

Draft for Amendments Panel
Recommendation Vote on
29th June 2007

AMENDMENT REPORT

CUSC Proposed Amendment CAP131

User Commitment

The purpose of this report is to assist the Authority in their decision of whether to implement Amendment Proposal CAP131

Amendment Ref	CAP131
Issue	0.2
Date of Issue	25 th June 2007
Prepared by	National Grid

I DOCUMENT CONTROL**a National Grid Document Control**

Version	Date	Author	Change Reference
0.1	15/06/07	National Grid	Draft for Industry comment
0.2	25/06/07	National Grid	Draft for Amendments Panel Recommendation Vote
0.3		National Grid	Draft for Amendments Panel Members comment
1.0		National Grid	Formal version for submission to the Authority

b Document Location

National Grid Website:

www.nationalgrid.com/uk/Electricity/Codes/

c Distribution

Name	Organisation
The Gas and Electricity Markets Authority	Ofgem
CUSC Parties	Various
Panel Members	Various
National Grid Industry Information Website	

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1.0 SUMMARY AND RECOMMENDATIONS

Executive Summary

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

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

- 1.6 In addition, a total of six Consultation Alternative Amendments (CAAs) were raised and National Grid issued a Consultation Alternative Amendment Report on 4th May 2007. There was little support for the additional CAAs from the CUSC parties that responded to this additional consultation, however, where a CAA has been raised without specific reference to a WGAA, it is necessary to assume that the CAA could be applied to any of the WGAA's (unless it clearly can not be combined, such as RWE's CAA "C"). This has led to a total of 25 Combination Options in addition to the 6 WGAA's and RWE's CAA "C" as outlined in the matrix below:

WGAA, CAA and Combination Option Matrix

		WGAA					
		A1	A2	A3	B1	B2	B3
RWE	Not TNUoS Proxy	CAA C					
RES	Cost Reflective UCAM	Combination Option					
Wind Energy	Adjutsed UCAM + CC	X	X	1	X	X	X
Farm Energy	Gen TNUoS -3	2	3	4	5	6	7
DONG (1)	No UCAM for EG	8	9	10	11	12	13
DONG (2)	Trigger Date	14	15	16	17	18	19
		20	21	22	23	24	25

1.7 The matrix shows that there are a total of 32 possible choices; six stand alone WGAAs, one stand alone CAA “C” and 25 Combination Options. CAA “D” clearly states that it should apply to WGAA A3.

National Grid Recommendation

1.8 National Grid continues to believe that WGAA A1 without further modification by the CAAs best achieves the relevant CUSC objectives and recommends that the CUSC be modified to reflect the changes for implementation by 1st April 2008.

Amendment Panel Recommendation

1.4 **To be completed following CUSC Panel Vote.**

2.0 PURPOSE AND INTRODUCTION

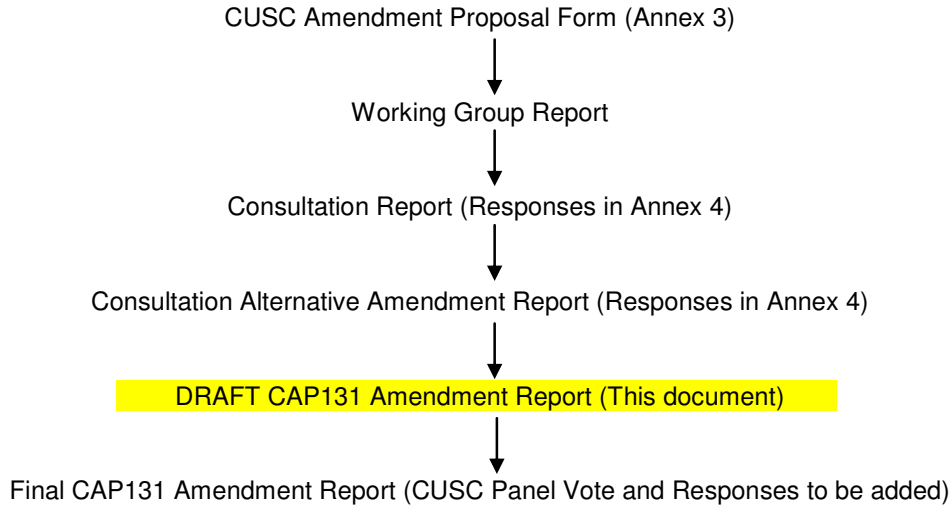
2.1 This Amendment Report has been prepared and issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State. It addresses issues relating to the level and certainty of securities required from TEC Users and proposes an increase in the minimum notification of a reduction in TEC from existing users to two years.

2.2 Further to the submission of Amendment Proposal CAP131 (see Annex 3) and the subsequent wider industry consultation that was undertaken by National Grid, this document is provided to the Gas and Electricity Markets Authority (“the Authority”) in order to assist in the decision whether or not to implement Amendment Proposal CAP131.

2.3 CAP131 was proposed by National Grid and submitted to the CUSC Amendments Panel for consideration on 29th September 2006. The CAP131 Working Group Report was submitted to the CUSC panel meeting on 23rd February 2007. Following evaluation by the Working Group, the Amendments Panel determined that CAP131 was appropriate to proceed to wider industry consultation by National Grid. Views were requested by April 13th 2007 and six Consultation Alternative Amendments were raised during this time. Under the terms of the CUSC, a further period of consultation was

undertaken to consider the proposed Consultation Alternative Amendment proposals.

- 2.4 In summary, the consultation has followed the process outlined below and is at the highlighted stage:



- 2.5 This document outlines the nature of the CUSC changes that are proposed and incorporates National Grid's recommendations to the Authority concerning the Amendment. Copies of all representations received in response to the consultation have also been included and a 'summary' of the representations received is also provided. Copies of each of the responses to the Consultation Report and Consultation Alternative Amendment Report are included as Annex 4 to this document. Copies of the responses to the Final CAP131 Amendment Report are included as Annex 5 to this document.
- 2.6 This Amendment Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at www.nationalgrid.com/uk/Electricity/Codes/.

3.0 PROPOSED AMENDMENT

- 3.1 This section describes National Grid's original amendment proposal. It was developed following extensive industry feedback received through National Grid's "Managing the GB Queue" consultation, Transmission Price Control Review consultations and also the Ofgem led Access Reform Options Development Group.
- 3.2 Under the existing arrangements, on termination of a Construction Agreement a TEC User is liable for "final sums". These "final sums" are based on the costs incurred by National Grid in undertaking the transmission works to provide the connection to use of system required by that user, which are effectively unnecessary because of the termination. These costs are uncertain because although estimates are provided, the exact cost due on termination will not be known until after termination. The level of these costs also varies, generally increasing in significant steps during the construction programme as National Grid progresses the works. There is also in this approach a need to associate specific transmission construction works (and therefore the costs associated with these) to a particular user or group of users. This can result in a user, due to the timing of its application or Completion Date and the amount of transmission construction works now generally required to accommodate the level of requested capacity on the transmission system, becoming liable for significant amounts compared with the size and cost of its own development. The level of liability is also subject to change as the transmission construction works alter, and this can be affected by other users.
- 3.3 CAP131 seeks to address perceived CUSC defects in the existing regime that were identified during the above consultation processes and has the following objectives:
- Improve the arrangements for determining (and therefore securing) a user's liability in respect of the costs of infrastructure transmission works by developing a clear and transparent method of calculating these in relation to all users;
 - Adopting an approach to these liabilities that would reduce the overall level, volatility and uncertainty of those liabilities during the life of the project;
 - Improve efficiency in network planning by increasing the notice period for reductions in transmission entry capacity from 5 days to 2 years.
- 3.4 The proposal aims to replace the current arrangements for cost reflective final sums in relation to infrastructure¹ transmission works with a non-refundable liability calculated on the basis of a generic methodology. The proposal also contends that defining a minimum notice period for reductions in TEC would additionally provide earlier information relating to utilisation of the transmission system by existing TEC Users and so provide a better opportunity to reflect this in assessing transmission reinforcements required for new users.

¹ CAP131 only applies to infrastructure works and the modification does not propose any changes to the derivation of connection asset, one-off or advanced services works which will continue to be calculated on a project specific cost-reflective basis using the current methodology as defined in "The Statement of the Connection Charging Methodology" and can be found on the National Grid website.

- 3.5 The proposal aims to de-link the project-specific costs of transmission infrastructure investment currently secured by TEC Users through “final sums” and replace this with a generic methodology based on a non-refundable termination charge payable on termination. Based on analysis of capital expenditure projections during the current price control period, it is estimated that on the basis of the sums derived from a multiple of 6 times the prevailing Generation TNUoS tariff, those TEC Users applying for new TEC or increases in TEC will be securing approximately 50% of the costs of investment to accommodate all generation entry forecast between 2007 and 2012. Therefore the proposal is that TEC Users applying within this price control for new TEC or increases in TEC will be liable, depending on the time of termination, for a charge of £1, £2, or £3 per kW or a multiple of 6 times the prevailing Generation TNUoS tariff multiplied by the capacity of the project (subject to a minimum £3/kW tariff to broadly reflect local connection costs). The following paragraphs describe the mechanism and calculation of the level of such charge for new TEC applications or applications to increase TEC.
- 3.6 When an application has been received by National Grid, within 3 months it will make an offer which will include a Completion Date (the date at which the User will be entitled to rights to use the transmission system and will become liable for Generation TNUoS charges). This will be the earliest time, in National Grid’s best view, that the relevant transmission capacity to accommodate this user can be delivered.
- 3.7 The offer will set out the payments due on termination, User Commitment Amounts before the Trigger Date, and Cancellation Amounts between the Trigger Date and Completion Date. The process is described in the Figure 1 below.

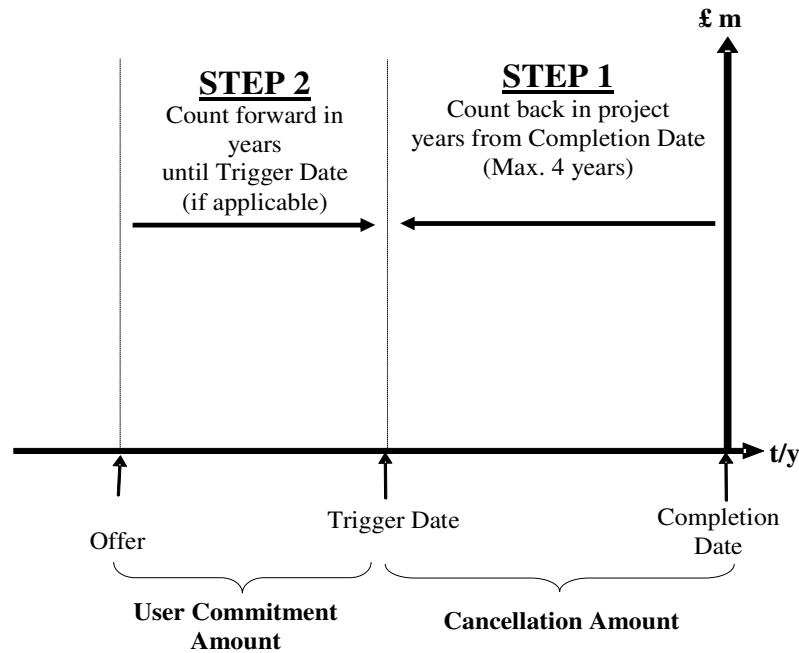


Figure 1: Calculation of Security Timescales

- 3.8 In most cases, it can be expected that following the Trigger Date, the majority of applications for new TEC or increases in TEC will result in a Completion Date within 4 years. It should be noted that under the CAP131 arrangements, National Grid will retain the right in the Construction Agreement to delay the Completion Date owing to unforeseen circumstances beyond its control.
- 3.9 The Trigger Date is defined by the GBSO and specified in the Construction Agreement such that the Completion Date can be achieved. Whilst the intention is to accurately define the Trigger Date at the outset, the date may vary to reflect delays to the construction programme or construction works.
- 3.10 The User Commitment Amount comprises a liability (User Commitment Amount - UCAM) of £1/kW commencing upon signature of the Construction Agreement. This increases by £1/kW for each full year from the signature date, up to the Trigger Date subject to a cap of £3/kW. The User would be liable to pay this sum in the event that its Construction Agreement with National Grid is terminated prior to the Trigger Date. The UCAM will be non-refundable.
- 3.11 Where the delivery of the Completion Date requires construction works and no consents are needed, and the Completion Date is more than 4 full years from the date of the Offer, the User is liable for the UCAM upon signature of the Construction Agreement until 4 full years before the Completion Date. Therefore the Trigger Date for projects with no required consents is 4 full years from the Completion Date. Where the Completion Date is within 4 full years before completion, and no consents are needed, the User will become liable for the Cancellation Amount on signature of the Offer and the UCAM will not apply.

- 3.12 In the event that a TEC User reduces the level of TEC requested prior to the Trigger Date, the TEC User will be liable for the Capacity Reduction Charge, which will be calculated as follows:

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - [\text{TEC}_r \times \text{UCAT}]$$

Where;

- TEC_r is the revised TEC following TEC reduction
- UCAT is the relevant User Commitment Amount Tariff in year t (i.e. £1/kW, £2/kW £3/kW)

- 3.13 Once the Trigger Date has been reached, the User will become liable for the Cancellation Amount on termination rather than the UCAM and this will be calculated as follows:

$$\text{CancellationAmount}_t = \text{TEC} \times \text{GenTNUoS}_z \times X \times T_t$$

Where;

- Cancellation Amount_t is the liability due on termination of the Construction Agreement in the relevant full year
- TEC is the higher of the new TEC or CEC or the higher of the increase in TEC or CEC requested (in kW)
- GenTNUoS_z is the zonal Generation TNUoS tariff applicable to the generation project and published in the Statement of Use of System Charges. If a project is located in a Generation TNUoS Charging Zone which has a negative tariff, or a tariff less than £3/kW, a minimum “floor” value of £3/KW tariff will apply. If a project is not located in a Generation TNUoS Charging Zone (e.g. offshore or island connections), then the appropriate Generation TNUoS tariff will be calculated by National Grid as part of the application process in accordance with the Charging Methodology.
- X is a multiplier and is established by National Grid at the beginning of each Transmission Price Control Period. For current offers and those made during the period April 2007 to April 2012 X will be 6.
- T_t is a fraction which varies according to the number of full years from the Completion Date to the Trigger Date. In the full year (t) prior to the Completion Date, T=1. In the full year prior to year t (i.e. t-1) T=0.75. In the full year prior to t-1 (i.e. t-2) T=0.5. In the full year prior to t-2 (i.e. t-3) T=0.25.
- TEC_r is the revised TEC following TEC reduction
- UCAT is the relevant User Commitment Amount Tariff in year t (i.e. £1/kW, £2/kW £3/kW)

- 3.14 The level and profile of the Cancellation Amount (CA) is fixed upon signature of the Construction Agreement using the prevailing Generation TNUoS tariff at the time that the offer is made.

- 3.15 This enables the following calculation:

CA Year-4

$$\text{CancellationAmount}_{t-3} = \text{TEC} * \text{GenTNUoS}_z * X * 0.25$$

CA Year-3

$$\text{CancellationAmount}_{t-2} = \text{TEC} * \text{GenTNUoS}_z * X * 0.5$$

CA Year-2

$$\text{CancellationAmount}_{t-1} = \text{TEC} * \text{GenTNUoS}_z * X * 0.75$$

CA Year-1

$$\text{CancellationAmount}_t = \text{TEC} * \text{GenTNUoS}_z * X * 1$$

- 3.16 In the event that a TEC User reduces the level of TEC requested prior to the Completion Date, the TEC User will be liable for the Capacity Reduction Charge, which will be calculated as follows:

$$\text{Capacity Reduction Charge}_t = \text{Cancellation Amount}_t - [\text{TEC}_r * \text{GenTNUoS}_z * X * T_t]$$

- 3.17 In the event a connection or increase in capacity can be achieved within four financial years, and construction works are required, then no UCAM will be payable and the applicable Cancellation Amount will be determined according to the above formulas relative to the Completion Date providing there is no Trigger Date.
- 3.18 The original Amendment Proposal suggests that the above User Commitment should also apply to those projects where there are no transmission asset works.
- 3.19 The securities described above can be summarised in Figure 2 below:

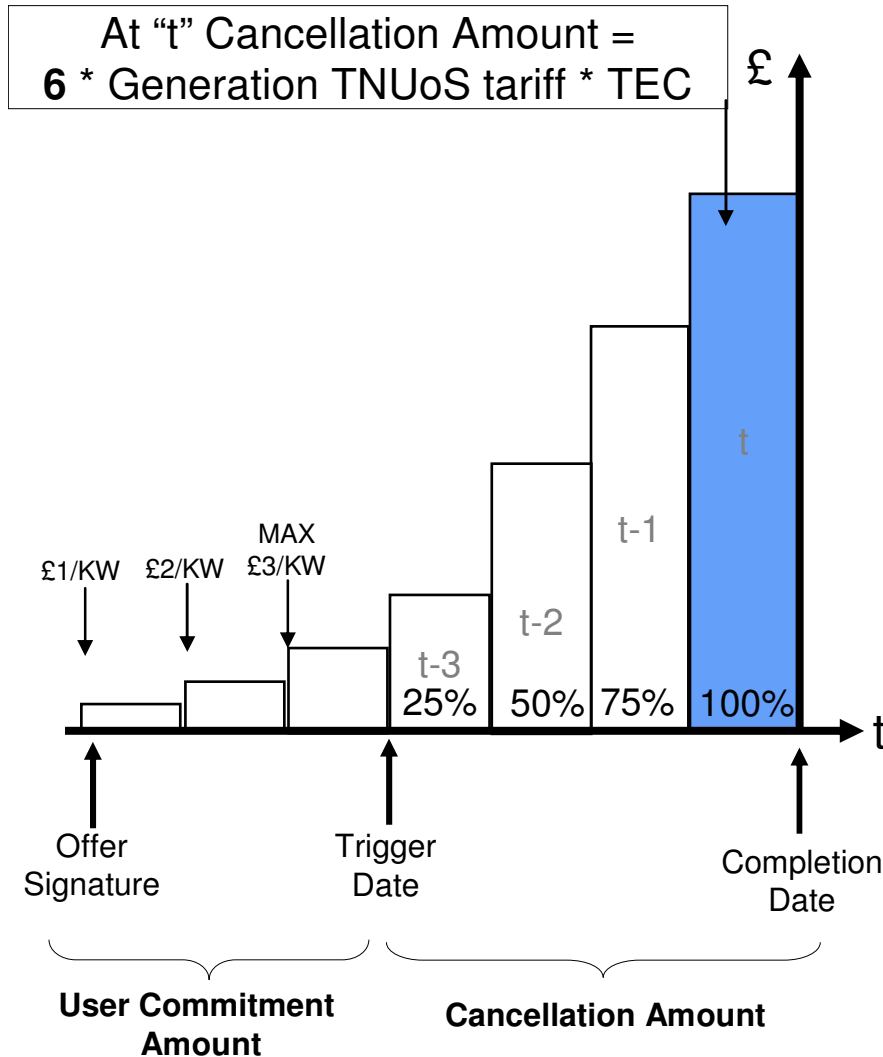


Figure 2: Generic Securities for new TEC or Increases in TEC

- 3.20 The original Amendment proposes that the above User Commitment should also apply to those projects where there are no transmission asset works.
- 3.21 Under the current CUSC provisions a user can reduce its TEC on 5 business days notice prior to the start of a financial year. The following paragraphs describe the proposed change to this. For clarity, this would, as today, only apply to existing TEC Users i.e. those TEC Users that have passed the Completion Date. Notification of a reduction in TEC prior to the Completion Date would incur the Capacity Reduction Charge related to the appropriate percentage of the $6 * \text{Gen TNUoS} * \text{TEC}$ described in section 3.16 above.
- 3.22 In relation to a decrease in TEC, this aspect of the proposal aims to provide a financial incentive to existing TEC Users to provide National Grid with a number of years notice of reductions in required transmission capacity. The number of years will be derived in accordance with any relevant transmission licence obligation or

provision (if appropriate), but otherwise it will be 2. In the event an existing TEC User reduces TEC without providing National Grid with 2 years notice, the TEC User would be liable to pay 2 times the generation TNUoS tariff (or modulus of the tariff in negative charging zones) multiplied by the reduction in capacity.

- 3.23 An existing TEC User would not be exposed to any liability whatsoever if National Grid is informed in writing of its intention to reduce its TEC at least two full years in advance of the intended TEC reduction date. Following notification of the intended TEC reduction National Grid would as soon as practicable issue a revised Appendix C for the purposes of the relevant Bilateral Agreement reflecting the decrease in the TEC to take effect from the specified future date. After the TEC reduction date, a TEC User's firm transmission access rights for that capacity would be relinquished and the new value of the station TEC would take effect.
- 3.24 Where an intended TEC reduction has not been notified to National Grid with two full years notice, an existing TEC User would become liable to pay the following User Commitment Charge:

$$UserCommitmentCharge = \delta TEC * |GenTNUoS_z| * Y$$

Where;

- δTEC = The actual reduction in TEC
- $|GenTNUoS_z|$ = Modulus of the Generation TNUoS tariff of the power station in the relevant zone (z) subject to a minimum of £3/KW
- Y = multiplication factor of Generation TNUoS that is to be paid i.e. 2

- 3.25 The User Commitment Charge would become payable as soon as the User notifies National Grid of an intention to reduce TEC without providing 2 full years notice. The TEC User would be invoiced for the outstanding sum.
- 3.26 The User Commitment Charge would be in addition to the Generation TNUoS payments made through normal operation of the power station under current arrangements.

4.0 SUMMARY OF WORKING GROUP DISCUSSIONS

- 4.1 This section summarises the main areas of Working Group discussion. A more detailed review can be found in the Final Working Group Report submitted to the CUSC Panel and this can be downloaded from the National Grid website at the following url:

http://www.nationalgrid.com/NR/rdonlyres/8DAE79C3-FA53-46A6-9802-1AABD70E3C3C/15375/Feb07_04.pdf

Cost Reflectivity

- 4.2 The Group spent considerable time discussing whether the sums delivered under the generic arrangements would be broadly cost reflective and focused on six areas: User Commitment Amounts; Generation TNUoS tariffs as an investment proxy; the £3/KW tariff floor; multiplier value; shape of Cancellation Amounts; and asset re-use.
- 4.3 The rationale for the non-refundable User Commitment Amount is that all users should provide a reasonable commitment when offers are accepted for connection to and use of the Transmission System. Presently, in most cases cost reflective final sums can be very low or zero until work commences and hence there may be little incentive for TEC Users to fully consider the viability of projects before Bilateral Agreement signature. This could lead to unviable projects being accepted and included in the background against which transmission reinforcements are planned. In addition, the increasing nature of the User Commitment Amount up to £3/kW is designed to incentivise unviable projects to terminate at the earliest possible stage. The Working Group examined evidence presented by National Grid and agreed that the User Commitment Amount is reflective of the costs of obtaining consents and undertaking pre-engineering works.
- 4.4 The Working Group considered in great detail the adequacy of using Generation TNUoS tariffs as a proxy to determine Cancellation Amounts. The analysis included comparison against a number of possible alternative proxies such as tariffs based on different zones or nodes and even a non-locational tariff. The Working Group expressed a number of concerns with the use of the full TNUoS tariff as the investment proxy, details and discussion of which can be found in the Final Working Group report. Perhaps the most significant concern and one that has led to the development of Alternative Amendments A2 and B2 is in relation to the zoning criteria for transmission charging. Parts of the transmission system for which similar reinforcements have been identified may be covered by more than one Generation TNUoS zone. In principle therefore, two TEC Users may be required to provide different levels of security when the actual cost of the reinforcement is the same for each. National Grid provided additional analysis to examine whether cost reflectivity is improved by using larger zones based on those published in the Transmission Price Control Review: Final Proposals on 4th December 2006. Whilst some marginal improvement in the overall cost reflectivity was measured, this needs to be weighed against the increase in complexity and derivation of an additional tariff to be used as the investment proxy. National Grid continues to believe that the use of pure Generation TNUoS tariffs subject to a minimum £3/kW is the most appropriate investment proxy and this was supported by a majority of the CAP131 Working Group.
- 4.5 Where Generation TNUoS tariffs are used as an investment proxy it is necessary to define a positive tariff floor for negative and marginally positive charging zones so that the costs of local reinforcements can be

adequately reflected. National Grid presented analysis using a sample of projects in E&W located in marginally positive and negative charging zones which suggested that £3/kW is a reasonable tariff floor to use.

- 4.6 The multiplier value or “X” was also discussed extensively. National Grid provided analysis that suggested X should be set to a value between 11 and 14. National Grid is satisfied that a value of 12 would recover the required CAPEX spend for new entry forecast over the next price control period against the current contracted background. The value of the multiplier should subsequently be reviewed at the beginning of each price control period. The Working Group agreed that on the basis of the evidence presented that 12 is a reasonable approximation.
- 4.7 Analysis was presented to the Working Group by National Grid to examine the profile and build up of the Cancellation Amounts (25% t-4, 50% t-3, 75% t-2, 100% t-1) as against the current cost reflective final sums “s-curves” and the step ups were found to be a reasonable approximation.
- 4.8 The Working Group requested that National Grid examine its assumption that all investment costs are sunk in the event of a project termination given the potential for asset re-use. National Grid presented analysis examining levels of asset re-use using empirical evidence from an England and Wales generation group. The Working Group agreed that asset re-use is extremely difficult to quantify and although the particular analysis performed suggested this was in the region of 14%, the Working Group agreed this could not be reliably applied across other regions. Given the difficulties in forecasting asset re-use, the Working Group concluded that this should not be included in the calculation of a generic charge. The consequence of this is that the value of any asset re-used will essentially be seen as a benefit to all users to the extent that the cost of that asset has been recovered under the generic user commitment called down from the terminating party.

Applicability

- 4.9 The Working Group considered the categories of parties to whom CAP131 should apply. This included projects with no works, non-TEC change transmission works, projects with long lead times, and embedded generators.
- 4.10 The original Amendment proposed applying the User Commitment Amount to all increases of TEC, even where no transmission works were anticipated. The Working Group felt that applying such a mechanism would not be consistent with cost reflectivity and lead to more complex contractual arrangements where the liability to pay charges would exist outside the current Construction Agreement. On this basis the Working Group agreed that it would not be appropriate to apply such charges to those projects where there were no required works.

- 4.11 The original amendment seeks to apply User Commitment on the basis of the higher of CEC or TEC for a given application. The intent was to capture those applications that request a connection to the main interconnected system in advance of TEC being made available. In such instances where a User is connecting to an *existing* substation connection in advance of TEC being available may be useful because of the opportunity to procure short term access products. The Working Group was concerned with the use of CEC as a commercial product and raised a number of scenarios that would involve National Grid completing transmission works but that do not involve a change to power station TEC. On this basis it was agreed that for simplicity and transparency the generic methodology would apply solely to changes in TEC and that the current cost-reflective final sums methodology would continue to be applied to all other changes.
- 4.12 The Working Group discussed long lead-time projects and in particular whether it was appropriate for projects with Completion Dates far in the future to be required to face a charge on termination. National Grid confirmed that the intention of the original amendment proposal was that the first stage of the generic user commitment would always apply on signature of the Construction Agreement (but that was on the expectation that a Completion Date is provided in that agreement). The alternative of the first stage commitment only applying from the date 7 years ahead of the Completion Date was suggested. Whilst this would be more cost reflective for most projects, there were concerns that this could lead to speculative projects remaining in the queue without an incentive to terminate. On balance, the Working Group agreed that it would be more appropriate for User Commitment to apply only to projects within seven years of the Completion Date.
- 4.13 The applicability of User Commitment to embedded generators was also discussed. The intention had been to apply the generic methodology to all TEC Users including those with a Bilateral Embedded Generation Agreements (BEGA). The Working Group agreed that connection works are to continue to be secured by the DNO using cost reflective final sums and that wider transmission works will be secured by the embedded generator using the generic methodology where applicable.

Trigger Date

- 4.14 The definition of the “Trigger Date” between the first and second stages of the generic commitment was identified as an issue by the Working Group. The Working Group agreed that the second “Cancellation Amount” stage should be limited to a maximum number of years. National Grid presented analysis to suggest that on a sample of England and Wales projects, an appropriate maximum should be 4 years, but emphasised that there is a significant standard deviation around this number.

- 4.15 In addition to the 4 year maximum, a 'Trigger Date' is required to avoid the over-securitisation of short lead-time projects and National Grid proposed the use of a 'transmission milestone date'. This date would be determined by National Grid on a project specific basis and would, in National Grid's reasonable opinion, best represent a proxy for significant financial commitment being made by the transmission companies. After much deliberation of possible alternatives the Working Group agreed this would be the most appropriate definition.

Capacity Reduction Charge

- 4.16 For new or incremental TEC the original amendment proposed imposing a Capacity Reduction Charge on power stations that reduce the level of required TEC before the Completion Date (such projects would effectively be treated as partial terminations and exposed to the appropriate generic charge on the difference in capacity levels). The purpose of such a mechanism would be to incentivise the most accurate application for TEC at the outset and to recognise that costs would have been incurred by National Grid on the basis of the higher TEC. In the current environment where capacity is extremely constrained in some areas of the country the temptation may be to apply for higher levels of capacity than is actually required either due to the uncertainty in planning decisions or procured manufacturing equipment, or even the perception that there may be value in holding TEC that could one day be traded.
- 4.17 Some members of the Working Group believed that such a mechanism would actually have the opposite effect to the one intended and drive applicants into withholding the latest information to avoid paying the Capacity Reduction Charge. Indeed, it was argued that new entrants may find it preferable to complete projects with the original TEC only to reduce the level with 2 years notice following Completion, and thereby effectively avoiding the majority of the Capacity Reduction Charge (and instead pay 2 years of TNUoS on the unutilised TEC).
- 4.18 Therefore, the Working Group agreed that there would be no point in implementing a Capacity Reduction Charge unless National Grid had the power to remove TEC from applicants on Completion, if the User had not constructed a power station that was capable of generating up to the requested TEC level. Some members of the Working Group saw the inclusion of such clauses in the Construction Agreement as unnecessarily draconian and outside the scope of the Terms of Reference for CAP131. The disagreement within the Working Group led to the development of Alternatives "A1" which includes reference to the Capacity Reduction Charge and "A3" which removes reference to the Capacity Reduction Charge.

TEC Reduction by Existing Generation

- 4.19 Investment in the transmission system for TEC Users, whilst triggered by increases in TEC, is required to accommodate those increases against a background of TEC for existing TEC Users. A requirement for user commitment from new TEC Users and a longer notice period, or cost consequences if the minimum notice is not provided from existing TEC Users promotes better equality of access between new and existing TEC Users requiring both to give more considered thought to their actual long term TEC requirements. In terms of notice it better allows National Grid to take into account the existing TEC User's intentions in its transmission system planning or where notice isn't given to recover costs from that existing TEC User.
- 4.20 National Grid believes that an increase in the minimum period to reduce TEC from 5 days to 2 years is an appropriate balance. It will provide an opportunity for National Grid to more efficiently assess or adjust its transmission reinforcement investment planning for new users but such timescales should not unduly reduce generator flexibility.
- 4.21 In the case where a power station does not provide the notice required, the original Amendment proposes that the power station would be required to pay a sum equal to 2 years of the prevailing transmission charges in lieu of such notice. This would serve to reduce all users' transmission charges in the following year and would partially offset the cost of any inefficient transmission investment caused.
- 4.22 The Working Group raised a number of concerns with the proposals for existing generators. Generators noted that it was very difficult to forecast capacity requirements two years ahead and that therefore these proposals represented an additional sunk cost associated with TEC reduction. Some members of the Working Group considered that actually, the proposals could perversely lead to generators retaining TEC reduction information once notice had been given to avoid liabilities and that this would not be in industry best interests. In addition, the Working Group noted that the proposals would not act as an incentive in negative TNUoS charging zones and liabilities in positive charging zones could potentially be avoided if trading capacity without 2 years notice was possible, as currently outlined in the CUSC. The Working Group agreed that replacing the liability to pay a charge if notice was not given with a requirement to provide a minimum 2 years notice but without allowing for earlier reduction on payment of a "charge" would be a better alternative. This suggestion led to the "A" Alternatives discussed later in this document. Some members of the Working Group maintained that the proposals for existing generators would not better facilitate the CUSC objectives and that the proposals for a 2 year notice period or charge in lieu of notice should be omitted. This led to the "B" Alternatives.

Equity of Treatment between New and Existing Generators

- 4.23 A member of the Working Group argued that not requiring existing generators to provide two years notice of reduction to TEC (the “B” Alternatives) created a substantial imbalance between new and existing generators and that arguably (though the member did not support this), that to preserve equality between new and existing generators the period of notice to reduce TEC for existing Generators should be increased from 5 business days to six years with a charge based on six times the prevailing TNUoS in lieu of such notice.
- 4.24 The applicability of National Grid’s C7 Licence Condition “Prohibition on discriminating between users” was discussed in this context. Paragraph 1 states “In the provision of use of system or in carrying out of works for the purpose of connection to the GB transmission system, the licensee shall not discriminate as between any persons or class or classes of persons”. The Working Group agreed that this meant the arrangements did not have to be the same for use of system and new connections and was why enforcement action had not hitherto been undertaken against National Grid in respect of the present arrangements which treat new and existing generators differently. It was the view of the Working Group that the remaining paragraphs in the Licence Condition should not count against implementation of CAP131.
- 4.25 National Grid also believes that the difference in a 2 year notice period and a Cancellation Charge based on six times Generation TNUoS reflects the greater risk of stranded investment caused by new TEC Users as opposed to reductions by existing TEC Users, as in its judgement of the current climate, generators seeking connection to the system were far more likely to terminate than existing generators were to reduce TEC. The Working Group agreed that a significantly increased commitment from existing TEC Users was not an efficient way of covering the risk of inefficient investment, due to the large population of power stations that would face this commitment and the relatively small probability that an existing power station will close.

