



WORKING GROUP REPORT

CUSC Amendment Proposal CAP150 Capacity Reduction

**Prepared by the CAP150 Working Group
for submission to the Amendments Panel**

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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

- 1.1 CAP150 – Capacity Reduction was proposed by National Grid at the CUSC Amendments Panel on the 29 June 2007. CAP150 seeks to address the issue of Users that have a contracted transmission capacity figure that is inconsistent with their project details (e.g. planning consent) or the construction programme is not consistent with contracted Completion Date.
- 1.2 National Grid proposed to amend the CUSC to enable National Grid to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity figure provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then National Grid would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the transmission capacity figure to an appropriate level and revise the Construction Works as necessary to reflect this. In addition National Grid would have the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in the User's transmission capacity figure and for National Grid's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application fees.
- 1.3 In addition to the Original Proposal the Working Group supported the raising of a Working Group Alternative Amendment.

Working Group Recommendation

- 1.4 The Working Group believes its Terms of Reference have been completed, CAP150 has been fully considered. A majority of the Working Group believes that the Original Proposal is BETTER than the baseline. A minority believed that the Working Group Alternative Amendment ("WGAA") is BETTER than the baseline but a majority believed that the Working Group Alternative Amendment is WORSE than the baseline. Overall a majority of the Working Group believed that the Original Proposal is BEST. The Working Group recommends to the CUSC Panel that the Consultation report should proceed to wider Industry Consultation as soon as possible.
- 1.5 The Working Group vote is summarised in Annex 6 to this Working Group report.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This Report summarises the deliberations of the Working Group and describes the Original CAP150 Amendment Proposal as well as the Working Group Alternative Amendment.
- 2.2 CAP150 was proposed by National Grid and submitted to the Amendments Panel for their consideration on 29 June 2007. The Amendments Panel determined that the proposal should be considered by a Working Group and that the Group should report back to the panel meeting within 3 month(s).
- 2.3 The Working Group met on 18 July, and the members accepted the Terms of Reference for CAP150. A copy of the Terms of Reference is provided in Annex 2. The Working Group met several times to consider the issues raised

by the Amendment Proposal and consider whether the Proposal and the Working Group Alternative better facilitated the Applicable CUSC Objectives.

- 2.4 This Working Group Report has been prepared in accordance with the Terms of the CUSC. An electronic copy can be found on the National Grid Website, www.nationalgrid.com/uk/Electricity/Codes/, along with the Amendment Proposal Form.

3.0 PROPOSED AMENDMENT

- 3.1 At present National Grid is aware of projects throughout Great Britain that have a transmission capacity figure in their Bilateral Agreement that is considerably in excess of the project's apparent needs (e.g. based on planning consent applications, planning consent approvals etc) or where the User's Works required to utilise this transmission capacity is unachievable by the Completion Date but nevertheless the User declines to submit a Modification Application¹ to reduce their contracted transmission capacity figure in their Bilateral Agreement or seek a delay to their Completion Date. This presents a number of issues for National Grid:

- It causes uncertainty over the volume of transmission capacity necessary
- It creates the potential risk of over investment
- The release of this capacity could permit other projects to connect earlier than their current contracted date and present opportunities for new projects.

- 3.2 The proposed amendment seeks to address the issue of Users that have a contracted transmission capacity figure that is inconsistent with their project details (e.g. planning consent) or the construction programme. Whilst there are remedies available where a User does not progress or complete a project, the nature of these remedies (i.e. termination) may not be proportionate in all cases. This means that a User can hold onto the transmission capacity figure (in their Bilateral Agreement) until very close to or after their contracted connection date. National Grid are required under the Planning Code to utilise the transmission capacity figure from the Bilateral Agreements together with other data held by National Grid relating to the transmission system when considering new applications to connect to and use the GB Transmission System. This requirement, together with Users holding contracted capacity against projects that are not being progressed (in a manner consistent with that capacity) can lead to inefficient investment and delays in connecting new projects with a consequent adverse impact on competition.

- 3.3 National Grid proposed to amend the CUSC to enable National Grid to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity figure provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then National Grid would have the right to propose changes to the User's Bilateral Agreement and Construction

¹ Elsewhere this report discusses a number of issues regarding the consequences of a Modification Application

Agreement to reduce the transmission capacity figure to an appropriate level and revise the Construction Works as necessary to reflect this. In addition National Grid would have the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in the User's transmission capacity figure and for National Grid's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application fees.

- 3.4 Specifically it is proposed (in CAP150 Original Proposal) by National Grid:
- 3.4.1 In addition to the quarterly reports provided by the User on its project under the Construction Agreement National Grid would have the right to request information from a User regarding their project such as the planning consents applied for.
 - 3.4.2 The Construction Programme would identify dates for particular events (milestones) associated with the User's works e.g. grant of Section 36 planning consent.
 - 3.4.3 Where National Grid becomes aware (e.g. Section 36 planning consent is granted for a lower capacity than is reflected in the relevant Bilateral Agreements) that there might be a discrepancy with the transmission capacity figure in the Bilateral Agreement or the User fails to meet the milestones such that it is reasonable to question whether the User can complete their project by the completion date, then National Grid would notify the User and seek an explanation from the User regarding the inconsistency between the transmission capacity figure within their Bilateral Agreement (contracted position) and the available project information.
 - 3.4.4 If the inconsistency is not resolved, then National Grid would be entitled to vary the bilateral agreement to reduce the User's transmission capacity figure (TEC or power station capacity in relation to a BELLA) to a figure that National Grid considered was appropriate based upon the information available and make any other necessary consequential contractual changes including changes to the Construction Agreement to reflect any changes to the works or programme. The agreement to vary would also provide for recovery from the User of any costs of abortive works resulting from the capacity reduction.
 - 3.4.5 This change would be applicable to all existing and future Users with one of the agreements described above prior to completion of the User works.

4.0 SUMMARY OF WORKING GROUP DISCUSSIONS

- 4.1 At the first Working Group meeting the proposer set out how the Original Amendment aligned with the current contractual arrangements and the GB Queue initiatives. The current Construction Agreement (CONSAG) (Schedule 2 Exhibit 3) has provisions that deal with delays to projects (Clause 3.2) and the failure of the User to commence the commissioning programme by the backstop date (Clause 4.7/4.8). However, National Grid does not have the ability to take account of the size of a development where National Grid becomes aware that a User's development no longer reflects the contracted position.
- 4.2 National Grid has also published its GB Queue Management conclusions where it has stated that where there are developers who wish to delay their projects in an area where other projects are unable to connect by their aspirational connection date then National Grid would not allow these

projects to delay beyond their initial backstop date (2 years after the completion date). Failure to be able to commence the commissioning programme by the backstop date will result in the development being terminated by National Grid.

- 4.3 Where Users are unable to progress their projects by the contractual completion date set out in the relevant construction agreement then these Users should seek to modify their agreement to reflect the revised expected programme by submitting a Modification Application to National Grid.
- 4.4 To complete the current framework National Grid have proposed that they have the right to request additional information and subsequently to propose changes to User's agreements to reflect the expected project position by the completion date. Such an additional right would allow for transmission capacity to be released to those parties that are best able to use this transmission capacity in a more timely fashion than is currently the situation. The proposer considers that this better facilitates the CUSC objectives through more efficient use of the transmission system and facilitation of competition. The Working Group members unanimously supported the principles of the original proposal at an early stage. A Working Group member questioned whether the same effect could be achieved through commercial measures.
- 4.5 A generator was viewed by a general consensus of the Working Group as being unreasonable if it is knowingly not passing on information that it is required to do under the clauses of the CONSAG. The consideration of "knowingly" would be when the generator is sure that it cannot (and therefore does not intend to) meet the contracted MW (TEC) or completion date of the project.
- 4.6 Following the presentation of the original proposal some Working Group members felt that National Grid should have been seeking this right earlier and that by not actively managing such agreements that this might be considered by some to be negligent and in breach of its licence conditions. The group noted that National Grid has been reticent in enforcing existing clauses in the CUSC construction agreement as it considers bringing a generator developer into breach of the code impractical.
- 4.7 Other members felt that the developers were also acting in a manner that would not be consistent with competition legislation or the licence obligations of certain generators. In such cases certain Working Group members felt that the Authority should be taking action against these generators.
- 4.8 A Working Group member commented that generators were being unfairly labelled as capacity hoarders as they were just acting in accordance with the terms of their contract in a rational economic manner. Whilst the generator may have notified National Grid of any changes fully and correctly under the terms of the Construction Agreement and in accordance with the Grid Code, he/she may be unwilling to also submit a Modification Application at the request of National Grid, due to the risk and uncertainty arising from the resultant variation. It was also noted that Grid Code PC5.6 already provides for National Grid to use data other than TEC and CEC in assessing background conditions for new applications.
- 4.9 The proposer also presented an overview of the process (see Annex 7) and explained how the process would be robust whilst ensuring that there was sufficient opportunity for the User to provide information to National Grid,

revise the data sent under the CONSAG or Grid Code, or to provide information to the Authority that would support their transmission capacity figure for their contracted completion date.

4.10 National Grid set out that the information that should be used as a trigger for initiation of the process. National Grid set out that they would need the right to seek clarification from a User of their transmission capacity figure (in their Bilateral Agreement) in the face of any information that National Grid became aware of. Such information can be set out in three categories as follows:

- Information provided under the Grid Code or CONSAG,
- Information provided by the User to the public domain, and
- Other relevant information or data.

4.11 There was a considerable amount of debate about suitable triggers for the initiation of the process. Some of the Working Group members did not wish to be burdened with numerous requests for information from National Grid based on hearsay alone. This was recognised by National Grid and a more appropriate methodology with associated safety checks (including being able to refer such proposed modifications to the Authority) was suggested which meant that the overall approach was a robust approach that would not lead to the unnecessary reduction of a developers transmission capacity figure or burden developers with frivolous or vexatious information requests from National Grid.

4.12 The Working Group discussed the criteria that would be used by National Grid in determining whether a reduction in the transmission capacity figure was required. It was recognised by the Working Group that any list of criteria would be non exhaustive. The Working Group discussed the key criteria and the need for these key criteria to be reasonable and appropriate. These key criteria were discussed under a number of scenarios where a reduction would be required. The Working Group agreed that the following key criteria would be a good initial list of criteria for National Grid to use when deciding if a reduction is required.

- Reduction would result in different assets or works
- Assets are being or could be used by another User
- If the holding onto the capacity results in inefficient investment
- If it causes a (significant) cost to a third party
- Potentially has an affect on charge setting (including TNUOS)
- Has an affect on the outages required

4.13 The Working Group discussed the reasonableness of these criteria and the timing of the application of these criteria. As this provision would be applicable from signature of an Offer (or upon implementation) it was recognised that it would be unreasonable to require a developer to have the required consents ahead of when they would be require in the normal course of a project. Similarly it was recognised that a developer should achieve the required consents in time to complete the project by the completion date and in cases where the developer is unable to achieve this then the transmission capacity figure would need to be reduced to zero. This would effectively terminate the project.

4.14 An informal process was discussed by the Working Group and it was recognised that the informal process gave the User time to remedy any error or omission in data or information relevant to the transmission capacity figure

- provided to National Grid. Further if the User considered the information to be confidential and the User did not wish for the information to be known by National Grid then the User has the opportunity in the formal process to pass this information to the Authority (where the information would remain confidential).
- 4.15 The detail of the process for the original proposal is shown with an associated description of the process flow diagram in Annex 7 to this report. The process is divided into two sections the informal process which has been codified to reflect that an informal stage should take place and the more formal (two phase) process where the two formal notices are received and counter notices served and the rights of Users to refer matters to the Authority for determination are set out.
- 4.16 During the discussion on the reduction of TEC and transmission capacity figure some Working Group members felt that when TEC was reduced the corresponding CEC of the Plant should not be reduced. It was explained to the group that CEC was not a product and that the requirement for CEC in itself did not currently drive any investment. Investment would only be carried out if it was accompanied by a corresponding TEC. This was confirmed by the Transmission Owner representative from SHETL. Several Working Group members questioned if works directly associated with connecting the generator (i.e. CEC rather than TEC specific works) could be unilaterally curtailed/stopped by National Grid if a User had a contract in place to pay for that work. These Working Group members were mindful that with such CEC related works in place the User could opt (via for example the CAP142 arrangements) to obtain TEC via a commercial agreement with another User or seek LDTEC, STTEC products from National Grid. These Working Group members felt that were the (CEC) connection works are fully paid for by the User that this work should be completed as to do otherwise would limit competition.
- 4.17 Several Working Group members argued that as the original amendment proposal did not include a reference to CEC that it would be beyond the scope of the amendment proposal to refer to CEC and as such could not be included in the drafting of the Original Amendment. National Grid remained of the view that it was inconsistent to reduce TEC and not CEC as the User would not be building the generation capacity consistent with the CEC. This may result in the CEC that is referenced in the calculation of the Interruption Payment in the CUSC would refer to an incorrect CEC value. The counter view was put that where the User was paying for such (CEC) works it would, by definition, be economic as far as National Grid was concerned. After some debate on this matter the Chair of the Working Group ruled, **and some of the working group agreed**, that the inclusion of CEC was outside the scope of the Amendment Proposal and as such could not be included.
- 4.18 The Working Group discussed the timing of the release of TEC and whether this should wait until the end of the process when the consequences had been evaluated or if there should be a more timely release when National Grid had identified that the User was holding excess transmission capacity. National Grid was initially of the view that the capacity should be released 15 (fifteen) business days following the initial notice if not referred to the Authority. Several Working Group members, mindful that 15 business days in the context of holidays, bereavement, medical needs etc., might mean that the initial notice is missed thought that it would be prudent to have an additional stage following the initial notice to give the User every possible opportunity to remedy the situation. Therefore, as shown in Annex 7, the

Working Group agreed that there would be two phases to the formal process. In the first phase National Grid would issue a "Notice of Intent" to the User informing the User of National Grid's intention to reduce the User's transmission capacity figure. The User would have 15 (fifteen) business days to respond. If the User did not respond (or the Users response was judged by National Grid to be unsatisfactory) then the second phase (of the formal process) would be enacted by National Grid who would issue a "Notice of Reduction" to the User informing the User of its reduced transmission capacity figure. The User would have 15 (fifteen) business days to accept the change or refer the matter to the Authority for Determination. In the event that the User failed to respond within the timeframe then the User's agreement would be changed accordingly (and the User charged appropriately). The transmission capacity associated with this change to the affected User's transmission capacity figure would be released by National Grid immediately after the change to the User's agreement had come into effect. However, where the User sought a determination from the Authority then no release (of the Users transmission capacity) would arise until the Authority had determined the matter at hand. The process flow and legal text for the original proposal was modified to add in this two phases to the formal process.

