to make an additional competitive service available, but due to lack of transparency the new service has not yet been reported by National Grid. It should also be noted that timescales for the introduction of the competitive service were hindered by lack of transparency of the costs incurred in 2008 and the requirement for competition to overcome technical hurdles in response to a commercial signal to provide a competitive service. The imposition of administered prices through CAP170, immediately after this new competitive service has been made available interferes with market forces and removes the reward which the service provider had expected to reap for its efforts and, furthermore, removes any commercial incentive to overcome technical hurdles which stand in the way of providing additional services. The negotiation of this new service also provided greater flexibility in pricing to allow a more responsive competitive environment for the provision of an intertrip service, assuming greater transparency would be facilitated by NGET. It appears that all this effort and the

natural effects of commercial incentives to provide competition have been disregarded.

- ii) The imposition of a mandatory service for what are at present commercial services puts a question mark over whether this meets NGET's licence and statutory obligations to facilitate competition in the supply and generation of electricity.
- iii) The BSUoS costs in total will reduce, but at the expense of only certain parties, creating winners and losers between E&W and Scotland.

In light of the reasons we have outlined in this letter we do not believe that CAP170 better meets either of the Applicable CUSC Objectives. However, we can see reason why, if implemented, CAP170 would have a detrimental impact on the meeting of the Applicable CUSC Objectives.

In light of the reasons we have outlined in this letter we do not believe that CAP170 better meets either of the Applicable CUSC Objectives. However, we can see reasons why, if implemented, CAP170 would have a detrimental impact on the meeting of the Applicable CUSC Objectives.

For example, with respect to both Objectives (a) and (b), given the flawed and disproportionate way in which CAP170 was raised (and rapidly progressed) through the change process, it will profoundly alter investor confidence in building new power station assets in GB. This in turn, will result in a serious reduction in new plant being built which will lead to a reduction in competition in the generation of electricity and put at risk the security of electricity supplies in GB.

Process

We believe the process followed in terms of the way that CAP170 was raised, on the clear instruction of Ofgem, was based on a false premise, namely the 'sudden' discovery, by Ofgem, of the forecast constraint costs at the Derogated Cheviot constraint for 2009/10 (starting on 1st April).

First, this **issue has been known about for sometime**. It is clear, from the SO Incentive Initial Proposals consultation documentation, issued by National Grid on 27th November 2008, that the forecast cost of constraints associated with the Derogated Cheviot constraint would be £161M in 2009/10 (see table on page 2 of the "Historic Costs" Appendix). We note that according to the Ofgem letters of 16th - 17th February 2008 that this forecast figure, for Derogated Cheviot constraint costs, declined significantly. With the publication of the Final

Proposals from National Grid on 27th February 2009 this figure is now forecast to have dropped by over 13% (from £161M to £139M) since the 27th November 2008 document.

However, despite this significant reduction Ofgem now consider this matter requires the unwarranted (in our view) raising of 'urgent' proposals to substantially, and materially, change industry codes; including the CUSC via this CAP170 amendment proposal. If the Ofgem concerns of 16th - 17th February 2009 are genuinely held then why did they not raise them in late November when the higher (£161M) figure was first published, or indeed in July 2008 when the level of Cheviot intertrip payments were made available to the market?

By not doing so at the earliest practical opportunity (namely in late November 2008, if not much earlier in FY 2008-09 when this matter was first raised) Ofgem has not only compelled National Grid (under a threat associated with licence compliance) to urgently raise proposals to address specific areas of change (to industry codes and charges) that Ofgem wish to see introduced but to do so via a vastly truncated change procedure which has been clearly prejudicial to us. This means that we, as a CUSC Party, have been placed at an unfair disadvantage, as we have been unable to meaningfully contribute to the development of the CAP170 proposals as, for example, we have been able to do with most TAR related CUSC Amendment Proposals. As you know, under the 'normal' (non urgent) CUSC change process, time would have been afforded, to all CUSC Parties, to: (a) fully participate in a properly constituted cross industry Working Group to develop and assess the proposed changes; (b) submit comments to a Working Group Consultation and within that Working Group Consultation response we could have (c) raised Working Group Consultation Alternative Request(s) if we wished to.