Assessment of Potential Exposure

- 4.26 The Working Group discussed the risks associated with moving to a generic user commitment regime.
- 4.27 Based on analysis of capital expenditure projections, the generic methodology on the basis of the amount derived from use of six multiplied by Generation TNUoS, means those parties applying for new TEC or increases in TEC will be securing approximately 50% of the costs of investment to accommodate all generation entry forecast between 2007 and 2012. The Working Group discussed the rationale for the 50% sharing factor given that this increases risks to all Users. National Grid explained that the covering letter to the Ofgem-led Access Reform Options Development Group (ARODG) report dated 9th May 2006 had suggested that it may be appropriate to “change the

balance of risk borne by consumers...while investment is being completed to accommodate prospective new generation”.

- 4.28 National Grid went on to explain that 50% seemed like a reasonable sharing level given the benefits to competition from the lowering of barriers to entry. In addition, National Grid pointed to a possible precedent in the gas industry. Section 2.3(d) of the Incremental Entry Capacity Release Methodology Statement states “At any terminal, if a minimum quantity of incremental capacity is demanded in a quarter, the net present value of the revenue from bids for Incremental Entry Capacity which would be accepted if a given quantity of Incremental Entry Capacity was released **equals at least 50% of the assumed project value**, then National Grid NTS would seek approval to designate and allocate that quantity of capacity as permanent obligated entry capacity.”
- 4.29 A value of $X=6$ is therefore proposed in order to share the risk of inefficient investment caused by generation project termination between the TEC Users that introduce the risk and all users.
- 4.30 The Working Group also discussed how the generic arrangements would compare to the present project specific cost reflective regime. National Grid provided analysis based on the current contractual background. For each of these projects, the current cost reflective final sums curve of a project was compared with the generic user commitment profile (based on using the full TNUoS tariff as the investment proxy with a multiple of 12). In each case, the surplus or deficit profile associated with the generic user commitment regime was calculated.
- 4.31 In order to estimate the risks associated with each stage of the generic user commitment, the resultant surplus or deficit profiles were stacked with a common completion date. The results of this analysis are shown below in Figure 3.

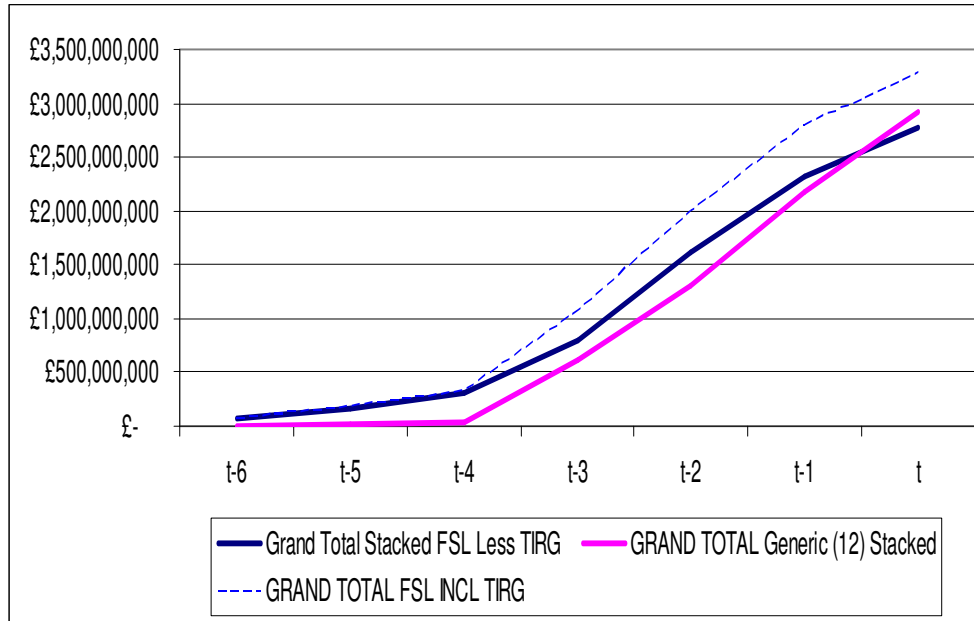


Figure 3: Stacked Cost Reflective Final Sums Curves versus Generic Methodology where the TNUoS multiplier has a value of 12

- 4.32 This graph compares the total level of cost reflective final sums liability for that period with the total level of generic user commitment (based on X=12) for all projects that are due to connect to the transmission system by 2016.
- 4.33 There are a number of large Transmission Investment for Renewable Generation (TIRG) projects in Scotland for which funding has already been agreed by Ofgem. The costs associated with these projects have been split out for clarity. The Working Group agreed that, given the capacity queue, the TIRG reinforcements were likely to be required even if a number of projects terminated.
- 4.34 The graph in Figure 4 below compares the total level of cost reflective final sums liability with the total level of generic user commitment (based on X=6) for all projects that are due to connect to the transmission system by 2016. It shows the average project surplus or deficit on termination associated with a move from cost reflective final sums liabilities to the generic methodology. The costs associated with TIRG reinforcements have not been considered as part of this analysis. The graph also shows the range of results associated with one standard deviation.

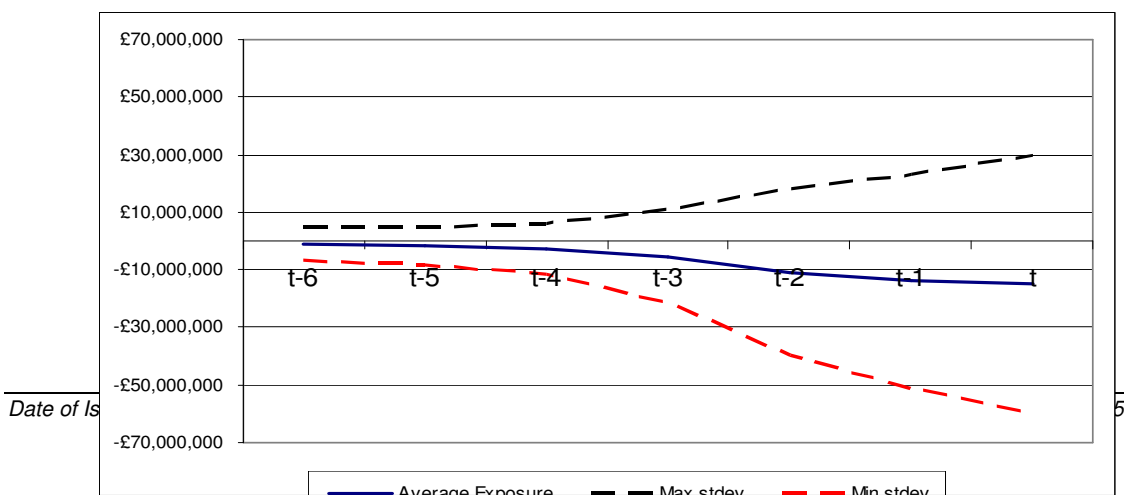


Figure 4: Range of average expected exposure for any given project termination versus current Final Sums (Generation TNUoS multiplier has a value of 6)

- 4.35 The results show that with the TIRG projects removed from the analysis, a value of $X=6$ means that on average, the generic user commitment would approximately cover costs in the early years (£1/kW, £2/kW and £3/kW), but that in the later years (multiple of TNUoS), the generic user commitment would not cover all potential costs, with this exposure increasing the closer the generation project termination is to the completion of the transmission works. The results also highlight the fact that a generic arrangement may inevitably lead to a surplus or a deficit from actual costs associated with any given project termination, and that this potential surplus or deficit increases the closer the generation project termination is to the completion of the transmission works.
- 4.36 The Working Group agreed that the majority of decisions to pursue or cancel a project would come at the first stage of commitment (£1, £2 or £3/kW) and that the risk of a project termination would reduce towards the completion of the transmission works.

5.0 ALTERNATIVE AMENDMENTS

Working Group Alternative Amendments

- 5.1 Discussions at the CAP131 Working Group meetings led to six alternative amendments raised by Working Group members. The alternative amendments can be categorised into those that cover new and existing TEC Users (A1, A2 and A3) and those that cover new TEC Users only (B1, B2 and B3). The main features of these amendments are shown in the table below:

A1	A2	A3	B1	B2	B3
National Grid	International Power	Eon	EDF Energy	International Power	Eon
<ul style="list-style-type: none"> • The User Commitment associated with an increase in TEC is set out in the Construction Agreement • User Commitment is only required for an increase in TEC if there is a Construction Agreement • User Commitment for an increase in TEC is based only on TEC (not the higher of CEC or TEC) • Transmission Works associated with non-TEC changes are covered by the existing cost reflective final sums arrangements • User commitment for an increase in TEC is only required within 7 years of the Completion Date • The Trigger Date is a date specified in the Construction Agreement • TEC reduction requirements are described in the CUSC • TEC can only be reduced following a 2 year notice period 					
	<ul style="list-style-type: none"> • The Cancellation Amount investment proxy is calculated using fixed generation zones consistent with investment zones identified as part of the recent TPRC 	<ul style="list-style-type: none"> • If a TEC User reduces TEC prior to the Completion Date, there is no Capacity Reduction Charge 	<ul style="list-style-type: none"> • User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged 	<ul style="list-style-type: none"> • User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged 	<ul style="list-style-type: none"> • User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged
				<ul style="list-style-type: none"> • The Cancellation Amount investment proxy is calculated using fixed generation zones consistent with investment zones identified as part of the recent TPCR 	<ul style="list-style-type: none"> • If a TEC User reduces TEC prior to the Completion Date, there is no Capacity Reduction Charge

Working Group Alternative A1

- 5.2 Consideration and debate by the CUSC CAP131 Working Group led National Grid to raise Working Group Alternative A1. The differences from the original amendment are described below.
- 5.3 The User Commitment associated with an increase in TEC should only apply where transmission works are required to deliver this.
- 5.4 The User Commitment associated with an increase in TEC should only apply to TEC, not to the higher of CEC or TEC. Any transmission reinforcement works which are not triggered by a TEC change will be covered by the existing cost reflective final sums liabilities arrangements.
- 5.5 User Commitment for new TEC Users should not apply to TEC Users with Completion Dates more than seven years ahead. If the Completion Date is more than seven years ahead, no user commitment is faced until the Completion Date is within seven years of the present date.
- 5.6 The Trigger Date is a date specified in the Construction Agreement. The Trigger Date moves the level of the applicable security from the User Commitment Amount to the Cancellation Amount. This is a date specified in the Construction Agreement and is defined as the date identified by National Grid which represents when significant expenditure will be required to enable construction for delivery of the transmission capacity requested. Whilst the intention is to accurately define the Trigger Date, the date may change to reflect any change in the construction programme or construction works. In the event of a change in the Trigger Date, National Grid will provide due notice of the change. The profile of the Cancellation Charge will be shifted in tandem with the revised Trigger Date.
- 5.7 The User Commitment for existing TEC Users seeking to reduce TEC should be simplified such that TEC can only be reduced following a 2 year notice period.
- 5.8 The User Commitment for existing TEC Users seeking to reduce TEC should be described in the CUSC. CUSC Section 6.30.1.1 will be changed to read: "Each User shall be entitled to decrease TEC for the Connection Site upon giving the Company not less than 2 years notice in writing."

Working Group Alternative A2

- 5.9 Working Group Alternative A2 was raised by International Power who believes that it better fulfils the applicable CUSC objectives.

5.10 The main feature of Working Group Alternative A2 is that the Cancellation Amount investment proxy is calculated using re-zoned TNUoS tariffs rather than the full TNUoS tariffs published in the Statement of Use of System charges. In all other respects, Working Group Alternative A2 is the same as Working Group Alternative A1.

5.11 The Cancellation Amount will be calculated as follows:

$$CancellationAmount_t = TEC \times GenInvZoneTNUoS_z \times X \times T_t$$

Where;

- GenTNUoS_z is the Generation Investment Zone TNUoS tariff applicable to the generation project. If a project is located in a Generation Investment Zone TNUoS Charging Zone which has a negative tariff, or a tariff less than £3/kW, a minimum “floor” value of £3/KW tariff will apply. If a project is not located in a Generation Investment Zone TNUoS Charging Zone (e.g. offshore or island connections), then the appropriate Generation Investment Zone TNUoS tariff will be calculated by National Grid as part of the application process.

5.12 The Generation Investment Zone TNUoS tariff is calculated according to the National Grid Use of System Charging Methodology, but instead of the zoning criteria contained in the Methodology, the generation zones are fixed to those identified by the Transmission Owners in the recent Transmission Price Control and published in Ofgem’s Final Proposals document. The Generation Investment Zone TNUoS tariffs for 2007/08 are shown in the table below:

Zone	Gen Investment Zone Tariff (£/kW)
South & South West	-3.17
Thames Estuary	0.50
London	0.03
South Wales	-0.51
East of England and Home Counties	0.74
West Midlands	1.73
East Midlands	3.94
North Wales and North West	5.51
Yorkshire & Lincolnshire	5.51
North East	8.97
SPT	13.20
SHETL	19.42

5.13 The Generation Investment Zones for England and Wales are shown in Figure 5 below:

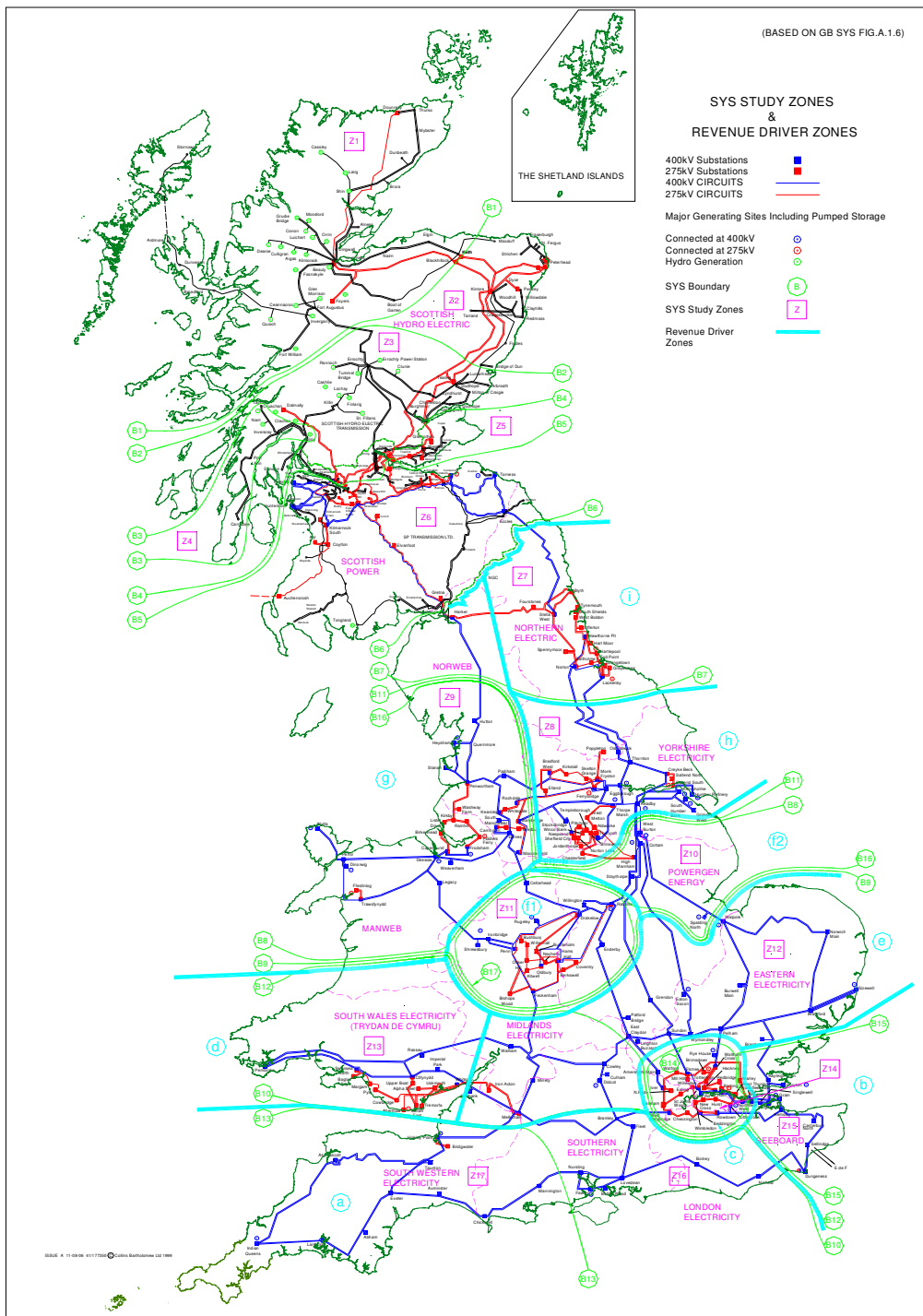


Figure 5: Generation Investment Zones in England and Wales

5.14 The Generation Investment Zones would be calculated annually by National Grid and published on the National Grid website.

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- 5.15 In the event a connection or increase in capacity can be achieved within four years, and construction works are required, then no UCAM will be payable and the applicable Cancellation Amount will be determined according to the above formulas providing there is no Trigger Date.

Working Group Alternative A3

- 5.16 Working Group Alternative A3 was raised by Eon who believes that it better fulfils the applicable CUSC objectives.
- 5.17 The main feature of Working Group Alternative A3 is that the Capacity Reduction Charge is not applicable. Notification of a reduction in TEC prior to the Completion Date would not incur any charge. In all other respects, Working Group Alternative A3 is the same as Working Group Alternative A1.

Working Group Alternative B1

- 5.18 Working Group Alternative B1 was raised by EDF Energy who believes that it better fulfils the applicable CUSC objectives.
- 5.19 The main feature of Working Group Alternative B1 is that the User Commitment arrangements apply to new or increases in TEC only; and the notice required from existing TEC Users to reduce TEC remains unaffected. In all other respects, Working Group Alternative B1 is the same as Working Group Alternative A1.

Working Group Alternative B2

- 5.20 Working Group Alternative B2 was raised by International Power who believes that it better fulfils the applicable CUSC objectives.
- 5.21 Working Group Alternative B2 is essentially a combination of Working Group Alternatives B1 and A2. The User Commitment arrangements apply to new or increases in TEC only, and the Cancellation Amount investment proxy is calculated using generation TNUoS tariffs with zones fixed to the investment zones identified as part of the Transmission Price Control.

Working Group Alternative B3

- 5.22 Working Group Alternative B4 was raised by Eon who believes that it better fulfils the applicable CUSC objectives.
- 5.23 Working Group Alternative B4 is essentially a combination of Working Group Alternatives B1 and A3. The User Commitment arrangements apply to new or increases in TEC only and the Capacity Reduction Charge is not applicable.

Consultation Alternative Amendments

- 5.24 Following publication of the Working Group Report, a further six Consultation Alternative Amendments were raised and they are detailed below. One Consultation Alternative (CAA C) was significantly different from the Working Group Alternative Amendments. The remaining five Consultation Alternative Amendments were refinements of the existing WGAAAs and retain the underlying principles. These are referred to in this document as CAA D, CAA E, CAA F, CAA G and CAA H.

CONSULTATION ALTERNATIVE AMENDMENT “C” – Capped Net Final Sums

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

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

- 5.26 This Consultation Alternative Amendment proposal was raised by two parties; Non-CUSC Party British Wind Energy Association (and therefore according to the CUSC this would not normally be a Consultation Alternative Amendment proposal since only CUSC Parties may raise Alternative Amendments) and CUSC Party Renewable Energy Systems Group (RES).
- 5.27 The amendment proposes to replace the £1/kW, £2/kW, £3/kW User Commitment Amount with “security against the actual pre-construction costs of the local connection incurred by National Grid” to WGAAAs A3. National Grid has interpreted this to mean that users would secure final sums before the Trigger Date on the basis of six monthly estimates as today.

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

- 5.28 Consultation Alternative Amendment E was raised by Farm Energy on behalf of Channel Energy Limited, a CUSC party that is a joint venture between DONG Energy and Farm Energy Limited.
- 5.29 It proposes to flex the User Commitment Amount and Cancellation Amounts to incentivise generators to develop projects in areas of high opportunity as used in Chapter 9 of the Seven Year Statement. Thus projects in areas designated High or Very High investment opportunities would face only 30% of the User Commitment

Amount and Cancellation Amount, projects in Medium areas 60% and projects in Low or Very Low areas 100%. Farm Energy also proposes that the Capacity Reduction Charge is similarly adjusted.

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

5.30 Consultation Alternative Amendment F was raised by DONG Walney (UK) Ltd. It considers that all the proposed WGAAAs discriminate against embedded generators applying to use the transmission system by means of a Bilateral Embedded Generator Agreement (BEGA). It proposes that the Generation TNUoS tariff used as the investment proxy for the Cancellation amount should be discounted by £3/kW since this broadly reflects local connection costs which are already secured between the embedded generator and the relevant DNO.

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

5.31 Consultation Alternative Amendment G was also raised by DONG Walney (UK) Limited and suggests that the User Commitment Amount should not apply for BEGA applications. This is on the grounds that the embedded generator would additionally be contracting with the DNO for its connection, and the charges for this will be levied directly on the generator.

CONSULTATION ALTERNATIVE AMENDMENT “H” – Trigger Date

5.32 Wind Energy (Services) Limited (“WES”) propose to amend the definition of the Trigger Date such that it is the later of:

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

5.33 Planning consent in this context means either local consent or approval from the Scottish Executive in Scotland or the equivalent in other parts of GB.

6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

6.1 In considering the assessment against the applicable CUSC objectives, we have considered each of the “stand alone” options individually (WGAA A1, A2, A3, B1, B2, B3 and CAA “C”), and clustered the remaining Combination Options (as described in the matrix in Paragraph 1.6) into appropriate groups, since the arguments are identical for each set.

Proposed Amendment (Original)

6.2 The Working Group agreed that the Working Group Alternative Amendment A1 would better facilitate the CUSC Objectives when compared with the original

amendment proposal and therefore a more detailed assessment against each of the applicable objectives was not performed.

Working Group Alternative A1

6.3 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A1 would better facilitate the CUSC Objectives. One Working Group member did not agree. The Working Group discussion is described below.

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

Market Signals

Some working group members believe that the non-refundable nature of the CAP131 arrangements would reduce the potential for speculative applications, which would provide more efficient investment signals to National Grid. One working group member believes that the change from cost reflective final sums to a user commitment equivalent to 50% of the average investment cost diluted and reduced the value of the investment signals to National Grid.

One working group member believes that the cost reflective final sums arrangements provide a useful incentive for TEC Users to connect as close to the transmission system as possible, and thereby minimise the investment to be secured. This working group member gave the example of a new TEC User being sited in an area with limited transmission only having to provide a commitment based on zonal TNUoS charges, when the investment required could be much higher, and have a much longer lead time.

Another working group member questioned whether cost reflective final sums provide an incentive to connect as close to the transmission system as possible due to the uncertainty surrounding the level of wider reinforcement required under either the 'first come first served' or 'clustering' approach.

Other working group members believe that TNUoS charges, rather than cost reflective final sums, should provide the locational signal to TEC Users. One working group member believed that if cost reflective final sums are providing a sharper locational signal than TNUoS charges then this supported the case for change since it is not consistent with a 'shallow' charging methodology.

Risk Sharing

One working group member was concerned that a move from cost reflective final sums to a generic user commitment based on 50% of the average costs would increase the risk of inefficient investment, the cost of which would be shared by that user and all other users. This working group member was concerned that a move to a 50:50 risk share between TEC Users and all users was not justified.

Existing TEC Users

Some working group members believe that replacing the minimum 5 days notice to reduce TEC with 2 years reduces the risk of inefficient transmission investment as National Grid would have more time to react to changes in the planning background. Other working group members believe that it is not possible for existing TEC Users to be able to make decisions on TEC requirements 2 years out and therefore, the 2 year notice period adds costs to existing TEC Users but does not provide a benefit to National Grid.

Some working group members believe that the 2 year notice period for a reduction in TEC incentivises existing TEC Users to hoard TEC for 2 years when they would otherwise release it.

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

Project Risk

The working group agreed that the fixed nature of the user commitment arrangements removes the project risks associated with the volatile final sums arrangements and therefore has a beneficial effect for new projects, allowing decisions to be made based on certain information.

The working group noted that the CAP131 arrangements will impact on existing projects that are seeking a connection to the transmission system. The working group also noted that the user commitment arrangements are based on 50% of the average investment cost and therefore in the majority of cases, the liability faced by a user under the user commitment arrangements will be lower than the liability faced under cost reflective final sums arrangements. Some working group members considered that this would reduce barriers to entry.

One working group member was concerned that whilst the liabilities faced by users would be lower in most cases, it was possible that they would be higher in some circumstances. This working group member was concerned that projects requiring significant reinforcements would be better off, whereas projects requiring minor reinforcements would be worse off, and that this would have a negative impact on competition by encouraging less economic and efficient projects to a reserve future capacity.

Transparency

Some working group members believe that the definition of the arrangements in the CUSC improves transparency for users when compared with the current final sums arrangements.

Some working group members believe that the use of TNUoS tariffs as an investment proxy improves the transparency of the arrangements, since it allows users to easily calculate the user commitment required for any particular potential project.

Existing Generation

Some working group members believe that since the transmission system is designed to accommodate new and existing TEC Users, user commitment should be sought from both new and existing TEC Users. Some working group members believe that a requirement to pay 2 years of TNUoS charges prevents users from responding to TNUoS signals and that the cost consequences may impact on competition in the market.

Some working group members believe that the advantages in terms of facilitating effective competition outweigh any concerns with regard to efficiency.

Working Group Alternative Amendment A2

- 6.4 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A2 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment A2 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of A2 are described below.

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

Some working group members believe that using investment zones is more appropriate than TNUoS charging zones since this avoids TEC Users in the same investment zones, triggering similar transmission investments but facing different levels of security.

Some working group members believe that whilst the investment zones are more appropriate for anticipated projects, TNUoS charging zones may be more appropriate for unanticipated projects.

Some working group members believe that the advantages of using investment zones are outweighed by the disadvantages, in terms of reduced transparency, of having a bespoke set of tariffs.

Working Group Alternative Amendment A3

- 6.5 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A3 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment A3 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of A3 are described below.

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

Some working group members believe that the removal of the Capacity Reduction Charge prior to the Completion Date removes an inappropriate incentive to attempt to withhold information on TEC

required until after completion and therefore reduces the likelihood of inefficient investment.

Some working group members believe that the Capacity Reduction Charge, and the associated contract management by National Grid to prevent changes after completion, is required to ensure that users provide their best information in terms of TEC at the earliest possible stage to prevent inefficient investment.

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

Some working group members believe that the Capacity Reduction Charge imposes unnecessary costs on project developers acting reasonably. These working group members state that it is not possible to know the exact TEC required at connection application due to the timescales associated with a transmission connection and the likelihood of changes due to the consents process or manufacturers technological development.

Some working group members believe that the Capacity Reduction Charge is required to act as a disincentive for users in a capacity queue to hoard TEC. The working group noted that the link between user commitment and TEC already introduces a disincentive to hoard TEC.

Working Group Alternative Amendment B1

6.6 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment B1 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B1 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of B1 are described below.

➤ *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*

Some working group members believe that the 2 year notice period for a reduction in TEC incentivises existing TEC Users to hoard TEC for 2 years when they would otherwise release it. Other working group members believe that it is not possible for existing TEC Users to be able to make decisions on TEC requirements 2 years out and therefore, the 2 year notice period adds costs to existing TEC Users but does not provide a benefit to National Grid.

Some working group members believe that replacing the minimum 5 days notice to reduce TEC with 2 years reduces the risk of inefficient transmission investment as National Grid would have more time to react to changes in the planning background.

➤ *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

Some working group members believe that a requirement to pay 2 years of TNUoS charges prevents users from responding to TNUoS signals and that the cost consequences may impact on competition in the market. Some working group members believe that since the transmission system is designed to accommodate new and existing TEC Users, user commitment should be sought from both new and existing users.

Working Group Alternative Amendment B2

- 6.7 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment B2 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B2 is essentially a combination of A1, A2 and B1 the relevant Working Group discussions are captured above.

Working Group Alternative Amendment B3

- 6.8 The Working Group was split on the question of whether CAP131 Working Group Alternative Amendment B3 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B3 is essentially a combination of A1, A3 and B1 the relevant Working Group discussions are captured above.

CONSULTATION ALTERNATIVE AMENDMENTS

Consultation Alternative Amendment C

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

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

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

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

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- 6.9.4 “Conservative” estimates of expected liabilities by NGET could be referred to Ofgem. (Users are able to refer final sums liabilities to Ofgem today so there is no change versus the original and this is no benefit over the WGAAAs)
- 6.10 Against the applicable CUSC Objective (b. competition) RWE note the following points:
- 6.10.1 Under the current clustered arrangements the volatility and high level of final sums creates significant project risk. There is no doubt that fixing the risks associated with connections to the transmission system under CAP131 RWE Alternative will have a beneficial effect for new projects, particularly in relation to financing. (This resolves volatility, as do the WGAAAs but not the absolute level of final sums which can be high. First come first served could also mean an individual User may face the costs of significant infrastructure reinforcement on its own – this could be very high, with or without a cap).
- 6.10.2 CAP131 RWE Alternative addresses one of the key issues associated with the current connection arrangements: the joint and several liabilities introduced as a consequence of clustering and the potential for users to have to secure up to 100% of the clustered works if other users terminate. CAP131 RWE Alternative will introduce a fixed level of liability throughout the duration of the connections works with appropriate levels of risk sharing, thereby facilitating new entry and competition.
- 6.11 National Grid’s view is that this Consultation Alternative Amendment does not address one of the main drivers behind CAP131. Although, like the WGAAAs, it does remove volatility from the final sums profile, it does not address the absolute level of those liabilities that can be achieved through the 50% sharing factor which is an implicit feature of the generic WGAAAs. In addition, by retaining the “first come first served” cost reflectivity, albeit capped, it does not resolve the extreme instance where for example a small wind farm triggers and is forced to secure very significant infrastructure works just by the random chance it happens to apply at the wrong time. Further, retaining the final sums methodology is not as transparent to Users as the generic methodology which has the appeal of the maximum liability being broadly predictable even before a User makes an application. Estimating and fixing a “cost reflective” profile up to four years before placing contracts could lead to significant differences between amounts secured and actual costs. Indeed to the extent that required works change, there is scope for these differences to be quite large.
- 6.12 We believe therefore that although Consultation Alternative Amendment C better achieves the applicable CUSC objectives than the current baseline, all the WGAAAs have additional benefits. The CAA proposal would also require substantial changes to the Construction Agreement legal text which have been outlined in Annex 2.

Combination Option 1

- 6.13 RES believes that although it is satisfied with the analysis provided for using Generation TNUoS as an investment proxy there is less evidence to support the User Commitment Amount levels and that they are essentially arbitrary and not cost reflective. It argues that requiring users to secure the actual pre-construction costs

would be a more proportionate response. The BWEA does not expand on why it believes the proposed amendment would improve WGAA A3.

- 6.14 National Grid believes that in the current climate, the cost reflective regime is not working and that therefore a different approach is required – one that requires a sensible financial commitment. In the current cost reflective regime there are many projects that are not required to provide any commitment whatsoever, which may be exacerbating the GB Queue. National Grid accepts that on a case by case basis, the User Commitment Amount will not be cost reflective since the generic arrangements are designed to be cost reflective on average. A loss in cost reflectivity is the trade-off for higher certainty in moving to a generic regime. In addition, it would be inconsistent to retain a cost-reflective element for the User Commitment Amount whilst using a generic proxy for the more substantive post-trigger Cancellation Amount. National Grid believes that the evidence presented to the Working Group and published in the Working Group Report demonstrates that the generic User Commitment Amount is a reasonable approximation for pre-construction costs.
- 6.15 We believe therefore that although Combination Option 1 better achieves the applicable CUSC objectives than the current baseline, all the WGAAs better facilitate the relevant CUSC Objectives.

Combination Options 2 to 7

- 6.16 Farm Energy believes that its changes would make CAP131 more consistent with the achievement of DTI targets for deployment of renewable energy because it incentivises developers to operate in areas with high potential for connection of new generation. It also believes that these changes provide a measure of cost reflectivity in National Grid's own commitments within these areas where significant reinforcement is not required. Hence these proposals better meet the applicable CUSC objectives.
- 6.17 National Grid believes that the User Commitment Amount is about providing a suitable financial commitment from TEC Users wherever the power station is located. The Cancellation Charge however, by using Generation TNUoS tariffs as an investment proxy already includes locational incentives to Generators. Moreover, the proposed adjustments seem a little arbitrary. Although the generic methodology is less cost reflective on a project by project basis, it still seeks to be cost reflective overall, subject to the 50/50 sharing with all users, and applying these adjustments in the absence of further evidence would be inappropriate. In addition, achievement of DTI targets for renewable energy is not an applicable CUSC objective. Further, it is not normal practice for CUSC legal text to refer to documents outside the contractual framework such as the Seven Year Statement. We believe that these changes would reduce transparency and could lead to confusion in the application of Cancellation Charges if a terminating project in a given Investment Opportunity Area changed its status.
- 6.18 We believe therefore that Combination Options 2 to 7 do not better achieve the applicable CUSC objectives compared to the current baseline or the WGAAAs.