- 4.19 It was recognised by the Working Group that following the initial reduction of the transmission capacity figure there would remain a period of up to 3 (three) months where there was uncertainty for the developer over the works and programme. This period of up to 3 (three) months is required in order to review the works required to connect the development at the new transmission capacity figure and to prepare the required agreement to vary. The timescales proposed in the process and legal text are consistent with National Grid's Licence timescales for production of an Offer following a Modification Application. The Working Group considered that this was acceptable.
- 4.20 The Working Group discussed how embedded developments with no direct CONSAG with National Grid should be managed. Working Group members agreed that in these cases that the discussion should continue with the party who has the CONSAG. It was recognised by the Working Group that certain changes would need to be made to the developers agreement as part of the implementation of any reduction as the works identified and capacity listed in the agreement would need to change.
- 4.21 The working group discussed their perceptions of project risk. There was consensus that a carefully defined capacity reduction process would not present project developers with an undue level of additional risk. However some members argued that it would not be acceptable to extend the proposal to cover project delays. These members reasoned that the Backstop Date existed to allow for timescales to be prudently flexible. If the process allowed National Grid to reduce a project's TEC or terminate its Bilateral Agreement for a delay, it would in practise dispense with the backstop date and greatly increase risk to the developer. Such an extended proposal would force the developer to submit a Modification Application for even a short delay in completion. On receiving an application, National Grid is obliged to consider its entire investment programme rather than just the requirements of a specific project. This means that it may have to issue a revised connection date several years later than the original offer. Therefore for even brief delays a project could be faced with changes that could undo the terms of its financing. With this concern in mind, the Working Group agreed to keep the original solution confined to capacity. A Working Group Alternative

Amendment was then proposed to include Completion Date delays in the proposed process.

- 4.22 The Working Group discussed the issue of costs. These costs fell into two categories (i) costs of processing the change and (ii) costs that are a consequence of the change.
- 4.23 When a User submits a Modification Application the User has the choice of whether they apply on the basis of a fixed price application or pay the actual costs. The Working Group agreed that Users should pay the fees as consistent with them submitting a Modification Application. This approach means that the User is not incentivised not to amend their agreement and that they will pay all the costs associated with processing their reduction in capacity and any consequential amendments.
- 4.24 The consequential costs of any reduction in capacity were discussed by the Working Group. These costs can be considered to be very much like Final Sums where any cost is subject to reuse of any assets and certain timescales. For the purpose of drafting the treatment of the consequential costs of any reduction are treated as a termination for the purposes of Final Sums due. The exception to this is where any User has agreed to pay a User Commitment amount and in these cases the amount due will be the User Commitment and this amount will become payable when the TEC has been reduced.

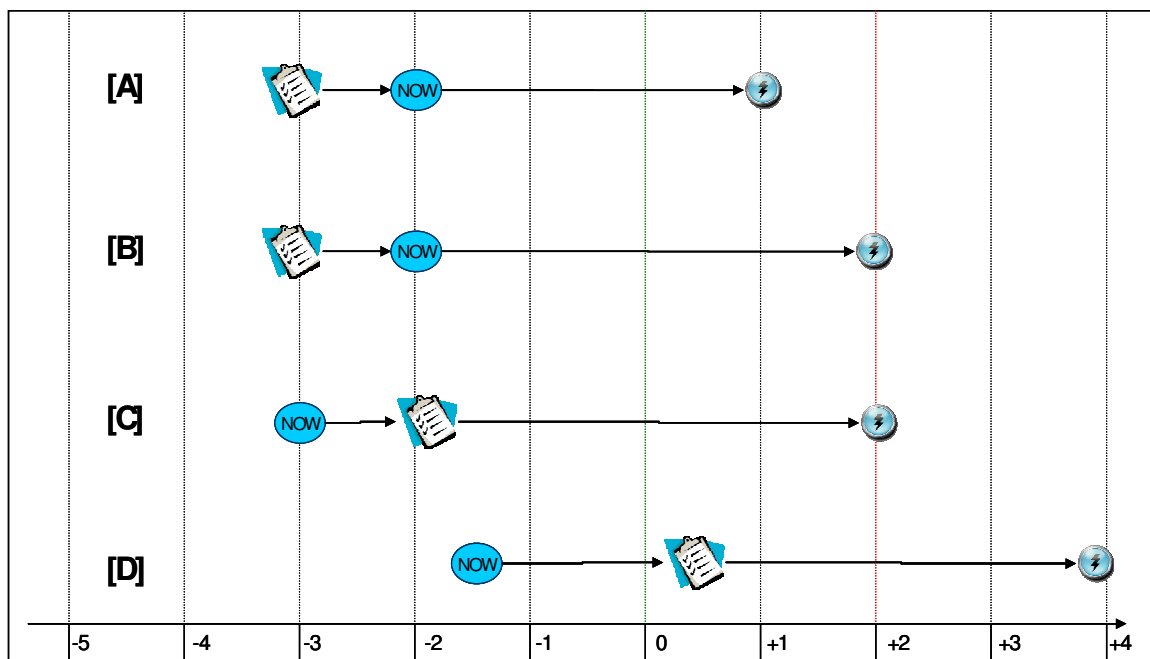
5.0 WORKING GROUP ALTERNATIVE AMENDMENT

- 5.1 A member of the Working Group proposed an Alternative Amendment: Termination upon failure to modify agreements.
- 5.2 If we consider CAP150 Original is implemented, National Grid would have:
- [1] The right to allow the project to progress even if delayed, enforcing termination upon the backstop date. (Existing rights).
 - [2] After being notified of a significant delay, the right to notify the User to submit a modification application for a later connection. (Existing rights)
 - [3] After being notified of having an incorrect transmission capacity figure against the plant likely to be commissioned, the right to notify the User to submit a modification application and if this is not done, use enforcement action to reduce the transmission capacity figure in Appendix C of the User's BCA.
- 5.3 [1] & [2] are existing rights for the GBSO, through clauses, 4.8 Backstop date and 3.3 Delays. [3] is a new right, provided by implementation of CAP150.
- 5.4 The Working Group member who proposed the Alternative Amendment considers there to be an asymmetry between [2] and [3] above, where the incorrect transmission capacity figure is proposed to have enforcement action and a delay in the construction programme does not. In the view of the proposer of the Alternative Amendment this is clearly inappropriate and would represent a defect in the code if CAP150 were implemented.
- 5.5 It is proposed the WGAA should have termination, (rather than enforcement action), for failure by the User to fulfil obligations of the CUSC Construction Agreement. Therefore the WGAA will:

- Include a further clause to ensure the User is developing a power station in accordance with the Transmission Entry Capacity and Connection Entry Capacity specified in Appendix C of the Bilateral Connection Agreement. As such, it follows the intention of CAP150).
 - Update the existing clause in the Construction Agreement, pertaining to delays, such that there is consistency between arrangements in the new (aforementioned) clause and existing clauses.
 - Rather than introduce enforcement action, as proposed under CAP150 Original, the WGAA intends to provide National Grid with the contractual right to terminate the agreement, should the User not request a modification to their agreement.
- 5.6 It will do this by introducing a Notice of Termination which can be issued to Users failing to fulfil the requirements of Appendix C of the BCA and Appendix J of the Construction Agreement. The Notice of Intended Termination will follow an informal process initiated by the GBSO, (when the GBSO is concerned the User will not satisfy the requirements of Appendix C of the BCA and Appendix J of the Construction Agreement), which should give the chance for a User to justify their project's progression through the submission of revised Quarterly Report (and Grid Code DRC) data or the User can submit a Modification Application to align the Appendices with the project's actual progression.
- 5.7 The Notice of Termination is intended to provide an incentive for CUSC Users to behave properly with regard to their CUSC obligations. It also provides an efficient process for National Grid to penalise Users acting improperly, without the legal implications associated with notifying the Authority the User is in breach of the CUSC.
- 5.8 With regard to embedded generators, it is expected the DNO will be served with a Notice of Termination. This is because the DNO holds the Construction Agreement with National Grid; the generation project the DNO is representing is bringing the DNO into breach of the CUSC.
- 5.9 The DNO will not be exposed to the termination of the Construction Agreement as (although it will have to pay National Grid Final Sums upon termination), it will have required the generator to secure the Construction works being completed on its behalf. Therefore all BELLA agreements will be affected by the WGAA. Those generators being managed by DNOs, yet considered to be Relevant Embedded Power Stations will also be affected as it is expected the DNO will ensure the generator is fulfilling its agreements to connect the correct capacity in a timely manner.
- 5.10 Upon termination of the DNO's Construction Agreement, in order for a BELLA to be terminated, there needs to be a clause inserted into the BELLA. This will ensure when the DNO's Construction Agreement is terminated all generator agreements directly associated with the terminated DNO Construction Agreement are terminated. This would be consistent with the treatment of Bilateral Connection Agreements.
- 5.11 The proposer of the WGAA believes that notice of termination for failure to progress the project would interact with clause 4.8 backstop date. The proposer believes National Grid would aim to use the backstop date rather than the notice of termination if a generator is delayed, but likely to connect within the backstop date. An example would be where a CCGT developer has committed to plant and construction, however the equipment delivery and installation timescales prevent it connecting at the completion date. In

this case National Grid can allow the developer to accept the risk of the backstop date and connect within two years. On the other hand, if the generator is not consented and has no equipment on order, it cannot accept the risk of the backstop date (i.e. it is delayed by 2 or more years). In this case National Grid would be inclined to issue the notice of termination. The proposer considered it would be unreasonable for National Grid to enforce the notice of termination clause introduced by the WGAA should it be more reasonable for the Backstop Date clause to be enforced.

5.12 The following diagram considers the relationship between the notice of termination and the backstop date. The number sequence represents the project timeline, with the connection date being year 0 and +2 being the backstop date. The clip board represents power station consents, the “now” symbol places today’s date upon the year sequence and the electrification symbol represents the developer’s anticipated connection date.



5.13 Project [A] has a consented project has two years before the agreed connection date, yet expects to complete construction in Y+1. It would have reasonable certainty over the delay after securing delivery / installation contracts and should therefore not be too concerned in passing the backstop date. In this instance it would be reasonable for the GBSO to exercise the backstop date rather than the Notice of Termination. On the other hand, example [B] is expecting to connect on or around the backstop date after confirming the construction programme with contractors. For project [B] there is a great risk that if it should not modify the connection date with the GBSO, it will pass the backstop date. In this case, the GBSO would be more inclined to utilise the notice of termination rather than the backstop date as it realises the assets it is building are likely to remain unused for over two years. For [B] the backstop date is clearly inappropriate for both parties.

5.14 Project [C] has yet to obtain consents but expects (should the project run to plan), to connect on or around the backstop date. Project [C] is at risk of the backstop date being enforced without it connecting, so it should look to modify its agreements. For the GBSO there is a high likelihood that transmission works will be stranded unless it reconfigures the reinforcements needed to connect project [C] and other applicants. In this case the Notice of

Termination, rather than the backstop date is appropriate should the developer not modify its agreements willingly.