Instead the only highly limited opportunity we have had to comment on this substantial change is via this single Company Consultation which, as we are sure you appreciate, does not allow CUSC Parties to (unlike a Working Group which can) develop or in any other respect define / confirm / identify / expand / evolve / progress / amplify / elaborate / enhance / grow / advance any aspect of the CAP170.

Second, we **do not agree that 'urgency' was warranted** in the case of CAP170. It has been claimed, by the Proposer, that CAP170 exhibits two (of the three) criteria that the Authority has indicated warrant urgency being applied to change requests for the industry codes.

The three (urgency) criteria established by the Authority are:-

- *There is a very real likelihood of significant commercial impact upon NGET, industry parties, or customers if a Modification Proposal is not urgent;*

- *Safety and security of the network is likely to be impacted if a proposed modification is not urgent; and*
- *The proposal is linked to an imminent date related event.*

With regard to bullet point 1 of the urgency criteria, “there is a very real likelihood of significant commercial impact upon NGET, industry parties”, we do not believe this applies in the case of CAP170. The commercial intertrips already in place provide an economic alternative to NGET taking energy actions to resolve constraints. The forecast costs of the Cheviot intertrip have already been reduced by NGET, and there is now competition in the Cheviot intertrip service. The impact of CAP 170 will be to remove legitimate economic revenue from some parties in Scotland to provide benefits to other parties, most notably in E&W. In other words, it simply creates winners and losers between E&W and Scotland. Such a redistribution of revenue between market participants across GB at the specific direction of Ofgem would clearly be unjust.

Furthermore, if this element of the urgency criteria were to apply to CAP170 then, ipso facto, it would apply (if CAP170 were approved and implemented) to grant urgency for a CUSC Amendment from Scottish generators to reverse CAP170 (on the basis of a “very real likelihood of significant commercial impact upon” those Scottish generators).

With regard to the second bullet, “Safety and security of the network is likely to be impacted if a proposed modification is not urgent”, which is not considered in the justification of the proposal, we do not believe that there will be any impact on the safety and security of the network if the urgency was not given. There is no difference to the immediate safety and security of the network between the Commercial Cheviot intertrips being provided and the mandatory Category 5 intertrips proposed here, all that is changing is the price that is being paid for the service. Indeed, we believe that the process being followed by Ofgem to implement CAP 170 will have a detrimental impact on security of supply in the longer term as it will have an adverse impact on investor confidence, and hence limit investment in new build generation.

With respect to bullet point 3, “the proposal is linked to an imminent date related event”, the key matters, in our view, in considering this further are:-

- a) at what date was the "imminent date related event" reasonably known to the Authority (as the de-facto proposer of CAP170)?;
- b) at what date was the proposal effectively raised by the Authority?; and
- c) what is that "imminent date" (and is it 'fixed' or could it 'move' back)?

Our understanding of how the 'date imminent event' criteria has been applied previously, to similar requests for urgent industry code changes, is that if the Proposer could reasonably have known the date of the "imminent date related event" and has delayed (for their own internal reason) the date (b) of raising the Mod, then they had to accept, as time ticks by towards date (c), that the less time there is between (b) and (c); compared, for example, to the time elapsed between (a) and (b); for the industry code (in this case the CUSC) to assess any changes then there is an (understandable) reluctance, on the part of the industry code panel (the CUSC Panel in the case CAP170), to consider an accelerated (and thus reduced thoroughness of analysis etc.,) assessment process given as the party seeking urgency has brought the problem upon itself. However, where the date of the "imminent date related event" (a) has clearly only just come to light then we have found industry code panels to be, very pragmatically, willing to accept the request for urgency.

It is clear that whilst the cost of the Derogated Cheviot constraint is historically at a high level (a) it has been known, and accepted by the Authority and Government, for sometime that this would occur (as a result of the derogation of the Cheviot boundary as part of the arrangements to introduce BETTA) and (b) that those costs are based on legitimate 'Bids and Offers' in the Balancing Mechanism and/or commercial intertrip agreements (between National Grid and certain CUSC Parties). We would also highlight that the matter of commercially agreed intertrips has already been determined on by Ofgem in July 2005, and that this determination was made in the light of the already existing derogation, i.e. the derogation is not new, and therefore undermines the justification for this change.