Combination Options 8 to 13

- 6.19 DONG argues that embedded generators would have to pay the same User Commitment Amount and a Cancellation Amount as directly connected generators. This would be in addition to connection to the DNO network and for any Connection Asset works at the DNO/ TO interface.
- 6.20 National Grid contends that the User Commitment proposals described in the WGAAAs do not discriminate against Embedded Generators with a BEGA and that therefore CAA F is not appropriate. At present, both directly connected and embedded generators secure connection assets as cost reflective final sums liabilities. The difference is that embedded generators could trigger more connection assets. Clearly if embedded generators trigger more connection assets then it is appropriate that they secure them.
- 6.21 We believe therefore that Combination Options 8 to 13 better achieve the applicable CUSC objectives when compared to the current baseline but do not better achieve the relevant CUSC objectives when compared to the WGAAAs.

Combination Options 14 to 19

- 6.22 DONG believe the UCAM should not apply to embedded generators with a BEGA because the generator would additionally be contracting with the DNO for its connection, and the charges for this will be levied directly on the generator.
- 6.23 National Grid believes that the User Commitment Amount should apply to all TEC Users, whether directly connected or embedded because it represents an appropriate financial commitment. The £1/kW, £2/kW and £3/kW amounts do reflect the average costs of pre-engineering works for those parties seeking to use the transmission system which would ordinarily be secured in full under the final sums regime. Combination Options 14 to 19 better facilitate the relevant CUSC objectives when compared to the current baseline but do not better serve the applicable CUSC objectives compared to the WGAAAs since there is no justification to discriminate between different classes of TEC User.

Combination Options 20 to 25

- 6.24 WES argues that the difference in trigger date definition is key for projects with multiple deep upgrades. A project developer is exposed to the risk of major delay until the final phase of upgrades is consented. When work on that phase ultimately starts, there is then a case for seeking increased commitments but not before.
- 6.25 WES states that the increase in commitment from the £1/2/3kW level to a multiple of a TNUoS is very substantial for projects in Scotland, where the majority of schemes in the Transmission queue are located. To require such increase when projects still lack consent would almost certainly lead to projects falling away. This should not be the intention of the regulations which are designed to promote competition. The Consultation amendment, by revising the Trigger date to allow consent to be obtained overcomes this problem and this better promotes effective competition.

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- 6.26 National Grid notes the considerable time spent by the Working Group discussing this area and believes that the proposal whilst alleviating developer concerns to some degree would lead to unacceptable risk for all users. National Grid may be undertaking infrastructure works to enable a given application well in advance of a developer achieving planning consents and it is therefore important that those works are underwritten through the generic methodology by those users that require those works. This will remain a tension where it is quicker to build a new generating unit than a new transmission line. National Grid believes that the 50/50 sharing between new and all users inherent in the generic methodology already significantly reduces developer risk. National Grid believes that Combination Options 20 to 25 better achieve the applicable objectives compared to the current baseline but do not better facilitate them when compared to the WGAAAs.

7.0 PROPOSED IMPLEMENTATION

- 7.1 The Working Group propose CAP131 should be implemented in the first April or October to occur at least 6 months after an Authority decision because this reflects the end of a 6 month security period under the current arrangements and provides sufficient time for National Grid to complete the necessary amendments to agreements and for TEC Users to make necessary decisions in light of the new arrangements.
- 7.2 In addition, the Working Group propose that a voluntary move to the generic arrangements should be made available to all TEC Users 10 days after an Authority decision to ensure that the advantages discussed above are not delayed.

8.0 IMPACT ON THE CUSC AND OTHER INDUSTRY DOCUMENTS

- 8.1 Due to the number of Alternatives and Options, there is a wide range of possible changes to the CUSC. All of the proposed amendments require as a minimum a new Schedule 4 to the CUSC called "User Commitment Principles" and changes to the Construction Agreement. In addition, changes to CUSC Section 6 and new definitions are required in some instances. The main changes are summarised below.
- 8.2 Each WGAA, CAA "C" and Combination Option requires a unique Schedule 4 to the CUSC - User Commitment Principles. These are provided in Annex 2 of this document. Schedule 4 outlines the charges that would be payable in the event of termination and if applicable, TEC reduction for new users. It also outlines the charges that would be payable following TEC reduction by existing Users with less than 2 years notice, if applicable.
- 8.3 WGAAAs A1, A2, A3 and Combination Options 1, 2, 3, 4, 8, 9, 10, 14, 15, 16, 20, 21 and 22 require new CUSC definitions and changes to Section 6 of the CUSC to accommodate proposals to increase the notice period of TEC reduction from 5 days to 2 years. The relevant definitions and changes to Section 6 are provided in Annex 2. Combination Options 2, 3, 4, 5, 6, and 7 would require definitions of "Investment Opportunity Class" and "Investment Opportunity Area" in the CUSC.
- 8.4 This document includes two versions of the Construction Agreement. The first version applies to WGAAAs A1, A2, B1 and B2. The second version applies to A3 and

B3. The significant difference between the two is the Capacity Reduction Charge which is not applicable to the A3 and B3 variants. The A3 and B3 Construction Agreement version does however include a new paragraph 2.17 and an extended paragraph 7.3. Some of the Combination Options (1, 2, 3, 4, 5, 6, 7, 20, 21, 22, 23, 24, and 25) would require additional changes to the Construction Agreement, and they are noted in the relevant section in Annex 2. A separate Construction Agreement, which would be significantly different, has not been included for CAA "C" to limit the length of this document, however one will be provided if requested by Ofgem during the Regulatory Impact Assessment.

8.5 CAP131 has no impact on other industry documents.

9.0 IMPACT ON CUSC PARTIES

Working Group Alternative Amendments

9.1 CAP131 Working Group Alternative Amendments have the impacts described in the following table:

WGAA	Impact
A1	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Greater transparency of levels of securities required ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ TEC reduction in build phase subject to capacity reduction charge ➤ Costs of termination shared with all users through TNUoS charges ➤ Existing generators to provide 2 years notice of TEC reduction
A2	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Less transparency of levels of securities required versus WGAA's A1, A3, B1 and B3. ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ TEC reduction in build phase subject to capacity reduction charge ➤ Costs of termination shared with all users through TNUoS charges ➤ Existing generators to provide 2 years notice of TEC reduction
A3	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Greater transparency of levels of securities required ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ Costs of termination shared with all users through TNUoS charges ➤ Existing generators to provide 2 years notice of TEC reduction
B1	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Greater transparency of levels of securities required ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ TEC reduction in build phase subject to capacity reduction charge

	<ul style="list-style-type: none"> ➤ Costs of termination shared with all users through TNUoS charges
B2	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Less transparency of levels of securities required versus WGAA A1, A3, B1 and B3. ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ TEC reduction in build phase subject to capacity reduction charge ➤ Costs of termination shared with all users through TNUoS charges
B3	<ul style="list-style-type: none"> ➤ On average reduces overall level of securities required for transmission reinforcement from new entrants ➤ Greater transparency of levels of securities required ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years ➤ Costs of termination shared with all users through TNUoS charges ➤ Existing generators to provide 2 years notice of TEC reduction

Consultation Alternatives

9.2 CAP131 CAA “C” and Combination Options have the impacts described in the following table:

	Impact
CAA “C”	<ul style="list-style-type: none"> ➤ Overall level of securities for new entrants remains the same ➤ Securities fixed upon signature of CONSAG reducing uncertainty ➤ User Commitment required from all parties where completion < 7 years
CO 1	<ul style="list-style-type: none"> ➤ As WGAA A3 ➤ UCAM cost reflective, not generic. Means not all new entrants within 7 years of completion will be required to provide user commitment immediately, and could increase speculative capacity applications versus A3.
CO 2	<ul style="list-style-type: none"> ➤ As WGAA A1 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff. ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 3	<ul style="list-style-type: none"> ➤ As WGAA A2 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff. ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 4	<ul style="list-style-type: none"> ➤ As WGAA A3 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff. ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 5	<ul style="list-style-type: none"> ➤ As WGAA B1 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff.

	<ul style="list-style-type: none"> ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 6	<ul style="list-style-type: none"> ➤ As WGAA B2 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff. ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 7	<ul style="list-style-type: none"> ➤ As WGAA B3 ➤ Arbitrary adjustments to UCAM and CC results in even lower required securities than proposed in A1 even though locational element already reflected in TNUoS tariff. ➤ Costs of termination shared with all users significantly in excess of 50%.
CO 8	<ul style="list-style-type: none"> ➤ As WGAA A1 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs. ➤ Discriminates against other TEC Users
CO 9	<ul style="list-style-type: none"> ➤ As WGAA A2 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 10	<ul style="list-style-type: none"> ➤ As WGAA A3 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 11	<ul style="list-style-type: none"> ➤ As WGAA B1 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 12	<ul style="list-style-type: none"> ➤ As WGAA B2 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 13	<ul style="list-style-type: none"> ➤ As WGAA B3 ➤ TNUoS tariff used to calculate generic infrastructure securities reduced by £3/kW for embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 14	<ul style="list-style-type: none"> ➤ As WGAA A1 ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 15	<ul style="list-style-type: none"> ➤ As WGAA A2 ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 16	<ul style="list-style-type: none"> ➤ As WGAA A3 ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 17	<ul style="list-style-type: none"> ➤ As WGAA B1 ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 18	<ul style="list-style-type: none"> ➤ As WGAA B2 ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 19	<ul style="list-style-type: none"> ➤ As WGAA B3

	<ul style="list-style-type: none"> ➤ UCAM does not apply to embedded generators with BEGAs ➤ Discriminates against other TEC Users
CO 20	<ul style="list-style-type: none"> ➤ As WGAA A1 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users
CO 21	<ul style="list-style-type: none"> ➤ As WGAA A2 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users
CO 22	<ul style="list-style-type: none"> ➤ As WGAA A3 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users
CO 23	<ul style="list-style-type: none"> ➤ As WGAA B1 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users
CO 24	<ul style="list-style-type: none"> ➤ As WGAA B2 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users
CO 25	<ul style="list-style-type: none"> ➤ As WGAA B3 ➤ Cancellation Charge applies after last consent achieved ➤ Increased risk to all users

10.0 IMPACT ON INDUSTRY COMPUTER SYSTEMS OR PROCESSES

10.1 CAP131 has no impact upon on Industry Computer Systems or Processes.

11.0 VIEWS AND REPRESENTATIONS

11.1 This Section contains a summary of the views and representations made by consultees during the consultation period in respect of the Working Group Alternative Amendments and the Consultation Alternative Amendments.

Views of Panel Members

11.2 The Amendments Panel agreed with the findings of the Working Group and did not discuss the proposal further.

View of Core Industry Document Owners

11.3 No representations received.

Working Group

11.4 All of the Alternative Amendments received some support from the Working Group as better than the current baseline. Alternative Amendment B3 received most support from the Working Group.

Responses to Consultation

11.5 The following table provides an overview of the representations received. Clearly, many of the arguments raised have already been discussed in the main body of the text so National Grid's responses are aimed primarily at new arguments raised.

Copies of the representations are attached as Annex 4.

Reference	Comments
CAP131-CR-01 Airtricity	<ul style="list-style-type: none"> ➤ Case for increasing notice period of TEC reduction for existing users not proven ➤ Capacity Reduction Charge unnecessary and penal – changes can be outside of control of developer ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ National Grid believes that 5 days notice of a reduction of TEC does not allow it to make the most efficient investment decisions. Two years represents a reasonable balance between time to react for National Grid and the associated reduction in flexibility for existing generation. ➤ The Capacity Reduction Charge provides appropriate incentives for new entrants to notify National Grid of changes to enable the most efficient allocation of capacity.
CAP131-CR-02 British Energy	<ul style="list-style-type: none"> ➤ Case for increasing notice period of TEC reduction for existing users not proven ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ National Grid believes that 5 days notice of a reduction of TEC does not allow it to make the most efficient investment decisions. Two years represents a reasonable balance between time to react for National Grid and the associated reduction in flexibility for existing generation.
CAP131-CR-03 BWEA	<ul style="list-style-type: none"> ➤ Believe trigger date should be mutually agreed by both parties on case by case basis ➤ Support WGAA A3 or B3 with CAA "D" modifications
National Grid View	<ul style="list-style-type: none"> ➤ National Grid believes the Trigger Date should reflect as closely as possible the timing of actual spend. The Trigger Date definition as described in the User Commitment Principles for the WGAAs best reflects that timing and limits unacceptable risk for all users.
CAP131-CR-04 Carron Energy	<ul style="list-style-type: none"> ➤ Believe Generic User Commitment Methodology should be user choice ➤ UCAM should be cost reflective and refundable ➤ "To allow NG to make money simply by virtue of being a monopoly is unacceptable..." ➤ Concern that connections not being offered in a timely matter ➤ Not clear from the report at what stage the secured amount alters if there is slippage in the programme ➤ Notification of changes should be made in a timely manner ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ If cost reflective final sums or generic methodology is user choice, it could be expected that users would choose the regime that minimises the absolute security level. This would result in significantly less than the overall target 50% of total liabilities being secured and therefore represents unacceptable risk to all users. ➤ Generic and non-refundable UCAM will reduce speculation and capacity hoarding for projects within seven years of completion ➤ National Grid is revenue neutral to the CAP131 proposals. Consumers and existing generators will be exposed to over or under recoveries through adjusted TNUoS charges. ➤ National Grid is unable to provide earlier connection mainly because it takes time to obtain planning consents for major infrastructure works. Any regime would struggle to cope with the capacity applications that have been

	<p>forthcoming since BETTA. CAP131 will help by reducing speculative capacity applications and providing incentives to developers to provide information to National Grid when capacity requirements change.</p> <ul style="list-style-type: none"> ➤ The User Commitment Principles outline how the secured amounts alter in the event there is slippage in the programme ➤ National Grid will provide due notice of changes
CAP131-CR-05 Centrica	<ul style="list-style-type: none"> ➤ There may be cases where existing projects under FSL face a higher liability under the generic methodology ➤ NGET and Users should be in close contact when setting the Trigger Date ➤ Two year notice period for TEC reduction does not incentivise users to release TEC ➤ Believe Capacity Reduction Charge provides perverse incentive to keep a higher level of TEC than is needed in the construction phase ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ There may be instances where projects under FSL face higher liabilities through the generic methodology, though the 50% sharing factor should minimise these occurrences. Most parties will face lower overall liabilities. ➤ The Trigger Date is defined in the User Commitment Principles. National Grid always aims to be sensitive to the needs of developers. ➤ There are a number of short term products available to assist generators in managing short term capacity positions such as STTEC, LDTEC, TEC Trading, and now also TEC exchange. We believe these products help generators to manage capacity requirements, and that generators are in the best position to understand those requirements two years ahead. ➤ CRC discussed in main body of text
CAP131-CR-06 DONG	<ul style="list-style-type: none"> ➤ Believe CAP131 discriminates against Embedded Generators with BEGAs ➤ Raised two Consultation Alternative Amendments
National Grid View	<ul style="list-style-type: none"> ➤ National Grid and most industry respondents to the subsequent Alternative Amendment Consultation do not agree ➤ Arguments discussed in main body of text
CAP131-CR-07 EDF Energy	<ul style="list-style-type: none"> ➤ 50% sharing factor has not been justified ➤ UCAM good addition to baseline arrangements ➤ Non-refundable nature suitable deterrent ➤ TNUoS tariff as a measure of cost reflectivity is a gross generalisation ➤ Trigger date should reflect point at which costs incurred ➤ Capacity Reduction Charge required to prevent Users avoiding liabilities ➤ 2 year liability will not release TEC, rather the opposite ➤ Support WGAA B1
National Grid View	<ul style="list-style-type: none"> ➤ The above points are discussed in the main text
CAP131-CR-08 Energy Technical & Commercial Services Ltd	<ul style="list-style-type: none"> ➤ Consider proposals for existing users in WGAAs A1, A2 and A3 to be misleading – depending on timing of notice, liability for TNUoS charges may be 3 years.
National Grid View	<ul style="list-style-type: none"> ➤ National Grid would expect Users to provide notice of TEC reduction at the very end of the Financial Year to avoid liability for 3 years TNUoS.
CAP131-CR-09 E.ON UK	<ul style="list-style-type: none"> ➤ Agree with principle of UCAM ➤ Agree with Trigger Date as defined in WGAAs ➤ Comfortable with analysis provided by National Grid to support a multiple of 6 times TNUoS charges and the 50% sharing factor ➤ Agree proposals should only apply to those with Construction Agreements ➤ Agree proposals should not apply earlier than 7 years prior to completion date ➤ Do not agree with 2 years notice period for existing generators - will not improve information on closures, will act as a penalty and be counter-productive

	<ul style="list-style-type: none"> ➤ Do not support Capacity Reduction Charge and believe it will be counter-productive and developers should be able to revise capacity requirements ➤ Do not support user commitment charges based on UCA zones – just creates different set of winners and losers ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ The above points are discussed in the main text
CAP131-CR-10 Fairwind Ltd	<ul style="list-style-type: none"> ➤ Discriminates against embedded generators with BEGAs ➤ The Capacity Reduction Charge is “draconian” ➤ The proposal works contrary to Government targets for renewable generation
National Grid View	<ul style="list-style-type: none"> ➤ Issues related to embedded generators discussed in main text ➤ The Capacity Reduction Charge provides an incentive to new developers to update National Grid to changes in capacity requirements. This would enable National Grid to efficiently allocate previously contracted capacity to other users. ➤ National Grid believes the proposals will assist Government targets for renewables by lowering the absolute level of securities required for transmission works, providing certainty in those levels, and reducing speculative applications for capacity that can be otherwise allocated to developers with more advanced projects
CAP131-CR-11 Farm Energy	<ul style="list-style-type: none"> ➤ Raised a Consultation Alternative Amendment to “flex” UCAM and Cancellation Amount according to location
National Grid View	<ul style="list-style-type: none"> ➤ Locational signal already provided in level of TNUoS tariff proxy
CAP131-CR-12 First Hydro	<ul style="list-style-type: none"> ➤ Oppose 2 year notice of TEC reduction ➤ UCA zones reflect similar costs incurred by the TO for reinforcement ➤ Support Capacity Reduction Charge ➤ Support B2
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CR-13 Immingham CHP	<ul style="list-style-type: none"> ➤ Current FSL regime penal, anti competitive and not cost reflective ➤ CAP131 should not apply to CEC ➤ Do not support a Capacity Reduction Charge ➤ Not appropriate to establish symmetry between new and existing user commitment ➤ Compensation should be available in the event capacity is commissioned but not made available ➤ There should be clear conditionality on planning consents having been issued as part of the Trigger Date definition
National Grid View	<ul style="list-style-type: none"> ➤ National Grid understands that there are difficulties with the existing regime which is why it has proposed CAP131. The current FSL regime is not however anti competitive and is 100% cost reflective. ➤ National Grid agrees it is not appropriate to establish symmetry between new and existing user commitment. ➤ National Grid does not agree compensation should be available in the event capacity is commissioned but not made available. National Grid already has licence obligations to deliver capacity at the earliest opportunity. Most delays are caused by factors outside National Grid’s control such as obtaining planning permission. ➤ The Trigger Date is defined in the User Commitment Principles of the WGAAAs
CAP131-CR-14 Magnox	<ul style="list-style-type: none"> ➤ Support CAP131 because it will discourage speculative connection applications and promote more efficient allocation of capacity. ➤ If proposals do not work as intended and a lot of projects cancel near completion, there could be significant stranded assets with potential

	<p>material increases in TNUoS for all users. Not been properly quantified but believe risk is small.</p> <ul style="list-style-type: none"> ➤ Do not agree with 2 year TEC reduction notice ➤ Support WGAA B1
National Grid View	<ul style="list-style-type: none"> ➤ National Grid understands that there are difficulties with the existing regime which is why it has proposed CAP131. The current FSL regime is not however anti competitive and is 100% cost reflective. ➤ National Grid has provided analysis indicating average value at risk at different stages of a project development (see Figure 4). We believe that as a project approaches completion, the risk of termination decreases and agree therefore that the risk is small
CAP131-CR-15 Natural Power	<ul style="list-style-type: none"> ➤ A3 best fits Final Sums Solution but proposed options need further clarification ➤ Notice of TEC Reduction could be 1 year? ➤ Trigger Date should align with planning for all required infrastructure improvements ➤ CAP131 and National Grid's open letter are interactive
National Grid View	<ul style="list-style-type: none"> ➤ NPC does not make clear what further clarification is required. National Grid's telephone lines are always open to questions from industry if more information is sought. ➤ One year notice of TEC reduction does not enable National Grid to re-schedule transmission works efficiently ➤ Trigger Date defined in the User Commitment Principles ➤ The CUSC defines the timescales in which Amendment Proposals are considered
CAP131-CR-16 RES	<ul style="list-style-type: none"> ➤ Support WGAA A3 ➤ Raised Consultation Alternative Amendment for cost reflective UCAM ➤ Trigger Date should be when all planning consents achieved
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CR-17 RWE	<ul style="list-style-type: none"> ➤ Does not support implementation of CAP131 or any of the WGAAs ➤ Concerned over moving away from cost reflective liabilities and concept of risk sharing which is a disproportionate response to current issues ➤ CAP131 proposals increase the risk of stranded investment ➤ Risk sharing not justified ➤ Inefficient market signals created for projects remote from existing transmission infrastructure ➤ Do not agree with Capacity Reduction Charge or 2 year notice for TEC Reductions ➤ Proposed Consultation Alternative Amendment "C"
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CR-18 Scottish Power	<ul style="list-style-type: none"> ➤ Support WGAA B1 ➤ Movements in the Trigger Date should not require developers to seek additional finance ➤ Suggest "amnesty" period before implementation of Capacity Reduction Charge ➤ Believe User Commitment should apply even to those projects greater than seven years from completion ➤ Do not support 2 year TEC Reduction notice
National Grid View	<ul style="list-style-type: none"> ➤ Any movement in the Trigger Date would not required developers to seek additional finance unless it was through mutual consent i.e. bringing a completion date forward enabling earlier connection ➤ Implementation of CAP131 is likely to take a minimum of 3 months which should provide adequate "amnesty" to developers

CAP131-CR-19 Scottish Renewables	<ul style="list-style-type: none"> ➤ Do not agree with Capacity Reduction Charge ➤ Trigger Date should be considered on a case by case basis ➤ WGAAAs A3 or B3 preferred
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CR-20 Teesside Power	<ul style="list-style-type: none"> ➤ Do not agree with 2 year TEC Reduction notice period ➤ Forecasting capacity requirements “extremely problematic” ➤ Support WGAA B2
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CR-21 United Utilities	<ul style="list-style-type: none"> ➤ Does not address embedded generators who choose not to enter into TEC arrangements ➤ Support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ CAP131 applies to TEC Users. Issues relating to transmission access for embedded generation are currently being considered through Ofgem’s Transmission Access for Distributed Generation Working Group
CAP131-CR-22 West Coast Energy	<ul style="list-style-type: none"> ➤ Do not believe CAP131 should be implemented against projects where construction is already underway ➤ Generators not able to defer works ➤ Final TEC requirement can not be identified until quite late in the process ➤ Do not agree with Capacity Reduction Charge
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text ➤ Generators are able to defer works by raising a Modification Application
CAP131-CR-23 Wind Energy	<ul style="list-style-type: none"> ➤ Support WGAA B3 ➤ Raised Consultation Alternative Amendment to change definition of Trigger Date
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-01 British Energy	<ul style="list-style-type: none"> ➤ Do not agree with CAA “C” as doubt National Grid could accurately fix a “cost reflective” profile up to four years before placing contracts potentially leaving significant exposure through over-securitisation ➤ Do not agree with CAA “D” as current cost reflective regime is not working and may be exacerbating the queue (the actual submission says British Energy does believe CAA “D” better facilitates the CUSC objectives but National Grid believes this is an error as it does not match the context of the paragraph) ➤ Do not agree with CAA “E” as user commitment should applied consistently to all users regardless of location ➤ Do not agree with CAA “F” for the same reasons ➤ Do not agree with CAA “H” as this may lead to unacceptable risk for all users ➤ Still prefer WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-02 Carron Energy	<ul style="list-style-type: none"> ➤ Believe CAA “C” would result in National Grid over-estimating costs associated with connection and do not support it ➤ Do not support CAA “D” as GB queue may be worsened by speculative capacity applications ➤ Do not support CAA “E” as locational element already included in TNUoS ➤ Are not convinced by arguments and do not support CAAs “F” and “G” ➤ CAA “H” can only work if the industry back a regime based on shallow connection costs ➤ Still support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text

CAP131-CAR-03 Centrica	<ul style="list-style-type: none"> ➤ CAA “C” and “D” reduce generic nature of methodology ➤ Do not support CAA “E” ➤ Do not support CAAs “E” and “F” as embedded generators already receive benefits ➤ Do not support CAA “H” ➤ Still support WGAA B3
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-04 EDF Energy	<ul style="list-style-type: none"> ➤ Do not support any of the CAAs ➤ CAA “C” retains first come first served principles ➤ CAA “H” would result in under-securitisation ➤ Continue to support WGAA B1
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-05 E.ON UK	<ul style="list-style-type: none"> ➤ Prefer transparency and certainty of WGAA v CAA “C” ➤ Do not support CAA “D” as will not make the positive contribution to the GB queue that the other WGAA would make ➤ Do not support double counting of locational signals and therefore reject CAA “E” ➤ Do not support CAAs “F” or “G” ➤ CAA “H” would complicate the setting of the Trigger Date and therefore do not support it
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-06 RWE	<ul style="list-style-type: none"> ➤ Raised and supports CAA “C” ➤ Do not support CAA “D” as agree UCAM is a reasonable approximation of pre-construction costs ➤ Not convinced by case for CAA “E” ➤ Do not support CAAs “F” and “G” as the WGAA do not discriminate against embedded generators ➤ Do not support CAA “H” as this would lead to unacceptable risk for all users
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text
CAP131-CAR-07 Scottish Power	<ul style="list-style-type: none"> ➤ Continue to support WGAA B1 as all CAAs weaken the signals of User Commitment
National Grid View	<ul style="list-style-type: none"> ➤ Arguments discussed in main text

11.5 Most respondents were broadly supportive of CAP131 proposals during the construction phase. There was most support for WGAA B3 and no support for any of the CAAs.

National Grid View

11.5 Many of the arguments between the WGAA are finely balanced, however National Grid continues to believe that WGAA A1 provides the most appropriate overall package of reforms.

12.0 AMENDMENT PANEL RECOMMENDATION

12.1

13.0 NATIONAL GRID RECOMMENDATION

13.1

14.0 COMMENTS ON DRAFT AMENDMENT REPORT

14.1 National Grid received 1 response following the publication of the draft Amendment Report. The following table provides an overview of each representation. Copies of the representations are attached as Annex 5.

Reference	Company	Summary of Comments
CAP131-AR-01	AMEC	AMEC presented their preferences to the CAP131 Proposal, however this part of the process where such changes can be included closed on 21 st May and therefore can not be addressed in the Draft Amendment Report

ANNEX 1 – GLOSSARY AND ACRONYMS

BEGA	Bilateral Embedded Generation Agreement
CA	Cancellation Amount
CAPEX	Capital Expenditure
CEC	Connection Entry Capacity
CUSC	Connection and Use of System Code
DNO	Distribution Network Operator
FSL	Final Sums Liability
GBSO	GB System Operator
NTS	National Transmission System (Gas)
Ofgem	Office of Gas and Electricity Markets
SHETL	Scottish Hydro Electric Transmission Limited
SPT	Scottish Power Transmission
SYS	Seven Year Statement
TEC	Transmission Entry Capacity
TIRG	Transmission Investment for Renewable Generation
TNUoS	Transmission Network Use of System
TPCR	Transmission Price Control Review
UCAM	User Commitment Amount
UCAT	User Commitment Amount Tariff

ANNEX 2 – PROPOSED LEGAL TEXT TO MODIFY THE CUSC

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

For Alternative Amendments A1 to A3 there are three items of relevant legal text:

- New Schedule 4 of the CUSC - User Commitment Principles
- Amended clauses to the Construction Agreement
- New CUSC Definitions and amended CUSC Section 6

For Alternative Amendments B1 to B3 there are two items of relevant legal text:

- New Schedule 4 of the CUSC - User Commitment Principles
- Amended clauses to the Construction Agreement

Please note that the Construction Agreement for Alternative Amendment A1 is identical to Alternative Amendments A2, B1 and B2. Please also note that the Construction Agreement for Alternative Amendment A3 is identical to Alternative Amendment B3 (in addition to the changes required to implement the generic methodology, differences between the A3 and B3 Construction Agreements lie in the Capacity Reduction Charge definition, a new Clause 2.17 and an extended Clause 7.3 in the B3 version).

Text to give effect to the Working Group Alternative Amendment A1

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Amendment Alternative A1

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. **The**

Trigger Date will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the **profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request a revised Appendix R to a **User's Construction Agreement** will be issued by the **Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

-
- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
 - 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

Capacity Reduction Charge_t = User Commitment Amount_t – (TEC_r * UCAT_t)

Where;

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

TEC_(r) is the revised TEC following reduction of TEC.

Post Trigger Date

Capacity Reduction Charge_(t) = Cancellation Amount_(t) – (TEC_(r) * GenTNUoS_(z) * X * T_(t))

Amended clauses to the Construction Agreement for Alternative Amendment A1 (and A2, B1 and B2)

(Please note that this version of the Construction Agreement is also applicable to Alternative Amendments A2, B1 and B2 however due to the size of the document it has not been replicated four times)

SCHEDULE 2 EXHIBIT 3

INDICATIVE

DATED [] 200[1]

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)
and**

[] (2)

**THE CONNECTION AND USE OF SYSTEM CODE
CONSTRUCTION AGREEMENT**

Construction Agreement Notes

- 1 This construction agreement is drafted generically for use in **Offers** for connection to or use of the **GB Transmission System**.
- 2 In the event of termination of this **Construction Agreement** different provisions apply in respect of payments due to **The Company** by a **User** depending on the category of **User**. This Construction Agreement contains the provisions for both **Non TEC Users** who are liable on termination for **Final Sums** and **TEC Users** who are liable on termination for a **Cancellation Charge** in accordance with the **User Commitment Principles** and **Final Sums** in respect of any **One Off Works**
- 3 The definition of **Final Sums** and Clause 2.4 are different (as noted within the text) depending on whether the **User** is a **Non TEC User** or **TEC User**
- 4 Clauses 9, 10 and 11 and Appendix M to this construction agreement are written in the alternative depending on whether the **User** is a **Non TEC User** or **TEC User** and in respect of **TEC Users** whose construction agreement provides for **One off Works** both the provisions relating to **Final Sums** and the **Cancellation Charge** will apply.
- 5 The definition of "**Capacity Reduction Charge**", Clauses [2.16,] [2.17,] [7.3] and Appendix R are only relevant for **TEC Users**.

CONTENTS

<u>Clause</u>	<u>Title</u>
1	<i>Definitions, Interpretation and Construction</i>
2	<i>Carrying out of the Works</i>
3	<i>Delays</i>
4	<i>Commissioning Programme and Liquidated Damages</i>
5	<i>Approval to Connect/Energise/Become Operational</i>
6	<i>Independent Engineer</i>
7	<i>Becoming Operational</i>
8	<i>Compliance with Site Specific Technical Conditions</i>
9	<i>Credit Requirements</i>
10	<i>Event of Default</i>
11	<i>Termination on Event of Default</i>
12	<i>Term</i>
13	<i>CUSC</i>
14	<i>Disputes</i>
15	<i>Variations</i>
16	<i>Restrictive Trade Practices Act</i>
<i>Appendix B1</i>	<i>One Off Works</i>
<i>Appendix G</i>	<i>Transmission Connection Asset Works</i>
<i>Appendix H</i>	<i>Transmission Reinforcement Works</i>
<i>Appendix I</i>	<i>User's Works</i>
<i>Appendix J</i>	<i>Construction Programme</i>
<i>Appendix K</i>	<i>Liquidated Damages</i>
<i>Appendix L</i>	<i>Independent Engineer</i>
<i>Appendix M</i>	<i>Security Arrangements</i>
<i>Appendix N</i>	<i>Third Party Works</i>
<i>Appendix R</i>	<i>Cancellation Charge</i>

THIS CONSTRUCTION AGREEMENT is made on the [] day of [] 200[1]
BETWEEN

- (1) National Grid Electricity Transmission plc a company registered in England with number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] ("**User**", which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **GB Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **GB Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the **Bilateral Connection Agreement** have the same meanings, interpretations or constructions in this **Construction Agreement**.

"Authority" as defined in the **CUSC**.

"Backstop Date" the date specified as such in the **Construction Programme**.