- 5.15 Project [D] has not yet gained consents, yet remains with a connection date four years in advance of when it can connect. The developer is clearly negligent in managing the construction agreement and has not progressed the project in the manner agreed under Appendix J: Construction Programme. In this case the Notice of Termination is more suitable than enforcing the backstop date when the generator does not connect in Y+2.
- 5.16 The Working Group examined the Alternative Proposal and recognised that the intention of the suggested process was to equip National Grid with a more complete range of options for managing the effect of inaccurate information on its investment programme. Those members who held the view that it would not be appropriate for National Grid to effect a termination of a Bilateral Agreement on the basis of a delayed completion date, considered that the matter of reasonableness was imprecise and therefore introduced additional and inappropriate project risk. These members argued that the 2 year backstop provision is essential to ensure that complex and expensive projects are delivered within necessarily flexible timeframes. The Alternative Proposal would leave developers in an uncertain position, as should a dispute arise they would not know if National Grid intended to honour the Backstop Date or start the termination process. A problem occurs because the extended powers would be discretionary and the terms of their use between the Completion Date and the Backstop date are not set out explicitly. Finally, it was again mentioned that it may not be appropriate for a developer to submit a Modification Application for a brief delay, as the reassessed connection date could be for several years later. Such delays could undo a project's financing, even before the termination fees are taken into account.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

Proposed Amendment

- 6.1 A majority of the Working Group believed that CAP150 would better and best facilitate the CUSC Objective(s);
- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and
 - (b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.
- 6.2 By allowing National Grid to more efficiently manage TEC applications and free up transmission capacity where TEC would not otherwise be used. The Working Group vote is contained in Annex 6 to this report.

Working Group Alternative Amendment

- 6.3 A majority of the Working Group believed that CAP150 Working Group Alternative would not better facilitate the CUSC Objective(s);
- (a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and

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

6.4 The Working Group vote is contained in Annex 6 to this report.

7.0 PROPOSED IMPLEMENTATION

7.1 Both the Original Amendment Proposal and the Working Group Alternative Amendment propose new defined terms and additional clauses as set out in Annex 1 to this report.

7.2 The CAP150 Amendment Proposal required that any change would be applicable to all Users who are not yet connected or are awaiting a TEC increase with one of the agreements listed in Section 8.

7.3 In respect of future Users as the relevant CUSC Exhibits will be amended following approval by the Authority then any Offers made to future Users would contain this text as standard as Offers are required to be in substantially the form of the CUSC Exhibits.

7.4 In respect of existing Users under each Bilateral Agreement National Grid and the User have to effect any amendment to a Bilateral Agreement required by the Authority as a result of a change in CUSC. The Bilateral Agreements specifically authorises National Grid to make such amendment on its behalf of the Authority.

7.5 Should the Proposed Amendment or Working Group Alternative Amendment be approved by the Authority, National Grid and the User will be required to effect this amendment by varying the existing Bilateral Agreements. As a result of this, National Grid will issue Agreements to Vary the Bilateral Agreements consistent with the changes. The numbering of individual Bilateral Agreements may vary in some cases.

7.6 The Working Group proposes CAP150 Original or Working Group Alternative Amendment should be implemented 10 business days after an Authority decision.

7.7 Following the implementation National Grid will issue Agreements to Vary the relevant Bilateral Agreements as soon as is reasonably practical. These are anticipated to come into legal effect immediately.

7.8 This change would be applicable to all existing and future Users with one of the agreements described above prior to completion of the User works. Need to discuss implementation by changes to existing agreements.

8.0 IMPACT ON THE CUSC

Proposed Amendment

8.1 CAP150 Original Proposal requires amendments to:

CUSC Section 11.3 – Definitions New definitions,

Schedule 2 – Exhibit 1 (Bilateral Connection Agreement),
Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement),
Schedule 2 – Exhibit 3 (Construction Agreement), and
Schedule 2 – Exhibit 5 (BELLA).

- 8.2 The text required to give effect to the Original Proposal is contained as Part A of Annex 1 of this document.

Working Group Alternative Amendment

- 8.3 CAP150 Working Group Alternative Amendment requires amendments to Section 6 of the CUSC.
- 8.4 The text to give effect to the Working Group Alternative Amendment is attached as Part B of Annex 1 of this document.

9.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

- 9.1 CAP150 has no impact upon Core Industry Documents.

Impact on other Industry Documents

- 9.2 CAP150 Original Proposed Amendment has a minor impact upon the STC under STCP18-1. The STC Committee will be informed of the potential consequential impact on the STC in the event of CAP150 Amendment Proposal being approved by the Authority and subsequently implemented within the CUSC. The STC Committee will be requested to review the impact of CAP150 and any associated STC changes will be proposed and progressed in line with the STC Amendment Proposal process in accordance with Section B, paragraph 7.2

ANNEX 1 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

Part A - Text to give effect to the Original Proposed Amendment

1. **Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA)**

Amend Schedule 2 Exhibit 3 (the Construction Agreement) as follows:

Add the following as Clause 7.4 in the Construction Agreement

7.4 **Transmission Entry Capacity Reduction**

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

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

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

7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company**

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

7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with 7.4.5 by the **User** that the **User's Equipment** is such that it will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** is such that it will not reasonably be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.

7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business**

Days after the date of the **Notice of Reduction** by the **User** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**.

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

Amend Clause 15.3 of Schedule 2 Exhibit 3 (the Construction Agreement) to include reference to Clause 7.4

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

Add the following definitions to Clause 1 of Schedule 2 Exhibit 3 (the Construction Agreement)

Capacity Reduction Charge

*[where on interim methodology a sum equal to the difference between a) the **Cancellation Charge** that would have been payable by the **User** had this **Construction Agreement** terminated in the **Financial Year** (or part of **Financial Year**) in which the **User** reduced its*

Connection Entry Capacity and/or **Transmission Entry Capacity** as appropriate and the **User** had not reduced its **Connection Entry Capacity** and/or **Transmission Entry Capacity** as appropriate and b) the **Cancellation Charge** that would have been payable in such **Financial Year** (or part of **Financial Year**) if such charge was calculated on the basis of the reduced **Connection Entry Capacity** and/or **Transmission Entry Capacity.**] or
[Where on CAP 131 the definition implemented as part of that amendment]
or

[where on final sums -"Final Sums and as such subject to the provisions of Clauses [9.2 and 9.3 -if user meets credit rating] [9.6 and 9.7 - if user does not meet credit rating] of this **Construction Agreement** except that the **Final Sums** will be assessed by reference to those elements of the **Construction Works** no longer required as a result of a **Notice of Reduction** taking effect rather than on termination of this **Construction Agreement**"]

Notice of Intent

the notice issued by **The Company** pursuant to Clause 7.4.4

Notice of Reduction

the notice issued by **The Company** pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised **Transmission Entry Capacity.**

Preliminary Request

the request issued by **The Company** pursuant to Clause 7.4.1

Reduction Fee

the fee payable by the **User** to **The Company** in respect of the agreement to vary issued pursuant to Clause 7.4.9

such fee being calculated on the same basis as that set out in the **Charging Statements** as payable on a payment of actual costs basis in respect of a **Modification Application**.

2 Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station

Amend Schedule 2 Exhibit 3 (the Construction Agreement) as follows:

Add the following as a new Clause 7.4 in Schedule 2 Exhibit 3 (the Construction Agreement)

7.4 Developer Capacity Reduction

7.4.1 If, at any time prior to the **Completion Date The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small\medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that the **Developer's Equipment** is such that it will not be capable of generating at the **Developer Capacity, The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

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

7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with 7.4.2 by the **User** that the **Developer's**

Equipment is such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.

- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** is such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with 7.4.5 by the **User** that the **Developer's Equipment** is such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7 Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** is such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**,

the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**.

7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Capacity Reduction Charge** and **Reduction Fee**. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.”

Amend Clause 2.8 of the Construction Agreement as follows

“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other’s part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. **The User shall also provide to The Company such information as The Company shall reasonably request and which the User is entitled to disclose in respect of the Developer’s Project.** Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer’s Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”

Amend Clause 15.3 of Schedule 2 Exhibit 3 (the Construction Agreement) to include reference to Clause 7.4

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

Add the following definitions to Clause 1 of Schedule 2 Exhibit 3 (the Construction Agreement)

Developer Capacity	the MW figure [<i>for export</i>] specified in the Developer's Data .
Capacity Reduction Charge	the fees, expenses and costs (whether external or internal) paid, payable or incurred by The Company in respect of those elements of the Construction Works no longer required when a Notice of Reduction takes effect.
Developer	<i>Insert name address and registered number</i> who is party to a BELLA with The Company or the subject of the Request for a Statement of Works .
Developer's Data	the information provided by the [Developer-BELLA] [User in respect of the Developer in the Request for a Statement of Works-relevant embedded medium\small power station] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the User's Distribution System at []
Notice of Intent	the notice issued by The Company pursuant to Clause 7.4.4
Notice of Reduction	the notice issued by The Company pursuant to Clause 7.4.7 revising the Developer's Capacity for this Construction Agreement and Appendix A to the BELLA .
Preliminary Request	the request issued by The Company pursuant to Clause 7.4.1
Reduction Fee	the fee payable by the User to The

Company in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the **Charging Statements** as payable on a payment of actual costs basis in respect of a **Modification Application**.

Attach a new Appendix P to Schedule 2 Exhibit 3 (the Construction Agreement) - Appendix [P] (Developer's Data) and amend Contents Page accordingly

Appendix [P]

Developer's Data

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

Amend Schedule 2 Exhibit 5 (the BELLA) as follows:

Add the following definitions to Clause 1

User's Capacity	the MW [<i>export</i>] figure specified in the User's Data .
DNO	<i>name address and registered number of owner/operator of the distribution network to which user is to connect.</i>
DNO Construction Agreement	the agreement between The Company and the DNO for Transmission Reinforcement Works as a consequence of the User's connection to the Distribution System .
Notice of Reduction	the notice of that name given by The Company to the DNO and the User pursuant to Clause 7 of the DNO Construction Agreement .
Notice of Reduction Effective Date	the date the amendments proposed by the Notice of Reduction take effect.
User's Data	the data submitted by the User and set out in Appendix A to the BELLA against which the effect on the GB Transmission System of the User's connection to the Distribution System has been assessed.

The following shall be added as a new Clause 9.4 of Schedule 2 Exhibit 5 (the BELLA) and reference to Clause 9.4 added to Clause 9.1.

“9.1 Subject to 9.2, 9.3 and 9.4, no variation to this BELLA shall be effective unless made in writing and signed by or on behalf of both The Company and the User.”

“9.4 Appendix A shall be automatically amended to reflect any Notice of Reduction on the Notice of Reduction Effective Date.”

Amend Appendix A to Schedule 2 Exhibit 5 (the BELLA) as attached

APPENDIX A

THE SITE OF CONNECTION AND USER'S DATA

SITE[s] OF CONNECTION

Company:

Site[s] of Connection:

Size of Power Station:

Owner[s] / Operator[s] of Distribution System:

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

Part B - Text to give effect to the Working Group Alternative Amendment

1. Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA)

Construction Agreement

Add the following as new clause 2.x in section 2 of the Construction Agreement.

2.x Power Station

The **User** shall be responsible for designing building and installing the **Power Station** and the **User's Equipment** shall be such that it will be capable of generating at the **Transmission Entry Capacity** [*directly connected power stations only* - and of a type and size that matches the **Connection Entry Capacity**].

Add the following as new clauses 2.y and 2.z in section 2 of the Construction Agreement.

“2.y Power Station Build

2.y.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process generally or otherwise that the **User** is not meeting its obligations under Clause 2.x **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

2.y.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.

2.y.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation

set out in the **Preliminary Request** is correct, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.

2.y.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:-

- a) the **User** does not submit a **Modification Application** requesting the appropriate changes to the **User's Works** and **Transmission Entry Capacity** [*directly connected power stations only* - and **Connection Entry Capacity**] such as to satisfy **The Company** that it can fulfil its obligations under 2.x within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- b) if a **Modification Application** as required under (a) above has been made but the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,

and upon such termination the provisions of Clause 11 shall apply.

2.z **User's Progress**

2.z.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process generally or otherwise that the **User** will not complete its **User's Works** in accordance with the **Construction Programme** **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

2.z.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.

2.z.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation set out in the **Preliminary Request** is correct, and the **User** has not exercised its rights under Clause 3.2, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.

2.z.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:-

- a) the **User** does not submit a **Modification Application** requesting the appropriate changes to the **Construction Programme** within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- b) if a **Modification Application** as required under (a) above has been made but the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,

and upon such termination the provisions of Clause 11 shall apply.”

Amend Clause 12.1 of the Construction Agreement to refer to Clauses 2.y and 2.z.

The following new definitions shall be added to Clause 1 of the Construction Agreement.

Notice of Intended Termination	the notice issued by The Company to the User pursuant to Clause 2.y.3 and/or Clause 2.z.3
Power Station	the [] power station as set out in the User's Works .
Preliminary Request	the request issued by The Company to the User pursuant to Clause 2.y.1 and/or Clause 2.z.1

2 Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station

A Construction Agreement

Add the following as new clause 2.x in section 2 of the Construction Agreement.

2.x Developer's Data

The **User** shall notify **The Company** in the event that it becomes aware of any changes to the **Developer's Data**."

Add the following as a new Clause 2.y in section 2 of the Construction Agreement

"2.y Change in Developer's Data

2.y.1 If, at any time prior to the **Completion Date The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, notification from the **User** under Clause 2.x of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that there are changes to the **Developers Data The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

2.y.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.

2.y.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation

set out in the **Preliminary Request** is correct, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.