Third, the **time for consideration has been further limited**. In addition to not raising their concerns as quickly as reasonably practical, thus disproportionately limiting the time for CAP170 to be considered/developed by CUSC Parties, Ofgem then go on, in their letter of 2nd March 2009 granting urgent status to CAP170, to reduce still further the time available for the CAP170 changes to be considered, in this case by the CUSC Panel, by two working days (from the 25th March requested by the CUSC Panel to 23rd March instead) to less than two hours. This represents a substantial, and in our view wholly unwarranted, reduction in the period for the CUSC Panel to consider the details of the proposed change and take account of CUSC Parties concerns prior to making their recommendation vote to the Authority.

Fourth, **the current process compares very badly with the process entered into during CAP076**. As you may recall the four Categories of intertripping schemes (to which CAP170 would add a fifth) were introduced via CUSC Amendment Proposal CAP076. CAP076 was first raised at the August 2004 CUSC Panel meeting, from whence it proceeded according to the non-urgent assessment procedure. This included full Working Group deliberations plus

two opportunities for CUSC Parties to provide comments (via a Working Group Consultation in November and a Company Consultation in January) with the final report issued to the Authority in March 2005. The Authority opined on CAP076 in June 2005. This, approximately, ten month process is to be 'repeated' in less than five weeks with CAP170.

Specifics

First, with respect to the statement in paragraphs 1.9 and 3.2, of the CAP170 Company Consultation document, it is our understanding that it was by majority (rather than unanimity: as can be erroneously inferred by the paragraphs 1.9 and 3.2 wording) that the CUSC Panel agreed that CAP170 should be treated as urgent.

Second, with respect to the statement in paragraph 3.8, of the CAP170 Company Consultation document, as regards the Proposer's intention that Category 5 intertripping schemes would be applied (via Appendix F3) "to existing....intertrip providers" we note that, upon implementation of CAP170 (the Authority having fettered their discretion by virtue of their letters of the 16th-17th February) that there may well not be any existing intertrip providers (to which CAP170 will apply).

Third, we note that paragraph 3.9 of the CAP170 Company Consultation document refers to a Methodology being used to determine which Users (currently all in Scotland) will be required to provide Category 5 intertripping schemes.

Two issues arise from this namely:-

- a) where is this Methodology; and
- b) what are the governance arrangements for the Methodology going forward?

With regard to (a) we note that without sight of the Methodology in question we have been unfairly constrained in our ability to assess what the impact of CAP170 will be on our business, yet this is a fundamental question regarding these generators rights. We do not believe that it will be possible to put in place a methodology that does not discriminate between generators in how they install and have to put into service any mandatory intertrip scheme.

With regard to (b) we believe that a precedent has now been established by National Grid; with its agreement that the CAP166 SO Long Term (Auction) Release Methodology will be incorporated (at the earliest practical opportunity) into the CUSC; that the CAP170 (paragraph 3.9) Methodology should also be incorporated into CUSC governance (along exactly the same lines as proposed with CAP166).

We believe these two issues need to be addressed, as a matter of the utmost urgency, and we look forward to contributing to the deliberations on them with extreme alacrity in the very near future.

In addition to this, the Methodology will need to take account of the cost on the generator of having this obligation imposed (at, effectively, no notice). There will, for example, be cost associated with physically modifying the power station plant to be able to operate in the way expected via an intertrip of this nature.

Furthermore, works will be required to install the equipment, which may necessitate a plant outage – the cost to the generator of:-

- a) this work being undertaken; and
- b) the associated imbalance costs etc., whilst the work is being undertaken;

needs to be taken into account.

A further aspect that will need to be set out in the Methodology is what, exactly, are the criteria to be applied, by National Grid, to determine whether to:-

- i) utilise existing Category 1-4 intertrips; or
- ii) utilise exiting (or negotiate new) commercial agreements or arrangements (such as PGBT,s BOAs etc.);

before making use of Category 5 intertrips schemes.

Once this has been set out the Methodology also needs to make clear in what order (amongst all the Cat 5 intertrip schemes set up) will the Category 5 intertrips schemes (1) be armed and (2) 'fired in anger' and, if utilised in anger, what is the order for returning transmission access to the affected generator in the shortest possible time (by National Grid exercising best endeavours to restore transmission access).