"Bilateral Connection Agreement" the **Bilateral Connection Agreement** entered into between the parties on even date herewith.

"Bilateral Embedded Generation" the **Bilateral Embedded Generation**

Agreement"	Agreement entered into between the parties on even date herewith.
"Cancellation Amount"	the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement on or after the Trigger Date such sum being that specified in the Table in Appendix R by reference to the Cancellation Period in which this Construction Agreement is terminated.
"Cancellation Charge"	the User Commitment Amount or Cancellation Amount as appropriate.
"Cancellation Period(s)"	the periods specified as such in Appendix R.
"Capacity Reduction Charge"	the sum calculated in accordance with the User Commitment Principles .
"Charging Date"	the date upon which the Construction Works are first Commissioned and available for use by the User or if the Independent Engineer before, on or after the Commissioning Programme Commencement Date shall have certified in writing that the Transmission Connection Assets , are completed to a stage where The Company could commence commissioning and by such date the User's Works shall not have been so certified then the date falling [] days after the date of such certification, provided that the Transmission Reinforcement Works are Commissioned and Seven Year Statement Works are completed as at that date. In the event that the Transmission Reinforcement Works are not so Commissioned and/or the

	Seven Year Statement Works are not so completed the Charging Date shall be the date on which they are Commissioned and/or completed as appropriate.
“Commissioning Programme Commencement Date”	the date specified in the Construction Programme for the commencement of the Commissioning Programme or any substituted date fixed under the terms of this Construction Agreement
“Commissioning Programme”	the sequence of operations/tests necessary to connect the User’s Works and the Transmission Connection Asset Works to the GB Transmission System for the purpose of making the User’s Works available for operation to be determined pursuant to Clause 2.10 of this Construction Agreement .
“Completion Date”	[] or such other date as may be agreed in terms of this Construction Agreement .
“Connected Planning Data”	data required pursuant to the Planning Code which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items.
“Consents”	in relation to any Works :- <ul style="list-style-type: none"> (a) all such planning and other statutory consents; and (b) all wayleaves, easements, rights over or interests in land or any other consent; or (c) permission of any kind as shall be necessary for the construction of the Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Works when completed.
“Construction Programme”	the agreed programme for the Works to be carried out by The Company and the User set out in detail in Appendix [J] to this Construction Agreement or as amended from time to time pursuant to Clauses 2.3

	and 3.2 of this Construction Agreement .
"Construction Site"	the site where the Transmission Connection Asset Works are being undertaken by or on behalf of The Company ;
"Construction Works"	the Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works but excluding for the avoidance of doubt any Third Party Works .
"Dispute Resolution Procedure"	the procedure for referral to arbitration set out in Paragraph 7.4 of the CUSC .
"Event of Default"	any of the events set out in Clause 10 of this Construction Agreement as constituting an event of default.
["Final Sums" (Non TEC Users)]	<p>the amount payable by the User on termination of this Construction Agreement being the aggregate from time to time and for the time being of:-</p> <ol style="list-style-type: none">(1) all The Company Engineering Charges arisen prior to the date of termination;(2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by The Company in respect of any part of the Construction Works carried out prior to the date of termination of this Construction Agreement;(3) fees, expenses and costs properly payable by The Company in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any Construction Works provided it is negotiated on an arms length basis (including any such arising under the STC);

- (4) a sum equal to the reasonable costs of removing any **Transmission Connection Assets** and of making good the remaining **Plant and Apparatus** following such removal;
- (5) fees, expenses and costs due in accordance with Clause 2.4.1; and
- (6) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

Provided that no sum shall be due in respect of **Final Sums** in respect of fees, expenses and costs associated with (a) the **Seven Year Statement Works** and/or (b) **Transmission Reinforcement Works** required for wider system reasons and specified in Part 2 of Appendix H.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.]

["Final Sums" (TEC Users)

the amount payable by the **User** on termination of this **Construction Agreement** being the aggregate from time to time and for the time being of:-

- (1) all **The Company Engineering Charges** arisen prior to the date of termination;
- (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **One Off Works** carried out prior to the date of termination of this **Construction Agreement**;
- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by

it or any third party of any contract for or relating to the carrying out of any **One Off Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);

(4) fees, expenses and costs due in accordance with Clause 2.4.1; and

(5) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

"Independent Engineer"

the engineer specified in Appendix L to this **Construction Agreement**. Provided that:-

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

then such engineer as the President of the Institution of Electrical Engineers shall, on the application of either party, nominate shall be the **Independent Engineer**.

"Liquidated Damages"

the sums specified in or calculated pursuant to Appendix K to this **Construction Agreement**.

"One Off Works"

the works described in Appendix B1 to this **Construction Agreement**.

"Seven Year Statement Works"

the works set out in Table B7 of the statement prepared by **The Company** pursuant to Standard Condition C11 of the

	Transmission Licence and issued by The Company in [] which in The Company's reasonable opinion are required to be completed before the Completion Date to ensure that the GB Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee's transmission licence prior to the Connection of the User's Equipment in terms of Clause 7.1 [or 7.2] of this Construction Agreement .
"Term"	the term of this Construction Agreement commencing on the date hereof and ending in accordance with Clause 12.
"Third Party Works"	the works specified in Appendix N.
"Transmission Connection Assets"	the assets specified in Appendix A to the Bilateral Connection Agreement .
"Transmission Connection Asset Works"	the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement .
"Transmission Reinforcement Works"	those works other than the Transmission Connection Asset Works, Seven Year Statement Works and One Off Works , which in the reasonable opinion of The Company are necessary to extend or reinforce the GB Transmission System in relation to and prior to the connection of the User's Equipment at the Connection Site and which are specified in Appendix H to this Construction Agreement , where Part 1 is works required for the User and Part 2 is works required for wider system reasons.
"Trigger Date"	the date specified as such in Appendix R as it may be amended from time to time under the provisions of this Construction Agreement .
"User Commitment Amount"	the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement prior to the Trigger Date such sum being that specified

	in the Table in Appendix R by reference to the Cancellation Period in which this Construction Agreement is terminated.
“User Commitment Principles”	the methodology relating to the application and calculation of the Cancellation Charge and Capacity Reduction Charge set out in CUSC Schedule 4 as it may be amended from time to time.
“User’s Works”	those works necessary for installation of the User’s Equipment which are specified in Appendix I to this Construction Agreement .
“Works”	the Construction Works and the User’s Works .

2. CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously

completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.

2.3 The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates; or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and all dates specified in this **Construction Agreement** [(except the **Trigger Date**)] and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required.

2.3.3 The User shall be regularly updated by The Company in writing or by such other means as the parties may agree as to progress made by The Company from time to time in the obtaining of relevant Consents pursuant to its obligations under Clause 2.2 or 2.3 of this Construction Agreement.

[include 2.4.1 where Final Sums apply]

Non TEC User

2.4.1 The **User** shall be liable to pay to **The Company** as part of any **Final Sums due**:-

- (a) all **The Company's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** excluding any costs associated with the

Seven Year Statement Works and the works specified in Part 2 of Appendix H.

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the **Transmission Connection Asset Works**. This sum shall not include any capital costs incurred by **The Company**, in relation to **Connection Sites** in England and Wales, in the acquisition by it of the freehold of any land or any **Relevant Transmission Licensee**, in relation to **Connection Sites** in Scotland, in the acquisition by it of the feuhold of any land. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.]

Or

TEC User

2.4.1 The **User** shall be liable to pay to **The Company** as part of any **Final Sums due:-**

- (a) *all **The Company's Engineering Charges** accrued; and*
 - (b) *proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay*
- in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** in respect of the **One Off Works**. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.]

[2.4.2] [2.4] Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.

2.5 *The **User** shall have the right to terminate this **Construction Agreement** [at any time] upon giving not less than 7 (seven) days notice in writing to **The Company**. Upon such termination the provisions of Clause 11 shall apply.*

[2.6] *If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement**. Upon such termination the provisions of Clause 11 shall apply.*

2.7 *Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall*

-
- include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.
- 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. Each party shall deliver to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.
- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.

- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for Trade and Industry shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]
- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works** (and as a consequence), the **Construction Programme** and all dates [(except the **Trigger Date**)] specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the

Construction Works and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

2.15 [The **Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.16 Where **The Company** exercises its rights to change the **Construction Works** or **Construction Programme** pursuant to Clauses 2.3, 2.11, 2.13 or [3.2] **The Company** shall review the appropriateness of the **Trigger Date** in light of such changes. **The Company** shall advise the **User** by notice in writing as soon as practicable as to whether it considers it appropriate in accordance with the principles in the **User Commitment Principles** to revise such **Trigger Date** as a consequence of these changes or believes the **Trigger Date** remains appropriate notwithstanding such changes in either case giving its reasons for its view. Where **The Company** considers a revision is appropriate it shall be entitled to revise the **Trigger Date** (and as a consequence Appendix R) upon [30 days] written notice.

2.17 If at anytime [on or after the **Trigger Date** but] before the [**Completion Date**] the **User** reduces its **Transmission Entry Capacity** from []MW then the **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company's** invoice thereof.

3 DELAYS

3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.

3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to

have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate and **The Company** as necessary to reflect this.

4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

- 4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.
- 4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.
- 4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.
- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.
- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.

- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by the **Backstop Date** to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User**. **Upon such termination the provisions of Clause 11 shall apply.**

5 APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.
- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and

-
- 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
- 5.4.2 written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];
- 5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.
- 5.5 If directly connected to the **GB Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.
- 5.6 If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **GB Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-
- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with;
and

-
- (iii) *the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.*

*If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.*

6 INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the **Independent Engineer** with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

- 7.1 If directly connected to the **GB Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** shall be **Commissioned** and (2) the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.
- 7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the **Transmission Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the [New] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **GB**

Transmission System. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** **The Company** reasonably believes from data supplied by the **User** under the planning conditions in the **Grid Code**, reports provided by the **User** pursuant to Clause 2 of this **Construction Agreement** and the commissioning process generally that the **User's Equipment** is such that it will not be capable at the **Completion Date** or within a reasonable period thereafter of generating up to []MW [*Transmission Entry Capacity*];, **The Company** shall automatically have the right, having first informed the **User** in writing (the "**Notice**") that it intends to do so and stating the whole MW figure that it considers appropriate, to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the whole MW figure that it reasonably believes the **User's Equipment** will at or within a reasonable period of time from the **Completion Date** be capable of generating to. The **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** by reference to such reduction such payment to be made within 14 days of the date of **The Company's** invoice thereof. If the **User** reasonably believes that its **User's Equipment** will be capable at or within a reasonable period of time from the **Completion Date** be capable of generating a) at [] MW [*Transmission Entry Capacity*] or b) at more than the MW figure proposed by **The Company** in the **Notice** or that it has a reasonable explanation as to why this is not the case then the **User** shall within [2] **Business Days** of receipt of the **Notice** (the "**Counter Notice**") advise **The Company** accordingly and within [1] month of receipt of the **Counter Notice** (or such later period as the parties shall agree) the **User** shall prove such fact or provide such explanation to **The Company's** reasonable satisfaction. If **The Company** is not reasonably satisfied and **The Company** and the **User** do not agree what level of MW the **User's Equipment** will be capable of generating to or **The Company** does not accept the **User's** explanation for the difference, either

party may promptly refer the matter to an **Independent Engineer** for a decision. Pending the decision of the **Independent Engineer** The Company shall be entitled to amend Appendix C in accordance with the **Notice** and if so amended the **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company's** invoice thereof.

8. Compliance with Site Specific Technical Conditions

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendix F 1-5 to the **Bilateral Connection Agreement** .

9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing the **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**. Details of the credit requirements are set out in the relevant Appendix M

[Final Sums

9.1 PROVISION OF SECURITY (User meets The Company Credit Rating)

9.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9.4) 28 days after the **Charging Date** the User shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the User forthwith:-

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

(ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 In the event of the User:-

- (i) not having an **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,

or if **The Company** becomes aware that:

- (iv) the **User** ceases to have an **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the User may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The User shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the User confirming to The Company under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide The Company with the security specified below to cover the User's payment obligations to The Company arising in the event of, or which have arisen prior to, termination of this Construction Agreement. The security to be provided shall be in an amount not greater than such sums payable on termination and specified in writing by The Company to the User from time to time as appropriate. Such security shall be provided by way of:-

- (i) an irrevocable on demand standby **Letter of Credit** or guarantee; or
- (ii) cash held in escrow [**Escrow Account/ Bank Account**]; or
- (iii) any other form included in **The Company's** then current policy and procedure

such letter of credit or guarantee or security to be in a form agreed in writing by **The Company** and to be given by a **Qualifying Bank**, or **Qualifying Company**. Cash deposited in [escrow] shall be deposited with a **Qualifying Bank**. The choice of such security shall be at the discretion of the **User**.

9.1.5 The User shall in addition to providing the requisite security enter into an agreement with The Company, which shall be supplemental to this Construction Agreement (the "Amending Agreement"). The Amending Agreement shall be in such form as

The Company shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

- 9.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.
- 9.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

Final Sums

- 9.2 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:
- (a) furnish the **User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
 - (b) by written notice to the **User** inform the **User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.
- 9.3.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant and Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.
- 9.3.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant and Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3

of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

- 9.3.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**. If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.
- 9.4 The obligations to provide security under this Clause 9 shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** when due under the provisions of the **CUSC**.

Or

9.1 Provision of Security (User does not meet The Company Credit Rating)

9.1.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until (subject to Clause 9.8) 28 days after the **Charging Date** (unless and until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the **User's** obligation to pay **The Company** any and all sums specified by **The Company** in accordance with Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of:-

- (a) the **User's** liability to pay **The Company** amounts from time to time due under Clause 2.4 of this **Construction Agreement**; and
- (b) **Final Sums**.

9.2 Provision of **Bi-annual Estimate** and **Secured Amount Statement**

9.2.1 **The Company** shall provide to the **User** an estimate ("the **Bi-annual Estimate**") in substantially the form set out in Part 2 of Appendix M to this **Construction Agreement** and showing the amounts of all payments required or which may be required to be made by the **User** to **The Company** in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement** at the following times and in respect of the following periods:-

- (a) forthwith on and with effect from the signing of this **Construction Agreement**, in respect of the period from and including the day of signing of this **Construction Agreement** until the next following 31st March or 30th September (whichever shall first occur); and
- (b) not less than 75 (seventy five) days (or if such day is not a Business Day the next following **Business Day**) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid.

9.2.2 Such **Bi-annual Estimate** shall be accompanied by a statement (in the form of the **Secured Amount Statement** set out in Part 3 of Appendix M to this **Construction Agreement**) ("**Secured Amount Statement**") specifying the aggregate amount to be secured at the beginning of and throughout each such period.

9.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following six calendar month period nonetheless provide security in accordance with the provisions of this **Construction**

Agreement in the same amount as the amount then in force in respect of the then current six calendar month period. Notwithstanding the foregoing, if **The Company** shall provide the **User** with any **Bi-annual Estimate** and **Secured Amount Statement** later than the date specified in Clause 9.2.1 of this **Construction Agreement**, then the following shall apply. The **User** shall within 30 (thirty) days of receipt of the said **Secured Amount Statement** procure that to the extent that the amount in respect of which security has been or is to be provided pursuant to this Clause 9.2.3 in respect of the relevant period ("**the Secured Amount**") falls short of the amount stated in the **Secured Amount Statement** ("**the Required Amount**") the Secured Amount shall be adjusted to the **Required Amount**.

9.3 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for payment under any of the provisions of this **Construction Agreement**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the sums due or which may become due or in respect of which the **User** has a liability to **The Company** for payment. **The Company** shall also be entitled to send the **User** further invoices for such sums not covered in previous invoices. The **User** shall pay **The Company** all sums so invoiced by **The Company**.

9.4 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

- 9.4.1 any amount certified by **The Company** in any **Secured Amount Statement** as requiring at any time and from time to time to be secured; or
- 9.4.2 the fairness and reasonableness of **The Company's** estimate; or
- 9.4.3 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or
- 9.4.4 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9.5 If there shall be any dispute as mentioned in Clause 9.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Clauses 9.4.1 and 9.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.5 shall survive termination) and, in the case of Clauses 9.4.3 and 9.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

Final Sums

9.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish **the User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
- (b) by written notice to **the User** inform **the User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

9.7.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including

the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

- 9.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

- 9.8 The obligations to provide security under this Clause 9 shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** where due under the provisions of the **CUSC**.]

and/or

[Cancellation Charge]

9. PROVISION OF SECURITY (User meets The Company Credit Rating)

- 9.1.1 The **User** shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of

such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the start of each **Cancellation Period** the **User** shall confirm to **The Company** that it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of ceasing to meet **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain **The Company Credit Rating** for at least 12 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the **User** forthwith:-

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

(ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 In the event of the **User**:-

(i) not meeting **The Company Credit Rating**; or

(ii) having a credit rating below **The Company Credit Rating**; or

(iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,

or if **The Company** becomes aware that:

(iv) the **User** ceases to meet **The Company Credit Rating**; or

(v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain **The Company Credit Rating** for at least [12] months; or

the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating.

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** in respect of the **Cancellation Charge**. The security to be provided shall be in an amount not greater than such sums payable on termination. Such security shall be provided by way of:-

(i) an irrevocable on demand standby **Letter of Credit** or guarantee; or

(ii) cash held in escrow in a **Bank Account**; or

(iii) any other form included in **The Company's** then current policy and procedure

such letter of credit or guarantee or security to be in a form agreed in writing by **The Company** and to be given by a **Qualifying Bank**, or **Qualifying Company**. Cash deposited in escrow in a **Bank Account** shall be deposited with a **Qualifying Bank**. The choice of such security shall be at the discretion of the **User**.

9.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "**Amending Agreement**"). The **Amending Agreement** shall be in such form as **The Company** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

9.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.

9.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

9.2 The obligation to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

Or

9. PROVISION OF SECURITY (User does not meet **The Company Credit Rating**)

9.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the sums specified in Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of the **User's** liability to pay **The Company** the **Cancellation Charge**.

9.2 The **User** shall provide security at the beginning of and throughout each **Cancellation Period** for the **Cancellation Charge** that would be payable by the **User** in the event of this **Construction Agreement** terminating in such **Cancellation Period**

9.3 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

9.3.1 whether the amount as requiring at any time to be secured has been calculated in accordance with the **User Commitment Principles**; or

9.3.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

9.3.3 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** and to recover the amount

or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9.4 If there shall be any dispute as mentioned in Clause 9.3 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred, in the case of Clause 9.3.1, to the **Independent Engineer** (and for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.4 shall survive termination) and, in the case of Clauses 9.3.2 and 9.3.3, be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

9.5 The obligation to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

10. EVENT OF DEFAULT

As before alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing this **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**.

[Final Sums and Cancellation Charge]

10. Event of Default (User meets The Company Credit Rating)

Any of the following events shall constitute an **Event of Default**:-

-
- 10.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, or to enter into the **Amending Agreement** pursuant to Clauses 9.1 or 10.3 of this **Construction Agreement**.
- 10.2 If having entered into the **Amending Agreement** and having provided security satisfactory to **The Company** pursuant to Clauses 9.1 and 10.3 of this **Construction Agreement**.
- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the User shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;
 - (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;
 - (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.
- 10.3 If
- (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or
 - (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10 is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
 - (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or

such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of this **Construction Agreement** and which arise under this **Construction Agreement**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice. The **User** shall if required by **The Company**, in addition to providing the requisite security, within a period of 30 days following the date on which **The Company** gives the **User** such notice enter into an **Amending Agreement**. Such **Amending Agreement** shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen and shall be in such form as **The Company** shall reasonably require in line with **The Company's** then current provisions to the like effect in its connection agreements with other parties.

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10.3 the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

Or

[Final Sums

10 Event of Default (User not meet The Company Credit Rating)

Any of the following events shall constitute an **Event of Default**:-

- 10.1 If
- (i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10 is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to

declare the principle of the advances under such arrangement immediately due and payable; or

- (ii) there is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to **The Company** within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;

(iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in either (i) or (ii) or (iii) the **User** fails:-

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of **The Company** and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Clause 10.1 subsequently occurring.

- 10.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.4 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.5 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

and/or

[Cancellation Charge

10 Event of Default (User not meet The Company Credit Rating)

Any of the following events shall constitute an **Event of Default**:-

- 10.1 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clause 9.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.2 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.3 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.

10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

11. TERMINATION

11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of this Clause 11 shall apply.

11.2 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

(a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and

(b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

11.3 The **User** shall be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** [-:

[*Non TEC Users*

(1) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**; such payment to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in accordance with Clause [9.3.3. or 9.7.3]] or]

or

[*TEC Users*

(1) the **Cancellation Charge** and
(2) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**; such payments in each case to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in respect of **The Company's** estimate of **Final Sums** in accordance with Clause 9A.3.3. or 9B.7.3.]

12. TERM

12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8 or 11 hereof.

- 12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the provisions of Clause 11 shall apply.
- 12.3 The associated [**Bilateral Connection Agreements** or **Agreement to Vary the Bilateral Connection Agreement**] will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.
- 12.4 Any provisions for payment shall survive termination of this **Construction Agreement**.

13. CUSC

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.24 (Counterparts), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

Except as specifically provided for in this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

15. VARIATIONS

- 15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.
- 15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3 and 2.11 and 2.16 and Paragraph 6.9 of the **CUSC**.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity Transmission plc)

SIGNED BY)
[name])
for and on behalf of)

[User]

)

APPENDIX [J]

CONSTRUCTION PROGRAMME

APPENDIX [H]

TRANSMISSION REINFORCEMENT WORKS

APPENDIX [L]

INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

The amount of Liquidated Damages payable by The Company to the User pursuant to this Construction Agreement shall be:

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXX.

APPENDIX [G]

TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [B]
[Part 1]
ONE OFF WORKS

APPENDIX M
FINAL SUMS

PART 1

SECURITY ARRANGEMENT

1. **DEFINITIONS**

In this Appendix M, the following terms have the meanings set out next to them:-

“Bi-annual Estimate” means an estimate pursuant to Clause [9.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;

“Bank Account” means a separately designated bank account in the name of The Company at such branch of Barclays Bank PLC, or such branch of any other bank, in the City of London as is notified by The Company to the User, bearing interest from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account, mandated for withdrawal of principal solely by The Company against delivery of a Notice of Drawing for the amount demanded therein and mandated for the transfer of any interest accrued to the Bank Account to such bank account as the User may specify;

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to The Company and allowing for

	partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;
"Notice of Drawing"	means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;
"Performance Bond"	means an on first demand without proof or conditions irrevocable performance bond or performance guarantee executed as a deed in a form reasonably satisfactory to The Company but in any case allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;
"Qualified Bank"	means a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the Performance Bond or Letter of Credit it issues in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives The Company reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives The Company reasonable cause to have such doubt;
"Qualified Company"	means a company which is a public company or a private company within the meaning of S.1(3) of the Companies

Act 1985 and which is either a shareholder of the User or any holding company of such shareholder (the expression holding company having the meaning assigned thereto by Section 736, Companies Act 1985 as supplemented by Section 144(3), Companies Act 1989) and which has throughout the validity period of the Performance Bond it gives in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating or such lesser rating which The Company may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives The Company reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the Performance Bond and no other event has occurred which gives The Company reasonable cause to have such doubt;

“Secured Amount Statement”

means a statement accompanying the Bi-annual Estimate setting out the amount of the User's Obligation based on figures contained in the Bi-annual Estimate being the amount for which security shall be provided to The Company pursuant to Clause 9 of this Construction Agreement;

“User's Obligation”

means the User's obligation to pay under this Construction Agreement:-

-
- (i) all amounts in respect of which the User has a liability to pay to The Company pursuant to Clause 2.4 of this Construction Agreement Agreement;
- (ii) Final Sum
- “Valid” means valid for payment to be made thereunder against delivery of a Notice of Drawing given within the period stated therein.

2. **SECURITY REQUIREMENT**

The User’s Obligation shall be secured by any one of the following:-

- 2.1 A Performance Bond or Letter of Credit from a Qualified Bank for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such Performance Bond or Letter of Credit to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M; or
- 2.2 A cash deposit in a Bank Account at least for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 3.4 of this Appendix M; or
- 2.3 A Performance Bond from a Qualified Company for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such Performance Bond to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M.

3. **GENERAL PROVISIONS**

- 3.1 Any Notice of Drawing to be delivered to Barclays Bank PLC or any other bank at which the Bank Account shall have been opened or a Qualified Bank

or a Qualified Company may be delivered by hand, by post or by facsimile transmission.

- 3.2 If the User becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, the User shall so notify The Company in writing as soon as it becomes so aware. If The Company becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, The Company may notify the User to that effect in writing. Where the bank or the company so ceases to be either a Qualified Bank or a Qualified Company (as the case may be) as a consequence of The Company having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out The Company's reasons for having such doubt. The User shall within 21 days of the giving of such notice by The Company or the User whichever is the earlier provide a replacement Performance Bond and/or Letter of Credit from a Qualified Bank or Qualified Company, as the case may be, and/or provide a cash deposit in the required amount in a Bank Account. From the date the replacement Performance Bond or Letter of Credit or Bank Account cash deposit is effectively and unconditionally provided and Valid, The Company will consent in writing to the security which it replaces being released.
- 3.3 The following provisions shall govern the issuance, renewal and release of the Performance Bond or Letter of Credit:-
- 3.3.1 The Performance Bond or Letter of Credit shall be Valid initially from the signing of this Construction Agreement at least to and including the following 31st March or 30th September whichever is the earlier date. Such Performance Bond or Letter of Credit shall be for an amount not less than that stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period specified in the Secured Amount Statement.

- 3.3.2 On a date which is at least 45 days (or if such day is not a Business Day then on the immediately preceding Business Day) before the next following 31st March or 30th September whichever is the earlier date such Performance Bond or Letter of Credit shall be renewed so as to be Valid for not less than 6 months commencing from the immediately following 1st April or 1st October (as the case may be). Such renewed Performance Bond or Letter of Credit shall be for an amount not less than the amount of the User's Obligation stated in the Secured Amount Statement as the amount to be secured during the period that such renewed Performance Bond or Letter of Credit shall be Valid.
- 3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.
- 3.4 The following provisions shall govern the maintenance of cash deposits in the Bank Account:-
- 3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.
- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.

-
- 3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) (“the Release Date”).
- 3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by The Company to the User from the Bank Account on the Release Date.
- 3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and The Company agrees to take any steps required to be taken by it for the release from the Bank Account and payment to the User of such interest as soon as the same shall have been credited to the Bank Account and The Company shall have received notice of such credit.
- 3.5 Notwithstanding any provision aforesaid:-
- 3.5.1 The User may provide different securities to The Company at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the aggregate amount required to be secured pursuant to the Secured Amount Statement for any period specified therein.
- 3.5.2 The User may upon the expiry of at least 14 days prior written notice to The Company, substitute one type of security for another provided that unless The Company shall otherwise agree in writing such substituted security must be Valid from 1st April or 1st October (as the case may be) and committed at least 45 days before the immediately preceding 31st March or 30th September (as the case may be) in the following manner:-
- (a) where a Performance Bond or a Letter of Credit is to substitute for other securities, it must be issued or given at least 45 days before

such immediately preceding 31st March or 30th September (as the case may be).

- (b) where a cash deposit in a Bank Account is to substitute for other securities, it must be deposited into the Bank Account at least 45 days before such immediately preceding 31st March or 30th September (as the case may be).

3.5.3 Upon request by the User to The Company, securities substituted in the aforesaid manner shall, providing the substitute security shall be Valid, be released on the following 1st April or 1st October (as the case may be). However, where the amount required by the Secured Amount Statement to be secured for any period is less than the amount required to be secured in the preceding period, the substituted security shall not be released until 7 days after the then following 31st March or 30th September (as the case may be).

PART 2

BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT

DATED []

Amount due and amount which will
or might fall due for the period
commencing on and including
[] and ending on and
including [] in
respect of which security is
required

1. Final Sums

PART 3

SECURED AMOUNT STATEMENT

CONSTRUCTION AGREEMENT DATED []

Amount in which security is
required for the period
commencing on and including
[] and ending on and
including []

User's Obligation

We hereby certify that the amount to be secured in respect of the User's Obligation is as stated above in respect of the named period.

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

PART 4

NOTICE OF DRAWING

To [] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

RE: **CONSTRUCTION AGREEMENT DATED []**
PERFORMANCE BOND NO./DATED []/LETTER OF CREDIT NO.
[]/BANK ACCOUNT NO. [] (“THE SECURITY”)

We refer to the above Security in our favour. We hereby demand immediate payment thereunder in the amount of £[].

We require payment to be made by telegraphic transfer to:-

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity Transmission plc

Account No:

Yours faithfully,

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

APPENDIX [N]

THIRD PARTY WORKS

END OF SCHEDULE 2 EXHIBIT 3

New CUSC Definitions and amended Section 6 of the CUSC for Alternative Amendment A1

6.30.1 Decrease in **Transmission entry Capacity**

6.30.1.1 Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than 2 years notice in writing.

6.30.1.2 **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.

6.30.1.3 The decrease in the **Transmission Entry Capacity** shall take effect at the end of the **TEC Decrease Notice Period**.

Section 11 (Definitions)

Add new definitions as follows

“ Cancellation Charge ”	in relation to a particular User as defined in its Construction Agreement ;
“ Capacity Reduction Charge ”	In relation to a particular User as defined in its Construction Agreement ;
“ Non Tec User ”	a User who is a) not a TEC User or b) a TEC User where the Construction Works in its Construction Agreement do not relate to the provision of Transmission Entry Capacity or an increase in Transmission Entry Capacity ;
“ User Commitment Principles ”	the principles applied by The Company in the application and calculation of a User’s Cancellation Charge and Capacity Reduction Charge such principles being set out in Schedule 4;
“ TEC Decrease Notice Period ”	the notice period required pursuant to CUSC Paragraph 6.30.1.1;
“ TEC User ”	a User acting in the category of a Power Station directly connected to the GB Transmission System or an Embedded Power Station except those which are the subject of a BELLA or an Interconnector Owner ;

Text to give effect to the Working Group Alternative Amendment A2

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Alternative Amendment A2

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this

identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the **User** could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the **profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

-
- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Agreement; or
 - 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

Capacity Reduction Charge_t = User Commitment Amount_t – (TEC_r * UCAT_t)

Where;

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

TEC_(r) is the revised TEC following reduction of TEC.

Post Trigger Date

Capacity Reduction Charge_(t) = Cancellation Amount_(t) – (TEC_(r) * GenTNUoS_(TPCR) * X * T_(t))

Amended clauses to the Construction Agreement for Alternative Amendment A2

Please see the **Construction Agreement** in the legal text for **Alternative Amendment A1**

New CUSC Definitions and amended Section 6 of the CUSC

6.30.2 Decrease in **Transmission entry Capacity**

- 6.30.2.1 Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than 2 years notice in writing.

6.30.2.2 **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.

6.30.2.3 The decrease in the **Transmission Entry Capacity** shall take effect at the end of the **TEC Decrease Notice Period**.

Section 11 (Definitions)

Add new definitions as follows

“ Cancellation Charge ”	in relation to a particular User as defined in its Construction Agreement ;
“ Capacity Reduction Charge ”	In relation to a particular User as defined in its Construction Agreement ;
“ Non Tec User ”	a User who is a) not a TEC User or b) a TEC User where the Construction Works in its Construction Agreement do not relate to the provision of Transmission Entry Capacity or an increase in Transmission Entry Capacity ;
“ User Commitment Principles ”	the principles applied by The Company in the application and calculation of a User’s Cancellation Charge and Capacity Reduction Charge such principles being set out in Schedule 4;
“ TEC Decrease Notice Period ”	the notice period required pursuant to CUSC Paragraph 6.30.1.1;
“ TEC User ”	a User acting in the category of a Power Station directly connected to the GB Transmission System or an Embedded Power Station except those which are the subject of a BELLA or an Interconnector Owner ;

Text to give effect to the Working Group Alternative Amendment A3

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Alternative Amendment A3

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and

will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUOS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date and the profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date**

-
- the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Programme; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.
-

Amended clauses to the Construction Agreement for Alternative Amendment A3 (and Alternative Amendment B3)

SCHEDULE 2 EXHIBIT 3

INDICATIVE

DATED [] 200[1]

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)
and**

[] (2)

**THE CONNECTION AND USE OF SYSTEM CODE
CONSTRUCTION AGREEMENT**

Construction Agreement Notes

- 1 This construction agreement is drafted generically for use in **Offers** for connection to or use of the **GB Transmission System**.
- 2 In the event of termination of this **Construction Agreement** different provisions apply in respect of payments due to **The Company** by a **User** depending on the category of **User** and this Construction Agreement contains the provisions for both **Non TEC Users** who are liable on termination for **Final Sums** and **TEC Users** who are liable on termination for a **Cancellation Charge** in accordance with the **User Commitment Principles** and **Final Sums** in respect of any **One Off Works**
- 3 The definition of **Final Sums** and Clause 2.4 are different (as noted within the text) depending on whether the **User** is a **Non TEC User** or **TEC User**
- 4 Clauses 9, 10 and 11 and Appendix M to this construction agreement are written in the alternative depending on whether the **User** is a **Non TEC User** or **TEC User** and in respect of **TEC Users** whose construction agreement provides for **One off Works** both the provisions relating to **Final Sums** and the **Cancellation Charge** will apply.
- 5 Clause [7.3] and Appendix R are only relevant for **TEC Users**.

