

**Minutes and Actions Arising from Meeting No.69
Held on 26 October 2007
At National Grid Office, Warwick (via teleconference*)**

Present:

Chris Bennett	DB	Panel Chairman
Beverley Viney	BV	Panel Secretary
Hedd Roberts	HR	Panel Member (National Grid)
Duncan Burt	DB	Panel Member (National Grid)
Paul Jones	PJ	Panel Member (Users Member)*
Simon Lord	SL	Panel Member (Users Member)*
Tony Diccio	TD	Panel Member (Users Member)*
Garth Graham	GG	Panel Member (Users Member)*
Bob Brown	BB	Panel Member (Users Member)*
David Edward	DE	Authority Representative*

In Attendance:

Kathryn Coffin	KC	BSC Panel Representative*
Wayne Mullins	WM	National Grid
Sarah Jukes	SJ	National Grid

1 Introductions/Apologies for Absence

1259. Apologies were received from Simon Cocks, Malcolm Taylor and Paul Mott. Garth Graham was acting as the alternate for Malcolm Taylor.

2 Minutes of the Meeting held on 28 September 2007

1260. The minutes of the 68th CUSC Amendments Panel meeting held on 28th September 2007 were AGREED subject to minor amendments.

3 Review of Actions

1261. **Action 1243:** TD to make necessary Amendments to CAP149 Working Group Report - complete
1262. **Action 1244:** BV to circulate amended CAP149 report and publish on the web - complete
1263. **Action 1255:** BV to add Access Review and Offshore Transmission to the standing CUSC Agenda on the section "Report on other Industry Documents" - complete
1264. **Action 1256:** BV to circulate proposed 2008 CUSC meeting dates - complete
1265. **Action 1257:** BV to circulate and publish headline report - complete

4 New Amendment Proposals (as at 18/10/07)

1266. None

5 Standing/Working Group Reports

1267. **BSSG (Balancing Services Standing Group)** – the next meeting of the BSSG would be held on 5th November 2007 and would consider analysis by National Grid.
1268. **CAP150 Capacity Reduction** – DB gave a detailed presentation which is available on the National Grid website. DB indicated that National Grid had raised CAP150 as it believed there was a defect with the current queue process for transmission access. In some cases Users in the queue may not be accurately declaring data relevant to the level of access required. For example if a User is over-holding capacity in the queue this may prevent other Users efficiently gaining access to transmission capacity at the earliest possible time. The solution was to establish a process to facilitate the formal request for clarification of data from the User. Where National Grid was not satisfied that the data reasonably reflects the capacity held in the queue by the User then National Grid can seek a reduction in the contracted capacity for that User. Any action by National Grid would be subject to User Agreement and appeal to the Authority.
1269. A Working Group Alternative Amendment (WGAA) had been identified which involved substituting a process leading to termination of the agreements relating to the User's capacity (subject to appeal to the Authority) for the National Grid determination of a revised capacity figure.
1270. The Working Group discussion acknowledged that in an ideal world data should always be maintained accurately by Users. However, where capacity reduction was necessary the Working Group agreed that this should only apply to TEC rather than CEC. Some Working Group Members had residual concerns about the additional risk to projects that the CAP150 process might entail and the nature of the information that National Grid would employ to decide whether capacity reduction was appropriate. However, there was a consensus in the Working Group that safeguards built into the process in terms of timescales for the User to respond, notice of intention before final notice issued and the Appeal and legal challenge arrangements were adequate to address these concerns.
1271. A majority of the Working Group agreed that CAP150 original proposal better facilitated CUSC Applicable Objectives a) and b). A majority of the Working Group agreed that CAP150 WGAA would not better facilitate the CUSC Applicable Objectives.
1272. The Panel discussed several detailed comments on the Working Group Report circulated by PJ the day before the Panel meeting (see Appendix A). PJ also raised two additional points at the meeting. Firstly, he was concerned that Scenario 2 in the draft report appeared to refer to a delay in the construction programme as being a reason for initiating the TEC reduction process. It was his understanding that under the CAP150 original proposal this process would only apply where there was a doubt about the level of capacity that the generator required. DB pointed out that this scenario concerned a potential delay beyond the backstop date which is why it was applicable. PJ agreed with this explanation, but pointed out that the flow diagrams in the draft document referred to National Grid being able to initiate the process if it believed that the Completion Date would not be met. DB agreed that this appeared inconsistent. DB indicated that he intended to respond to the points raised by PJ after consultation with National Grid Legal Services via e-mail copied to all Panel