2.y.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:

[In the case of a BELLA

- a) the **Developer** does not submit a **Modification Application** requesting the appropriate amendments to the **Developer's Data** within 15 **Business Days** of the date of the **Notice of Intended Termination**; and
- b) the **User** does not submit a **Modification Application** requesting the corresponding amendments to the **Developer's Data** for the purposes of this **Construction Agreement** within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- c) if the **Modification Applications** as required under (a) and (b) above have been made but the **Developer** and/or the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,]

[in the case of relevant embedded medium\small power stations

- a) where either **The Company** requires a revised **Request for a Statement of Works** and the **User** does not submit the same within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- b) the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,]

and upon such termination the provisions of Clause 11 shall apply.

Amend Clause 2.8 of the Construction Agreement as follows.

“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other’s part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer’s Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer’s Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”

The following new definitions shall be added to Clause 1 of the Construction Agreement.

Developer	<i>name registered address and co number</i>
Developer’s Capacity	the MW figure [<i>for export?</i>] specified in the Developer’s Data .
Developer’s Project	the connection of a [<i>xmw wind farm\power station</i>] to the User’s Distribution System at [].
Developer’s Data	the information provided by the [Developer-BELLA] [User in respect of the Developer in the Request for a Statement of Works-relevant embedded medium\small power station] and set out in Appendix [P].
Notice of Intended Termination	the notice issued by The Company to the User pursuant to Clause 2.y.3.
Preliminary Request	the request issued by The Company to the User pursuant to Clause 2.y.1.

Attach a new Appendix - Appendix [P] (Developer's Data) and amend Contents Page accordingly

Appendix [P]

Developer's Data

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

B BELLA

Add the following new definitions at Clause 1 of the BELLA.

User's Data the information provided by the **User** in its application and set out in Appendix A against which the effect on the **GB Transmission System** has been studied.

Amend Clause 6 (Operational Notification) of the Bella as follows

Amend Clause 8 (Term) of the BELLA as follows

“Subject to the provisions for earlier termination set out in the **CUSC**, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** as provided in Section 5 of **CUSC** or earlier if the **Distribution Agreement** is terminated prior to the issue by **The Company** of the **Operational Notification**.

Amend Appendix A to the BELLA as follows

APPENDIX A
THE SITE OF CONNECTION AND USER'S DATA

SITE[s] OF CONNECTION

Company:

Site[s] of Connection:

Size of Power Station:

Owner[s] / Operator[s] of Distribution System:

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

ANNEX 2 – WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP

Working Group Terms of Reference and Membership

TERMS OF REFERENCE FOR CAP150 WORKING GROUP

RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP150 tabled by National Grid at the Amendments Panel meeting on 29 June 2007.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the applicable CUSC objectives. These can be summarised as follows:
 - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

SCOPE OF WORK

4. The Working Group must consider the issues raised by the Amendment Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and report on the following specific issues:
 - **assess impacts on CUSC parties**
 - **define the key milestones**
 - **understand scenarios when clause would be used**
 - **refunds if the works/assets are used elsewhere**
6. The Working Group is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAAs) arising from Group discussions which would, as compared with the Amendment Proposal, better facilitate achieving the applicable CUSC objectives in relation to the issue or defect identified.

7. The Working Group should become conversant with the definition of Working Group Alternative Amendments which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual Member of the Working Group to put forward a Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should be clearly described in the final Working Group Report to the CUSC Amendments Panel.
8. The Working Group is to submit their final report to the CUSC Panel Secretary on 20 September for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 28 September 2007.

MEMBERSHIP

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

Chair	Duncan Burt	
National Grid	Phil Collins	
Industry Representatives	Garth Graham	Scottish and Southern
	Dennis Gowland	Fairwind Orkney Ltd
	Laura Jeffs	Centrica
	Robert Longden	Airtricity
	John Morris	British Energy
	Alec Morrison	Scottish and Southern
	John Norbury	RWE
	David Scott	EDF
	Ben Sheehy	E.ON
	Tim Russell	Russell Power
Authority Representative	Jenny Boothe	Ofgem
Technical Secretary	Clare Talbot	National Grid

[NB: Working Group must comprise at least 5 Members (who may be Panel Members) and will be selected by the Panel with regard to WG List held by the Secretary]

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

RELATIONSHIP WITH AMENDMENTS PANEL

11. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event the Working Group Chair should contact the CUSC Panel Secretary.
12. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chair should contact the CUSC Panel Secretary.

MEETINGS

13. The Working Group shall, unless determined otherwise by the Amendments Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

REPORTING

14. The Working Group Chair shall prepare a final report to the 28 September Amendments Panel responding to the matter set out in the Terms of Reference.
15. **A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.**
16. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
17. The Chair (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

ANNEX 3 – INTERNAL WORKING GROUP PROCEDURE

CAP150 Working Group

INTERNAL WORKING PROCEDURES

1. Notes and actions from each meeting will be produced by the Technical Secretary (provided by National Grid) and circulated to the Chairman and Working Group members for review.
2. The Meeting notes and actions will be published on the National Grid CUSC Website after they have been agreed at the next meeting or sooner on agreement by Working Group members.
3. The Chairman of the Working Group will provide an update of progress and issues to the Amendments Panel each month as appropriate.
4. Working Group meetings will be arranged for a date acceptable to the majority of members and will be held as often as required as agreed by the Working Group in order to respond to the requirements of the Terms of Reference set by the Amendments Panel.
5. If within half an hour after the time for which the Working Group meeting has been convened the Chairman of the group is not in attendance, the meeting will take place with those present.
6. A meeting of the Working Group shall not be invalidated by any member(s) of the group not being present at the meeting.

ANNEX 4 – WORKING GROUP ATTENDANCE REGISTER

		18/7/07	22/08/07	7/09/07	21/09/07	5/10/07	12/10/07
Duncan Burt	Chair	x*	✓	✓	✓	✓	✓
Clare Talbot	Technical Secretary	✓	x	✓	✓	✓	✓
Phil Collins	National Grid	✓	✓	✓	✓	✓	✓
Chris Newett	National Grid	✓	✓	x	x	x	x
Garth Graham	Scottish and Southern	✓	✓	✓	✓	x	✓
Dennis Gowland	Fairwind Orkney Ltd	✓	✓	✓	✓	✓	✓
Laura Jeffs	Centrica	✓	✓	✓	x	✓	✓
Robert Longden	Airtricity	✓	✓	✓	✓	✓	x
John Morris	British Energy	✓	✓	✓	✓	✓	✓
Alec Morrison	Scottish and Southern	x	x	✓	✓	x	✓*
John Norbury	RWE	✓	✓*	✓	✓	✓	✓
David Scott	EDF	✓	✓	✓	✓	✓	✓
Ben Sheehy	E.ON	✓	x	✓	✓	✓	✓
Tim Russell	Russell Power	✓	✓	✓	x	✓	✓
Jenny Boothe	Ofgem	✓	✓	x	✓	✓	✓

Note

* Indicates an alternative representative attended the Working Group meeting on their behalf.

ANNEX 5 – AMENDMENT PROPOSAL FORM

CUSC Amendment Proposal Form	CAP:150
Title of Amendment Proposal: <p style="text-align: center;">Capacity Reduction</p>	
Description of the Proposed Amendment <i>(mandatory by proposer)</i> : <p>In summary, it is proposed to amend the CUSC to enable The Company to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then The Company would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the capacity to an appropriate level and revise the Construction Works as necessary to reflect this. In addition The Company has the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in capacity and for The Company's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application Fees.</p> <p>It is proposed:</p> <ol style="list-style-type: none">1. In addition to the quarterly reports provided by the User on its Project under the Construction Agreement The Company has the right to request information from a User regarding their Project such as planning consents applied for.2. The Construction Programme will identify dates for particular events (milestones) associated with the User's works e.g. grant of Section 36 consent.3. Where the Company becomes aware (e.g. Section 36 planning consent is granted for a lower capacity than is reflected in the relevant bilateral agreements) that there might be a discrepancy with the capacity in the Bilateral Agreement or the User fails to meet the milestones such that it is reasonable to question whether the User can complete their Project by the completion date, then The Company would notify the User and seek an explanation from the User regarding the inconsistency between the transmission capacity within their bilateral agreement (contracted position) and the available Project information.4. If the inconsistency is not resolved, then The Company would be entitled to vary the bilateral agreement to reduce the User's capacity (TEC or power station capacity in relation to a BELLA) to a figure that The Company considered was appropriate based upon the information available and make any other necessary consequential contractual changes including changes to the Construction Agreement to reflect any changes to the works. The agreement to vary would also provide for recovery of any costs of abortive works resulting from the capacity reduction.	

This proposal would require amendment to the standard forms of the Bilateral Connection Agreement as set out in Exhibit 1 to Schedule 2 of the CUSC, the Bilateral Embedded Generation Agreement as set out in Exhibit 2 to Schedule 2 of the CUSC, the Construction Agreement as set out in Exhibit 3 to Schedule 2 of the CUSC and the BELLA as set out in Exhibit 5 to Schedule 2 of the CUSC

This change would be applicable to all existing and future Users with one of the agreements described above prior to completion of the User works.

Description of Issue or Defect that Proposed Amendment seeks to Address (*mandatory by proposer*):

There has recently been an unprecedented level of applications for connection to and use of the GB Transmission System. In several locations this level of applications has resulted in many Users' receiving offers for connection dates later than their aspirational connection date. This is particularly relevant in Scotland where as a consequence of the transition to BETTA a "queue" of 168 Projects totalling some 13.5GW of capacity exists. The Company's offers of connection in some cases are 10 years in future. The Company is also aware of connection "queues" in parts of England and Wales such as the Thames Estuary and South Wales.

At present The Company is aware of Projects throughout Great Britain that have a capacity in their Bilateral Agreement that is considerably in excess of the Project's apparent needs (e.g. based on planning consent applications, planning consent approvals etc) or where the User's Works required to utilise this capacity are unachievable by the Completion Date but nevertheless the User refuses to reduce their contracted position or seek a delay to their Completion date.

This presents a number of issues for The Company:

- It causes uncertainty over the volume of transmission capacity necessary
- It create the potential risk of over investment
- The release of this capacity could permit other Projects to connect earlier than their current contracted date and present opportunities for new projects.

The proposed amendment seeks to address the issue of Users that have a contracted position that is inconsistent with their Project details (e.g. planning consent) or the construction programme. Whilst there are remedies available where a User does not progress or complete a Project, the nature of these remedies means that a User can hold onto TEC or capacity until very close to their connection date. Consequently, The Company is unable to utilise this capacity for other Users in a timely manner or review the works required, which has an adverse impact on competition. In addition the current remedies of termination may not be proportionate in all cases.

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

As a minimum, the following changes are expected:

New definitions in CUSC Section 11.3 – Definitions.

Schedule 2 – Exhibit 1 (Bilateral Connection Agreement).

Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement).

Schedule 2 – Exhibit 3 (Construction Agreement).

Schedule 2 – Exhibit 5 (BELLA).

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

The proposed amendment may require a minor consequential changes to the STC (in particular the procedures relating to connection offers, STCP-18). In addition charging methodology changes may also be required for abortive works and deemed application fees.

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

None.

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

None

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

The proposed amendment better facilitates the achievement of the Applicable CUSC Objectives as follows:

(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence

National Grid has a range of statutory duties and licence obligations which include ensuring the efficient, economic and co-ordinated operation of the GB Transmission System, the facilitation of competition and non-discrimination. The proposed amendment better facilitates the efficient discharge by National Grid of these obligations and, in particular, it is observed that:

- Existing arrangements allow Users to hoard capacity until the backstop date.
- The new arrangements would allow The Company to release capacity to Projects that are able to use it and thereby facilitate competition.
- It improves the level of certainty over the actual capacity connecting, reduces the amount of short term attrition and removes any potential risk of over investment

For these reasons, the proposed amendment would better facilitate Applicable CUSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence.

(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

- By facilitating release of capacity from a Project that is manifestly unable to use it The Company can release this capacity to other Projects that are able to use it.
- The present arrangements may act as a barrier to entry to new Users to the extent that capacity is being hoarded.
- The connection process may be prolonged; this may deter new entrants to the generation market.

For this reason, the proposed amendment would better facilitate Applicable CUSC Objective (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

Details of Proposer:	
Organisation's Name:	National Grid Electricity Transmission plc
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Proposer's Representative:	
Name:	Philip Collins
Organisation:	National Grid
Telephone Number:	01926 656143
Email Address:	Phil.collins@uk.ngrid.com
Details of Representative's Alternate:	
Name:	Andy Balkwill
Organisation:	National Grid
Telephone Number:	01926 655988
Email Address:	Andy.balkwill@uk.ngrid.com
Attachments (No):	

Notes:

1. Those wishing to propose an Amendment to the CUSC should do so by filling in this "Amendment Proposal Form" that is based on the provisions contained in Section 8.15 of the CUSC. The form seeks to ascertain details about the Amendment Proposal so that the Amendments Panel can determine more clearly whether the proposal should be considered by a Working Group or go straight to wider National Grid Consultation.
2. The Panel Secretary will check that the form has been completed, in accordance with the requirements of the CUSC, prior to submitting it to the Panel. If the Panel Secretary accepts the Amendment Proposal form as complete, then he will write back to the Proposer informing him of the reference number for the Amendment Proposal and the date on which the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, then he may reject the Proposal. The Panel Secretary will inform the Proposer of the rejection and report the matter to the Panel at their

next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform the Proposer.