CONTENTS

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Credit Requirements
10	Event of Default
11	Termination on Event of Default
12	Term
13	CUSC
14	Disputes
15	Variations
16	Restrictive Trade Practices Act
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme
Appendix K	Liquidated Damages
Appendix L	Independent Engineer
Appendix M	Security Arrangements
Appendix N	Third Party Works
Appendix R	Cancellation Charge

THIS CONSTRUCTION AGREEMENT is made on the [] day of [] 200[1]
BETWEEN

- (1) National Grid Electricity Transmission plc a company registered in England with number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] ("**User**", which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **GB Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **GB Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the **Bilateral Connection Agreement** have the same meanings, interpretations or constructions in this **Construction Agreement**.

"Authority"	as defined in the CUSC .
"Backstop Date"	the date specified as such in the Construction Programme .
"Bilateral Connection Agreement"	the Bilateral Connection Agreement entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the Bilateral Embedded Generation Agreement entered into between the parties on even date herewith.

"Cancellation Amount"	the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement on or after the Trigger Date such sum being that specified in the Table in Appendix R by reference to the Cancellation Period in which this Construction Agreement is terminated.
"Cancellation Charge"	the User Commitment Amount or Cancellation Amount as appropriate.
"Cancellation Period(s)"	the periods specified as such in Appendix R
"Charging Date"	the date upon which the Construction Works are first Commissioned and available for use by the User or if the Independent Engineer before, on or after the Commissioning Programme Commencement Date shall have certified in writing that the Transmission Connection Assets , are completed to a stage where The Company could commence commissioning and by such date the User's Works shall not have been so certified then the date falling [] days after the date of such certification, provided that the Transmission Reinforcement Works are Commissioned and Seven Year Statement Works are completed as at that date. In the event that the Transmission Reinforcement Works are not so Commissioned and/or the Seven Year Statement Works are not so completed the Charging Date shall be the date on which they are Commissioned and/or completed as appropriate.
"Commissioning Programme Commencement Date"	the date specified in the Construction Programme for the commencement of the Commissioning Programme or any substituted date fixed under the terms of this Construction Agreement
"Commissioning Programme"	the sequence of operations/tests necessary to connect the User's Works and the Transmission Connection Asset Works to the GB Transmission System for the

	purpose of making the User's Works available for operation to be determined pursuant to Clause 2.10 of this Construction Agreement .
"Completion Date"	[] or such other date as may be agreed in terms of this Construction Agreement .
"Connected Planning Data"	data required pursuant to the Planning Code which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items.
"Consents"	in relation to any Works :- <ul style="list-style-type: none"> (a) all such planning and other statutory consents; and (b) all wayleaves, easements, rights over or interests in land or any other consent; or (c) permission of any kind as shall be necessary for the construction of the Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Works when completed.
"Construction Programme"	the agreed programme for the Works to be carried out by The Company and the User set out in detail in Appendix [J] to this Construction Agreement or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this Construction Agreement .
"Construction Site"	the site where the Transmission Connection Asset Works are being undertaken by or on behalf of The Company ;
"Construction Works"	the Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works but excluding for the avoidance of doubt any Third Party Works .
"Dispute Resolution Procedure"	the procedure for referral to arbitration set out in Paragraph 7.4 of the CUSC .
"Event of Default"	any of the events set out in Clause 10 of this Construction Agreement as constituting an event of default.
["Final Sums" (Non TEC Users)	the amount payable by the User on termination of this Construction Agreement

being the aggregate from time to time and for the time being of:-

- (1) all **The Company Engineering Charges** arisen prior to the date of termination;
- (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **Construction Works** carried out prior to the date of termination of this **Construction Agreement**;
- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **Construction Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (4) a sum equal to the reasonable costs of removing any **Transmission Connection Assets** and of making good the remaining **Plant** and **Apparatus** following such removal;
- (5) fees, expenses and costs due in accordance with Clause 2.4.1; and
- (6) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

Provided that no sum shall be due in respect of **Final Sums** in respect of fees, expenses and costs associated with (a) the **Seven Year Statement Works** and/or (b) **Transmission Reinforcement Works** required for wider system reasons and specified in Part 2 of Appendix H.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.]

"Final Sums" (*TEC Users*)

the amount payable by the **User** on termination of this **Construction Agreement** being the aggregate from time to time and for the time being of:-

- (1) all **The Company Engineering**

Charges arisen prior to the date of termination;

(2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **One Off Works** carried out prior to the date of termination of this **Construction Agreement**;

(3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **One Off Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);

(4) fees, expenses and costs due in accordance with Clause 2.4.1; and

(5) interest on any such amounts from the date they were paid by **The Company** to the date of **The Company's** invoice at 2% over **Base Rate** from time to time and for the time being.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.]

“Independent Engineer”

the engineer specified in Appendix L to this **Construction Agreement**. Provided that:-

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

then such engineer as the President of the Institution of Electrical Engineers shall, on the application of either party, nominate shall be the **Independent Engineer**.

“Liquidated Damages”

the sums specified in or calculated pursuant to Appendix K to this **Construction Agreement**.

"One Off Works"	the works described in Appendix B1 to this Construction Agreement .
"Seven Year Statement Works"	the works set out in Table B7 of the statement prepared by The Company pursuant to Standard Condition C11 of the Transmission Licence and issued by The Company in [] which in The Company's reasonable opinion are required to be completed before the Completion Date to ensure that the GB Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee's transmission licence prior to the Connection of the User's Equipment in terms of Clause 7.1 [or 7.2] of this Construction Agreement .
"Term"	the term of this Construction Agreement commencing on the date hereof and ending in accordance with Clause 12.
"Third Party Works"	the works specified in Appendix N.
"Transmission Connection Assets"	the assets specified in Appendix A to the Bilateral Connection Agreement .
"Transmission Connection Asset Works"	the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement .
"Transmission Reinforcement Works"	those works other than the Transmission Connection Asset Works, Seven Year Statement Works and One Off Works , which in the reasonable opinion of The Company are necessary to extend or reinforce the GB Transmission System in relation to and prior to the connection of the User's Equipment at the Connection Site and which are specified in Appendix H to this Construction Agreement , where Part 1 is works required for the User and Part 2 is works required for wider system reasons.
"Trigger Date"	the date specified as such in Appendix R as it may be amended from time to time under the provisions of this Construction Agreement .
"User Commitment Amount"	the sum calculated in accordance with the User Commitment Principles payable by the User on termination of this Construction Agreement prior to the Trigger Date such sum being that specified in the Table in Appendix R by reference to the Cancellation Period in which this

Construction Agreement is terminated.**“User Commitment Principles”**

the methodology relating to the application and calculation of the **Cancellation Charge** and **TEC Reduction Charge** set out in **CUSC Schedule 4** as it may be amended from time to time.

“User’s Works”

those works necessary for installation of the **User’s Equipment** which are specified in Appendix I to this **Construction Agreement**.

“Works”

the **Construction Works** and the **User’s Works**.

2 CARRYING OUT OF THE WORKS

2.1 Forthwith following the date of this Construction Agreement (i) in respect of Connection Sites in England and Wales The Company and the User shall agree the Safety Rules and Local Safety Instructions to apply during the Construction Programme and Commissioning Programme; and (ii) in respect of Connection Sites in Scotland the User shall agree with the Relevant Transmission Licensee the Safety Rules and Local Safety Instructions to apply during the Construction Programme and Commissioning Programme. Failing agreement within three months of the date of this Construction Agreement the matter shall be referred to the Independent Engineer for determination in accordance with Clause 6 of the Construction Agreement.

2.2 Subject to Clauses 2.3 and 2.4 of this Construction Agreement forthwith following the date of this Construction Agreement The Company shall use its best endeavours to obtain in relation to the Construction Works, and the User shall use its best endeavours to obtain in relation to the User's Works, all Consents. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to Connection Sites in England and Wales, the other, or in relation to Connection Sites in Scotland, the Relevant Transmission Licensee, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the Relevant Transmission Licensee in order to enable the Works to be expeditiously completed and to enable that other to carry out its obligations to the other under this Construction Agreement and in all cases subject to such terms and conditions as are reasonable.

2.3 The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates; or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and all dates specified in this **Construction Agreement** [(except the **Trigger Date**)] and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required.

2.3.3 **The User shall be regularly updated by The Company in writing or by such other means as the parties may agree as to progress made by The Company from time to time in the obtaining of relevant Consents pursuant to its obligations under Clause 2.2 or 2.3 of this Construction Agreement.**

[include 2.4.1 where Final Sums apply]

[Non TEC User]

2.4.1 The **User** shall be liable to pay to **The Company** as part of any **Final Sums due:-**

- (a) *all **The Company's Engineering Charges** accrued; and*
- (b) *proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay*

in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** excluding any costs associated with the **Seven Year Statement Works** and the works specified in Part 2 of Appendix H.

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the **Transmission Connection Asset Works**. This sum shall not include any capital costs incurred by **The Company**, in relation to **Connection Sites** in England and Wales, in the acquisition by it of the freehold of any land or any **Relevant Transmission Licensee**, in relation to **Connection**

Sites in Scotland, in the acquisition by it of the feuhold of any land. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.]

[TEC User

2.4.1 **The User** shall be liable to pay to **The Company** as part of any **Final Sums due:-**

- (a) **all The Company 's Engineering Charges** accrued; and
- (b) **proper and reasonable out-of-pocket expenses incurred and/or paid or which The Company is legally bound to incur or pay**

in seeking and obtaining the Consents the subject of Clause 2.2 of this **Construction Agreement** in respect of the **One Off Works**. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.]

[2.4.2] **[2.4]** Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.

2.5 *The **User** shall have the right to terminate this **Construction Agreement** [at any time] upon giving not less than 7 (seven) days notice in writing to **The Company**. Upon such termination the provisions of Clause 11 shall apply.*

[2.6] *If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement**. Upon such termination the provisions of Clause 11 shall apply.*

2.7 *Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.*

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. Each party shall deliver to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.*

- 2.9 *During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.*
- 2.10 *Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.*
- 2.11 *If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** (and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges and One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.*
- 2.12 **[The User shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the Transmission Connection Asset Works. The User shall use its best endeavours to procure that the said deemed planning permission is so obtained. The Company's obligations under Clause 2.2 of this Construction**

Agreement shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for Trade and Industry shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The User shall liaise with The Company as to its construction and operational requirements and shall ensure that the said application meets The Company's requirements. The Company shall provide the User with all information reasonably required by it in relation to the application and the User shall ensure that all requirements of The Company are incorporated in the application for deemed planning consent.]

- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works** (and as a consequence), the **Construction Programme** and all dates [(except the **Trigger Date**)] specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 Where **The Company** exercises its rights to change the **Construction Works** or **Construction Programme** pursuant to Clauses 2.3, 2.11, 2.13 or [3.2] **The Company** shall review the appropriateness of the **Trigger Date** in light of such changes. **The Company** shall advise the **User** by notice in writing as soon as practicable as to whether it considers it appropriate in accordance with the principles in the **User Commitment Principles** to revise such **Trigger Date** as a consequence of these changes or believes the **Trigger Date** remains appropriate notwithstanding such changes in either case giving its reasons for its view. Where **The Company** considers a revision is

appropriate it shall be entitled to revise the **Trigger Date** (and as a consequence Appendix R) upon [30 days] written notice.

3 DELAYS

3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's Works for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this Construction Agreement or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.

3.2 If prior to the Completion Date a party (in this Clause 3.2 "the Affected Party") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "Defaulting Party") or the Defaulting Party's employees, agents, contractors or sub-contractors or by reason of an event of Force Majeure, the Affected Party shall be entitled to have such later date or dates fixed as the Commissioning Programme Commencement Date and/or (as the case may be) the Completion Date as may be fair and reasonable in the circumstances provided that it shall have notified the Defaulting Party in writing of such act, default or omission or event of Force Majeure within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the Affected Party. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the Independent Engineer. Once the new date or dates are fixed the Construction Programme and/or Commissioning Programme shall be deemed automatically amended as appropriate and The Company as necessary to reflect this.

4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

4.1 Each party shall give written notice to the other declaring its readiness to commence the Commissioning Programme when this is the case.

4.2 The Commissioning Programme shall commence forthwith once both parties have given written notice to the other under Clause 4.1.

4.3 The Works shall be deemed to have been Commissioned on the date that the Independent Engineer certifies in writing to that effect.

4.4 In the event that the actual date of commencement of the Commissioning Programme is later than the Commissioning Programme Commencement Date The Company (if and to the extent that it is responsible for delayed commissioning beyond the Commissioning Programme Commencement Date, such responsi-

bility and/or its extent to be determined by the Independent Engineer failing agreement between the parties) shall be liable to pay to the User Liquidated Damages for each day that the actual date of commencement of the Commissioning Programme is later than the Commissioning Programme Commencement Date. It is declared and agreed that such Liquidated Damages shall cease to be payable in respect of any period after the date of actual commencement of the Commissioning Programme.

- 4.5 In the event that the actual date on which the Construction Works are Commissioned is later than the Completion Date The Company (if and to the extent that it is responsible for delayed completion beyond the Completion Date, such responsibility and/or its extent to be determined by the Independent Engineer failing agreement between the parties) shall be liable to pay to the User Liquidated Damages for each day that the actual date on which the Construction Works are Commissioned is later than the Completion Date. It is hereby agreed and declared that such Liquidated Damages shall cease to be payable in respect of any period after completion of the Construction Works.**
- 4.6 Liquidated Damages payable under Clauses 4.4 and 4.5 of this Construction Agreement shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of Liquidated Damages shall send to the other party a statement of the Liquidated Damages which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the Liquidated Damages shown on the statement within 28 days of the date upon which the statement is received.**
- 4.7 Without prejudice to and in addition to the obligation of the User pursuant to Clause 2.4 of this Construction Agreement, the payment or allowance of Liquidated Damages pursuant to this Clause 4 shall be in full satisfaction of The Company's liability for failure to perform its obligations by the Commissioning Programme Commencement Date and/or the Completion Date as appropriate.**

In the event that the User shall have failed, in circumstances not entitling it to the fixing of a new date as the Commissioning Programme Commencement Date pursuant to Clause 3.2, to complete the User's Works by the Backstop Date to a stage where the User is ready to commence the Commissioning Programme, The Company shall have the right to terminate this Construction Agreement upon giving notice in writing to the User. Upon such termination the provisions of Clause 11 shall apply.

5 APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

5.1 Not later than 4 months prior to the expected Commissioning Programme Commencement Date or by such other time as may be agreed between the parties the parties shall prepare and submit the Operation Diagrams required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the Site Common Drawings required under CC 7.5.2 and 7.5.4 and, if necessary, Gas Zone Diagrams referred to in CC 7.4.9 and 7.4.12.

5.2 Not later than 3 months prior to the expected Commissioning Programme Commencement Date or by such other time as may be agreed between the parties the parties shall prepare and submit the Operation Diagrams required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the Site Common Drawings required under CC 7.5.3 and 7.5.5.

5.3 Not later than 3 months prior to the expected Commissioning Programme Commencement Date or by such other time as may be agreed between the parties:-

5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the Bilateral Connection Agreement; and

5.3.2 the User shall submit to The Company evidence satisfactory to The Company that the User's Equipment complies or will on completion of the User's Works comply with Clause 8 of this Construction Agreement and Paragraphs [1.3.3(b), 2.9 and 6.7] of the CUSC.

5.4 Not later than 8 weeks prior to the expected Commissioning Programme Commencement Date or by such other time as may be agreed between the parties each party shall submit to the other:

5.4.1 for the Connection Site information to enable preparation of Site Responsibility Schedules complying with the provisions of Appendix 1 to the Connection Conditions together with a list of managers who have been duly authorised by the User to sign such Site Responsibility Schedules on the User's behalf;

- 5.4.2 **written confirmation as required under CC.5.2(g) that the list of Safety Co-ordinators are authorised and competent [and a list of persons appointed pursuant to Grid Code CC5.2(m)];**
- 5.4.3 **a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.**
- 5.5 **If directly connected to the GB Transmission System not later than 3 months prior to the expected Commissioning Programme Commencement Date each party shall submit to the other a statement of readiness to complete the Commissioning Programme in respect of the Works and the statement submitted by the User shall in addition contain relevant Connected Planning Data and a report certifying to The Company that, to the best of the information, knowledge and belief of the User, all relevant Connection Conditions applicable to the User have been considered and complied with. If The Company considers that it is necessary, it will require this latter report to be prepared by the Independent Engineer. The report shall incorporate if requested by The Company type test reports and test certificates produced by the manufacturer showing that the User's Equipment meets the criteria specified in CC6.**
- 5.6 *If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **GB Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-*
- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;*
 - (ii) **CC 6** insofar as it is applicable to the **User** has been complied with; and*
 - (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.*
- If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.*

INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the

Independent Engineer with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

7.1 If directly connected to the **GB Transmission System** The **Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** shall be **Commissioned** and (2) the **Seven Year Statement Works** and **Third Party Works** shall be completed The **Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.

7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the **Transmission Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **GB Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Transmission Entry Capacity** of the **User's Equipment** is less than []MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Transmission Entry Capacity** of the **User's Equipment**.

8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendix F 1-5 to the **Bilateral Connection Agreement** .

9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing the **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**. Details of the credit requirements are set out in the relevant Appendix M

[FINAL SUMS

91 PROVISION OF SECURITY (User meets The Company Credit Rating)

- 9.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9.4) 28 days after the **Charging Date** the User shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.
- 9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the User forthwith:-
- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
 - (ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.
- 9.1.3 In the event of the **User**:-
- (i) not having an **The Company Credit Rating**; or
 - (ii) having a credit rating below **The Company Credit Rating**; or
 - (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,
- or if **The Company** becomes aware that:
- (iv) the **User** ceases to have an **The Company Credit Rating**; or
 - (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the User may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
 - (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,
- the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.
- 9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** arising in the event of, or which have arisen prior to, termination of this **Construction Agreement**. The security to be provided shall be in an amount not greater than such sums payable on

termination and specified in writing by **The Company** to the **User** from time to time as appropriate. Such security shall be provided by way of:-

- (i) an irrevocable on demand standby **Letter of Credit** or guarantee; or
- (ii) cash held in escrow [**Escrow Account/ Bank Account**]; or
- (iii) any other form included in **The Company's** then current policy and procedure

such letter of credit or guarantee or security to be in a form agreed in writing by **The Company** and to be given by a **Qualifying Bank**, or **Qualifying Company**. Cash deposited in [escrow] shall be deposited with a **Qualifying Bank**. The choice of such security shall be at the discretion of the **User**.

9.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "Amending Agreement"). The **Amending Agreement** shall be in such form as **The Company** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

9.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.

9.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

Final Sums

9.2 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish the **User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
- (b) by written notice to the **User** inform the **User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

9.3.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation

the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

- 9.3.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant and Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.
- 9.3.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**. If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.
- 9.4 The obligations to provide security under this Clause 9 shall continue until either all sums due under this **Construction Agreement** have been paid in

full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** when due under the provisions of the **CUSC**.

Or

9.1 Provision of Security (**User** does not meet **The Company Credit Rating**)

9.1.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until (subject to Clause 9.8) 28 days after the **Charging Date** (unless and until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the **User's** obligation to pay **The Company** any and all sums specified by **The Company** in accordance with Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of:-

- (a) the **User's** liability to pay **The Company** amounts from time to time due under Clause 2.4 of this **Construction Agreement**; and
- (b) **Final Sums**.

9.2 Provision of **Bi-annual Estimate** and **Secured Amount Statement**

9.2.1 **The Company** shall provide to the **User** an estimate ("the **Bi-annual Estimate**") in substantially the form set out in Part 2 of Appendix M to this **Construction Agreement** and showing the amounts of all payments required or which may be required to be made by the **User** to **The Company** in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement** at the following times and in respect of the following periods:-

- (a) forthwith on and with effect from the signing of this **Construction Agreement**, in respect of the period from and including the day of signing of this **Construction Agreement** until the next following 31st March or 30th September (whichever shall first occur); and
- (b) not less than 75 (seventy five) days (or if such day is not a Business Day the next following **Business Day**) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid.

9.2.2 Such **Bi-annual Estimate** shall be accompanied by a statement (in the form of the **Secured Amount Statement** set out in Part 3 of Appendix M to this **Construction Agreement**) ("**Secured Amount Statement**") specifying the aggregate amount to be secured at the beginning of and throughout each such period.

9.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following six calendar month period nonetheless provide security in accordance with the provisions of this **Construction Agreement** in the same amount as the amount then in force in respect of the then current six calendar month period. Notwithstanding the foregoing, if **The Company** shall provide the **User** with any **Bi-annual Estimate** and **Secured Amount Statement** later than the date specified in Clause 9.2.1 of this **Construction Agreement**, then the following shall apply. The **User** shall within 30 (thirty) days of receipt of the said **Secured Amount Statement** procure that to the extent that the amount in respect of which security has been or is to be provided pursuant to this Clause 9.2.3 in respect of the relevant period ("**the Secured Amount**") falls short of the amount stated in the **Secured Amount Statement** ("**the Required Amount**") the Secured Amount shall be adjusted to the **Required Amount**.

9.3 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for payment under any of the provisions of this **Construction Agreement**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the sums due or which may become due or in respect of which the **User** has a liability to **The Company** for payment. **The Company** shall also be entitled to send the **User** further invoices for such sums not covered in previous invoices. The **User** shall pay **The Company** all sums so invoiced by **The Company**.

9.4 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

- 9.4.1 any amount certified by **The Company** in any **Secured Amount Statement** as requiring at any time and from time to time to be secured; or
- 9.4.2 the fairness and reasonableness of **The Company's** estimate; or
- 9.4.3 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or
- 9.4.4 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

- 9.5 If there shall be any dispute as mentioned in Clause 9.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Clauses 9.4.1 and 9.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.5 shall survive termination) and, in the case of Clauses 9.4.3 and 9.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

Final Sums

- 9.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish **the User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
- (b) by written notice to **the User** inform **the User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

- 9.7.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

- 9.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all

such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

- 9.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

- 9.8 The obligations to provide security under this Clause 9 shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** where due under the provisions of the **CUSC**.]

and/or

[Cancellation Charge]

9. PROVISION OF SECURITY (User meets The Company Credit Rating)

- 9.1.1 The **User** shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the start of each **Cancellation Period** the **User** shall confirm to **The Company** that it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be

confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of ceasing to meet **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain **The Company Credit Rating** for at least 12 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the **User** forthwith:-

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

(ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 In the event of the **User**:-

(i) not meeting **The Company Credit Rating**; or

(ii) having a credit rating below **The Company Credit Rating**; or

(iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,

or if **The Company** becomes aware that:

(iv) the **User** ceases to meet **The Company Credit Rating**; or

(v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not

be able to maintain **The Company Credit Rating** for at least [12] months; or

the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating.

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** in respect of the **Cancellation Charge**. The security to be provided shall be in an amount not greater than such sums payable on termination. Such security shall be provided by way of:-

- (i) an irrevocable on demand standby **Letter of Credit** or guarantee; or
- (ii) cash held in escrow in a **Bank Account**; or
- (iii) any other form included in **The Company's** then current policy and procedure

such letter of credit or guarantee or security to be in a form agreed in writing by **The Company** and to be given by a **Qualifying Bank**, or **Qualifying Company**. Cash deposited in escrow in a **Bank Account** shall be deposited with a **Qualifying Bank**. The choice of such security shall be at the discretion of the **User**.

9.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "**Amending Agreement**"). The **Amending Agreement** shall be in such form as **The Company** shall

reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

9.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.

9.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

9.2 The obligations to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

Or

9. **PROVISION OF SECURITY (User does not meet The Company Credit Rating)**

9.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the sums specified in Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of the **User's** liability to pay **The Company** the **Cancellation Charge**.

9.2 The **User** shall provide security at the beginning of and throughout each **Cancellation Period** for the **Cancellation Charge** that would be payable by the **User** in the event of this **Construction Agreement** terminating in such **Cancellation Period**

9.3 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

9.3.1 whether the amount as requiring at any time to be secured has been calculated in accordance with the **User Commitment Principles**; or

9.3.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

9.3.3 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9.5 If there shall be any dispute as mentioned in Clause 9.3 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred, in the case of Clause 9.3.1, to the **Independent Engineer** (and for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.4 shall survive termination) and, in the case of Clauses 9.3.2 and 9.3.3, be

dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

9.5 The obligations to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

10. EVENT OF DEFAULT

As before alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing this **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**.

[Final Sums and Cancellation Charge]

10. Event of Default (User meets The Company Credit Rating)

Any of the following events shall constitute an **Event of Default**:-

- 10.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, or to enter into the **Amending Agreement** pursuant to Clauses 9.1 or 10.3 of this **Construction Agreement**.
- 10.2 If having entered into the **Amending Agreement** and having provided security satisfactory to **The Company** pursuant to Clauses 9.1 and 10.3 of this **Construction Agreement**.
- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the **User** shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;
- (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;
- (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.
- 10.3 If
- (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for

concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or

- (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10 is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of this **Construction Agreement** and which arise under this **Construction Agreement**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice. The **User** shall if required by **The Company**, in addition to providing the requisite security, within a period of 30 days following the date on which **The Company** gives the **User** such notice enter into an **Amending Agreement**. Such **Amending Agreement** shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen and shall be in such form as **The Company** shall reasonably require in line with **The Company's** then current provisions to the like effect in its connection agreements with other parties.

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10.3 the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

Or

[Final Sums

10 Event of Default (User not meet The Company Credit Rating)

Any of the following events shall constitute an **Event of Default**:-

- 10.1 If
- (i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10 is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
 - (ii) there is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to **The Company** within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;
 - (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in either (i) or (ii) or (iii) the **User** fails:-

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of **The Company** and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the

aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Clause 10.1 subsequently occurring.

- 10.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.4 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.5 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

and/or

[Cancellation Charge

10 **Event of Default (User not meet The Company Credit Rating)**

Any of the following events shall constitute an **Event of Default**:-

- 10.1 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clause 9.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.2 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.3 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

11. TERMINATION

11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate **and the provisions of this Clause 11 shall apply.**

11.2 **On termination of this Construction Agreement The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

(a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and

(b) **in the case of Connection Sites in England and Wales, The Company shall remove and, in the case of Connection Sites in Scotland, The Company shall procure that the Relevant Transmission Licensee removes, any Transmission Connection Assets on the User's land within 6 months of the date of termination or such longer period as may be agreed between The Company or the Relevant Transmission Licensee (as appropriate) and the User.**

11.3 **The User shall be liable forthwith on the date this Construction Agreement so terminates to pay to The Company [-**

[Non TEC Users

(1) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**; such payment to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in accordance with Clause [9.3.3. or 9.7.3]] or]

or

[TEC Users

(1) the **Cancellation Charge** and
(2) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**;
such payments in each case to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in respect of **The Company's** estimate of **Final Sums** in accordance with Clause 9A.3.3. or 9B.7.3.]

12. TERM

12.1 *Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8 or 11 hereof.*

12.2 *In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in*

the event that this is prior to the **Charging Date** the provisions of Clause 11 shall apply.

12.3 The associated [**Bilateral Connection Agreements or Agreement to Vary the Bilateral Connection Agreement**] will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.

12.4 Any provisions for payment shall survive termination of this **Construction Agreement**.

13. **CUSC**

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.24 (Counterparts), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. **DISPUTES**

Except as specifically provided for in this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

15. **VARIATIONS**

15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3 and 2.11 and 2.16 and Paragraph 6.9 of the **CUSC**.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity Transmission plc)

SIGNED BY)
[name])
for and on behalf of)
[User])

APPENDIX [J]

CONSTRUCTION PROGRAMME

APPENDIX [H]

TRANSMISSION REINFORCEMENT WORKS

APPENDIX [L]

INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

The amount of Liquidated Damages payable by The Company to the User pursuant to this Construction Agreement shall be:

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXX.

APPENDIX [G]

TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [B]
[Part 1]

ONE OFF WORKS

APPENDIX M**[FINAL SUMS]**

PART 1**SECURITY ARRANGEMENT****1. DEFINITIONS**

In this Appendix M, the following terms have the meanings set out next to them:-

“Bi-annual Estimate” means an estimate pursuant to Clause [9.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;

“Bank Account” means a separately designated bank account in the name of The Company at such branch of Barclays Bank PLC, or such branch of any other bank, in the City of London as is notified by The Company to the User, bearing interest from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account, mandated for withdrawal of principal solely by The Company against delivery of a Notice of Drawing for the amount demanded therein and mandated for the transfer of any interest accrued to the Bank Account to such bank account as the User may specify;

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to The Company and allowing for partial drawings and providing for the payment to

The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

"Notice of Drawing" means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;

"Performance Bond" means an on first demand without proof or conditions irrevocable performance bond or performance guarantee executed as a deed in a form reasonably satisfactory to The Company but in any case allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

"Qualified Bank" means a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the Performance Bond or Letter of Credit it issues in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives The Company reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives The Company reasonable cause to have such doubt;

"Qualified Company" means a company which is a public company or a private company within the meaning of S.1(3) of the Companies Act 1985 and which is either a shareholder of the User or any holding company of such shareholder (the expression holding company having the meaning assigned thereto by

Section 736, Companies Act 1985 as supplemented by Section 144(3), Companies Act 1989) and which has throughout the validity period of the Performance Bond it gives in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating or such lesser rating which The Company may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives The Company reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the Performance Bond and no other event has occurred which gives The Company reasonable cause to have such doubt;

“Secured Amount
annual
Statement”

means a statement accompanying the Bi-

annual Estimate setting out the amount of the User's Obligation based on figures contained in the Bi-annual Estimate being the amount for which security shall be provided to The Company pursuant to Clause 9 of this Construction Agreement;

“User's Obligation”

means the User's obligation to pay under this Construction Agreement:-

- (i) all amounts in respect of which the User has a liability to pay to The Company pursuant to Clause 2.4 of this Construction Agreement Agreement;
- (ii) Final Sum

“Valid” means valid for payment to be made thereunder against delivery of a Notice of Drawing given within the period stated therein.

2. **SECURITY REQUIREMENT**

The User’s Obligation shall be secured by any one of the following:-

- 2.1 A Performance Bond or Letter of Credit from a Qualified Bank for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such Performance Bond or Letter of Credit to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M; or
- 2.2 A cash deposit in a Bank Account at least for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 3.4 of this Appendix M; or
- 2.3 A Performance Bond from a Qualified Company for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such Performance Bond to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M.

3. **GENERAL PROVISIONS**

- 3.1 Any Notice of Drawing to be delivered to Barclays Bank PLC or any other bank at which the Bank Account shall have been opened or a Qualified Bank or a Qualified Company may be delivered by hand, by post or by facsimile transmission.
- 3.2 If the User becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, the User shall so notify The Company in writing as soon as

it becomes so aware. If The Company becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, The Company may notify the User to that effect in writing. Where the bank or the company so ceases to be either a Qualified Bank or a Qualified Company (as the case may be) as a consequence of The Company having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out The Company's reasons for having such doubt. The User shall within 21 days of the giving of such notice by The Company or the User whichever is the earlier provide a replacement Performance Bond and/or Letter of Credit from a Qualified Bank or Qualified Company, as the case may be, and/or provide a cash deposit in the required amount in a Bank Account. From the date the replacement Performance Bond or Letter of Credit or Bank Account cash deposit is effectively and unconditionally provided and Valid, The Company will consent in writing to the security which it replaces being released.

3.3 The following provisions shall govern the issuance, renewal and release of the Performance Bond or Letter of Credit:-

3.3.1 The Performance Bond or Letter of Credit shall be Valid initially from the signing of this Construction Agreement at least to and including the following 31st March or 30th September whichever is the earlier date. Such Performance Bond or Letter of Credit shall be for an amount not less than that stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period specified in the Secured Amount Statement.

3.3.2 On a date which is at least 45 days (or if such day is not a Business Day then on the immediately preceding Business Day) before the next following 31st March or 30th September whichever is the earlier date such Performance Bond or Letter of Credit shall be renewed so as to be Valid for not less than 6 months commencing from the immediately following 1st April or 1st October (as the case may be). Such renewed Performance Bond or Letter of Credit shall be for an amount not less than the amount of the User's Obligation stated in the Secured Amount Statement as the amount to be secured during the

period that such renewed Performance Bond or Letter of Credit shall be Valid.

- 3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.
- 3.4 The following provisions shall govern the maintenance of cash deposits in the Bank Account:-
- 3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.
- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.
- 3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) ("the Release Date").
- 3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by The Company to the User from the Bank Account on the Release Date.
- 3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and The Company agrees to take any steps required to be taken by it for the release from the Bank Account and payment to the User of such interest as soon as the

same shall have been credited to the Bank Account and The Company shall have received notice of such credit.

3.5 Notwithstanding any provision aforesaid:-

3.5.1 The User may provide different securities to The Company at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the aggregate amount required to be secured pursuant to the Secured Amount Statement for any period specified therein.

3.5.2 The User may upon the expiry of at least 14 days prior written notice to The Company, substitute one type of security for another provided that unless The Company shall otherwise agree in writing such substituted security must be Valid from 1st April or 1st October (as the case may be) and committed at least 45 days before the immediately preceding 31st March or 30th September (as the case may be) in the following manner:-

(a) where a Performance Bond or a Letter of Credit is to substitute for other securities, it must be issued or given at least 45 days before such immediately preceding 31st March or 30th September (as the case may be).