Members and sought the Panel's agreement to wider industry consultation on CAP150 in due course subject to the resolution of those remaining issues. DB thanked the Working Group for all their hard work analysing and considering what was a difficult and controversial Amendment Proposal. DB indicated that the Working Group believed that it had met its Terms of Reference and should be stood down. The Panel agreed that CAP150 should proceed to wider industry consultation in due course subject to the satisfactory resolution of the issues raised by PJ.

Action: DB

1273. DB indicated that for the future he did not believe it was a good practice for the Panel to ask a Working Group to consider multiple Amendment Proposals (CAP150-155). Although he was satisfied that the Working Group had met its remit for all the Amendment Proposals that it had been asked to consider there had been reduced time to consider CAP150 than he would have liked. GG as a Working Group Member agreed with DB's comments. The Panel noted these additional comments.
1274. **CAP157 - Extension of Qualified Company Definition** – BB gave a detailed presentation which is available on the National Grid website. BB indicated that CAP157 had been raised by CRE Energy on an urgent basis and submitted to the CUSC Panel on 23rd July 2007. The Panel and Ofgem had not supported urgent status. CAP157 sought to change the definition of “Qualifying Company” and “Qualified Company” in the CUSC in order to extend the ability to provide security guarantees to immediate affiliates of the User as well as an immediate shareholder or holding company. There were no changes to the levels of credit rating require for the provider. The existing arrangements were considered by the Proposer as unduly restrictive and limited to a vertical relationship. This could cause difficulties with a more complex group structure. CAP157 therefore sought to allow guarantees from a related company which was not necessarily in a higher vertical relationship with the User within the Group's corporate structure.
1275. The Working Group discussions identified a slight risk with the current arrangements that a “domino” effect of failing companies within the Group corporate structure could mean that guarantees were not valid. CAP157 did not change this current risk. However it did appear to offer greater flexibility over the current baseline and some potential advantages for smaller parties involved as part of a large project. The Working Group also developed a Working Group Alternative Amendment (WGAA) which addressed the situation where a receiver might be able to prevent settlement of a bond. The WGAA aimed to provide comfort that a bond can be settled and not set aside and introduced extra assurances. Changes to the CUSC were to Section 11 and Schedule 2 Exhibit 3 and Appendix M and no impact on core or other industry documents was identified. The Working Group unanimously voted that both CAP157 original amendment and CAP157 WGAA better met Applicable CUSC objective a) and the Working Group unanimously voted that CAP157 WGAA was BEST better than the original.
1276. BB sought the Panel's agreement to wider industry consultation on CAP157 in due course. BB thanked the Working Group for all their hard work analysing CAP157 and in particular thanked Wayne Mullins and Sarah Jukes of National Grid for their input to the Group's work. BB indicated that the Working Group believed that it had met its Terms of Reference and should be stood down. The Panel agreed that CAP157 should now proceed to wider industry consultation for four weeks.

Action: DB

6 Consultation Papers (as at 18/10/07)

1277. **CAP158 – Provision of interim response volume information** – DB informed the Panel that the Consultation closed on 12th October and that a Consultation Alternative Amendment had been proposed. He would arrange for clarification for the Panel of the timescales for the further consultation.