The completed form should be returned to:

Beverley Viney
Panel Secretary
Commercial Frameworks
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Or via e-mail to: Beverley.Viney@uk.ngrid.com

(Participants submitting this form by email will need to send a statement to the effect that the proposer acknowledges that on acceptance of the proposal for consideration by the Amendments Panel, a proposer which is not a CUSC Party shall grant a licence in accordance with Paragraph 8.15.7 of the CUSC. A Proposer that is a CUSC Party shall be deemed to have granted this Licence).

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

ANNEX 6 – RESULT OF WORKING GROUP VOTE

Name	Company	WGOP	WGAA
Phil Collins	National Grid	✓✓	✓
Garth Graham	Scottish and Southern	✓✓	✗
Alec Morrison*	Scottish and Southern	✓✓	✗
Dennis Gowland	Fairwind Orkney Ltd	✓✓	✗
Laura Jeffs	Centrica	✓✓	✗
Robert Longden	Airtricity	✓✓	✗
John Morris	British Energy	✓✓	✓
John Norbury	RWE	✓✓	✗
David Scott	EDF	✓	✓✓
Ben Sheehy	E.ON	-	-
Tim Russell	Russell Power	✓	✓✓

Notes

- ✓ indicates that proposal is better than the baseline
- ✓✓ indicates that proposal better than the baseline and best meets the CUSC objectives
- ✗ indicates worst than the baseline
- indicates abstained

One Working Group member abstained from voting. His view was that the proposals would create a very effective tool with which National Grid could manage transmission access and he did not therefore want to vote that the baseline was the best option. However he thought that the degree of discretion given to National Grid in both of the working group processes was too great; and that, if implemented, either would significantly increase the risk inherent in financing new generation projects. His view that the terms for TEC reduction could be made more explicit by, for example, listing the evidence that would have to be used to start the process, was considered impractical by the proposer and contrary to the aims of the proposal.

ANNEX 7A – PROCESS FLOW DIAGRAMS

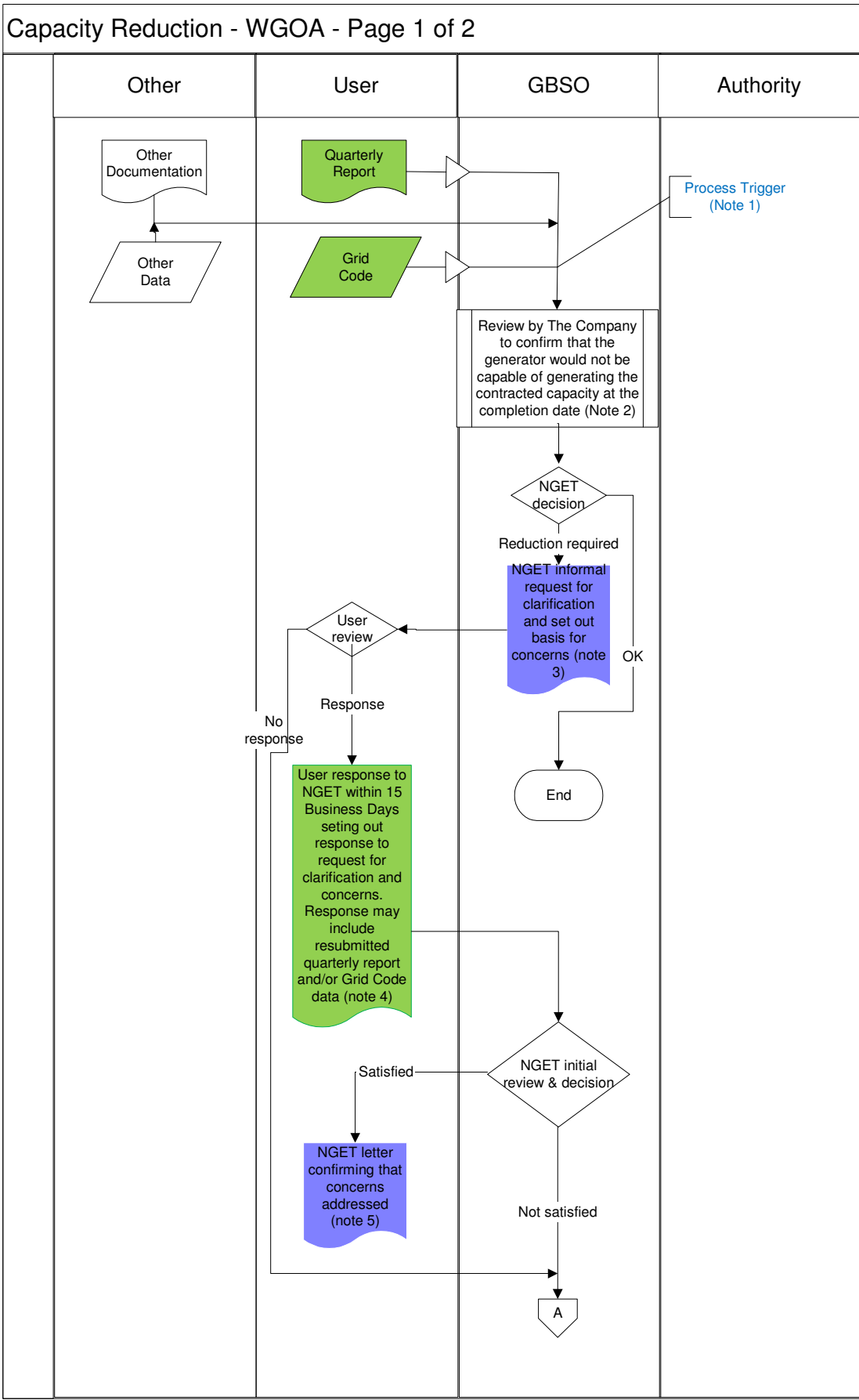
Part A

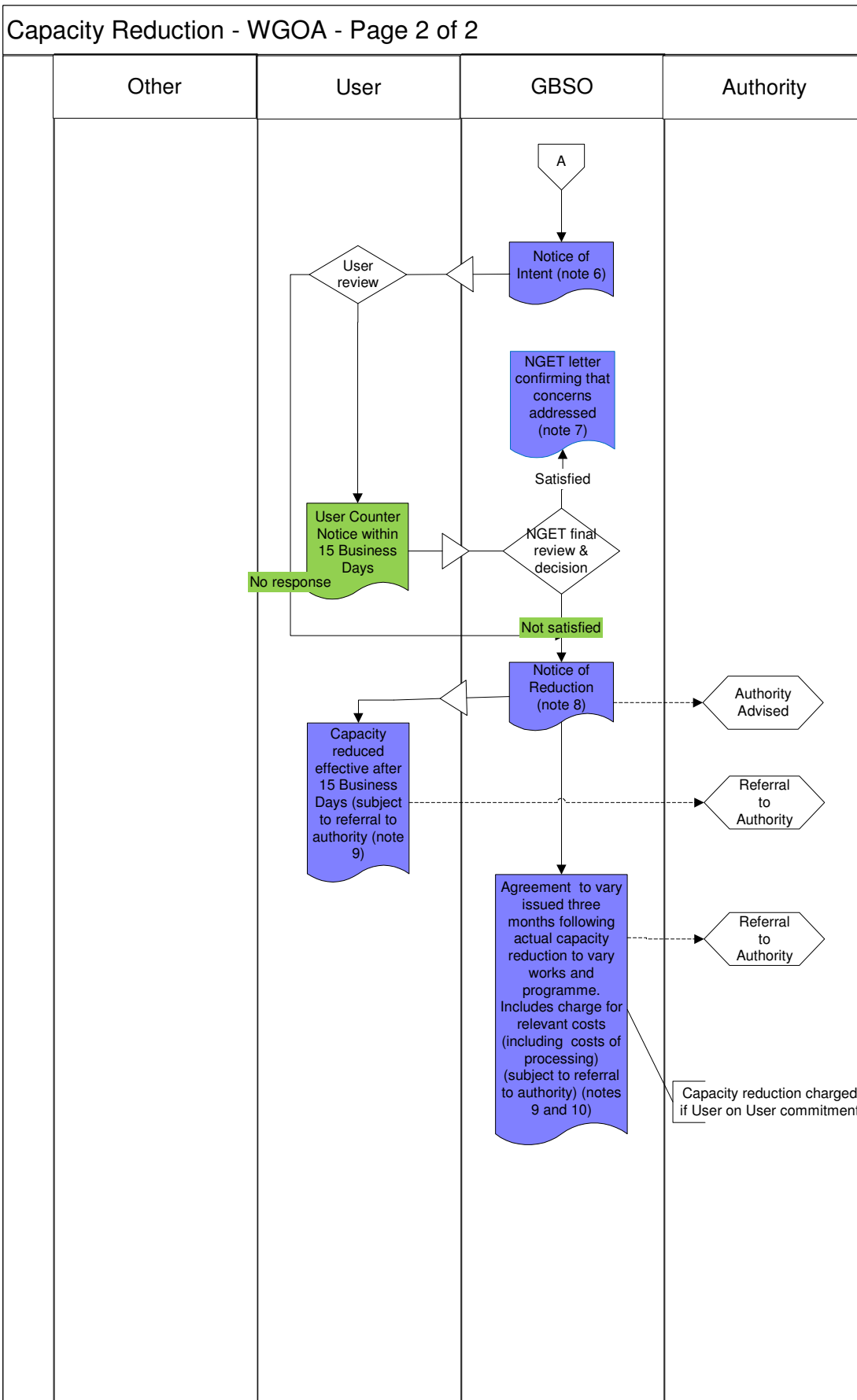
PROCESS FLOW DIAGRAM TO GIVE EFFECT TO THE ORIGINAL PROPOSED AMENDMENT

Stage:

1. Information is provided to through the developer's quarterly report (Construction Agreement clause 2.8) or Grid Code submissions (Detailed Planning Data). Information may also be gained from other sources, of which National Grid expects to be of sound legal basis in the pursuing process. Should this information be different from or cause effect to the GBSO to doubt the relevance of the Transmission Entry Capacity in App C of the Bilateral Connection Agreement or BEGA; the User Works set out in Appendix I or the Construction Programme App J of the Construction Agreement, it shall initiate an internal review.
2. The following key criteria would be a good initial list of criteria for National Grid to use when deciding if a reduction is required.
 - Reduction would result in different assets or works
 - Assets are being or could be used by another User
 - If the holding onto the capacity results in inefficient investment
 - If it causes a (significant) cost on a third party
 - Potentially has an affect on charge setting (including TNUOS)
 - Has an affect on the outages required
3. National Grid will issue a letter to the developer requesting clarification over the aforementioned discrepancy, requiring the developer to respond in 15 business days.
4. At this stage the developer has to assuage National Grid's concerns, possibly through submitting a Modification Application or by providing adequate reason as to why the BCA/BEGA and Construction Agreement are not in agreement with the information that initiated this process.
5. If the developer satisfies National Grid's concerns then National Grid will inform the developer in writing.
6. Should the developer fail to satisfy National Grid it shall be served a Notice of Intent, which offers the developer 15 business days before further action is taken.
7. If the developer satisfies National Grid's concerns within this period then National Grid will inform the developer in writing.
8. Upon no adequate response by the developer, a Notice of Reduction will be issued to the developer, stating capacity will be reduced (Transmission Entry Capacity – App C of the BEGA or Bilateral Connection Agreement). The developer has the right to refer this to the Authority, where the notice will be deferred until a determination is made. At this point the Authority is advised.
9. After 15 business days of the Notice of Reduction, National Grid will automatically issue an Agreement to Vary, which will change Appendix C of the BEGA or Bilateral Connection Agreement (TEC). This change is subject to referral to the Authority.

10. Within three months of the change to Appendix C (or A in the case of a BELLA) National Grid will issue an Agreement to carry to make the necessary changes to the construction agreement as a consequence of the reduction in capacity.
11. The developer will be charged by the GBSO for the costs of processing the agreement and revising the programme of works. Upon reduction the developer will be lose the final sums placed with the GBSO (associated with the reduced capacity), which may be refunded should there be reuse of the assets. The developer has the right to refer this Agreement to Vary to the Authority.