Notwithstanding our above comments on the Methodology, it seems clear, from paragraph 4.2A.8.2 of the proposed legal text, that there will only be a cursory application of the said methodology to the individual cost benefit analysis for each Category 5 intertrip scheme. This is because the five days that National Grid has (from the implementation of CAP170) for issuing an 'agreement to vary' is, in our view, an unreasonable period to undertake a cost benefit analysis, not least because there appears to be no ability/mechanism (or time) to take account of generator costs etc.. We remain to be convinced that a non-discriminatory methodology can be put in place.

Fourth, with respect to the statement in paragraph 3.10, of the CAP170 Company Consultation document, that the CAP170 arrangements will only last till "the derogation is

removed” we note that the Cheviot derogation is currently time limited to 31st March 2012, but could be extended. However, the Ofgem February letters indicate that any arrangements arising from that letter (i.e. CAP170) would only last till the enduring TAR related arrangements are implemented.

Fifth, with regard to the proposed use, as outlined in paragraph 3.12, of the ‘agreement to vary’ process we do not accept that when this process was first established (and has been used up to now) that it was ever intended to be used in this disproportionate way to prejudicially vary a bilateral agreement on such a substantial matter as imposing an intertrip obligation on a CUSC Party without their consent.

Sixth, with respect to the statement in paragraphs 3.14 and 4.1, of the CAP170 Company Consultation document, we do not accept that the Category 2 and 4 remuneration levels, when applied to Category 5 intertrips, adequately compensate the generator in Scotland for the increased wear & tear costs and risks they have incurred as a result of the intertrip being activated. In this regard we refer to the statement, in paragraph 1.7 that “as such the use of [Category 5] intertrips.... is a necessity rather than an occasional tool”. It should also be noted that CAP 076 was debated and implemented pre-BETTA for the generation that had intertrips in place in E&W that were not Commercial intertrips. Scottish generators have operated under Commercial arrangements since BETTA following a determination by Ofgem, and have had no need to have the impact of a mandatory intertrip imposed on them assessed. If CAP 170 is to be implemented, that assessment needs to take place.

As detailed in the ‘Remuneration section of the CAP076 Working Group report, is that the remuneration amount for Category 2 or 4 intertrips does NOT cover the costs of wear and tear following a trip (as stated in the second bullet point paragraph 3.14) or the associated consequential costs and risks that arise. This is clearly born out by reference to the CAP076 Working Group report and in particular:-

“3.44 It was stressed by the generator representatives that these [para. 3.43 £400k] costs did not include any allowance for plant damage or any other kind of consequential loss.

3.45 It was suggested that whilst CAP076 specifically excludes consequential losses, it may be appropriate to include any premium that is attributable to the risk of consequential losses. The Group was unable to establish a figure that would cover this.”

To the best of our knowledge, there has been no attempt (post CAP076) to establish a figure to cover “any premium that is attributable to the risk of consequential losses”.

Therefore the costs, for example, in terms of increased wear and tear on plant as well as increased risk (of the power station not returning to service after the intertrip is activated) are not fairly remunerated (via the figures outlined in the proposed Schedule 4 wording on page 15 of the CAP170 Company Consultation document).

It needs to be recognised, and acknowledged, that with a CAP170 Category 5 intertrip, the generator has no ability (given the totally disproportionate timescales for the introduction of these arrangements – within 10 working days of the Authority approval of CAP170) to seek to mitigate these costs and risks that, for example, they would have if a Category 2 or 4 (or indeed a Category 1 or 3) intertrip scheme were applied to their plant.

We believe that the issue of remuneration (including, but not limited to, increased wear & tear, heightened risks and consequential losses) needs to be addressed, as a matter of the utmost urgency, and we look forward to contributing to the deliberations on them with extreme alacrity in the very near future.

Seventh, we note the proposed change, in the legal text from the “User Circuit Breaker” to “relevant Circuit Breakers” for not just Category 5, but also Categories 1-4 intertrips. There are two aspects, in particular, that arise from this. Firstly, such a move, from the users circuit breakers to ‘others’ circuit breakers gives rise to an uncertainty about where the liability rests where an intertrip is (a) armed and or (b) ‘fired in anger’ erroneously. For the avoidance of doubt, where an erroneous event arises due to the negligence or inaction of National Grid then we would expect to be fully compensated for all costs that we incur as a result (and not, for example, be limited to £400k). Secondly, this change, in also applying to Category 1-4 intertrips, retrospectively alters the contractual terms of those related agreements. The reason why “User Circuit Breaker” was chosen was fully considered by the CAP076 Working Group over a prolonged period: altering it in this rapid way (in addition to undermining investor confidence) can give rise to unintentional consequences which we (or National Grid, or Ofgem) have not had time for fully consider.