(b) where a cash deposit in a Bank Account is to substitute for other securities, it must be deposited into the Bank Account at least 45 days before such immediately preceding 31st March or 30th September (as the case may be).

3.5.3 Upon request by the User to The Company, securities substituted in the aforesaid manner shall, providing the substitute security shall be Valid, be released on the following 1st April or 1st October (as the case may be). However, where the amount required by the Secured Amount Statement to be secured for any period is less than the amount required to be secured in the preceding period, the substituted security shall not be released until 7 days after the then following 31st March or 30th September (as the case may be).

PART 2

BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT
DATED []

Amount due and amount which will
or might fall due for the period
commencing on and including
[] and ending on and
including [] in
respect of which security is
required

1. Final Sums

PART 3

SECURED AMOUNT STATEMENT

CONSTRUCTION AGREEMENT DATED []

Amount in which security is
required for the period
commencing on and including
[] and ending on and
including []

User's Obligation

We hereby certify that the amount to be secured in respect of the User's Obligation is as stated above in respect of the named period.

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

PART 4

NOTICE OF DRAWING

To [] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

RE: **CONSTRUCTION AGREEMENT DATED []**
PERFORMANCE BOND NO./DATED []/LETTER OF CREDIT NO.
[]/BANK ACCOUNT NO. [] (“THE SECURITY”)

We refer to the above Security in our favour. We hereby demand immediate payment thereunder in the amount of £[].

We require payment to be made by telegraphic transfer to:-

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity Transmission plc

Account No:

Yours faithfully,

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

APPENDIX [N]

THIRD PARTY WORKS

END OF SCHEDULE 2 EXHIBIT 3

New CUSC Definitions and amended Section 6 of the CUSC for Alternative Amendment A3

i. Decrease in **Transmission entry Capacity**

- 1. Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than 2 years notice in writing.**

- 2. **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.**

3. The decrease in the **Transmission Entry Capacity** shall take effect at the end of the **TEC Decrease Notice Period**.

Section 11 (Definitions)

Add new definitions as follows

“ Cancellation Charge ”	in relation to a particular User as defined in its Construction Agreement ;
“ Non Tec User ”	a User who is a) not a TEC User or b) a TEC User where the Construction Works in its Construction Agreement do not relate to the provision of Transmission Entry Capacity or an increase in Transmission Entry Capacity ;
“ User Commitment Principles ”	the principles applied by The Company in the application and calculation of a User’s Cancellation Charge and Capacity Reduction Charge such principles being set out in Schedule 4;
“ TEC Decrease Notice Period ”	the notice period required pursuant to CUSC Paragraph 6.30.1.1;
“ TEC User ”	a User acting in the category of a Power Station directly connected to the GB Transmission System or an Embedded Power Station except those which are the subject of a BELLA or an Interconnector Owner ;

Text to give effect to the Working Group Alternative Amendment B1

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Alternative Amendment B1

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. **The Trigger** Date will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**.

The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Programme; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

Capacity Reduction Charge_t = User Commitment Amount_t – (TEC_r * UCAT_t)

Where;

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

$TEC_{(r)}$ is the revised TEC following reduction of TEC.

Post Trigger Date

$Capacity\ Reduction\ Charge_{(t)} = Cancellation\ Amount_{(t)} - (TEC_{(r)} * GenTNUoS_{(z)} * X * T_{(t)})$

Amended clauses to the Construction Agreement for Alternative Amendment B1

Please see the Construction Agreement in Alternative Amendment A1

Text to give effect to the Working Group Alternative Amendment B2

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Alternative Amendment B2

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger** Date will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**.

The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

Capacity Reduction Charge_t = User Commitment Amount_t – (TEC_r * UCAT_t)

Where;

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

$TEC_{(r)}$ is the revised TEC following reduction of TEC.

Post Trigger Date

$Capacity\ Reduction\ Charge_{(t)} = Cancellation\ Amount_{(t)} - (TEC_{(r)} * GenTNUoS_{(TPCR)} * X * T_{(t)})$

Amended clauses to the Construction Agreement for Alternative Amendment B2

Please see the Construction Agreement in the legal text for Alternative Amendment A1

Text to give effect to the Working Group Alternative Amendment B3

New Schedule 4 to the CUSC - User Commitment Principles

USER COMMITMENT PRINCIPLES for Alternative Amendment B3

Introduction

This section describes the methodology and principles used to calculate the Cancellation Charge associated with User Commitment.

1. CANCELLATION CHARGE

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

User Commitment Amount

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger** Date will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User**

could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity

Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

Amended clauses to the Construction Agreement for Alternative Amendment B3

Please see the **Construction Agreement** in the legal text for **Alternative Amendment A3**

Part B – Text to give effect to the Consultation Alternative Amendments

CONSULTATION ALTERNATIVE AMENDMENT “C”

User Commitment Principles

Cancellation Amount

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

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

Where:

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

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

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

Construction Agreement

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

- The definition of Cancellation Amount would change to a specified amount arrived at in accordance with the User Commitment Principles and without need to reference Cancellation Periods.
- Create new definition of “Actual Cancellation Amount” being the same definition as that for Final Sums but losing words before “the

-
- aggregate of” and instead of cross referring to clause 2.4.1 specifying “consents costs”
 - Add new clause to Clause 9 (Cancellation Charge) similar to Clause 9.3.3 (Final Sums) providing for the Company to issue the User with a statement showing the Actual Cancellation Amount and providing for repayment with interest at Base Rate where this is less than the Cancellation Amount paid.
 - Edit 11.3 (TEC Users) to reflect adjustment between Cancellation Amount and Actual Cancellation Amount
 - Simplify Appendix R
-

Combination Option 1 – modification to User Commitment Principles applicable to WGAA A3

User Commitment Principles

User Commitment Amount

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

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

Construction Agreement – changes to CONSAG version applicable to WGAA A3

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

- Amend definition of “User Commitment Amount” so it is similar to the existing definition of Final Sums but by reference to “local works”
 - Create definition of “Local Works”
 - Amend Section 9 (Final Sums) and Appendix M (Final Sums) to cover User Commitment Amount so estimated and secured on 6 monthly intervals and reconciled as per Clause 9 (Final Sums).
 - Simplify Appendix R
-

Combination Options 2 to 7 – modification applicable to all relevant WGAA User Commitment Principles

User Commitment Principles

User Commitment Amount

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

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

Table 1: User Commitment Amount Tariff

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

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

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

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

Cancellation Amount

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

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

Where:

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

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

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

CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

Pre-Trigger Date

Capacity Reduction Charge_t = User Commitment Amount_t – (TEC_r * UCAT_t)

Where;

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

TEC_(r) is the revised TEC following reduction of TEC.

Post Trigger Date

Capacity Reduction Charge_(t) = Cancellation Amount_(t) – (TEC_(r) * GenTNUoS_(z) * **P_{IO}** * X * T_(t))

Seven Year Statement

The CAA would also require a formal definition of “Investment Opportunity Class” in the Seven Year Statement

Construction Agreement

The Construction Agreement would also require addition of new definitions in CUSC Section 11 for “Investment Opportunity Class” and “Investment Opportunity Area”. These would be defined by reference to those definitions (when introduced) in the Seven Year Statement

Combination Options 8 to 13 – modification applicable to all relevant WGAA User Commitment Principles

User Commitment Principles

Cancellation Amount

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

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

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

b.) For embedded generators with a BEGA

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

Where:

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

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

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

Construction Agreement

No changes

Combination Options 14 to 19 – modification applicable to all relevant WGAA User Commitment Principles

User Commitment Principles

User Commitment Amount

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

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

- a.) **for Directly Connected Generators** will be £1/kW on termination during the first full 12-month period, and increase by £1/kW increments for

each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

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

Construction Agreement

No changes

Combination Options 20 to 25 – modification to all relevant WGAA User Commitment Principles

User Commitment Principles

Trigger Date

In making an **Offer** to a **User** **The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. **The Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to the later of:

a.) the date the Company reasonably believes it will incur significant costs in relation to the last element of the Construction Works associated with that Offer; and

b.) the date on which the User receives planning consent for the new generating station

Construction Agreement

- Create new definitions of “Significant Spend Date” and “Generating Station Planning Consent”.
 - Amend definition of Trigger Date so it is later of a) the Significant Spend Date and date of grant of Generating Station Planning Consent.
 - Additional Clauses to provide for User to confirm\provide copy of consent
 - Consequential changes to appendix R
-

ANNEX 3 – AMENDMENT PROPOSAL FORM

CUSC Amendment Proposal Form	CAP:131
<p><i>Title of Amendment Proposal:</i></p> <p style="text-align: center;"><i>User Commitment for New and Existing Generators</i></p>	
<p>Description of the Proposed Amendment (mandatory by proposer):</p> <p><i>This Amendment Proposal adds a new section to the CUSC defining the principles of User Commitment. By “User Commitment”, we mean;</i></p> <ol style="list-style-type: none"> <i>1. defining the monies to be secured by generators for incremental TEC; and</i> <i>2. defining the ongoing liabilities of existing generators to incentivise TEC reduction information.</i> <p><u>1. Security for Incremental Capacity</u></p> <p><i>This aspect of the proposal aims to de-link the project-specific costs of transmission investment currently secured by generators through “final sums” and replace the required securities for incremental transmission with a generic methodology based on a non-refundable termination charge equal to a multiple of the prevailing generation TNUoS tariff (subject to a minimum of £3/kW) in the year before connection. The multiple will be calculated in accordance with any relevant transmission licence obligation or provision (if appropriate), but otherwise it will be 6. The proposal is akin to the spirit of the “Interim Generic Methodology Statement” which can be found on National Grid’s website at the following url:</i></p> <p><i>http://www.nationalgrid.com/NR/rdonlyres/7D3600A1-5149-479C-A4D1-33448D37682C/10282/InterimGenericUserCommitmentMethodologyStatementv1.pdf</i></p> <p><u>2. Ongoing Liabilities</u></p> <p><i>This aspect of the proposal aims to provide a financial incentive to generators to provide National Grid with a number of years notice of reductions in required transmission capacity. The number of years will be derived in accordance with any relevant transmission licence obligation or provision (if appropriate), but otherwise it will be 2. In the event a generator reduces TEC without providing National Grid with 2 years notice, the generator would be liable to pay 2 times the generation TNUoS tariff (or modulus of the tariff in negative charging zones) multiplied by the reduction in capacity.</i></p> <p><i>If approved, the arrangements would apply to new applications for generation capacity, those applications currently being processed, generators with existing construction agreements and existing generators.</i></p>	
<p>Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):</p> <p><i>Recent industry feedback² has raised important arguments relating to the appropriateness of the current transmission access regime. The current regime has worked well when primarily accommodating occasional applications for large power stations in dispersed locations. However, BETTA reforms and government incentives to encourage renewable generation has led to a significant queue for transmission capacity clustered in specific areas and for power station granularities that are considerably smaller than those that have been previously observed. A number of defects have been highlighted:</i></p> <ol style="list-style-type: none"> <i>1. Final sums arrangements are not defined in existing commercial frameworks</i> <i>2. The level and volatility of final sums are perceived as a barrier to entry</i> <i>3. There are difficulties in network planning given the volume of connection applications and uncertainty in power station closures</i> <p><i>The proposer believes that the above issues are addressed through a defined “user commitment” which would provide clearer investment signals. The absence of such a definition may inhibit competition and could lead to inefficient investment signals.</i></p>	

² National Grid’s “Managing the GB Queue Consultation”, Ofgem’s “Access Reform Options Development Group” and arguments made in the Transmission Price Control Review.

In addressing the first and second defects, this modification proposal suggests replacing the current “final sums” with a generic methodology to promote transparency and certainty. This addresses the perceived barriers to entry and provides more confidence in the firmness of capacity applications.

In addressing the third defect, this modification proposal formally defines the level of liability for existing generators such that financial incentives exist to notify National Grid of an intention to reduce TEC two years ahead.

Additionally the “Interim Generic Methodology” is presently a voluntary arrangement sitting alongside the “Final Sums” method. Formalising the framework in the CUSC would enshrine only the generic methodology which would then become the mandatory arrangement for all parties.

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

The proposal suggests the inclusion of a new section or schedule to be added to the CUSC entitled “User Commitment”. The new section will bring together in one place the calculation and processes applying to the derivation of what has been previously referred to as “final sums” for those seeking incremental capacity, and will define the ongoing liabilities of existing generators to incentivise early notification of reductions in capacity.

In addition to the new section of the CUSC, changes may be applicable in the following areas:

- Removal of references to “Final Sums” and new definitions as required
- CUSC Section 2.14 – Connection Charges
- CUSC Section 3.9.1 – Use of System Charges
- CUSC Section 6.6 - Payment
- CUSC Section 6.30.1 – Decrease in Transmission Entry Capacity
- CUSC Section 6.30.2 – Increase in Transmission Entry Capacity
- CUSC Schedule 2 Exhibit 1 – Bilateral Connection Agreement
- CUSC Schedule 2 Exhibit 3 – Construction Agreement

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

None

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

- *Models of financial viability of incremental capacity applications to incorporate non-refundable nature of securities.*
- *Awareness of 2 years notice of transmission capacity reductions to avoid liability for 2 times the Generation TNUoS tariff.*

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):**

We believe that the proposed amendment better facilitates Applicable CUSC Objective 4(b) by:

1. *Lowering barriers to entry;*
2. *Reducing speculative connection applications facilitating economic investment;*
3. *Providing transparency in the Commercial Frameworks of required user commitments;*
4. *Providing better signals to enable more efficient planning of the transmission system;*

We believe that at this stage, the CUSC is the most appropriate location for this commercial framework to enable maximum transparency.

Details of Proposer:

Organisation's Name:

Nick Pittarello, National Grid

<p><i>Capacity in which the Amendment is being proposed:</i> (i.e. CUSC Party, BSC Party or “energywatch”)</p>	Transmission Owner
<p>Details of Proposer’s Representative: Name: Organisation: Telephone Number: Email Address:</p>	<p><i>Nick Pittarello</i> <i>National Grid</i> <i>01926-656261</i> <i>Nick.pittarello@uk.ngrid.com</i></p>
<p>Details of Representative’s Alternate: Name: Organisation: Telephone Number: Email Address:</p>	<p>Adam Brown National Grid 01926-655839 adam.brown@uk.ngrid.com</p>
<p>Attachments (Yes/No): No If Yes, Title and No. of pages of each Attachment:</p>	

ANNEX 4 – REPRESENTATIONS RECEIVED DURING CONSULTATION

This Annex includes copies of any representations received following circulation of the Consultation Document (circulated on 16th March 2007, requesting comments by close of business on 13th April 2007).

Representations were received from the following parties:

No.	Company	File Number
1	Airtricity	CAP131-CR-01
2	British Energy	CAP131-CR-02
3	BWEA	CAP131-CR-03
4	Carron Energy	CAP131-CR-04
5	Centrica	CAP131-CR-05
6	DONG	CAP131-CR-06
7	EDF Energy	CAP131-CR-07
8	Energy Technical & Commercial Services Ltd	CAP131-CR-08
9	E.ON UK	CAP131-CR-09
10	Fairwind Ltd	CAP131-CR-010
11	Farm Energy	CAP131-CR-011
12	First Hydro	CAP131-CR-012
13	Immingham CHP	CAP131-CR-013
14	Magnox	CAP131-CR-014
15	Natural Power	CAP131-CR-015
16	RES	CAP131-CR-016
17	RWE	CAP131-CR-017
18	Scottish Power Energy Wholesale	CAP131-CR-018
19	Scottish Renewables	CAP131-CR-019
20	Teesside Power	CAP131-CR-020
21	United Utilities	CAP131-CR-021
22	West Coast Energy	CAP131-CR-022
23	Wind Energy	CAP131-CR-023

Reference	CAP131-CR-01
Company	Airtricity

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Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
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13 April 2007

Dear Beverley,

CAP 131 - Consultation Response

Airtricity is a leading renewable energy company in the UK and Ireland, specialising in the development, ownership and operation of onshore and offshore wind farms, in addition to being a leading retailer of green energy in both the Irish Republic and Northern Ireland.

Airtricity welcomes the steps being taken by the industry to further facilitate the process of gaining access to the transmission system. We see CAP 131 as an important part of this ongoing process.

We set out our views below:

- Generally, we believe that the case for increasing the period that users have to give to National Grid for reductions in TEC has not been proven and as such Section 6 of the CUSC should be left unchanged
- The Original Proposal suggested applying User Commitment even where there were no transmission works involved. We agree with the conclusion of the Working Group that this is undesirable.
- The provision for a capacity reduction charge to be levied on a user if prospective TEC is reduced prior to completion of the project is unnecessary and overly penal. Renewables projects can be subject to significant review during development, driven by factors outside the control of the developer, such as the planning process.
- Whilst the various proposals to introduce a form of User Commitment are a welcome development, there will need to be continuing work to ensure that the non-refundable nature of the securities required from developers and the phasing of these against appropriate project milestones, does not result in a disproportionate burden being placed on projects.

Summary

Airtricity considers that the move to a form of User Commitment, from the present Final Sums arrangements, represents a positive step forward. Both National Grid and the members of the Working Group have made a considerable investment of time and resources in developing the proposals.

Airtricity supports Alternative B3, which achieves the desired objectives, whilst avoiding placing unnecessary additional risks or financial burdens on developers.

Yours sincerely,

Robert Longden
UK Regulatory Affairs Manager

Reference	CAP131-CR-02
Company	British Energy



13th April 2007

Beverley Viney
Amendments Panel Secretary
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Gallows Hill
Warwick CV34 6DA

Dear Beverley

CUSC AMENDMENT PROPOSAL CAP131

Thank you for the opportunity to comment on the issues raised by the consultation document on the above amendment proposal.

Key Points:

- **British Energy considers that the group of 'B' Alternatives all better meet the applicable CUSC Objectives. Overall, we consider the objectives are best facilitated by Alternative Amendment B3.**
- **A robust case has not been provided by National Grid for the proposed notice period of two years for TEC reduction from existing users. On the contrary, the proposal has many deficiencies and may even provide users with perverse incentives which are set out below. Consequently, we do not believe the original or any of the 'A' Alternatives better meet the applicable CUSC Objectives.**
- **The proposed user commitment arrangements for increases in TEC are likely to provide clear benefits for new connection applicants, reduce barriers to new entry and potentially act as a disincentive to speculative TEC applications and TEC hoarding.**

British Energy agrees that there are a number of defects with the current arrangements in respect of the 'commitment' provided by those seeking connection to the transmission system. Furthermore, there is an overall need for National Grid to take a more proactive approach with developers to manage the GB queue. Consequently, we support many of the principle objectives behind the amendment proposal. Namely:

- The introduction of a clear and transparent method for determining a user's liability in respect of transmission works;

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- Adopting an approach that would reduce the overall level, volatility and uncertainty of these liabilities and thereby lowering a barrier to entry; and
- Improve efficiency in network planning by better management of the GB queue and reducing speculative applications for transmission access.

We are of the view that CAP 131 has two distinct elements and that it would have been far more appropriate for these separate elements to have been proposed as two modifications. In light of this we have separated our comments on CAP 131 between the proposals for user commitment in respect of increases in TEC from those regarding notice of reductions in TEC for existing users.

User Commitment:

We agree that there are defects with the existing final sums liability (FSL) arrangements that may be a barrier to entry. In particular, as FSL is based on the actual costs incurred by National Grid the potential exposure for new users is uncertain as the costs faced in the event of termination will not be known until post termination. Furthermore, the level of the sums to be secured throughout the construction phase can be extremely volatile particularly if a project has been clustered with other projects. We therefore accept that the user commitment proposals set out in CAP 131 will provide notable benefits to new (and existing) users through the introduction of commitment that is:

- Set out in the CUSC and therefore transparent to all applicants;
- Generic and thereby provides certainty to the potential exposure faced by new users;
- Non-refundable and thereby potentially reduce the amount of speculative applications;
- Reduce barriers to entry; and
- Improve the market signals to NG thereby facilitating more efficient transmission investment.

Notwithstanding the benefits described above, we are concerned with certain elements of the generic user commitment proposed. Based on analysis undertaken by National Grid the generic methodology on the basis of the amount derived from use of six multiplied by Generation TNUOS, means that new connection applicants will be securing approximately only 50% of the cost of investment. The risk of the other 50% of the costs will be faced by existing transmission users. We are concerned that the use of a 50% risk sharing factor has not been justified by National Grid. This view is supported by the statement in the consultation document in para 4.28 where National Grid state that “50% seemed like a reasonable sharing level”. Further, simply stating that there is precedent in the gas market is not a robust argument for increasing the risks faced by existing electricity transmission users through inefficient transmission investment.

The proposed user commitment arrangements include a capacity reduction charge which will apply in circumstances where a user reduces the TEC it requires prior to its completion date. We are concerned that this generic charge is unreasonable as it would apply to any TEC reduction however small. At the signing of a connection agreement developers will rarely know the exact TEC required on completion due to the planning process and design technologies etc. Consequently, to apply a charge to developers who act ‘reasonably’ and may only require a small reduction in TEC appears extremely penal. It is noted that



incentives may be required in order to ensure that TEC is not hoarded through the connection process. However, the capacity reduction charge may actually incentivise developers to withhold TEC information until after completion which may lead to inefficient investment.

We consider that appropriate connection agreement management and enforcement between National Grid and the User is a more appropriate mechanism to address concerns regarding the hoarding of TEC in the GB queue. We note that National Grid in its recent Open Letter on the Management of the GB Queue has suggested improvements to the Connection Agreement arrangements through more efficient and effective communication between National Grid and the User plus the potential for a TEC reduction clause. We consider that it is more appropriate for concerns about TEC hoarding to be tackled through developments in these areas rather than through a capacity reduction charge as set out in CAP 131.

TEC Reduction by Existing Generation

National Grid argue that an increase in the notice period provided by users in respect of TEC reductions is required in order to improve the market signals associated with new investment. Whereas there may be a requirement for improvements in the information provided by existing users to National Grid in respect of future TEC requirements a robust case has not been provided by National Grid for the proposed notice period of two years. On the contrary, the proposal has many deficiencies which are set out below:

- TEC will effectively be hoarded as there is no incentive to reduce TEC at short notice given users will continue to pay for TNUOS on the full TEC for two year duration. This prevents TEC being released in an economic and efficient manner and reduces generator flexibility.
- Users are generally not in a position to make a decision on TEC reductions two years out. In particular, station closure decisions are taken on purely economic grounds which take in to account a number of varying factors over time. Consequently, these proposals are extremely unlikely to change generator behaviour in respect of TEC reductions and the two year TNUOS charge effectively becomes a 'closure tax' and represents an additional sunk cost associated with TEC reduction but with no associated benefit provided to National Grid in respect of efficient investment signals.
- These proposals would provide no incentive on users in negative or marginally positive zones.
- The charge could possibly be avoided in positive TNUOS charging zones through the trading of the TEC without two years notice.
- The requirement to pay two years TNUOS may prevent users from responding to the TNUOS signals and thereby impact on competition in the market.

Consequently, in light of the above comments we oppose the introduction of a two year notice period for TEC reduction from existing users on the basis that the perceived benefits of the proposals are extremely unlikely to materialise and therefore the charge effectively becomes a closure/reduction tax.



Specific Proposals and Applicable CUSC Objectives:

We recognise that the proposed user commitment arrangements for increases in TEC do provide clear benefits for new connection applicants (as set out above) which are likely to reduce barriers to new entry and potentially act as a disincentive to speculative TEC applications and TEC hoarding. Consequently, these benefits are likely to better facilitate the achievement of applicable CUSC Objectives (a) and (b)¹. However, we consider these benefits to be totally outweighed by the deficiencies and perverse incentives which would arise from the implementation of a two year TEC reduction notice period for existing TEC users. Consequently, we do not support any of the 'A' Alternatives as set out in the Consultation Document and on balance do not believe that any of these alternatives better meet the applicable CUSC Objectives.

However, by removing the existing TEC user element as proposed in all the 'B' alternatives the majority of the deficiencies and perverse incentives contained in the 'A' alternatives are also removed. On balance therefore, we consider all the 'B' alternatives better facilitate the applicable CUSC objectives (a) and (b) for the reasons set out above. However, given the concerns expressed above regarding the use of a capacity reduction charge and our view that the use of TNUOS tariffs are more transparent and thereby more appropriate than generation investment our overall preference is for Alternative B3.

Yours sincerely

Steven Eyre
Regulation Analyst

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¹ (a) 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.

Reference	CAP131-CR-03
Company	BWEA

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13th April 2007

Dear Beverley,

Re: BWEA Response to the CAP131 Consultation

The BWEA welcomes the opportunity to respond to the consultation on CUSC amendment proposal 131: "User Commitment".

BWEA was established in 1978 and is the representative body for companies active in the UK wind energy market. Its membership has grown rapidly over recent years and now stands at over 325 companies, representing 98.8% of all grid-connected wind energy now installed.

The UK has a rich variety of renewable energy resource, including 40% Europe's wind resource. Wind energy currently supplies approximately half a million homes in the UK. It is important to support and encourage the growth of the sector and associated benefits.

Our conclusions have been arrived at with the support of Robert Longdon (Airtricity), Richard Ford (RES), Elaine Greig (AMEC) and Scottish Renewables Grid Working Group.

The BWEA supports proposals to replace the existing Final Sums Security methodology and that the User Commitment Proposal is a positive step forward for developers.

The BWEA are keen to point out that for new generators, the proposal introduces its own set of financial risks that will be difficult to manage. In some cases the level of non-refundable charges for projects which would otherwise progress to construction but are still managing the uncertainties of the planning process will lead to their cancellation. This will hinder deliverability of targets for renewable generation for 2010 and beyond.



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The particular points that the BWEA would like to highlight are:-

1. The BWEA fully supports the User Commitment as a replacement of Final Sums Liability.
2. The BWEA has concerns that the A1 A2 proposal for a TEC reduction charge that would help provide NGET with clearer investment signals and to make developers applications more accurate could be counter productive and that a no-penalty provision is more likely to incentivise a project developer to release unwanted TEC.
3. It has been impossible to get consensus for option A3 or B3 from the BWEA membership because individual companies preference for the B options over the A options will correspond to the amount of connected generation in their portfolio. It is important the user commitment model is consistent with the requirement to manage the grid queue. To be effective, it is important that robust information exchange takes place between NGET and the developer.
4. The BWEA believes that A3/B3 most closely balances the interests of the renewable electricity sector whilst meeting the CUSC objectives.
5. The BWEA believes that Working Group Alternative A3/B3 can be further improved by replacing the £1/£2/£3 User Commitment element of the charges with security against the actual preconstruction costs of the local connection incurred by NG.
6. The BWEA proposes a Consultation Alternative Amendment to make the above change to Working Group Alternative A3/B3.
7. The BWEA believes that the trigger date (for moving from User Commitment to Cancellation Charges) should be mutually agreed by both parties on a case-by-case basis to ensure investments are protected.

I hope that our response is useful and if you require clarification of any of the points raised then please get in touch.

Yours sincerely,

G Cooper

Graeme Cooper
Head of Grid, Health & Safety and Technical Affairs

Reference	CAP131-CR-04
Company	Carron Energy



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11th April 2007

Dear Ms Viney

CAP131 User Commitment

Carron Energy are the owners of Uskmouth Power and Severn Power. Carron Energy welcomes the opportunity to comments on CUSC amendment proposal 131. Carron Energy supports the general move towards a more equitable basis for calculating the costs of new connections, as we feel the current methodology has a raft of problems that need to be addressed, and welcomes National Grid's (NG) proposal.

Carron Energy supports this modification being made. All of the alternatives are preferable to the original modification, and we support the use of broader TNUoS zones under alternative A2, but on balance we feel alternative B3 would best facilitate the relevant objectives. However, we still have concerns about the methodology and would like to make the following comments:

Carron supports the move to a more generic charging methodology. We are particularly concerned that at the current time the connection charges seem to be picking up what we believe are "deep" connection costs. The final sums methodology also results in erratic changes to the amount of reinforcement works that parties are required to secure as other parties come and go. This would not be such an issue if the reinforcement costs were limited to those in the local region, not those miles away.

Carron Energy does not support the idea that the new methodology replaces the final sums methodology, but instead should be choice for the user. We are particularly concerned by the non-refundable nature of the charges, especially early in a project and the fact the user commitment may overstate these initial costs. The risks developers carry from the requirement to spend money on pre-construction work, often prior to consents being awarded, is to a degree mitigated under the final sums methodology as some of the money can be recouped if developments do not go ahead. Where initial spend in on project planning permissions these costs could be correctly billed rather than NG holding security based on a formulae which is so generic. There is a trade off between predictable amounts for a connection as a whole and reasonable costs for undertaking initial project work. We note the group feels the user commitment would be broadly reflective of these costs, but we are not convinced that is the case for all plants.

Carron Energy believes that the non-refundable nature of the proposal could be altered for the initial stages of the project, where permissions are sought and pre-construction work is carried out. This could be achieved by having the time between the "offer" and "trigger" dates separated into an "initial" and "material" works section, where initial, pre consenting work, is cost reflective and refundable. Parties have

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no choice but to ask NG to do this initial work due to their monopoly status. However, if parties do not then proceed with a connection they should have the right to get back monies that NG has not spent. To allow NG to make money simply by virtue of being a monopoly is unacceptable and economically inefficient for the market as a whole. When you compare the likely level of user commitment charges compared to final sums in the early stages of a new project, final sums is likely to be lower due to its more cost reflective nature. It is reasonable to allow users to therefore stick with paying for actual spend early in a project.

Carron notes that NG wishes to maintain the right to move end dates where they feel that circumstances beyond their control have meant they are unable to fulfill their original commitment. Carron has serious concerns that NG is not currently offering parties connections in a timely manner. For example, were a new party to wish to connect in South Wales NG's current timing for offers seems to be 2013. The UK has a fundamental problem that the monopoly transmission provider is taking 6 years to connect plants that can be built in 2-3 years, and even then their connection offer will have a clause to allow even more slippage. Ofgem and DTI should have serious concerns about the performance of NG and its impact on long term security of supply. If slippage occurs parties should receive compensation.

As NG is having such problems in offering connections in a timely manner, it seems inappropriate that users have to start to pay NG before any work may have commenced. We entirely appreciate the concerns that NG has about speculative requests, but we continue to believe that their own delivery times simply encourage those requests. It is better to get in the queue than to ask for a connection when you need one as developers cannot expect delivery in "reasonable" timeframes. We therefore feel that while a deposit at signature may be necessary, further increases must be justified on the basis of NG doing something for the money. This is a particular issue for small companies such as Carron, who do not have credit rated parent companies to secure their exposure against connection costs.

Carron Energy notes that in NG's recent open letter on clusters it points out that once developers procure their equipment for new plant these very rarely fail. We therefore believe it would be appropriate that once consents are received and equipment procured, the final sums profile or user commitment should be stepped down to an amount related to expected connection charges at that site. We would feel that the 50% of the costs to be too high at this stage in the development as NG has virtual certainty that the project will connect and the majority of the asset value will fall into the RAV.

The use of TNUoS as a proxy costs does cause us some concerns as noted by the working group. We feel that it may be more equitable to use the generation investment zones from the price control, as suggested by International Power, to better reflect boarder costs of connecting generators in the same zones. This does not seem to lose the signals associated with the regional nature of TNUoS, but does reduce the potential for discriminatory charging for generators resulting in similar actual connection costs, in line with relevant objectives a) and b).

It is not clear to us why TEC reductions at an existing plant should be treated in a similar manner to TEC reductions at a new connection. Given the general move to allow TEC trading, which we support, were any TEC reduction to free up some TEC for other parties then this should be recognised in the charging structure.

The modification also fails to address the issue of TEC increases after a construction agreement is signed. Where a new connectee decides they wish to marginally increase capacity (say by 20-30%) and the actual work has not commenced, where such increases can easily be facilitated (in the same timeframes) these should be allowed. The whole connection methodology is biased in favour of NG's interests and should be more responsive to the needs of the generator. To not force such parties to the back of the queue may overcome some of the concerns about over estimating connection capacity at the connection request stage.

It is not clear from the report at what stage the secured amount alters if there is slippage in the programme. Were a new user to be at the start of period t-1 and a slippage of say six months occurs, the commitment should fall back to t-2 sums until the new start date of the period t-1 is reached. It may be



the intention to alter secured amounts within line as timetables alter, this however, is not clear in the report and it must be clear that if the trigger date or the completion date alters, then the applicable security will also alter.

Notification of these changes must also be made in a timely manner by NG. Likewise if projects can be accelerated, and the generator would like earlier connection, this should be facilitated by moving the dates back and altering security as required.

All of the alternative modifications discussed would seem to better facilitate the relevant objectives. In particular:

- a) Efficient discharge of the licences obligations; the current methodology is resulting in NG being unable to meet requests for new connections in a timely and efficient manner. The market would operate more efficiently were users to be able to gain market entry at transparent and predictable costs.
- b) Facilitating competition; there can only be competition in a market where new entrants can respond to market signals. By reducing the costs and complexity of market entry competition will be enhanced.

Carron Energy hopes that these comments are helpful, but if you do wish to discuss any of the issues raised please contact Lisa Waters on 020 8286 8677.