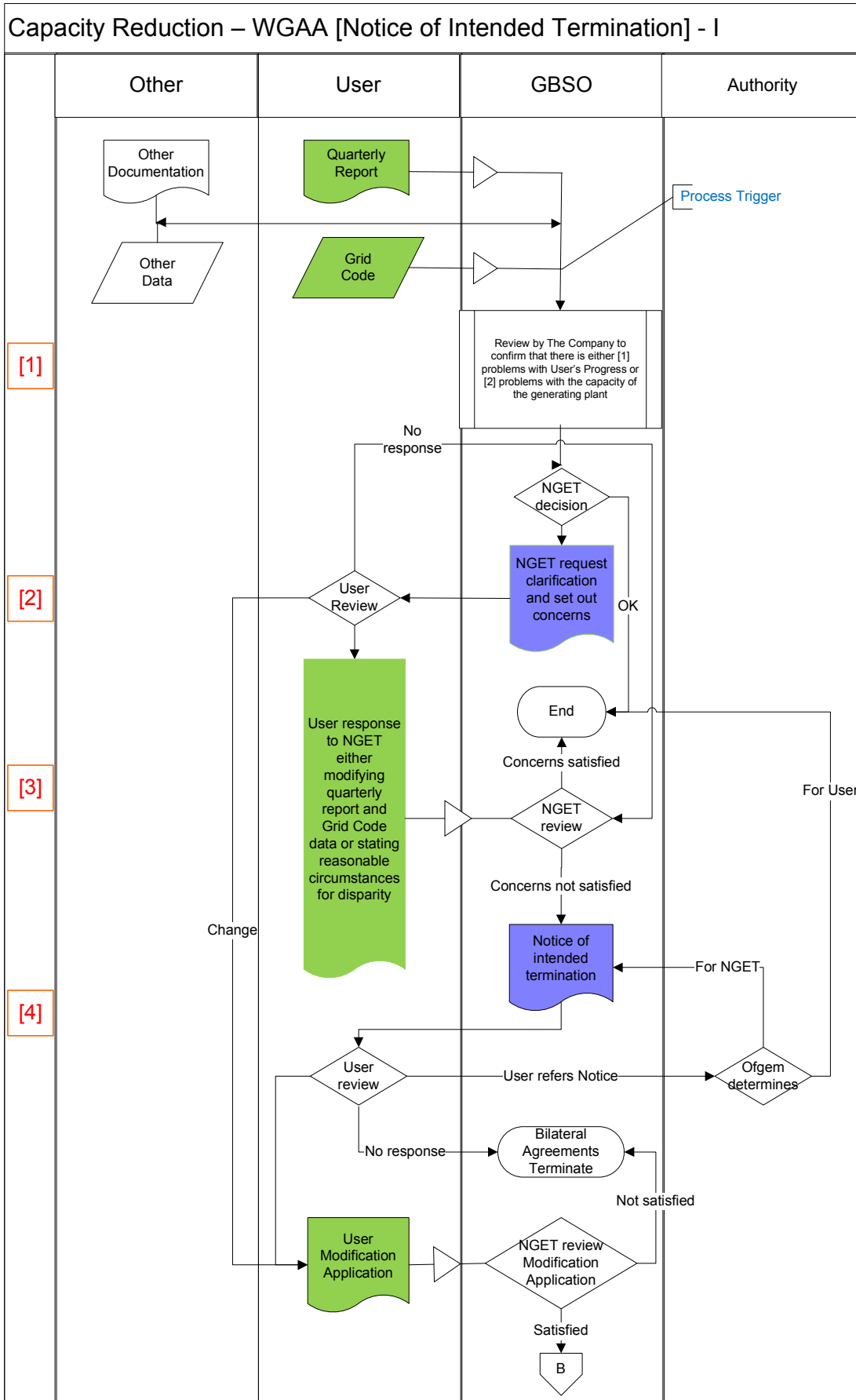
ANNEX 7B – PROCESS FLOW DIAGRAMS

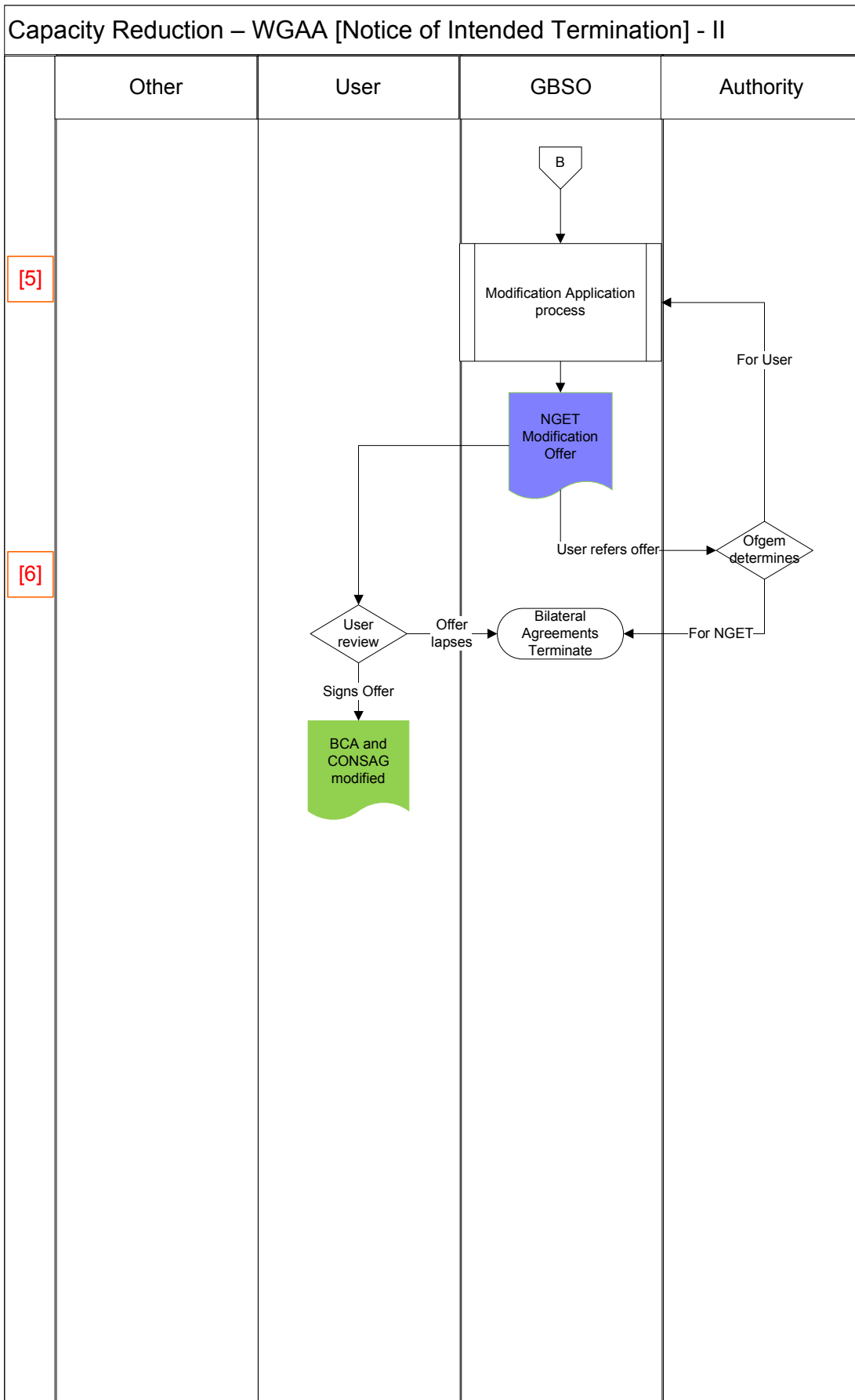
Part B

PROCESS FLOW DIAGRAM TO GIVE EFFECT TO THE WORKING GROUP ALTERNATIVE AMENDMENT

Stage:

1. Information is provided to through the developer's quarterly report (Construction Agreement clause 2.8) or Grid Code submissions (Detailed Planning Data). Information may also be gained from other sources, of which the GBSO expects to be of sound legal basis in the pursuing process. Should this information be different from or cause effect to the GBSO to doubt the relevance of either the Connection Entry Capacity and/or Transmission Entry Capacity figures in App C of the Bilateral Connection Agreement or BEGA; or the Construction Programme App J of the Construction Agreement, it shall initiate an internal review.
2. The GBSO will issue a letter to the developer requesting clarification over the aforementioned discrepancy, requiring the developer to respond in 15 business days.
3. At this stage the developer has to assuage the GBSO's concerns, possibly through submitting a modification application or by providing adequate reason as to why the BCA/BEGA and Construction Agreement are not in agreement with the information that initiated this process.
4. Should the developer fail to satisfy the GBSO, it shall be served a Notice of Intended Termination, which requires the developer to submit a modification application or face termination of the Construction Agreement. At this stage the developer may refer the notice to Ofgem, which would defer the termination until a determination is made by the Authority.
5. Faced with a Notice of Intended Termination, the developer is incentivised to submit a Modification Application which must satisfy the concerns originally expressed by the GBSO. The GBSO will then, in accordance with the CUSC, treat the application in the manner of any other and prepare an offer.
6. The developer has the right to refer this offer to the Authority (as it can with any offer), however if the Authority has already determined on the original Notice of Intended Termination, the developer should not refer the original points of dispute between the GBSO and itself. Should the developer not sign the offer, such that it lapses, the original construction agreement will be terminated. Upon termination the developer will be lose the final sums placed with the GBSO, which may be refunded should there be reuse of the assets.





ANNEX 8 – Working Group Scenarios

Scenario 1

User A applied for a TEC of 65MW (25 turbines @2.5MW) and currently has a completion date of 1/4/2008 with a backstop date of 1//2/2009. The User has applied and obtained consents of 45MW and has verbally indicated that they intend to apply for consents for the additional 20MW capacity in two 10MW stages. They have not sought to amend their agreement. The developer is on target for 45MW of capacity by the completion date. The User has not applied for consent for any additional turbines.

WGOA: The User should have requested a staged agreement before this date. If the User amends their agreement to reflect the staged connection then no action will be taken. If the User does not take action to amend the agreement to reflect the programme then National Grid will initiate the process to reduce the capacity figure to 45MW.

WGAA: If the additional 2x10MW stages were to connect within the backstop date then the developer would not need to amend the agreement. With the 2x10MW stages expected to be completed past this date, the User should request a staged connection through a modification application, Should it fail to do this, (as appears the case), the GBSO should serve a Notice of Termination.

Scenario 2

User B has a completion date of 31 October 2008 and a backstop date of 31 October 2010. The User has completed initial scoping but a rare bird has been spotted in the local area and the developer must continue to do further bird surveys for another 12 months before their consents application will be considered any further. The User has indicated that it will take 12 months from Consents before any turbines can be procured and the end delivery date would be uncertain.

WGOA: In this scenario the developer will need to spend 12 months to be in a position to obtain consents and another 12 months to procure the turbines. This in itself is a 2 year delay which, if possible to accommodate, would put the completion date at the same date as the backstop date. This would allow no time to obtain consents or to be in a position to commence the commissioning programme. The developer could opt to take the risk of having the completion date the same as the backstop date but unless the developer could convince National Grid that they are able to fastrack the programme then the project would soon need to be reduced to zero as milestones would need to be agreed that would reflect a realistic programme.

WGAA: The developer is clearly at risk of passing the backstop date and should submit a modification application to defer the connection. Should it fail to do this, (as appears the case), the GBSO should serve a Notice of Termination.

Scenario 3

User C has a connection date of 1/11/2015 with a capacity of 500MW which is conditional on several major reinforcements that are likely to be delayed further. The User has completed initial scoping studies and has made an initial planning application of 300MW (consistent with User works programme). Once this application has been approved the developer has indicated that they will apply for an extension to have the full capacity by the date required in order to meet the completion date.

WGOA: National Grid would have no concerns in this case as there is sufficient time and there is a risk that the developer may have their date slipped due to National Grid not being able to obtain consents. It would be useful if National Grid were aware of the Users programme for obtaining consents. At such an early stage of the project it would be likely that the project will change as it goes through planning and procurement.

WGAA: With seven years to go it is extremely likely that this developer will have to revise the agreement with the GBSO, either for dates or works (MW). The developer (and GBSO) should be looking to develop a staged connection agreement in line with the planning consents strategy. If, within the next year or two, the developer makes no progress in its consenting strategy or does not apply for a modification application to align the construction agreements with any such strategy, the GBSO has every right to serve a Notice of Termination.

Scenario 4

User D applied to the Scottish Licence A pre BETTA and signed their offer (Category A not connected). Following BETTA they were offered an early connection date of July 2007 with minimal works in Scotland (local connection works only). User D applied (in their original grid application) to connect 30 turbines @ 2.3MW (with a TEC of 69MW). However, User D only applied for consents for 20 turbines. User D was unable to obtain any consents in a time consistent with the original completion date and applied to delay their connection date two years due to consents issues. User D signed their subsequent Modification Offer for July 2009 but this means that their completion date is the same as the backstop date. User D did not apply to reduce the TEC of their project or amend the data that their offer was based on (still based on 2.3MW machines). User D has stated that it will take some 2 to 3 years to construct their project following obtaining of Consents. User D has recently indicated in their quarterly report that they would like to slip their dates further but are unable to do so because of Grid management rules.

WGOA: In this case there are two issues. Firstly the developer may require the additional capacity on the basis that they are going to utilise larger machines (3.2MW) to use a total of 64MW. Secondly the developer has not obtained consents and the Completion Date and Backstop Date is only 24 months away. National Grid would contact the User regarding the realistic chance that they will be in a position to complete the project by the backstop date. Unless sufficient evidence was provided National Grid would seek to reduce the capacity to zero MW and to terminate at the backstop date.

WGAA: The GBSO has (prior to the WGAA) utilised the backstop date clause, by not moving it back in the initial modification offer. The project is facing the risk of the GBSO enforcing the backstop date rather than allowing it defer the project. Under the WGAA the GBSO would have concerns, both for progress and the MW value. The GBSO would be fully justified in serving a Notice of Termination.