Action: DB

1278. **CAP151 – 155 - Construction Agreements Works Register** - DB informed the Panel that the consultation paper was issued on 5th October and that the consultation would close on 2nd November

7 CUSC Amendment Panel vote

1279. None.

8 Pending Authority Decisions (as at 18/10/07)

1280. **CAP131**: User Commitment for New and Existing Generators; **CAP144**: Emergency Instructions to emergency deenergise, are currently pending and **CAP146**: Responsibilities and liabilities associated with Third Party Works and Modifications made by Modification Affected Users. DE indicated that Ofgem intended to publish a Regulatory Impact Assessment (RIA) for CAP131 and request comments on the RIA by 7th January 2008. Ofgem would respond to comments on the RIA by the end of February 2008 and intended to publish its decision on CAP131 on 20th March 2008. Ofgem had issued a “minded to approve” letter for CAP144 but were awaiting the consequential Grid Code changes before making a final decision on CAP144. CAP146 was still under consideration within Ofgem and no decision had been taken yet on whether to issue an RIA for CAP146.

9 Authority Decisions (as at 18/10/07)

1281. **CAP143**: Interim Transmission Entry Capacity (ITEC) Product. Rejected by the Authority on 12th October 2007.

10 Report on other Industry Documents (BSC, STC, Grid Code and DCUSA)

1283. DB indicated that a further cash-out Modification Proposal raised by RWE Energy had recently been submitted (P217) and the Initial Written Assessment would be considered by the BSC Panel on 9th November 2007.

1284. On Offshore matters an STC Working Group had just completed its work and recommendations were expected in due course. The Workshop on access models will take place on 5th November 2007.

11 A.O.B

- **2008 CUSC Panel Meeting Dates**

1285. The CUSC Panel meeting dates proposed for 2008 were agreed.

12 Record of Decisions – Headline Reporting

1285. The Panel Secretary would circulate an outline Headline Report after the meeting and place it on the National Grid website in due course.

Action – RD to circulate and publish.

13 Date of Next Meeting

1286. The next meeting is scheduled for Friday 30 November 2007, at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA.

APPENDIX A

PJ additional comments re CAP150 Working Group Report

Firstly, at certain points in the legal text the phrase “*the **User’s Equipment is such that***” is used. This is in the context of whether the generator will or will not be able to export at the level of TEC specified in the BCA. An example is in 7.4.1 of the legal text for the original amendment (my underlining):

*“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**.”*

For any power station, until it is commissioned the User’s Equipment will not be able to export to the level of TEC because it doesn’t exist. Therefore, prior to the Completion Date all projects would be caught by this test. I assume this is not what was intended. I would suggest that “*the **User’s Equipment on completion of the User’s Works will be such that***” is used instead. This is consistent with the phrasing already used in 5.3.2 of the standard Construction Agreement. In other parts of the legal text reference is made to “**Developer’s Equipment**” rather than “**User’s Equipment**” but the issue is still the same.

Secondly, 7.4.8 and 7.4.9 refer to the Notice of Reduction being referable under Paragraph 4 of Condition C9 of the Transmission Licence. However, this paragraph appears to refer only to amendments to Agreements made under Condition C8 of the licence:

“If in respect of any bilateral agreement or construction agreement entered into pursuant to standard condition C8 (Requirement to offer terms) or this condition either the licensee or other party to such agreement proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.”

Many of these agreements would have been entered into under C18 of the licence. Is the Working Group certain that the wording as written would allow these agreements to be referred? The corresponding provisions relating to C18 appear to be contained in paragraph 10 of Condition C18 which reads:

“If the licensee and any applicant or existing user fail to agree upon the terms of an agreement based upon an offer made pursuant to this condition, the Authority may, pursuant to section 7(3)(c) of the Act and on application of the licensee, an applicant or an existing user, settle any terms in dispute in such manner as appears to the Authority to be reasonable.”

Should reference be made to this paragraph as well? I would welcome advice from Angela Q and/or David E on this.

Thirdly, there appears to be no mention of when the Notice of Reduction would take place after a decision by the Authority on a referral, whether successful or not. Is this open to the Authority to decide or should something be included in the legal text? Again, I would welcome advice from Angela and/or David on this.

Minutes

Finally, paragraph 7.4.8 of the BCA version of the legal text contains the phrase “*after the date of the **Notice of Reduction** by the **User***”. Given that National Grid gives the Notice of Reduction, I assume this should read “*after the date of receipt of the **Notice of Reduction** by the **User***”.