Yours sincerely

Garth Graham

Electricity Market Development Manager

Energy Strategy



CUSC Secretary
National Grid
NGT House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

13 March 2009

Dear David

Response to Connection and Use of System Code and Grid Code Consultations on CUSC Amendment Proposal CAP170 Category 5 System to Generator Operational Intertripping Scheme

Process

Uskmouth Power recognise the problems faced by the SO in managing the constraint issues created by non-compliant transmission boundaries. However, we are very concerned by the way this modification has been raised with urgent status and with such a shortened timeframe for consultation.

For smaller players, such as ourselves, this type of shorten consultation period, with no working group to consider alternatives, is an extremely unsatisfactory way to approach these issues. We would further note that we do not consider the day of the consultation release to count as a working day, as the documents were circulated late at night. This was not a new issue and should not have been dealt with in this manner.

Design of modification

Uskmouth Power would note that this modification would force a change to the bi-lateral connection agreements (BCA) that would have been negotiated and signed in good faith by the parties concerned. We do not believe that such changes to the BCAs should be allowed unless both the generator and NGC agree. These agreements are already biased towards the rights of the TO/SO and to change them via a modification will simply remove the incentive on generators to offer these services to the SO.

While we do not object to the main point of the modification, in allowing the SO a cheaper way to manage constraints, we are not convinced that the commercial terms for such a scheme are reasonable. The market generally operates on the basis of commercially negotiated contracts, a principle which we support. We therefore assume that NGC has satisfied Ofgem that attempts to negotiate appropriate commercial terms for managing boundary issues have been unsuccessful. If we move to a regime

where system support services are regulated contracts participants will become unwilling to offer these types of services voluntarily.

The commercial terms under this modification may appear to offer a reasonable compensation given current prices and fuel costs, but were a major change in prices or costs to occur the generator could be penalised for being in a specific location. A pricing mechanism that better links into the generators costs, including lost revenue, may be more equitable. As noted above, we do not think this modification should alter existing contracts as we assume the parties negotiated in good faith and agreed terms that were acceptable to them.

Furthermore, it is our understanding that the payment following the trip relates to a refund of TNUoS. Were a non-complaint boundary to arise in a negative TNUoS zone this would not offer any compensation at all. While we recognise such an outcome looks unlikely at the current time, we believe it needs consideration along with the other compensation issues.

There is too little detail in the document to know which power plants are likely to be impacted by this proposal, or what the costs associated with fitting the necessary equipment are. Uskmouth would like assurance that NGC will treat generators behind the boundary in an equitable fashion. We would therefore like to see NGC consult on the “methodology” for deciding which sites are impacted. It is also unclear what the governance of this “methodology” are, but we believe governance must involve all CUSC parties not be left to the discretion of the SO.

On the costs of installing the necessary equipment, where will these costs be recovered and how? As we are unclear what the expected costs of the proposals are it is difficult to judge how much of an issue this is, but we feel that due consideration has not been given to these sorts of details.

In conclusion, we do not feel that the proposal should be approved until the details of the scheme have had proper consideration by the industry. If, however, Ofgem were to agree to this modification we believe that they should ask NGC to review the associated costs and charging structures before implementation.

If you wish to discuss any of the issues raised in this modification please contact Lisa Waters on 020 8286 8677.

Yours sincerely

A handwritten signature in black ink that reads "Rebecca Williams". The signature is written in a cursive, flowing style.

Rebecca Williams
Head of Trading

ANNEX 2 - REPRESENTATIONS RECEIVED UPON THE DRAFT AMENDMENT REPORT

This Annex includes copies of any representations received following circulation of the Draft Amendment Report (circulated on 18 March 2009, requesting comments by 2.00pm on 23 March 2009).