Scenario 5

User E decides to use a new marine generating device rated at 5MW per machine and has obtained consents for 10 machines. The developer has not yet signed a contract with the supplier of the turbines. The developer has signed a BELLA for 50MW with National Grid with a connection date of 1/10/2010. A news story appears in several reputable papers and local TV news bulletins which indicate that trial for the device in Portugal has failed and that a 5MW machine is at least another 5 years away. The only machine available from all manufacturers is a maximum of 3.2MW. The developer has always quoted outputs from the device as given to him by the manufacturers in the quarterly reports to National Grid.

WGOA: National Grid contacts the developer and informs them of their concern regarding the size of the project based on the information provided and the recent press coverage. [The User responds that they are intending to use the 3.2MW machines and submits a modification application to reduce the size of the project to 32MW] or The User fails to respond to the letter and National Grid issues a Notice of Intent to reduce the capacity to 32MW. The User fails to respond to this notice and National Grid serve a Notice of Reduction to reduce the capacity to 32MW. The User serves a counter notice and the issue is referred to the Authority for determination. The Authority determines that the capacity figure should be no greater than the figure proposed by National Grid. National Grid implement the determination and revise Appendix A to the BELLA and the associated CONSAG with the DNO and subsequently amend the works required to connect User E.

The capacity is then subsequently reallocated to another User near Caithness who has obtained consents and is awaiting an earlier connection date to connect their proposed wave farm. This allows the developer to get the first stage of his project away.

WGAA: Under the WGAA this process would have involved a Notice of Termination, forcing the developer to submit a modification application for either a delay to wait for 5MW machines or a reduction to the MW connected.

ANNEX 9 WORKING GROUP NOTES

CAP150-155 Working Group

Meeting Name	CAP150-155 Working Group
Meeting No.	1
Date of Meeting	18 th July 2007
Time	10:00 – 15:00
Venue	National Grid Offices, Northampton

This note outlines the key action points from the first meeting of the CAP150-155 Working Group.

1. Introductions/Apologies for Absence

Apologies for absence were received from Alec Morrison (Scottish & Southern).

2. Working Group Terms of Reference CAP152 -155

The Terms of Reference were agreed subject to the addition of the following points:

consider User's need to state their required TEC in CAP 153

Working Group Terms of Reference CAP150

The Terms of Reference were approved subject to the following addition of the following point:

refunds if the works/assets are used elsewhere

Working Group Terms of Reference CAP 151

The Terms of Reference were approved unchanged.

The Secretary would incorporate these items into the Terms of Reference and arrange for them to be considered at the next Panel Meeting on 27th July.

3. Background to CAP 152- 155 Exhibits B,D,F and I

The proposer outlined the background to the proposed changes and the defects that had been identified within the text of the CUSC Exhibits. The changes proposed are aimed at providing greater clarity in the information that Users are required to complete prior to submission of an application form.

Exhibit B

Members page-turned the drafting for Exhibit B against the original proposal and identified some inconsistencies. The drafting would be cross-checked against the proposal and an updated version would be circulated to Working Group members. **Action : PC**

Members made a number of comments which they felt could form the basis of a Working Group Alternative Proposal as follows:

Para 3. In legal text

Members suggested that additional text should be included to explain how The Company would give consideration to changes made to information contained Sections B to D of the Application Form once informed by the applicant. This text could form the basis of an alternative proposal. Revised drafting would be provided. **Action: PC**

CAP150-155 Working Group

Para 13. in legal text

Update para 13 to reflect the requirements of the Grid Code which are not just limited to MSA **Action: PC**

Members also requested more focused references were included the areas of the National Grid website to direct applicants to the correct reference documents such as the Grid Code.

Section A

Update Section A to reflect working contact and clarify company secretary role and application to other types of organisations

Under Section C Technical Information

With reference to provision of Safety Rules by applicants members felt that a reference should be made to this document "will be provided later".

The ability the applicants plant to provide services WG Members suggested that an additional category added described as "Other" with the applicant to provide further details.

Members felt that the reference for Applicants to confirm intended Connection Entry Capacity should be retained as part of the application form.

With reference to a Customer Choice connection members felt that further explanation should be provided.

With reference to the term "a non standard ownership boundary" members suggested that further guidance could be provided.

Updated versions of the Exhibit would be provided for the next working group meeting.

Action : PC for all 3 actions above

Section D

Update section D to clarify the meaning of Power Station Procurement **Action PC**

Action ALL to provide any other comments on CAP 152 – 155 which were not discussed at the meeting

4. CAP 150 Capacity Reduction

The proposer gave a brief outline on the reasoning behind the proposal.

Members debated whether the provision of additional powers to National Grid to take action on proposed projects was the correct way forward. Some members were supportive and felt providing the option for National Grid to take steps to adjust users MW capacity in certain circumstances was a positive way forward. It would provide National Grid an additional tool

Members discussed the risk of capacity reduction. It was felt that this may not be applicable in all cases with the underwriting of costs of reinforcement. JN to provide note on the stages that the developer has to go through. **Action JN**

The proposer explained that the risk would be mitigated with the use of a methodology and appeals/disputes process. Members agreed there was a need to scope the out detail from the original proposal and then look at possible alternative options. A strawman methodology next meeting – **Action PC to WG members** contribute.

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5. CAP 151 Construction Agreement Works Register

The background to the proposal was discussed.

Members were supportive of the provision of this information. Members asked why this information could not be provided within the Seven Year Statement data currently available on the National Grid website. A note would be provided to the next meeting explaining why this was not an appropriate solution. **Action: PC**

The draft legal text would be sent out to WG members. **Action PC**

It was also confirmed that information would be published on signed agreements only not offers.

6. Next Steps

The Working Group to give further consideration to the updated Exhibits and firm up any WG alternatives (CAP 152-155).

Further development on CAP150

Detailed consideration of CAP151.

7. Date of Next Meeting

Proposed date 22nd August National Grid Offices Northampton.

Members Present:

Emma Carr (for Duncan Burt)	EC	Chair
Clare Talbot	CT	Secretary
Phil Collins	PC	National Grid
John Norbury	JN	RWE Npower
David Scott	DS	EdF Energy
Ben Sheehy	BS	E.ON
Laura Jeffs	LJ	Centrica
John Morris	JM	British Energy
Garth Graham	GG	Scottish and Southern
Tim Russell	TR	Russell Power
Dennis Gowland	DG	Fairwind Orkney Ltd
Robert Longden (dial in)	RL	Airtricity

In Attendance:

Jenny Boothe	JB	Ofgem
Chris Newitt	CN	National Grid

Apologies:

Alec Morrison		Scottish and Southern
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CAP150-155 Working Group

Meeting Name	CAP150-155 Working Group
Meeting No.	2
Date of Meeting	22 nd August 2007
Time	10:00 – 15:00
Venue	National Grid Offices, Northampton

This note outlines the key action points from the second meeting of the CAP150-155 Working Group.

1. Introductions/Apologies for Absence

Apologies for absence were received from Alec Morrison (Scottish & Southern).
Apologies for absence were received from Ben Sheehy (E.ON) (post event).

2. Previous Meetings Notes

The notes from the previous meeting held on 17th July 2007 were approved

3. CAP 152 to 155 Revision of CUSC Exhibits B, D, F and I

The proposer outlined the changes from made to the exhibits based on the comments from the previous working group meeting.

Further comments by the working group indicated that paragraph 3 of exhibit B did not read well and how a change can be 'accommodated' needed to be explained **Action: PC**

Comments on Para 15 of Exhibit B were that it was supposed to be an explanatory paragraph but merely referenced 'charging statements' and not the SQSS. Another paragraph is possibly needed between paragraphs 15 and 16 to explain that further detail is outlined in he SQSS. **Action: PC**

Move last line of paragraph 15 to paragraph 1 **Action: PC**

A debate on whether or not the sentence in brackets in Question 2 meant that all CUSC notices for that company would go to the company secretary or for just this application. Change the wording to make it clearer that this relates only to this application. **Action: PC**

Section C question 4, the working group agreed that the text 'have to' was too strong a legal text and needs to be changed to 'be able'. **Action: PC**

Section C question 6, the working group debated and agreed the need for more than four rows to indicate the number of gensets as certain types of generation will have more than four gensets and must be accommodated. **Action: PC**

Section C question 8, the GBSQSS only refers to not meeting the standards of the GBSQSS it is not clear what happens if these standards are exceeded. This needs to be clarified in the application. **Action: PC**

Section C question 10, the debate focused on whether or not ticking Yes or No made you obligated to build that design. The working group agreed that the question needed to be changed to indicate that an applicant would like to discuss the option of 'self build'. An accompanying explanatory paragraph was also suggested. **Action: PC**

Section D Working group discussed the meaning of the milestones outlined, whether or not this section wants connection information or forms the basis of the quarter reports. Working Group agreed that the application is the first opportunity for a user to indicate their key dates. It was suggested that the application needs to define what each of the milestones

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mean and if this section is to form the basis of the quarter reports filling it in needs to be mandatory.

Import and Export dates need to be included as these are the key dates that a project is geared to. **Action: PC**

It was agreed that there needed to a sentence after each milestone to describe what National Grid is looking for when filling out this section. **Action: PC**

It was also agreed that questions need to be consistent with all three types of agreement throughout the application. Consider wording to make sure questions can apply to all agreements. **Action: PC**

To use these comments to change other Exhibits. **Action:PC**

4. CAP 150 Capacity Reduction

The proposer gave a brief outline of the strawman of the CAP 150 process.

Working group agreed that anyone should be able to use capacity if it is available, other users should not be able to prevent another user to connect by any means.

Discussion centred on what data sources National Grid would use in order to approach a user about a discrepancy in their capacity. It was agreed that although the triggers for discussion could be vague the resulting process would rule out any vague data.

Comments on the process were that after the informal discussion stage a formal notification needs to be sent to the user to formally identify that there has been a disagreement with a time scale behind it before the formal process begins.

The discussion then moved to the pricing of capacity reduction, it was agreed that a user should be no better or worse off by going down the capacity reduction route. The fee charged should be the same as a Modification Application fee.

The working group also noted in principle that this process should never have to be used if generators acted in line with the obligations placed on them by the Codes. The capacity reduction will only be used where it is clear that there is a discrepancy and users haven't reduced previously of their own accord.

All agreed that they are comfortable with an enforcement process and that, in the first instance, it should be brought to attention that users already have an obligation to provide correct data through the Grid Code.

Change the 'referred' in last line of proposed action slide to 'determine' **Action: PC**

The line NG will set TEC based on further communication with the user need to be put into the paper **Action: PC**

To write up a draft version of Capacity Reduction Process with the comments above included **Action: PC**

5. CAP 151 Construction Agreement Works Register

The proposer went through the legal text of the register

General comments of the Working Group were that a completion date column for the reinforcements and the sites would be useful **Action: PC**

It was noted that the cost of this register to National Grid and the users would need to be researched further. **Action: PC**

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The 'seven year statement works' in the legal text need to be checked with an explanation
Action: PC

The Working Group also wanted to know the effects of embedded generation is on works and suggested that all works should be on the register

6. Next Steps

The Working Group to read over legal texts from Exhibits B, D, F, I and provide comments to PC **Action: Working Group**

Circulate the slides from the meeting, examples of works register and a worked up flow chart of CAP 150 **Action: PC/TD**

PC to circulate draft notes of meeting in good time. **Action: PC**

PC to aim to circulate draft Working Group Reports in time ahead of the next working Group meetings. **Action: PC**

7. Date of Next Meeting

Proposed date 7th September National Grid Offices Warwick.

Members Present:

Duncan Burt	DB	Chair
Thomas Derry	TD	Secretary
Phil Collins	PC	National Grid
Bill Reed for John Norbury	BR	RWE Npower
David Scott	DS	EdF Energy
Laura Jeffs	LJ	Centrica
John Morris	JM	British Energy
Garth Graham	GG	Scottish and Southern
Tim Russell	TR	Russell Power
Dennis Gowland	DG	Fairwind Orkney Ltd
Robert Longden (dial in)	RL	Airtricity

In Attendance:

Jenny Boothe	JB	Ofgem
Chris Newitt	CN	National Grid

Apologies:

Ben Sheehy		E.ON
Alec Morrison		Scottish and Southern

CAP150-155 Working Group

Meeting Name	CAP150-155 Working Group
Meeting No.	3
Date of Meeting	7 th September 2007
Time	10:00 – 15:00
Venue	National Grid Offices, Warwick

This note outlines the key action points from the second meeting of the CAP150-155 Working Group.

1. Introductions/Apologies for Absence

Jenny Boothe (Ofgem).

2. Previous Meetings Notes

The notes from the previous meeting it was stated that some of the details addressed at the second working group meeting were incomplete.

Progress of meetings to date

The Chairman outlined that CAP 150 is the least developed and should feature as the main focus of this Working Group Meeting. It was suggested that this might prompt the requirement to seek an extension of the working group timescales to cover this proposal in full.

3. CAP 152 to 155 Revision of CUSC Exhibits B, D, F and I

The proposer explained that the changes requested at the last meeting and by correspondence had been incorporated in Exhibit B to give effect to the Working Group Alternative proposal.

Members discussed issues related to design variations from the GBSQSS and feasibility studies that applicants should carry out in advance of submitting an application.

Clarifications were requested on a number of points as follows:

Timescales/process for the provision of interface agreements (Section C)

Members felt that further explanation was required under Programme setting out the definition/guidance of the related to the key milestones.