Yours sincerely

A handwritten signature in black ink that reads "Rebecca Williams". The signature is written in a cursive style with a large, stylized initial "R".

Rebecca Williams
Head of Trading

Reference	CAP131-CR-05
Company	Centrica



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Our Ref.
Your Ref.
14 June 2007

Dear Beverley,

CUSC Amendment Proposal CAP131 – User Commitment

Centrica welcomes the opportunity to comment on this amendment proposal. In summary, we believe that Working Group Alternative B3 better facilitates the achievement of the relevant CUSC Objectives, and is also the best option of the alternatives (and original proposal) presented in the consultation report.

We are broadly supportive of the principle of having a generic calculation for securing of risk associated with project-specific transmission works. However, it is important to recognise that there may well be some cases in which existing projects currently under a final sums liability may face increased security requirements. Users may well decide that the increase security could render a project that was still awaiting some planning consents much less viable, with the obvious implications for security of supply. NGET and the User should be in close contact to ensure that planning consents issues are taken into account when setting the 'Trigger Date'. Developers may well be nervous of having to supply high levels of security for a project that may still fail due to planning reasons outside its control.

As is reflected in our support for WGAA B3, this proposal should really have been submitted as two distinct proposals – one addressing generic user commitment, and one addressing the perceived issues around TEC reduction for existing users. With regard to the TEC reduction element, we believe that there are problems generated by an extension of the notice period to 2 years and financial penalties for shorter notification periods. A two-year notice period does not incentivise users to release TEC that they otherwise might release if, for example, it becomes obvious that plant is going to be on long-term outage. It is also very difficult for generators to be able to say with any certainty exactly what their needs are going to be in two years' time and so users may hoard TEC that they might otherwise release due to the increased financial risk of reducing at short notice.

With regard to the provisions in the proposal relating to reduction in TEC prior to project completion, we agree entirely with the views of the working group laid out in the consultation

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report. There would be a perverse incentive to keep a higher level of TEC than was needed, and then simply pay TNJoS during the 2 years' notice period following connection (or 5 days, if those provisions remained). It would also be inappropriate for NGET to forcibly reduce TEC for users under the current legislative framework.

For the remainder of the proposal (i.e. not relating to TEC reduction), we are broadly supportive of its intent. While by its nature a generic methodology does reduce cost reflectivity and the 50:50 sharing factor does have the potential to expose the industry to greater costs in the event of project failure, we do believe that the general certainty of charging and simplicity of information will make it easier for developers to plan and budget for projects. Risk of volatility is reduced, thus better facilitating market entry, and it appears that in the majority of cases the developer would be liable for less than if he had been under a final sums liability.

It is of course possible that there will be some situations in which users will have to over-secure, in fact these may very well also be the projects that would have connected close to the transmission network, so there may be a certain perverse incentive to locate further in more expensive locations.

However, on balance we believe that the generic liabilities are beneficial to competition, and will increase transparency and certainty in the market.

We therefore believe that WGAA B1 and B3 better facilitate the achievement of the relevant CUSC Objectives compared to the current baseline, and that WGAA B3 is the best of the available options. For the avoidance of doubt, we do not believe that A1, A2, A3 or B2 are better than the current baseline.

If you have any queries in relation to this response, please do not hesitate to contact me.

Best regards,

Dave Wilkerson
Centrica Energy

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Reference	CAP131-CR-06
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29 March 2007

Beverly Viney
Amendments Panel Secretary
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UK

Dear Ms Viney,

Amendment Proposal CAP131: User Commitment

Thank you for the opportunity to comment on this consultation. This response, including two Consultation Alternative Amendments, is made by DONG Walney (UK) Ltd.

We consider that all the proposed Working Group Alternative Amendments discriminate against embedded generators applying to use the transmission system by means of a Bilateral Embedded Generator Agreement (BEGA). Such generators would have to pay the same User Commitment Amount and Cancellation Amount as directly connected generators. However if embedded, a generator would have to pay for connection to the DNO network and any for any Connection Asset works at the DNO/TO interface *in addition* to the charges under the proposed user commitment.

First Consultation Alternative Amendment Proposal

It is clear from the consultation report that the Cancellation Amount includes a nominal charge of £3/kW of TEC to "broadly reflect local connection costs" (per paragraph 3.3 of the report). As these local connection costs are met directly by the generator with a BEGA it is inappropriate to charge them again through the proposed mechanism. To remove this anomaly the required amendment is to change the formula for the Cancellation Amount in paragraph 3.13 such that:

$$\text{Cancellation Amount} = \text{TEC} \times (\text{maximum}(0, \text{GenTNUoS} - 3)) \times X \times T_i$$

The formulae for CA Year -4 to CA Year - in paragraph 3.15 would be changed accordingly, as would the Capacity Reduction Charge in paragraph 3.1.16:

$$\text{Capacity Reduction Charge}_i = \text{Cancellation Amount} - [\text{TEC}_i \times (\text{maximum}(0, \text{GenTNUoS} - 3)) \times X \times T_i]$$



In the view of DONG Walney (UK) Ltd, this change should be made to each of the proposed Working Group Alternative Amendments. Doing so would mean that which ever of the alternatives was approved by the Authority, it would better meet the applicable CUSC objectives, in particular the facilitation of effective competition in the generation and supply of electricity, by avoiding undue discrimination against embedded generators contracting to use the transmission system via a BEGA.

Second Consultation Alternative Amendment Proposal

DONG Walney (UK) Ltd would additionally propose that the User Commitment Amount would not apply for BEGA applications. This is linked to the point above, in that with a BEGA the generator would additionally be contracting with the DNO for its connection, and the charges for this will be levied directly on the generator. As noted in the consultation report, NGET's analysis is that the "local connection costs" should be in the region of £3/kW, and if the generator is paying (or securing for payment later) these sums to the DNO, then no further "commitment" charge should be levied. Equally there would be no Capacity Reduction Charge, since the User would need to meet any actual costs incurred by the DNO and that were already committed.

In the view of DONG Walney (UK) Ltd, this change should be made to each of the proposed Working Group Alternative Amendments. Doing so would mean that which ever of the alternatives was approved by the Authority, it would better meet the applicable CUSC objectives, in particular the facilitation of effective competition in the generation and supply of electricity, by avoiding undue discrimination against embedded generators contracting to use the transmission system via a BEGA.

Yours sincerely


Ivan Christiansen
Senior Asset Manager


Reference	CAP131-CR-07
Company	EDF Energy

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Amendments Panel Secretary
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CV34 6DA



20th March 2007

Dear Beverley,

CUSC amendment proposal CAP131: Generic User Commitment Methodology

EDF Energy is pleased to have the opportunity to comment on the CUSC amendment proposal, CAP131.

Our general view is that generators should be responsible for paying for their connection, as this should ensure the most economic investment in the transmission system. However the final sums liability approach is inconsistent with the current “shallow” transmission charging methodology and therefore we pragmatically support the generic User commitment methodology for new Users but oppose the proposals for existing Users.

On these grounds EDF Energy supports WGAA B1 rather than the original. WGAA B1 is better than the baseline arrangements for new Users. WGAA B1 is better than the other proposals as there is no justification to enforce greater liabilities on existing Users as we believe it will force Users to holding onto TEC.

However supportive we are of this amendment, it must be stated that our key concerns over transmission access do not surround the level of security; rather the manner in which the access is allocated and retained by Users, with little obligation. We will express these views further in response to the GB Queue open letter issued this month.

We shall explain our view through discussing the main elements to the proposal:

The 50% sharing factor with the User community has not been justified

- EDF Energy believes the underlying assertion that generators wishing to connect to the system should only have to secure 50% of the costs has not been sufficiently justified. We understand that under baseline arrangements generators are exposed to greater securities than they may need to be (due to clustering), however we believe the sharing factor may expose other Users to undue cost should many projects terminate. It is a concern that this is specified in the “User Commitment Principles” rather than the CUSC itself, as it does not fall under the amendment process.

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User Commitment Amount (UCAM) is a good addition to the baseline arrangements

- The £1/kW, £2/kW and £3/kW UCAM provides an upfront commitment that generators should have to provide, in order to “reserve” future Transmission Entry Capacity (TEC). Under present arrangements, generators have been allocated capacity many years in the future. As final sum liabilities are based on the costs incurred by the transmission owner, many projects have little immediate liability and are free to reserve capacity. This has invariably led to inefficient management of investment in the transmission system. EDF Energy believes the non-refundable UCAM is sufficient commitment to ensure capacity is not hoarded by applicants.

Non-refundable nature of the security is a suitable deterrent.

- EDF Energy supports the non-refundable nature of the security charge. It provides greater disincentive to the developer to reserve TEC on an ongoing basis. It also makes the amendment more palatable to other Users who are exposed to 50% of the costs by this amendment proposal.

TNUoS tariff as the measure of cost reflectivity is a gross generalisation

- We do not believe that the TNUoS tariff is a fair measure of cost reflectivity. It only provides a general indication of the incremental cost to transmit electricity from a geographic area. The measure has no link to the specifics of the project, such as the necessity to build a new substation, the choice between OHL/ underground cable or other works. During the working group, EDF Energy did suggest that project related data could be used in the calculation: Security = kW TEC * km line length * Expansion factor¹.
- It is our view that the TNUoS multiple is only considered palatable by Users because of the 50% sharing factor, which ensures most projects should have their security reduced by these proposals. If the TNUoS multiple was supposed to be fully cost reflective, rather than 50% of the cost for all connections, then generators would be less supportive.

The Trigger Date should reflect the point at which cost is being incurred.

- The working group debated vigorously when the security should be “triggered” onto the higher 6*TNUoS*0.25 multiple. There were concerns a project should not have greater liabilities triggered until it has consent, even if the Transmission Owner must commit to works beforehand to ensure the connection date can be achieved. We disagree with this point, principally as the security is required to cover the transmission works, not the developers. Also, with liabilities reduced by the 50% sharing factor, it should be reasonable for the developer to accept them. If the developer cannot accept the liabilities then the project should be deferred, under the modification application process.

¹(for instance 1 for 400kV OHL; 2.1 for 132kV OHL in SHETL TO region)

A Capacity Reduction Charge is required to prevent Users avoiding liabilities.

- The capacity reduction charge aims to prevent Users from reducing their liabilities by modifying their agreements with a lower MW TEC value and subsequently terminating them. Although EDF Energy understands that the charge may penalise a developer with a station that has a different capacity than that originally envisaged, we cannot support an amendment that allows Users to influence their liabilities.
- Under the construction agreement there are clauses that should ensure the User is constructing a power station to the MW specified in the bilateral connection agreement. It should not be possible for the generator to build a power station with a different capacity to that it has requested. Although this may be true, with multiple and/or clustered connections the transmission owner will plan and build new transmission lines on the basis of the aggregate TEC requested in the connection agreements. If a number of these agreements have inaccurate MW capacity figures (which will only be changed 1-2 years prior to connection) then inefficient investment and allocation of TEC will occur.
- Over the last year we have seen some unrealistic connection dates being revised only a year before connection. Pembroke was such an example with this project (and two others) adversely affecting the setting of 2007/08 TNUoS charges. There are also projects with unrealistic TEC values in their connection agreements. It is such examples that lead us to believe the capacity reduction charge is required.



2 year liability for Existing Users will not release TEC, rather the opposite.

- The 2-year liability for existing Users will not allow them to release capacity immediately in the event of unforeseen closure. The decision to release TEC, either to decommission, buy LDTEC, or to mothball, is one based on the outlook of input fuel and market prices. It is not a decision that most generators will be able to anticipate with 2 years (or almost three, depending on timings) notice. The liability will be seen as a sunk cost to which the generator will aim to obtain some value through either trading it on or generating on an opportunity basis. It will force generators to hoard, rather than release TEC.

We hope that you will find these comments helpful. If you have any queries please do not hesitate to contact me.

Yours sincerely,

David Scott
Electricity Regulation, Energy Branch

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Reference	CAP131-CR-08
Company	Energy Technical and Commercial Services Ltd

ENERGY TECHNICAL & COMMERCIAL SERVICES LTD

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29 March 2007

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

Dear Ms Viney

Amendment Proposal CAP131: User Commitment

Thank you for the opportunity to comment on this consultation. This response is made by Energy Technical & Commercial Services Ltd, a specialist adviser to clients in the energy industries many of whom are affected by the proposals in CAP 131.

My comment is on the specific issue of making existing TEC Users pay two year's TNUoS (as a User Commitment Charge) where an intended TEC reduction has not been notified to National Grid with two full years notice. It is thus relevant for Working Group Alternative Amendments A1, A2 and A3 only.

In the consultation report (paragraph 3.22) it is stated that *"in the event an existing TEC User reduces TEC without providing National Grid with 2 years notice, the TEC User would be liable to pay 2 times the generation TNUoS tariff (or modulus of the tariff in negative charging zones) multiplied by the reduction in capacity."*

In actual fact, it is very unlikely that the user will have to pay just 2 years additional TNUoS, and it could be up to nearly three years. This is because the charging statement (Use of System Methodology Statement) says *"The Chargeable Capacity for Power Stations situated in positive charging zones is the highest Transmission Entry Capacity (TEC) applicable to that Power Station for that Financial Year"*. Therefore for a station to have to pay just two years TNUoS on the amount of TEC reduction, the notice would have to be given at the very end of a Financial Year. If the notice was given at say, the start of Financial Year 2007/08, the two years notice would not expire until some way into April 2009 and the user would be liable for TNUoS in 2007/08, 2008/09 and 2009/10. I thus consider the proposal to be misleading and that NGET is seeking a greater financial commitment from Users than is apparent from the report and earlier documents circulated on this matter.

ENERGY TECHNICAL & COMMERCIAL SERVICES LTD

If any of the Working Group Alternative Amendments A1, A2 and A3 are approved by the Authority, NGET should, or should be required to, change the charging methodology so that the liability for two years' TNUoS starts from when notice is given, not from the start of the next Financial Year.

Yours sincerely

A R Cotton

Reference	CAP131-CR-09
Company	E.ON UK



Beverley Viney
Amendments Panel Secretary
Electricity Codes
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13 April, 2007

Dear Beverley,

CAP131: User Commitment – Consultation Document

Thank you for the opportunity to respond to the above consultation document. E.ON UK supports the changes proposed in CAP131 in as much as it applies to new connections. However, we do not believe that the proposal to apply a capacity reduction charge to existing power stations is necessary and indeed may prove counterproductive.

E.ON UK expressed its concerns about the present Final Sums Liability (FSL) provisions publicly at Ofgem's price control review seminar in February 2006. At that time we suggested that there were two issues affecting new connections; consent risk and third party risk. Consent risk arises under the existing FSLs because new connecting parties are often required to underwrite large amounts of transmission infrastructure costs prior to achieving the necessary consents for their projects. Third party risk arises as parties entering and leaving a cluster of generation projects can significantly alter the liabilities of the others in the cluster. We supported National Grid's interim solution to these issues. Whilst not the full solution we would have liked to have seen, it went a significant way towards addressing both consent risk and third party risk for newly connecting parties.

CAP131 builds on these interim arrangements to provide a long term enduring solution. Our views on various aspects of CAP131 are as follows. A number of these elements are common to all of the CAP131 proposal options whereas others will relate to some of them.

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User Commitment Amount, Cancellation Amount and Trigger Date

We agree with the principle of the User Commitment Amount. This is similar to the solution we proposed in early 2006 whereby a new connecting party would be exposed to a nominal fixed £/kW charge prior to achieving the necessary consent for its project. We agree that this amount should step up from £1/kW each year after the date of the relevant offer up to £3/kW in a similar manner to the interim arrangements. Not only does this reduce the consent risk issue, it requires all projects to put forward collateral which should discourage frivolous applications for transmission capacity.

On balance we support the trigger date defined in the proposals. Our preference would have been for a date related to the consent of the projects themselves, as this is the driver of the consent risk issue which we identified. However, a date related to transmission consents is an improvement on the present arrangements and is largely in line with the interim model.

Having been involved with the working group assessment process and having seen the analysis that National Grid has carried out, we are comfortable with the proposal to set the Cancellation Amount to a percentage of 6 years' TNUoS charges. Our original proposal was to set the charge on the basis of a fixed profile representing the project's share of the clustered works anticipated when the offer was made. However, the interim proposal introduced a profile based on an increasing percentage of 10 years' TNUoS charges. This has a similar benefit of fixing the level of liability at the time when the offer is made, so that third party risk is removed. As the CAP131 proposal is consistent with the interim arrangements, we are comfortable with this element too.

Applicability of the arrangements

We agree with the principle that the arrangements should only apply to those generators with Construction Agreements. This view is derived from practicality rather than principle. With a generic approach it is not necessary to link the liability with an actual requirement to undertake works in each individual instance. The point of a generic approach is to share the risk across the community of new connecting parties so that individual parties are not hit by deep liabilities for infrastructure which will ultimately benefit other generators connecting at later dates. However, the approach adopted for CAP131 avoids the requirement to create a separate "User Commitment Agreement" to implement the provisions of the proposal for generators without Construction Agreements.

We also agree that the arrangements should not apply earlier than 7 years prior to the date that the relevant transmission capacity is to be made available. We believe that it is highly unlikely that the transmission companies will be undertaking reinforcement work to accommodate connections further ahead than this.

User Commitment Charge

One element common to the original CAP131 proposal, along with Working Group Alternative Proposals A1, A2 and A3, that we do not support is the introduction of a User Commitment Charge for existing generators who give less than 2 years' notice of a reduction in TEC. We do not see why such a charge is necessary. We can see the rationale for the other elements of the CAP131, which address the possibility of new connecting parties failing to commission and thereby creating stranded assets. However, existing generators who wish to reduce TEC will generally have used the system for many years and will have paid for the reinforcements originally required to accommodate them through the charges that they paid during this time.

National Grid's rationale for the charge is to improve the information it receives on closures. However, we believe it highly unlikely that such a charge will make a difference in this respect. There are two more likely outcomes. The most likely outcome is that the charge will be such that it does not alter the generator's closure decision which is driven more by other factors such as fuel and electricity prices. In these circumstances the charge will simply act as a penalty.

Alternatively, in more marginal cases, a generator may give the two years' notice required and then choose when to close within that period later, dependent on market factors. The TNUoS charges for the two year period would effectively be a sunk cost. Therefore, it would no longer have a bearing on when within that two year period the station closes. In more marginal cases this could have the effect of delaying the decision to close for a year or two as avoided TNUoS is no longer part of the decision.

This means that at best National Grid would only be aware that a station will close sometime within that two year period. At worst, a decision to close could be delayed as a result of the imposition of the User Commitment Charge. When a generator closed prior to the official end to its TEC, it is debatable under the CAP131 proposals whether this could be reallocated to other generators by National Grid, as the TEC would still presumably reside with the generator who would be able to sell on to another generator through a TEC trade. This could result in the relevant TEC becoming sterilised.

Therefore, we believe that the charge is likely to be ineffective and indeed in some circumstances prove to be counterproductive. This is an important consideration at a time when access to the system is very limited. Older plant should be encouraged to disconnect from the network when it is economically correct to do so. We should not put in place charges which provide artificial incentives to delay such a decision.

Capacity Reduction Charge

We do not support the proposal, common to Working Group Alternative Amendments A1, A2, B1 and B2, to introduce a Capacity Reduction Charge for applicants who reduce the size of their TEC applications prior to the completion date. We understand the rationale for the charge, but on balance believe that it could be

counter productive rather than helpful. Developing a new power project is a complex process and there are a number of issues which can cause a developer to revise the size of TEC it needs, such as planning considerations or the availability of turbines. In the present situation where there is a significant queue of projects wishing to connect, we believe that it is important that developers feel able to revise their required TEC downwards without fear of a financial penalty.

We understand the argument that the risk of such a charge should in theory provide the generator with an incentive to put forward a realistic capacity request at the time of application. However, we have no reason to expect that unrealistic applications have been made under the existing arrangements. Our concern is that, having made applications in good faith, participants will be punished for making revisions which will be beneficial for resolving the GB queue.

Use of Generation Investment Zones for Calculation of Cancellation Amount

We do not support the use of Generation Investment Zones to rezone the TNUoS tariffs used for the calculation of the Cancellation Amount. The concern expressed with the use of conventional TNUoS zones is that two generators within the same zone could trigger very different levels of transmission reinforcements, but would be exposed to the same rate of liability. We believe that this is simply a feature of a generic approach and is likely to be the case with any zoning criteria, unless the zones are so small that they include only one node each.

It is inevitable that changing to a new generic approach will create winners and losers. This alternative will just create a different set of winners and losers from the original. This option will however be more complicated to put into practice as specific zonal TNUoS charges will need to be calculated each year solely for the purposes of the Cancellation Charge. It will also arguably be less transparent making it more difficult for prospective generators to assess the likely liability they will be exposed to if they choose to build a plant at a particular location.

Assessment of the Alternative Proposals against the Applicable Objectives

Having given our views on the different design elements of the proposal, our views on whether each of the Working Group Alternative Amendments better meet the applicable CUSC objectives are set out below.

Working Group Alternative Amendment - WGAA A1

We believe that this better meets the applicable objectives. The improved arrangements for new connections and increases in TEC remove a barrier to entry which presently exists. This benefit is offset to some extent by the existence of the User Commitment Charge for existing generators and the Capacity Reduction Charge for reductions in TEC required prior to the completion date. However, we feel that on balance WGAA A1 is better than the present baseline.

Working Group Alternative Amendment - WGAA A2

As we state above, we do not support the use of Generation Investment Zones to rezone the TNUoS tariffs used to calculate the Cancellation Amount. As this is the only difference between this alternative and WGAA A1, then we believe that this is a worse option. On balance we believe that this WGGA is slightly worse than the present baseline.

Working Group Alternative Amendment - WGAA A3

This option is better than WGAA A1 as it avoids the detrimental effects of the Capacity Reduction Charge for reductions in TEC made prior to the completion date. Therefore, we believe that this alternative is also better than the present baseline.

Working Group Alternative Amendment - WGAA B1

This option is better than WGAA A1 as it does not include the User Commitment Charge for existing generators which we do not support. Therefore, we believe that this alternative is also better than the present baseline.

Working Group Alternative Amendment - WGAA B2

This option is better than WGAA A2 as it also does not include the User Commitment Charge for existing generators. This improvement is sufficient to offset the detrimental qualities of WGAA A2 to the extent that we believe that this alternative is better than the present baseline.

Working Group Alternative Amendment - WGAA B3

This option is better than WGAA A3 as it does not include the User Commitment Charge for existing generators. It is therefore better than the present baseline. This is the best option in our opinion, as it also does not contain the Capacity Reduction Charge for reductions in TEC made prior to the completion date.

In summary our position on each of the alternatives is as below

Working Group Alternative	Better than baseline?	Preference
WGAA A1	Yes	5 th
WGAA A2	No	6 th
WGAA A3	Yes	Equal 3 rd
WGAA B1	Yes	2 nd
WGAA B2	Yes	Equal 3 rd
WGAA B3	Yes	1 st

I hope that the above comments prove helpful.

Yours sincerely

Paul Jones
Trading Arrangements

Reference	CAP131-CR-10
Company	Fairwind

FAIRWIND (ORKNEY) LTDFAIRWIND STATKRAFT (ORKNEY) LTDResponse to CUSC amendment proposal CAP 131 User CommitmentA consultation exercise by National Grid

We have 3 main issues with the proposal as it stands:

- 1) The apparent anomaly of an embedded large generator signed up as a BEGA but who may – as result of this amendment – be left in the old final sums regime for a significant part of its transmission works (under the DNO) in addition to being forced to go to the user commitment model for the remaining part of its transmission works (through NGC).
- 2) A BEGA party caught in the above anomaly will also be expected to pay a fixed rate User Commitment Charge – for part of its transmission works through NGC whilst also securing final sums on a six monthly basis with the DNO – all prior to the ‘trigger’ date.
- 3) The proposed A1 version – favoured by NGC – charging new TEC holders for reducing TEC after the ‘trigger’ date for Cancellation Amounts, in the way described, is draconian and will lead to a significant barrier to entry to the grid for renewable projects.

Discussion

- 1) The apparent anomaly of an embedded generator.....

The proposal for the CAP amendment produces the apparent anomaly of leaving certain parties in a potentially deleterious position relative to other parties using the transmission system. In the case of a party signed up for TEC through a DNO as a BEGA it will be left in the old final sums regime – payable to the DNO – and at the same time paying sums to NGC through the new User Commitment scheme. Part of the reasoning to move connecting parties to the new regime was to allow greater transparency and certainty for projects, which may otherwise have been liable for variable final sums with no particular limit. This opportunity will be denied to parties caught in the anomaly, which could act as a strong disincentive to investment, and consequently act as an unfair barrier to access to the transmission system.

- 2) A BEGA party caught in the above anomaly will also be expected to pay a fixed rate User Commitment Charge

The reasoning for the levy of a User Commitment Charge on a party signing up for a connection to the grid and requiring works is given as the need to ensure that the party is serious about its long term plans to connect. By opening up an immediate liability to that party and the fact that the level of the charge is directly related to the TEC

applied for ensures that there is a disincentive to overestimate TEC. The User Commitment charge is not, however, designed to be reflective in any way to the cost of the infrastructure works required – but is an annually recurring and incremental (maximum over 3 years) non-returnable fee (in case of termination).

A party caught in the anomaly described in (1) is also further and adversely affected by the need to pay this incremental deposit on the one hand (to NGC) in respect of part of its works, whilst on the other hand paying 6 monthly final sums (which may well be in advance of the ‘trigger’ date for Cancellation Amounts) to the DNO.

As the reason for the User Commitment Charge is as a deposit only – then the party stuck in the anomaly will, in effect, be paying 2 ‘deposits’ – due after signing up with NGC and the DNO. The user Commitment charge to NGC plus the first 6-monthly final sums amount to the DNO. Unless there is a guarantee that the 6 monthly final sums demanded by the DNO is zero until the agreed trigger date for the whole transmission works, then the party would experience a significant disadvantage to other parties connecting to the system and with rights to use the system. As the DNO may not be in a position to guarantee to keep final sums to zero over this period (the User Commitment period) then the only other recourse – to ensure fairness – would be to set the Use Commitment Charge, for parties caught in the anomaly, to £0 per kW for each year.

3) The proposed A1 version

FSOL disagrees with version A1 but agrees with version B3 with respect to the proposed Capacity Reduction Charge Prior to Completion of works. As it is described in the consultation document if a party to a connection agreement were to reduce TEC, for any reason, even 1 day after the trigger date – then they would be liable for the whole of the Cancellation Charge for that portion of TEC – as though it was year 1 (on count-back from completion) – thus 100%. According to the equation quoted:

$$\text{Capacity Reduction Charge (t)} = \text{Cancellation account} - [\text{TECr} * \text{Gen TNUoS} * X * T(1)]$$

We see no reference to the count-back T relating to the actual time of reduction relative to the count-back.

NGC seem to be driven to reducing the GB queue of those with agreements to connect to the UK transmission system. It seems as though the GBSO is determined to use this very blunt instrument in an attempt to reduce the queue capacity. In the view of FSOL this proposed charge is wrong headed and could lead to significant barriers to investment in generation from renewable energy sources – and especially with those reliant upon new technologies.

The GBSO does not need to use such an instrument as it already has a very powerful tool as its disposal, in that a party who reduces its TEC to an extent that the works planned are no longer necessary, or would be redesigned to an extent which would adversely affect other users, can be subject to a mod app. This may well lead to the termination of the party with consequent requirement to pay for the Cancellation Charge in respect of all TEC – AT THAT TIME.

If the proposal version A1 were to be adopted then this would add a further, and probably critical, disincentive to parties to voluntarily reduce TEC (which would then be available for others) as they would be faced with a swingeing fine.

The proposal discriminates against those contracted parties who cannot be sure of the amount of CEC they will be able to build – thus directly relating to eventual TEC, until nearer the time of construction. Such parties will typically include those with windfarm projects (onshore and offshore) and those with marine renewables projects. Such parties are subject to uncertainty in planning, and the availability of the technology (as orders must be made significantly in advance, and which generation profiles may well change).

The proposal works contrary to the Government target for generation through renewables, and discriminates – de facto – between CUSC parties.

Dennis Gowland

Director

13.4.07

Reference	CAP131-CR-011
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Beverley Viney
Amendments Panel Secretary
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA

4th April 2007

Dear Ms Viney

Amendment Proposal CAP131: User Commitment

Thank you for the opportunity to comment on this consultation. This response is made on behalf of Channel Energy Limited, a CUSC party that is a joint venture between DONG Energy A/S (DONG) and Farm Energy Limited (FEL).

Channel Energy Limited has initiated the development of two large 1.5GW offshore wind energy projects in the South West. Whilst the DTI and The Crown Estate have not yet announced their timetable for a further round of offshore wind, DONG / FEL are concerned to ensure that they have sufficient time to carry out responsible investigations of the two sites. FEL was the originator of the London Array development in the Thames Estuary in 1999. DONG has partnered FEL since 2003 on the London Array and has substantial other offshore wind interests in UK waters. Both companies have direct experience of the timescales and complexity of offshore wind power development. We believe that a grid connection provides necessary comfort for significant development funds to be deployed. Indeed it would be difficult to commit to the early stage development work where this was not the case.

Whilst we appreciate the context and rationale for the new user commitment proposals, particularly the need for a demonstrable financial commitment, we believe that the current modification proposals send inappropriate investment signals to developers operating in areas of the UK that are unconstrained. Those signals are likely to deter developers from initiating large scale projects because the early financial commitments are too high and cannot be justified in the particular locations since little or no reinforcement is needed.

Consultative amendment proposal

We propose that the User Commitment Amount be flexed to incentivise generators to develop projects in areas of high opportunity as defined in the Seven Year Statement. Thus areas designated:

High or Very High areas for investment opportunity	30% of the £1, £2 or £3 proposed per kW charge
Medium areas	60% - " -
Low and Very Low areas	100% - " -

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Provided that should an area change its investment opportunity status, the User Commitment Amount would be amended to the appropriate charge for the new designation. The Capacity Reduction Charge for the User Commitment Amount would be amended accordingly.

Where the Cancellation Amount applies, this would be flexed in a similar manner, ie the required amendment is to change the formula for the Cancellation Amount in paragraph 3.13 such that:

$$\text{Cancellation Amount} = \text{TEC} \times \text{GenTNUoS} \times P \times X \times T_i$$

Where "P" is the proportion 30%, 60% or 100% for the investment opportunity area as set out above. The formulae for CA Year -4 to CA Year -1 in paragraph 3.15 and the calculation of the Capacity Reduction Charge in paragraph 3.16 would be changed accordingly.

In the view of Channel Energy Limited, these changes should be made to each of the proposed Working Group Alternative Amendments. We believe that this proposal is more consistent with:

- Achievement of DTI targets for deployment of renewable energy because it incentivises developers to operate in areas with high potential for connection of new generation
- Obtaining a measure of cost reflectivity for National Grid's own commitments within these areas where significant reinforcement is not required.

Therefore this proposal would better meet the applicable CUSC objectives, in particular the facilitation of effective competition in the generation and supply of electricity.

Yours sincerely



Michael Huntingford
Channel Energy Limited

Cc Mr Gert Hemmingsen, DONG Energy A/S

Reference	CAP131-CR-12
Company	First Hydro



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13th April 2007

Dear Beverley

CAP 131 User Commitment Consultations

International Power (IPR) is responding to your CAP131 User Commitment modification consultation on behalf of First Hydro Company, Saltend Cogeneration Company Ltd, Rugeley Power Ltd, Deeside Power Development Company Ltd and Indian Queens Power Ltd.

The transmission access arrangements based on the Final Sums methodology that have existed for a number of years have led to difficulties following a significant increase in the number of smaller MW applications. Many relatively small wind projects have been required to underwrite large TO investments in time scales incompatible with planning horizons.

This proposal and the various alternatives seek to address these defects by putting in place arrangements that will reduce the hurdles that new projects face to gain Transmission Entry Capacity on the system.

Whilst we agree with the need to address these defects, we have particular concern with the aspect of the proposals that seeks to impose additional user commitment on existing generation via a two year notice period to reduce TEC. We believe that this would simply add a two year time lag to decisions to reduce or close power stations. This would not encourage effective or efficient use of the system as it would potentially sterilise capacity for two years which could effectively be used by other parties.

We support Alternative B2 which we believe is better than the current baseline (CUSC provisions) for the following reasons:-

- It provides user commitment following application of up to £3/kw this will reduce the level of speculative applications.
- It provides a significant level of commitment following the TO commencement of significant works up to 10 x the TPRC zonal TNUoS. This security commitment will ensure that when the TO invests there is a significant financial commitment from the user.



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INVESTOR IN PEOPLE

- The proxy used for final sums is designed to secure 50% of the current level of final sums. This shares the overall risk with the customer but it is likely that any surplus investment will be subject to re-use by other projects.
- The proxy used is based on the TNUoS charging methodology but with the Charging zones replaced by the TPRC zones. The TPRC zones reflect zones where similar costs are incurred by the TO for reinforcement and we believe these provide a more appropriate charge. Projects that impose similar reinforcement costs will be subject to similar charges.
- Projects that request a reduction in the level of TEC prior to completion are subject to a charge. This will encourage projects to finalise their TEC requirements early in the application process rather than applying for the maximum possible capacity and reducing capacity as the project progresses through the planning and engineering process. This will ensure that the TO does not make uneconomic investments decisions by building surplus capacity.
- There is no change to the notice period required when connected generation reduces its TEC. We do not believe that increasing the user commitment period for existing generation will provide additional information to the TO. We believe that a two year notice period for TEC reduction would simply add an additional two year delay to the TO being able to access released capacity. Introducing change in this area does not, in our view, address the identified defects.