Representations were received from the following parties:

File Number	Company
CAP170-AR-01	British Wind Energy Association
CAP170-AR-02	Centrica
CAP170-AR-03	Dong
CAP170-AR-04	Edf Energy
CAP170-AR-05	Eon UK
CAP170-AR-06	Scottish Power

Virk, Bali

From: Helen Snodin [helen.snodin@xeroenergy.co.uk]
Sent: 20 March 2009 13:54
To: .Box.Cusc.Team
Subject: CAP 170 draft amendment report

Dear CUSC team

With respect to BWEA's and some other responses, I don't think the report responds to the question on why CAP 170 can't be specifically limited in time and application pending the full(er) review of the issues after its implementation.

Thanks and best regards,

Helen



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Helen Snodin

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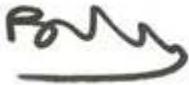
Virk, Bali

From: Appleby, Ben [Ben.Appleby@centrica.com]
Sent: 23 March 2009 10:54
To: .Box.Cusc.Team
Cc: Navesey, Fiona
Subject: CAP170 Amendment Proposal Response

Hello,

In response to the CAP170 amendment report published on the 18th March, Centrica would like to reiterate the views put forward in our original response to the CAP170 amendment proposal.

Kind Regards,



Ben Appleby
Industry Development Analyst

✉ ben.appleby@centrica.com
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Virk, Bali

From: Anthony Cotton [xanco@dongenergy.dk]
Sent: 19 March 2009 07:16
To: Hook, Carole
Cc: Thornton, Bec; 'Jan Schneekloth Christiansen'
Subject: RE: Company Consultation for CAP170: Category 5 System to Generator Operational Intertripping Scheme

Carole, sorry for not replying earlier. You should characterise DONG Energy as not being supportive of the amendment but if it is to be made the further amendments we proposed should also be made. The same goes for the Grid Code amendment B/09.

Tony

From: Hook, Carole [mailto:carole.hook@uk.ngrid.com]
Sent: 18 March 2009 09:56
To: xanco@dongenergy.dk
Subject: RE: Company Consultation for CAP170: Category 5 System to Generator Operational Intertripping Scheme

Dear Tony

In preparing the report for CAP170 we would like to indicate whether respondents support or do not support the proposal. You mention that you "have no comments on the principle behind the new category of intertrip", but have not explicitly stated your support for the proposal, could you please confirm for me if I am able to categorise you as supporting the proposal/ not supporting the proposal/ neither.

Many thanks

Carole

Carole Hook
Electricity Codes
National Grid

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CAP 170 Draft Amendment Report Response on behalf of British Energy – Part of EDF Energy

EDF Energy welcomes this opportunity to comment on the Draft Amendment Report for CAP170 – Category 5 System to Generator Operational Intertripping Scheme.

We note all the comments National Grid have made in reply to all responses received from Industry. However, we do not consider National Grid's responses to have addressed the concerns raised in our response to the Company Consultation.

For example we comment on two specific issues below.

We note that of the 14 non-confidential responses received 10 are expressly opposed and the remaining 4 do not give an indication of support. To expand, the 4 "neutral" responses all contain comments opposed to varying degrees, implementation of CAP170. As such we do not consider the comment in paragraph 1.10 (that there "is limited industry support for CAP170") to be reflective of the comments received.

Clause 11.9.2 details a response from National Grid to a respondent's view that only a " cursory application" of the methodology for assessing which users will be required to provide Category 5 intertrip services. National Grid responded that "the methodology forms a fundamental element of the proposal". We note that as this is the case, the methodology should have been available with the proposal for consideration and not published as a Procurement Guidelines consultation one day before the Company Consultation responses were due for CAP170.

We therefore conclude that in our view CAP170 **should not** be made.

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claire.maxim@eon-uk.com

Monday 23rd March 2009

Dear David,

**CUSC Amendment Proposal CAP170 – Category 5 System to
Generator Operational Intertripping Scheme – Draft Amendment
Report**

Thank you for the opportunity to comment on the above draft amendment report. This response is on behalf of E.ON UK and E.ON Energy Trading.

E.ON UK does not support the implementation of CAP170.

We believe that NGET has failed to address the following concerns raised in our letter of 13th March 2009:-

11.7.4 – The CUSC does indeed allow for changes to be made to Bilateral Agreements in the case of code changes – but this ability should not be used to enforce the kind of major change envisaged by CAP170. The fact that further specific drafting regarding the process of implementing CAP170 suggests that NGET’s lawyers do not think the current code provisions are sufficient to support such major change either. Suggesting that this change does anything other than set a precedent for imposing change upon Bilateral Agreements is disingenuous.