There was also a need to identify the correct references to the Town and Country Planning Act applicable in Scotland.

Working Group View

Members agreed that whilst the Original Proposal was better than the current position the majority were in support of the Working Group Alternative proposal.

4. CAP 150 Capacity Reduction

The proposer presented an outline process flow for the approach to capacity reduction. The process detailed the steps that would be followed in advance of any steps being taken in advance of a user's capacity being reduced. The proposer indicated that when National Grid became aware of incorrect data the user would be contacted for an informal discussion in the first instance. It had been indicated by Ofgem that a record of both the formal and informal process would need to be retained.

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Some members referred to CEC reductions and the lack of options open to Users to increase their CEC. It was stressed that there was a need to differentiate between the TEC and CEC and that the key driver in the process was a Users application of TEC which was the basis for investment in the Transmission Network. It was added that a CEC only application would not act as a trigger for investment and this type of speculative application would require a significant one-off charge. There was misinterpretation of the purpose of CEC. Members added that there were conflicts related to CAP 131 and the requirement for Securities based on CEC. It was stressed this was a future issue after CAP 131 implementation. Members requested that the debate on CEC reductions was reflected in the Working Group report.

Members requested further clarity in some of the steps in the process including contracted capacity at completion date. Members felt there was a need to apply a level of reasonableness and safeguards/checks were in place ensuring that actions were not taken on the basis of hearsay evidence. This issue had been debated at length at the second meeting. There was also a need to clarify the timescales for the provision of responses to the company by users to ensure consistency. It was suggested that the counter notice should be within 15 rather than 5 days. It was felt that this process was aligned with the STC, the process would be cross checked.

Members agreed that the process for Notice of Intent/Counter Notice needed to be clear and unambiguous and the steps that would be taken if a User did not respond within the set timescale. It was explained that the user can respond to the notice or challenge with the authority. Alternatively if the User is in agreement with the notice the route is to submit a Modification Application to revise TEC. One member asked why this process was not included in the legal text for CAP150. It was explained that as the route for referral was an existing process set out in the Licence so it was unnecessary to duplicate. The Licence only envisages a referral process post Offer or post Mod App.

Members questioned the costs related submission of a Mod App however it was noted that if the process triggered works there would be cost implications on National Grid.

It was indicated that the process of notifying the Authority was aimed at making the Authority aware of an ongoing dispute between the TO and a user prior to any possible referral.

Discussions progressed on a number of scenarios that might prompt issuing a reduction notice. If there is knowledge that a user has not applied for consent and there is no clear progress or development ie. a paper only project with no clear dates. In these instances the user tends to repeatedly delay their connection date pushing back the backstop date.

In the instance of a BELLA where capacity is reduced National Grid can not terminate as the contractual interface is with the DNO. Details of any relevant embedded generation can only be picked up via the generator/DNO quarterly reports. With a BELLA there are no Use of System rights but data provision requirements are in place via the Grid Code. The tripartite contractual arrangement needs to be addressed via the legal position. The action that could be taken to remove capacity from the DNO who would have to notify the embedded generator as the DNO can not export the generation from that generator. It was discussed whether this issue should be placed in the CUSC or whether it should be backed up in the Distribution Code. Members were to be asked to give consideration to this issue.

Action: Members

Members gave consideration to the proposals. The original proposal was based on reduction of capacity by a reasonable amount via a defined process through a modification application.

Some members felt that this route required a stronger penalty indicating that if a User is in breach of their construction agreement their project should be terminated. Other members felt that if a user fails to respond to the notice with an appropriate Mod App a Users TEC should be reduced to zero. It was felt that this second option would be more acceptable to the generators.

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Members agreed that these two alternative proposals should be progressed further and the the guidance/proforma for the Capacity reduction process needed to be revised following members comments

It was felt that an extension to the timetable should be sought from the Authority to address these issues. **Action: National Grid**

5. CAP 151 Construction Agreement Works Register

The proposer went through the legal text of the register.

Members questioned the exclusion of relevant Seven Year Statement Works from the proposed definition of Transmission Works within the Construction Agreements. The group was informed that if this was not excluded it would result in the register being unable to published all of the relevant transmission works. This would result in the drafting of a new definition of Transmission Works (in addition to Transmission Works Register) to be added to Section 11 of the CUSC as part of the Amendment.

Subsequently this would need to be tied up in separate mod.

Working Group view to be provided by email.

6. Next Steps

The Draft Working Group Reports for CAP152-155 and CAP151 to be circulate to members for comments **Action: National Grid/Working Group**

Further meetings on CAP 150 to further develop the WG alternatives and address the comments from members on the capacity reduction process. **Action: National Grid. A one month extension to the timetable will be sought from the Authority.**

7. Date of Next Meeting

Meetings to cover: CAP150 21st September and 5th October.

Members Present:

Duncan Burt	DB	Chair	
Clare Talbot	CT	Technical Secretary	
Phil Collins	PC	National Grid	
John Norbury	BR	RWE Npower	
David Scott	DS	EdF Energy	
Laura Jeffs	LJ	Centrica	
John Morris	JM	British Energy	
Garth Graham	GG	Scottish and Southern	
Tim Russell	TR	Russell Power	
Ben Sheehy	BS	EON	
Alec Morrison	AM	Scottish and Southern	Scottish and Southern
Dennis Gowland	DG	Fairwind Orkney Ltd	
Robert Longden (dial in)	RL	Airtricity	

Apologies:

Jenny Boothe	JB	Ofgem	
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CAP150-155 Working Group

Meeting Name	CAP150 Working Group
Meeting No.	4
Date of Meeting	21 st September 2007
Time	10:00 – 15:00
Venue	National Grid Offices, Warwick

This note outlines the key action points from the fourth of the CAP150-155 Working Group.

1. Introductions/Apologies for Absence

Tim Russell.

2. Previous Meetings Notes

The notes from the previous meeting it was stated that some of the details addressed at the third Working Group meeting should be revised in the following points highlighted by one members : the process of notifying the Authority of ongoing disputes between the **GBSO** and the user prior to any possible referral

The extension to the working group timescale would require an approach to the Authority via the **CUSC Panel**

3. CAP 150 Capacity Reduction

Progress of meeting to date

The Chairman outlined that the feature of this meeting would be based on consideration of the working group alternative proposal and the CAP 150 original.

David Scott outlined the details of the Working Group Alternative proposal he explained that the proposal was based knowledge incorrect capacity and/or likely project delay. Should these issues not be resolved via by the informal/formal process National Grid will take the step of issuing a Notice of Termination. It was explained that this provided a strong contractual tool. To address these issues the User can take the step of modifying TEC/CEC values or modify the timescales on the CONSAG. The process provides the option to take action prior to the backstop date. Where National Grid has knowledge that a User is not on target with their project in breach of the CONSAG this tool is not currently used.

Members felt that there was a need to apply reasonableness in this process from both sides. One member indicated that there has to be acceptance that major projects are prone to delay as a fact of life. There was a need to apply a meaningful timescale that makes sense. Phil Collins explained that the Contract does not reflect the actual position as the project develops hence the need for Modification. One member indicated the concerns/risks that all developers face regarding letters of credit. Concerns were expressed with regard to the two stage process covering delays and capacity and the impact of termination. The Chairman explained that requirement to terminate users contracts should only be used in rare circumstances if the formal/informal process works.

Some members were more supportive a route which reduced TEC to zero and if concerns are not addressed within the agreed period then the agreement will be terminated. In this process where there is dispute over reduction in capacity the user/National Grid has the option of referral to the Authority. There would be a need to check the vires within the CUSC on this issue. It was felt by some members that this route was the exhaustive process allowing informal, formal notice of TEC to zero if no response in required timescales/ with authority determination. There was some feeling that this approach

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keeping the agreement in place was more passive. However it needed to be recognised that in instances with paper projects actions needed to be taken where no responses were received to information requests. It was outlined that in the current process through waiver removes all our obligations in the CONSAG and a party would have to mod app to "get back in" however, in the process the TEC would not be reduced to zero a measured process is applied.

The Chairman suggested that there was a need to give consideration to the two proposals recognising members concerns over the severity of termination.

One member raised concerns that the alternative proposal now encompassed TEC reduction in addition to project delays. It was re-stressed that delays are a fact of life but there is no clear guidance in the CONSAG as to how these issues will be addressed. The only route seems to be Mod App in response to information on delays. There was a view that the position on delays needed to be more clearly articulated. Concerns were expressed that with the submission of a Mod App there is uncertainty of what offer will be returned to a user and the risks that are associated.

Some members expressed concerns over the risks to developers, and investors in projects and introducing the factor of delay into the proposal was a step to far. However it was noted that this level of risk was evident and needed to be managed by the developer in their business plan. It was added that the final sums penalty was a significant issue for developers.

One member felt that this position is already within the CONSAG. If there is a delay the User should notify the National Grid and the position will be assessed whether a Mod App is required. If the impact of the change is limited a mod app may not be required. It was added that if users did not notify National Grid of the true position the only route was a notification of breach. The concerns expressed by certain members over including consideration of project delays would be included in the working group report.

Members discussed the options that were under consideration and felt that it would be helpful to pull together a summary of the options from start to finish in the original and the WG alternative i.e. TEC reduction, project delays and the route to termination. One member suggested that a third working group alternative could be considered setting TEC to zero prior to issuing a notice of termination however after debate it was agreed that the original and the working group alternative would go forward for consideration.

One member stressed that there was a need to ensure that all of proposals included a clear route identified of referral to the authority.

Members asked for information on contracts in place for local works and the legal position and the need to build for capacity. Members requested some information where projects which can't complete by the back stop date and hence close to termination. **Action PC**

Members discussed the process flows it was felt that it may be helpful to introduce some criteria in B for the working group report. One member felt that capacity data could not be confirmed at the early stages of a project and developed subsequently. It was also felt that CEC and TEC levels are indicative only at the early stages and a phased review approach may be more applicable as the developer becomes more aware of the position.

Working Group Alternative : Process Flow

Members discussed the data sources that would feed into the process and the need to expand the sources to cover delays in Users projects. Also there was a need to revise the diagram (Notice of Termination) to pick up the review National Grid if no response had been received.

One member repeated concerns with regard to lifting the lid on an existing agreement and requirements for Mod Apps leading to uncertainty in contract particularly for developers.

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Members agreed that there was a need to be realistic in the timescales outlined in the Capacity Reduction process (both the formal and informal) route. It was agreed that this process should be included in the legal text, (a light version) There were concerns as to whether these aspects should be defined in the legal text. It was also stressed that the exiting right of referral is covered in the legal text. It was also felt that there was a need to cover the cancellation charge, final sums and impacts of termination in the legal text and ensure that there were no clashes with the existing provisions.

The details of the Working Group Alternative with comments/revisions would be circulated after the meeting. **Action: PC/DS**

The legal text for both the original proposal and WGAA would aim to be circulated by Friday 28th September with comments to be submitted by members prior to the next meeting. The updated flow diagram would also be circulated to members.

It was requested that details of some previous or likely scenarios were included in the Working Group Report. It was felt that there was a need to explain the process and key criteria from the trigger point and have clarity in the key elements of the process. Some members felt that the 15 day period notice needed to be extended as this did not allow a sufficient timescale to consider the position and does not follow the reasonableness case. There was a feeling with the formal process that a total 30 day period with 2 tiers (15 days each) the first period triggered from the notice of intent and the second period providing the notice of reduction. It was felt that this timescale supported the case for reasonableness. It was felt that this phased approach should be applied to both the original and the Working Group alternative.

The fees related to TEC reduction were discussed. It was noted that the applicable charges would be driven by the actual costs driven by the amount of working involved in each case hence there would be no fixed fee.

Members discussed the principles of the reasonableness test and the data sources that would feed into the decision making process. The process would need to focus on whether the required changes were material requiring a Mod App. Also consideration would be given to the impacts on other users by changes in works. For example on a 5MW project increasing to 6MW is not significant to the individual project but may have a significant impact on another user in close proximity. It was recognised that the route for users if the dispute could not be resolved was referral therefore this ensured that process needed to be reasonable and justified on the basis of the information captured.

One member referred to cost issues and what will be returned/refunded to Users in relation to assets that are re-used for other projects. **PC** to respond to the group on this issue.

4. CAP 151/CAP 152 to 155 Revision of CUSC Exhibits B, D, F and I

The proposer circulated the final version of the working group report which was due for consideration by the Panel on 28th September.

CAP 151 had been circulated to the to the Panel for consideration on 28th September.

5. Next Steps

Meetings on CAP 150 to further develop the WG alternatives and address the comments from members

6. Date of Next Meeting

5th October at National Grid House, Warwick.

CAP150-155 Working Group

Members Present:

Duncan Burt	DB	Chair
Clare Talbot	CT	Technical Secretary
Phil Collins	PC	National Grid
John Norbury	BR	RWE Npower
David Scott	DS	EdF Energy
Laura Jeffs	LJ	Centrica
John Morris	JM	British Energy
Garth Graham	GG	Scottish and Southern
Ben Sheehy	BS	EON
Alec Morrison	AM	Scottish and Southern
Dennis Gowland	DG	Fairwind Orkney Ltd
Robert Longden	RL	Airtricity
Jenny Boothe	JB	Ofgem