11.7.5 – Although the wording does not specifically terminate existing commercial agreements, it is unclear what would happen to such agreements if Category 5 Intertrips were introduced into a Bilateral Agreement – which agreement would take precedence?

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11.7.6 – It would behove NGET to do more than “acknowledge that some respondents commented” on the impact of CAP 170 on investment decisions. Let us be clear – CAP170 undermines existing investment decisions and places any decision to invest in any generation plant anywhere on the GB Transmission System at potential risk. This is a particularly alarming stance for NGET to adopt, given the requirement to build so much new capacity over the next 10-15 years. NGET should not underestimate the impact of CAP170 on future generation investment.

11.9.1 – The consultation on the Procurement Guidelines did not make it clear that this was the proposed methodology referred to in the CAOP170 Consultation document. The Procurement Guidelines consultation does not contain a methodology; it contains a list of (inadequate) criteria, with no information as to how they will be used.

11.9.5 – Any methodology should be robust to any potential derogation, so the reference to 5 days in this clause is a red herring.

11.9.8 – Whilst it is reassuring to be told that NGET keeps all derogations under review, that does not explain the exact impact of CAP170 on the terms of the SQSS derogation for the Cheviot boundary. Further explanation would be appreciated.

11.10.1 – As a member of the CAP076 Working Group, I do not recall that consideration was given to Intertripping anything other than Large Coal fired Generating Units or CCGT modules. It is unclear what technologies will be impacted by CAP170, and therefore the payment terms should be reviewed.

11.13.5 – NGET misses the important point about intertrip signals operating on circuit breakers owned by third parties, and has not addressed the concerns raised in our response.

Any change introduced with so little time for consideration and consultation should be drafted as tightly as possible to address the exact difficulty perceived. This principle has not been followed in the preparation of CAP 170, and so E.ON UK cannot support it.

If you have any queries, please do not hesitate to contact me on the above number.



Yours sincerely

Claire Maxim
Trading Arrangements



CUSC Team
UK Transmission Commercial
NGT House
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA

20 March 2009

Dear Sirs,

**Comments on Draft Amendment Report on CAP170
Category 5 System to Generator Operational Intertripping Scheme**

Thank you for the opportunity to comment on this draft amendment report. These comments are submitted on behalf of ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Renewable Energy Ltd.

1.0 Industry Responses

It is disingenuous to state that there is "limited industry support for CAP170". Of the 14 non-confidential responses received, 10 were opposed to the proposal and the remainder at best neutral if not critical of the proposal. The summary at 1.10 does not reflect the strong concern expressed in almost all industry responses at the substitution of a competitive intertrip scheme with and administered one and the grave effect that this would have on investor confidence. Strong concern was also expressed at the proposed mechanism for implementing the changes in Bilateral Connection Agreements (BCAs). The summary should also reflect the serious concerns raised on the lawfulness of the proposed modification.

11.0 National Grid View

- 11.6.1 By itself, the cost of resolving constraints does not constitute a defect and reflects the economic cost of resolving constraints in a competitive market signalling the requirement for investment in infrastructure. Indeed, as detailed in paragraph 3.5 of the report, the average cost of resolving Cheviot constraints in 2008/09 of £48.93/MWh is remarkably similar to the cost of resolving constraints on the rest of the GB Transmission System of £45.97/MWh considering the level of outage required during the current transmission upgrade programme.
- 11.7.2 National Grid is wrong to characterise the Authority's role under the proposed implementation process as a 'route to challenge' the inclusion of a category 5 scheme in an existing Bilateral Agreement. The proposed legal drafting clearly states that the Authority is merely to 'settle the terms' of the relevant Agreement to Vary. This does not appear to permit the Authority to question the legitimacy of including a category 5 scheme in an existing Bilateral Agreement in the first place.

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In any event, we regard the implementation process in itself as an unlawful interference with the enjoyment of the rights conferred on affected generators under their existing Bilateral Agreements.

- 11.7.3 Past use of commercial intertripping demonstrates that the System Operator must consider such action to be economic and efficient when compared to alternatives such as use of the Balancing Mechanism or other balancing services contracts to resolve constraint issues. The entry of new parties also demonstrates the freedom of parties to enter the market for commercial intertripping services and this market should be allowed to develop.
- 11.7.4 We do not regard the existence of the variations clause as offering any relevant precedent for the interference in contractual rights proposed under CAP170.
- 11.7.5 Refer to the comments under lawfulness section (11.14) below.
- 11.8.1 The introduction of administered intertripping services will severely distort the market for commercial balancing services, reducing the incentive and limiting the ability of parties to participate in the market for commercial balancing services
- 11.9.7 The mere fact that a generator is connected to part of the GB system that is not fully compliant with GBSQSS is not a legitimate ground for National Grid treating that generator any differently from other generators when procuring balancing services. As explained in our consultation response we regard such differential treatment as amounting to unfair (and unlawful) discrimination.
- 11.10.2 As outlined in the consultation response from Scottish and Southern Energy, the compensation for Category 2 and 4 intertrips does NOT cover the costs of wear and tear following a trip
- 11.11 The Interim Connect and Manage process was promoted by Ofgem on the concept that any increase in constraint costs would be offset by the carbon benefit arising from earlier connection of renewable generation. Increased constraint costs would be socialised via BSUoS reflecting the benefit to the whole community from carbon savings. CAP170 will direct the impact of increased constraints arising from Interim Connect and Manage solely upon those required to provide Category 5 intertripping services and will not socialise the impact as originally envisaged.

11.14 **Lawfulness of Proposal**

- 11.14.1 We acknowledge that CAP170 does not seek to terminate existing commercial services agreements. Our point is that CAP170 will (by rendering these agreements redundant) interfere with the enjoyment of the rights conferred on the relevant commercial service providers.

We note that National Grid has not responded to the additional points made by us as regards interference by CAP170 with (a) contractual rights of access to the GB transmission system and (b) interests in businesses which engage in the provision of commercial services.

- ***Unlawful discrimination under Directive 2003/54 and National Grid's Transmission Licence***

In terms of determining the application of category 5 intertripping schemes, National Grid is currently consulting on a Methodology and if implemented into the Procurement Guidelines this would provide an approved transparent mechanism to be used in determining the provision of category

5 intertripping schemes. It is proposed that administered prices would be applied consistently with those developed for CAP076.

The first sentence above appears to be an attempt to address our concern as to discrimination between members of the class of generators providing category 5 intertripping schemes. However, it is no answer simply to state that the proposed methodology will be an 'approved transparent' one: it may well be, but it will still discriminate unfairly between providers within the class.

The second sentence above appears directed to our concern that the administered prices proposed to be paid under CAP170 for providing intertrip services treat all providers of those administered services in a similar fashion without regard to the different costs incurred by them in providing the services. Stating that the administered prices will be applied in line with CAP076 simply does not address that concern, particularly in light of the different nature of the services provided under CAP170.

We also note that National Grid has not responded to our concerns that CAP170 will also produce discrimination as between the class of generators who are to provide the proposed administered intertrip services and other participants in the wider generation/ancillary services market.

- ***Competition Act – abuse by National Grid of a dominant position***

No evidence is provided in support of the allegations that National Grid is dominant within the meaning of Section 18 of the Competition Act, and taking account of all the circumstances including the countervailing power of other market participants, it is unlikely that National Grid is dominant in any relevant market. Even if it were, there is no evidence of any abuse of any dominance.

As the GBSO, there is no question but that National Grid is an unavoidable trading partner for any generator seeking to provide ancillary services in Great Britain. In availing itself of the facility afforded by CAP170 to impose unfair and discriminatory purchase prices on providers of those services (who have no countervailing power to exercise in that respect), National Grid would be abusing that position.

- ***Due process***

National Grid is following the urgent CUSC process set out in the CUSC and as prescribed by the Authority in its decision on urgency.

Resort to the urgent CUSC process does not excuse or explain the failures (highlighted by us and other respondents) to observe the requirements of due process in developing and consulting on the current proposal. We expect the Panel and the Authority to take these failures into account in considering the proposal.

I hope you find these comments useful. Should you have any queries on the points raised, please feel free to contact us.

Yours faithfully,



SCOTTISHPOWER
Energy Wholesale

James Anderson
Commercial and Regulation Manager