The table below summarises International Power's views on the alternatives that have been put forward by the working group and identifies our preferred alternative B2.

	Description	Rank	Comment
A1	NG modified Proposal	4 th	
A2	NG Proposal with TPRC zones	2 nd	New projects in the same investment zone should be subject to a similar charge
A3	NG Proposal with no TEC reduction charge pre completion	6 th	Generation should be incentivised to apply for an appropriate level of TEC to ensure the TO does not over invest in infrastructure.
B1	NG Proposal with no TEC reduction charge post completion	3 rd	TEC reduction charge will provide NG with no additional information and will be a barriers to releasing capacity.
B2	NG Proposal with TPRC zones and no TEC reduction charge post completion	1st	New projects in the same investment zone should be subject to a similar charge This option has no TEC reduction charge and so should not delay reuse of surplus TEC.
B3	NG Proposal with no TEC reduction charge pre and post completion.	5 th	Generation should be incentivised to apply for an appropriate level of TEC to ensure the TO does not over invest in infrastructure.

Yours sincerely

Simon Lord
Transmission Services Manager

Reference	CAP131-CR-13
Company	Immingham CHP

Beverley.Viney@uk.ngrid.com

CUSC Amendment Proposal CAP131 – User Commitment

This letter constitutes the response of Immingham CHP (IChP) to the consultation document issued by National Grid on 16 March.

IChP supports the concept of formalising user commitment as an alternative to the current final sums regime, which is penal, anti-competitive and is no sense cost-reflective. We are also keen to identify an approach that combines establishing an orderly connection and disconnection process with recognition of existing contractual rights and the intended properties of the TEC-based access regime.

Of the seven options presented, we do not support the original as revised rules should only apply where National Grid assumes new risks through the need to construct transmission works and where such works are required to deliver an increase in TEC. We also believe that, in the interests of simplicity and understanding, the arrangement should apply only to TEC and not CEC. All of the alternatives exhibit these properties.

Of the alternatives we support only those that do not levy a capacity reduction charge. As presently defined TEC provides an existing connected party effectively with an evergreen option on capacity in return for payment of TNUoS up to the appropriate level. This property right is contractually underwritten. A party reducing TEC already faces significant sanctions as it in effect is giving up its option and reducing its contractual rights. The capacity returned can of course also be rebooked by a competing party, which is conducive to facilitating competition.

A capacity reduction charge is also detrimental as it could create incentives on parties to retain rights on capacity that they may not ordinarily require.

The position is not comparable between a new user seeking commitment and an existing generator with commitment, and it would be inappropriate to try to establish symmetry between the two classes of user. Under all the alternatives cancellation amounts only bite where new reinforcement works are needed. If many cases a connected party reducing its existing TEC is likely to mitigate investment requirements on National Grid. The proposed change to introduce a cancellation amount in such circumstances effectively constitutes a retrospectively-applied penalty, which was not envisaged when TEC was originally implemented.

We recognise, however, that there is a need for a much more orderly process for notifying intentions and capacity reservations for existing as well as new users. The increased information and transparency this will introduce should have a very beneficial competitive effect and enable parties to make much more rationale decisions. In turn this should deliver real efficiency gains with regard to the operation and development of the transmission system. There are risks that generators will elect to ignore notice requirements unless the charges were set at a high enough level to be a real deterrent.

Combining these desirable features we believe it creates an alternative model similar to B3 but with notice requirement as envisaged under alternative A1.

We also believe some modification of all these options is needed to take on board two additional factors:

- first that cancellation payments for new users should be refundable where no new works are in the event not required; and
- second there should be similar relief where assets commissioned are subsequently utilised.

We would note that the current proposals do not address the issue of compensation in the event that firm capacity is commissioned but not available, and this matter requires urgent consideration.

With regard to the draft legal text, we would wish to see one change. This is at page 34 of the consultation report and the explanation of the "trigger date". The trigger date is a key mechanism, at which point potential liabilities for the prospective user can begin to ramp up considerably. It is important that this issue is not left to bilateral negotiation and that there is a clear conditionality on formal planning consents having being issued.

We would be happy to provide further comment and clarification as necessary.

Kirsten Elliott-Smith
Immingham CHP LLP/ ConocoPhillips (U.K.) Limited

Reference	CAP131-CR-14
Company	Magnox



13 April 2007

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Direct tel: 01453 81 3631
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Your ref:
Our ref: dmw

By Email

Dear Beverley

**Consultation Document for CUSC Amendment Proposal CAP131 (Issue 1.0, 16 March 2007)
- User Commitment**

This letter is the response of Magnox Electric Ltd to the above consultation document. Magnox Electric currently operates two nuclear power stations (Oldbury and Wylfa) and one small hydroelectric power station (Maentwrog) on behalf of the Nuclear Decommissioning Authority. It also operates a number of other directly connected demand sites.

We understand the problems that have arisen with the "GB queue", and the difficulties that are now being encountered with the very large number of separate connection applications and agreements for new generation, many of which interact. A lot of the difficulties are due to the large number of proposed projects which almost certainly will not proceed to conclusion, and the reluctance of project developers to terminate agreements for such projects because of the perceived value of a place in the queue. Consequently we support measures to thin out the queue of new connections and allow earlier connection for new generation, provided these measures do not adversely affect existing users. CAP 131 is an attempt to introduce some such measures.

Overall we believe that alternative amendment B1 best facilitates the relevant CUSC objectives; our reasons are given below.

Desirable Outcomes

The desirable outcomes of a change to the CUSC would be:

- Developers are discouraged from making connection applications for new generation which are purely speculative (i.e. paper projects which merely reserve capacity in the hope of selling it on).
- Developers with existing connection agreements for new projects which cannot proceed are encouraged to terminate them at the earliest opportunity.
- Developers of new generation projects do not apply for a greater TEC than they can realistically use.

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- Where a new generation project needs significantly less TEC than was applied for, the developer has an incentive to reduce TEC at the earliest opportunity, and not to hoard it.
- Existing generation has an incentive to relinquish unneeded TEC as early as possible.
- Existing users do not see a material increase in TNUoS tariffs as a result of the shift of risk to all users.

Our Views on the Requirements for New Generators

We believe that all the proposed amendments achieve the first two desirable outcomes listed above. Alternative amendments A1 and B1 better facilitate the CUSC objectives than alternative amendments A3 and B3. This is because A3 and B3 do not place any incentive on developers to minimise the TEC they apply for or to relinquish unneeded TEC as early as possible (third and fourth desirable outcomes listed above). Instead the incentive is to keep the maximum TEC until shortly before the completion date, and then relinquish it.

We do not have strong views on the relative merits of A2 and B2 compared with A1 and B1. The difference between TNUoS tariffs and tariffs based on Investment Zones may produce perverse incentives. Consequently we believe that A1 and B1 are marginally better than A2 and B2.

There is a defect in all the amendments with regard to generation projects which have a completion date more than 7 years ahead. We agree it would be unreasonable to require greater commitment from projects where no completion date can be given. But where a completion date can be given, the amendments as proposed effectively allow capacity to be reserved free of charge until 7 years before that date. This is undesirable.

If the incentives do not work as intended, and a lot of projects are cancelled late, there is the possibility of a significant amount of stranded assets. As the various proposed amendments shift approximately 50% of the liability to all users, there is the potential for a material increase in TNUoS tariffs affecting all users. This has not been properly quantified in the documents, but we believe the risk is small. We expect that if the one of the amendments is adopted then the effect will be closely monitored, to allow early warning of such an undesirable outcome

Our Views on 2 Years Notice for TEC Reduction

We do not believe that the imposition of a charge on existing generators who do not give 2 years notice of reduction in TEC will necessarily encourage earlier release of TEC, and so does not better facilitate the CUSC objectives. Consequently, we support the B amendments in preference to the A amendments or the original amendment. This view is partly based on our own experience. Last year we reduced the TEC in the final year of operation of two of our stations. I am sure we would not have done this if we had been required to give 2 years notice or pay a charge for 2 years for making the reduction without such notice. Similarly two years ago we made a reduction in TEC at another of our stations which will be effective for a number of years; if the proposed rule in the original amendment or the A amendments had been in place at that time, we would have given two year's notice, and the actual TEC reduction would have taken place two years later than it did. We understand from other generators that closure decisions for conventional

thermal plant are generally taken as late as possible for good commercial reasons, so again the effect of the proposed 2 year notice period will probably be to delay release of TEC by 2 years.

In addition, the imposition of the charge in negative charging zones does not work at all. Faced with the option of paying the modulus of twice the annual TNUoS charge and releasing TEC immediately, or giving two years notice and keeping the TEC for 2 years while not generating, almost all generators will choose the latter option, as it is much cheaper. Again, the release of TEC will be delayed 2 years by the proposed charge. It does not seem sensible to include in the CUSC a penalty rule that just does not work.

For these reasons we strongly believe that the proposed requirement for a two years notice period for TEC reductions, or a penalty charge, is actually a "tax" on closure, and not a means of encouraging early release of TEC. A further point is that the proposals for new generation shift around 50% of the risk of stranded expenditure and assets from developers of new generation to all exiting users. It does not seem reasonable that existing generators should be exposed to both this additional risk and a further financial penalty for not giving early notice of TEC reduction.

Overall, we believe that the alternative B amendments all better facilitate the CUSC objectives than the alternative A amendments or the original amendment.

Conclusions

Combining the views expressed above, overall we believe that proposed alternative amendment B1 best facilitates the relevant CUSC objectives, provided that it does not lead to a material increase in TNUoS tariffs for all users.

We believe that in addition to CAP131, National Grid must look at other measures to manage the GB queue, such as requiring evidence from applicants and holders of connection agreements that they actually have some contractual entitlement to use the land or sea where their planned project is to be built, evidence that they are preparing or making a planning application etc. We would support such measures. We note from the open letter from Phil Collins to industry participants dated 26 February 2007, that National Grid is moving in that direction.

I hope our comments are helpful; they are not confidential. I would be happy to discuss them further.

Yours sincerely

David M Ward
Grid Interface Engineer
Operational Programmes
david.m.ward@magnox.co.uk
On behalf of Magnox Electric Ltd

Reference	CAP131-CR-15
Company	Natural Power

Response to national grid consultation : CUSC Amendment Proposal 131.

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e- mail : Jeremy@naturalpower.com

To: Beverley Viney,
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Date : 13th april 2007-04-13

Natural Power Consultants Ltd (NPC) are a renewable energy consultancy based in South West Scotland, but with offices in Canada, France, Wales and project work throughout Europe. In the UK market NPC have consented over 700 MW of renewable capacity of which 180 MW is operational, over 350 MW is in construction and the remainder is delayed by grid connection issues. In addition NPC are actively representing over 300MW within the planning system. NPC also run an asset management service for clients which is managing over 280 MW of operational projects.

NPC thank National Grid for the opportunity to respond to the above consultation and make the following comments having discussed the issues involved with several clients all active within the UK market.

Summary.

NPC do not agree that any of the proposed options create a fair balance without further clarification and amendment. Of the options presented NPC believes A3 represents the best fit for a balanced Final Sums Solution.

Basic Objectives.

NPC agree that the current system for dealing with Final Sums Liability (FSL) is out of date and in need of review. National Grid deserve congratulations on the way they have conducted the process for change to date. It is a good example of industry participation, supported by Ofgem.

Any new system should however look to deliver clear investment signals, with appropriate levels of user commitment, leading to the construction of fully utilised grid assets; in the most cost effective way within the existing SQSS and other codes. In this the rights of existing and new generators should be properly balanced to give a proportionate split of risk and information, which will facilitate good management and investment decisions.

NPC agrees with the three arrowed points in para 3.3 on page 4 of the consultation, however do not think the panel (which has a difficult job to do) has discussed all the points made by panel members, and robustly measured them against these objectives.

Options A and B

In creating options A and B it appears the discussion revolved around the current 5 day notice period, a new 2 year option and one of 6 years. It is clear to NPC that the 2 year option is unlikely to be supported by existing large users, who see this as a new cost, imposed over a longer than acceptable time frame.

On the other hand National Grid (NG) make a very valid point in relation to managing existing and new capacity as efficiently as possible, against a background of lower plant margins and a need to replace up to 30% of existing generation plant before 2020. It seems the old rules were devised under different market conditions and therefore should be revised.

Why was a period of 1 year not discussed by the panel? NPC would see this as sensible compromise and one which would not lead to existing players having to make large contingencies.

In light of this NPC support A3 as an option with a proposal that 2years is changed to 1 years notice for reductions in TEC rather than the existing 5 days.

Further Analysis of NPC's preferred Option A .

Dealing with bullet points 1-8 within the table of options on page 20 of the consultation NPC would make the following comments.

NPC agree with the principles outlined in points 1-5 inclusive.

Bullet point 6 Trigger Date.

NPC accept that under the existing background framework, where generators and NG discuss the Trigger date within the Construction Agreement and then modify both capacity and dates to suite the progress of the project and the grid infrastructure through planning and construction, is a constructive and fair process; however there are a number of points listed within the NG "Open Letter" which would change the background to the current framework. The industry has learned, to its cost, from the BETTA process, that dealing with consultation responses in isolation of the changes that are going on around them, leads to increased work, potential discrimination and unreasonable delays in proposing new amendments to readdress the new framework.

For example, if the open letter changes the rules allowing NG to only allow a delay in the commissioning date of a project where another generator cannot use the capacity; there will be no delays permitted in Scotland as there is a 10GW queue. This is a potential reversal of the current rules against which we are being consulted on today. With this in mind NPC propose a number of points which could be used today and equally apply in the event of the open letter coming into force.

- A trigger date should not be set until NG have planning in place for all the required infrastructure improvements, upgrades and new lines needed to connect the generator. (At the moment trigger dates can make a generator liable for penalties when the first part of a several phase upgrade is consented.) In this way both parties are much better informed on their projects final designs than when the initial connection agreement offer was agreed. This part also fits with the spirit of the open letter and an amnesty to generators on TEC reduction.
- Once all the required consents are in place, NG would serve notice on the generator to agree the trigger date, at which point the generator must commit to a trigger date (trigger date will be based on NG having a confirmed build timetable prepared) based on the capacity agreed by the generator and NG within those discussions.
- Once the trigger date was agreed both parties would only have very limited scope to alter the connection construction agreement. NG would be liable for constraint payments if they did not meet the timetable (free of planning risk) set in the construction agreement at the trigger date except in extreme conditions. The generator would be liable to the full 6 times TEC user commitment outlined in CAP 131 unless they could demonstrate matters out of their reasonable control had forced a change such as the unavailability of a certain turbine. In all events this discretion would not be greater than 25% of the agreed TEC as defined at the trigger date. This recognises the fact that the grid infrastructure may take 4 years to build and a generator may not be able to fix turbines in detail at the point of agreeing the 4 year timetable with NG.

These suggestions would increase the risk to the consumer of abortive planning costs, as these would be accelerated and done at the same time, instead of in sequence; however these additional costs at risk are minor compared with the possibility of generators ordering plant which cannot be constructed, or NG building grid which is under utilised, or even a stranded asset.

The purpose of the above suggestions are to fix a point in time when all parties know to a high degree of certainty how things should progress. This should be before NG commit to major expense, but after the planning risk is largely removed.

In conclusion, having discussed the CAP 131 proposal with clients and other colleagues within the industry NPC prefer option A3 to the others (with the reservations stated above), but strongly recommend that further work is done to ensure CAP 131 and the NG "Open Letter" timetables are harmonised so that Ofgem can allow the industry the time and courtesy of viewing them together, and decide on them together in the light of their interaction.

Reference	CAP131-CR-16
Company	RES



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12 April 2007

Beverley Viney
Amendments Panel Secretary
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Our Ref: ENG-000081

Dear Beverley,

Consultation Response - CAP131

Renewable Energy Systems Group ("RES") is a leading UK based developer of renewable energy projects. A wholly owned subsidiary of Sir Robert McAlpine Ltd, RES has developed and constructed over 1500MW of wind energy projects worldwide with a further 1100MW currently under construction. In 1992 RES developed the UK's second wind farm at Carland cross in Cornwall. RES has developed and constructed 200MW in the UK and has a UK portfolio of over 1000MW in various stages of development.

RES welcomes the opportunity to respond to the consultation on CUSC amendment proposal 131: User Commitment.

Summary

- Of the 6 alternatives proposed in the consultation, RES believes that Working Group Alternative A3 best meets the applicable CUSC objectives.
- RES believes that Working Group Alternative A3 can be further improved by replacing the £1/£2/£3 User Commitment element of the charges with security against the actual preconstruction costs of the local connection incurred by NG.
- RES proposes a Consultation Alternative Amendment to make this change to Working Group Alternative A3.
- RES believes that the trigger date (for moving from User Commitment to Cancellation Charges) should be set to a date which occurs after both NG and Generator planning consents are granted.

Introduction

RES supports proposals to replace the existing Final Sums Security arrangements with an alternative form of User Commitment. This was a key theme of the 2006 report from the Access Reform Options Development Group (ARODG). In addition RES acknowledges and appreciates the effort and resources provided by National Grid and members of the CAP131 working group in assessing this proposal.

However RES notes that the introduction of user commitment is not a universal panacea for new generators. It introduces its own set of financial risks that will be difficult to manage. In some cases the level of non-refundable charges for projects which would otherwise progress to construction but are still managing the uncertainties of the planning process will lead to their cancellation. This will hinder deliverability of targets for renewable generation for 2010 and beyond.

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Document Reference: ENG-000081

ENG-000081

Alternatives

This consultation document identifies 6 alternative proposals numbered A1, A2, A3, B1, B2, and B3.

User commitment for existing TEC Users

Alternatives A1, A2, and A3 require existing TEC users to provide a user commitment equivalent to 2 Years TNUoS charges. Alternatives B1, B2 and B3 do not.

RES supports the principle that both existing and new TEC users should provide a level of user commitment. The impact - on network design and planning - of a new generator is the same as the deferred closure of an existing generator. RES therefore does not support alternatives B1, B2, or B3

Use of TNUoS tariffs

Alternative A2 proposes that Cancellation amounts be calculated using rezoned TNUoS tariffs rather than the full TNUoS tariffs proposed in the other alternatives. This will require NGC to calculate and publish a new set of data solely for the setting of User Commitment charges. This will be less transparent than the existing process for setting TNUoS charges. NG has made the TNUoS charging calculator available to network users who are then able to verify the TNUoS charges. This independent verification would not be available with the use of alternative charging zones.

These disadvantages outweigh any perceived increase in cost reflectivity of charges.

RES therefore does not support alternative A2.

Reductions in TEC for new TEC users.

Alternatives A1 (and A2) include a capacity reduction charge which is intended to incentivise the most accurate applications for TEC at the outset. RES agrees with those working group members who believe that the capacity reduction mechanism would have the opposite effect and discourage new TEC users from notifying any reduction in their requirement for TEC. In our recent response to National Grid's open letter on management of the GB queue, RES argues that "*where a developer concludes that the requested level of TEC is no longer needed... there should be a positive inducement for the surplus TEC to be released.*"

Unlike conventional generation where the required TEC is unlikely to vary significantly in the final few years before connection, wind projects are subject to continual review until financial close particularly during the planning process.

The planning process typically does not identify the maximum MW capacity but instead concentrates on the number and height of the proposed turbines. Where a project is required to apply for grid connection in the pre-planning stage it is prudent to apply for the maximum anticipated network capacity. During the planning process it is not unusual for the number of turbines and/or their size to be reduced. In addition the availability of turbines is not known until the project has gained planning consent and is in a position to order turbines.

It is entirely possible for a project that was intended to consist of, for example, 12 turbines of 2.5MW each could finally consist of 8 turbines of 1.8MW each. In this example the requirement for TEC would fall from 30MW to below 15MW a reduction of more than 50%.

RES therefore supports Alternative A3 in preference to Alternative A1.

User commitment charges and cancellation charges

One feature of the current proposals is that there is a step change in the level of charges at the change from User Commitment to Cancellation charges. For a prospective generator in Northern Scotland (where TNUoS charges are £20/kW) this can be a 10 fold increase in security. RES is concerned that the timing of this change from user commitment to cancellation charges at 4 years out is likely to occur whilst projects are still at risk of planning process. This could lead to closure of a number of viable projects at the 4 year ahead

ENG-000081

stage, not because of any deficiency in the project but where the developer is unable to accept (or finance) significant additional non-refundable project costs against a planning risk largely outside his control.

RES notes that all the alternatives manage the change in risk profile for instances where National Grid has a planning risk. This is managed by use of a trigger date which is connected to NG planning consents. This has the effect of delaying the transfer from user commitment to cancellation charges until NG planning risk is crystallised.

This is an appropriate measure but should be even handed. RES believes that the trigger date should be set to a date which occurs after both National Grid and Generator planning consents are granted.

The level of user commitment

The setting of Cancellation charges to multiples of TNUoS has been analysed by the working group to assess the potential risk exposure of the risks associated with moving to a generic user commitment regime.

However RES believes there is less evidence to support the £1/£2/£3 /kW charges for user commitment. Whilst RES supports the principles of both user commitment and the increase in commitment over time, we believe that the proposed levels are essentially arbitrary and will not be cost reflective.

RES believes it would be better, and a more proportionate response, for new TEC users to secure the actual preconstruction costs (such as design and wayleaving costs) incurred by National Grid in providing the local connection assets.

Consultation Alternative amendment

RES proposes, as a Consultation Alternative Amendment, a variation of Working Group Alternative A3 but where security for actual preconstruction costs of the local connection are substituted for the £1/£2/£3 User commitment charges

We would be happy to discuss any aspect of this response further. Please address any queries to Richard Ford at Richard.Ford@res-ltd.com or by phone at 01923 299374.

Yours sincerely,

Andy Paine
Director of Strategy
RES UK and Ireland Ltd

CC: File

Reference	CAP131-CR-17
Company	RWE

RWE Trading



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12th April 2007E-mail: beverley.viney@uk.ngrid.com

CUSC Amendment Proposal CAP 131, User Commitment for New and Existing Generators – RWE Consultation Response

Dear Beverley,

Thank you for the opportunity to comment on the CAP131 (User Commitment for New and Existing Generators) Consultation. This response is from RWE and its relevant CUSC signatories.

RWE does not support implementation of CAP131 and any of the alternatives proposed by the Working Group. We do not believe CAP131 and its alternatives better meet the relevant CUSC objectives. Our concerns relate to the move away from fully cost-reflective liabilities for new connections and the introduction of the concept of risk sharing with customers, which we believe is a disproportionate response to potential issues with the current arrangements for access to the GB transmission system.

If any of the alternatives were to be implemented then our preference would be for Working Group Alternative B3 (CAP131 without the user commitment for existing users and without the capacity reduction charge) or Working Group A3 (CAP131 without the user commitment for existing users).

Our detailed comments on CAP131 are outlined below.

CUSC Objective (a) – “Efficiency”

We believe that CAP131 will impact on Objective (a) in the following ways:

- **CAP 131 and Cost Reflectivity:** The prospective arrangements under CAP 131 are not cost reflective when compared with the current baseline and will increase the risk of “stranded” investment in transmission assets or inappropriate charges that over recover costs for users that terminate agreements.
- **CAP 131 and “Risk Sharing”:** The evidence presented in the Working Group report in relation to the proposed level of “risk sharing” under CAP131

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(i.e. new users only underwrite a proportion of the investment liabilities) does not justify the attribution of costs to "other users" if users terminate connection agreements. CAP131 will result in less efficient outcomes for other users when compared to the current baseline.

- **CAP 131 and Market Signals:** CAP131 will make projects with connections that are remote from existing transmission infrastructure more attractive (lower risk) while making projects located close to existing infrastructure less attractive (higher risk). CAP 131 will, therefore, result in inefficient market signals in relation to investment in transmission infrastructure.
- **CAP131 and the Non Refundable Charge:** The non-refundable nature of CAP131 final sums will introduce inefficiencies in circumstances where assets are being reused or are capable of use at some point in the future. This also appears inconsistent with the requirement to offer terms that are cost reflective under NGET's transmission licence (in particular Condition C8 (4)).

CUSC Objective (b) – "Competition"

We believe that the arguments in favour of CAP 131 under Objective (b) are more finely balanced. There is no doubt that CAP 131 will reduce the risk for users associated with volatile final sums that arise from the current arrangements. However, CAP 131 will have a differential impact on projects that are seeking connection to the transmission system, creating both winners and losers. In this context a winner is a project with a current high level of final sums having a new agreement with a considerably lower level of final sums liability. The losers will be projects with low levels of final sums that will have significantly greater levels of final sums under the new arrangements.

Ongoing User Commitment

We recognise that the introduction of a firm ongoing User Commitment for existing users may be beneficial in relation to use of the transmission system (CUSC Objective (a)) but this may be offset by the fact that users will no longer have the flexibility to optimise transmission usage by reducing TEC at short notice in response to TNUoS charging signals (impacting competition, CUSC Objective (b)). In addition, we do not believe that a capacity reduction charge in relation to projects that vary TEC will facilitate CUSC Objective (a) since the current connections arrangements provide sufficient incentives on users to ensure that the level of TEC capacity is optimised (e.g. liabilities to pay TNUoS on the full TEC on completion)

RWE Consultation Alternative

RWE recognises that the proposal to manage the risks associated with volatile final sums liabilities is an important aspect of the CAP131 amendment proposal. RWE wishes, therefore, to propose a Consultation Alternative to CAP131 which maintains many of the features of CAP 131 but replaces the TNUoS multiplier with capped net final sums for a maximum four year period set at the time of the offer for connection. This alternative is described in Annex 1 to this letter. It is also worth noting that the arrangements under CAP131 RWE Consultation Alternative could also be applied to all new connections that require new transmission infrastructure, including embedded generation and associated distribution network connections.

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely

By email

Bill Reed,
Market Development Manager

ENC: Annex 1, CAP131 Consultation Alternative



RWE Trading

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

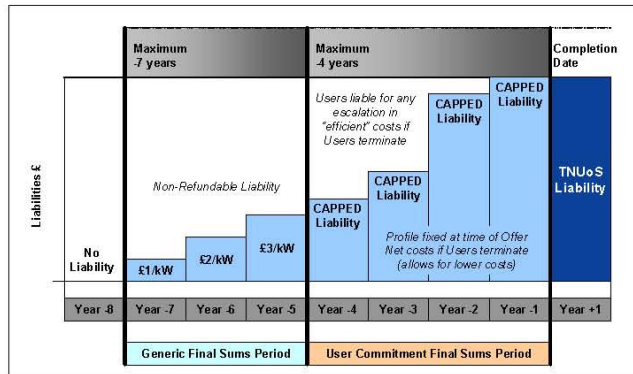
1 Introduction

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

2 The Alternative

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

Figure 1: CAP 131 RWE Consultation Alternative



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

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

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

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

Detailed Arrangements

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

3 Assessment against CUSC Objectives

3.1 Assessment against Objective (a) – “efficiency”

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

Implications for “Stranding Risk”

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

Market Signals

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

“Risk Sharing”

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

CAP131 Alternative and “economic and efficient” offers

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

3.2 Assessment against Objective (b) – “Competition”

Project Risks

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

CAP131 Alternative and Clusters

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

Reference	CAP131-CR-18
Company	Scottish Power Energy Wholesale



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Ref CAP131
Date Friday 13th April

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Dear Beverley,

CUSC Amendment Proposal CAP131: "User Commitment for New and Existing Generators"

Thank you for the opportunity to respond to this consultation document. This response is submitted on behalf of ScottishPower Energy Wholesale, which includes the UK energy businesses of ScottishPower, namely ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Energy Retail Ltd.

ScottishPower welcomes the removal of the uncertainty and volatility associated with the existing final sums liability arrangements and is generally supportive of the generic approach to securing infrastructure works. Overall, our preference is for Working Group Alternative B1, subject to certain reservations, as outlined below.

The use of a non-refundable liability should encourage users to define their requirements accurately at the time of application. The proposed methodology has the benefit of transparency and simplicity in the calculation of the value of the liability enabling developers to establish their commitments at an early stage. However, we have concerns over the ability of National Grid to move the Trigger Date and hence the profile of liabilities. National Grid should only have the power to delay the Trigger Date thus ensuring that developers are not required to seek additional finance.

The use of fixed generation zones (consistent with TPRC) for calculation of the liability would introduce an additional level of administrative complexity without resolving the underlying unfairness in the proposed methodology which will result in users in high TNUoS zones underwriting the cost of infrastructure works in low TNUoS zones. This is another example of where extreme differentials in zonal TNUoS prices are providing a perverse incentive to generators in areas of extremely limited transmission capacity to retain unused TEC - which cannot be traded under existing arrangements due to zero Exchange Rate values.

ScottishPower believe that the introduction of a Capacity Reduction Charge would neither act as a disincentive to notify National Grid of a reduction in TEC requirements nor encourage users to hoard TEC. An essential part of the management of the GB Queue is the encouragement of users to re-declare their TEC requirements as early as possible and this can be achieved through the introduction of a Capacity Reduction Charge accompanied by a short "amnesty" period.

ScottishPower do not support the introduction of a User Commitment Charge for existing generators who do not provide 2 years' notice of a reduction in TEC. Due to the difficulties in forecasting capacity requirements 2 years ahead, this proposal represents an additional sunk cost and would impact upon competition in the electricity market.

ScottishPower do not believe that the User Commitment should only apply from 7 years prior to the Connection Date. The absence of any financial commitment may still encourage speculative applications in those areas with the longest connection lead times.

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

Yours sincerely

John W Russell

SAIC Ltd.

For and on behalf of ScottishPower Energy Wholesale, which includes the UK energy businesses of ScottishPower, namely ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Energy Retail Ltd.

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Reference	CAP131-CR-19
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13 April 2007

Dear Ms Viney

Scottish Renewables Response: CUSC Amendment Proposal CAP131

Many thanks for the opportunity to respond to the National Grid Electricity Transmission (NGET) CUSC Amendment Proposal CAP131. This response has been put together following consultation with our members.

Scottish Renewables is the trade body for the industry in Scotland and we have over 200 members involved in the renewable energy sector, many of which have a direct interest in electricity network issues. Scottish Renewables also benefits from the support of its Grid & Regulation Work Group, made up from the members of Scottish Renewables and chaired by Keith MacLean (Scottish & Southern Energy) and Jeremy Sainsbury (Natural Power Consultants).

Needless to say, if you have need for clarification on any of the issues we have raised please get in touch.

Scottish Renewables would also like to express its appreciation for the effort that NGET and the CUSC Working Group has put into resolving this issue.

Scotland, and the development of renewable electricity projects, is key to the delivery of the Renewables Obligation and the UK's commitment to cutting carbon emissions. These projects also have a significant role in the development of Scotland's economy and in particular 'local' or rural economies where otherwise vulnerable communities see an opportunity in renewables to reverse population decline and tackle fuel poverty through its development. Therefore, given the environmental and economic benefits, any identified obstacles to the development of this industry should be tackled quickly and any potential opportunities delivered.



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Scottish Renewables broadly supports proposals to replace Final Sums Liability with a User Commitment methodology.

There are six alternatives being proposed (A1, A2, A3, B1, B2 and B3) by NGET following discussions within the CUSC Working Group.

We would like to highlight the following points:

- Scottish Renewables supports the replacement of FSL with a form of User Commitment;
- Scottish Renewables is concerned that a TEC reduction charge (A1 & A2) to assist accurate applications from developers and provide clear investment signals to NGET would be counterproductive and that a 'no penalty' provision would provide an incentive to generators to 'release' unwanted TEC and help ease the congestion in any transmission queues and provide a potential opportunity for projects to connect sooner;
- With regard to the notice period for TEC reductions, it is reasonable to request information from developers as soon as is practicably possible whilst also acknowledging the uncertainties and risk associated with the planning system. It has been difficult to identify a clear consensus on this issue from Scottish Renewables members other than that there is a clear preference for alternatives A3 and B3. It is important that the User Commitment model is consistent with the requirement to manage the grid queue, and we refer specifically to NGET's Open Letter on grid queue management. To help trigger connections as soon as practicably possible, queue management cannot be effective without sound information from the developer *and* NGET. This means that openness about TEC reductions should be encouraged whilst also meeting the objectives of the CUSC and acknowledging the uncertainties that generators face;
- All the alternatives propose a 'trigger date' defined by NGET infrastructure consents. Scottish Renewables believes an even handed approach that allows for trigger dates to be agreed by both parties on a case-by-case basis so that the investments of both NGET and the generator are protected is appropriate.

Therefore given the points raised above Scottish Renewables believes that Alternatives A3 and B3 are closest to balancing the interests of the renewable electricity industry sector in Scotland whilst meeting CUSC objectives.

I hope this response is useful and that it underlines our general belief that poorly calibrated charges, and unnecessarily prescriptive rules, can have a detrimental and counter productive effect on decision making in the development process and the management of the transmission network.

If you would like Scottish Renewables to clarify any of the points made above then please do not hesitate to get in touch.

On a practical note, it was not until relatively late in the consultation period that Scottish Renewables became aware of the CAP131 consultation. I would greatly appreciate being

placed on all distribution lists relating to NGET consultations relevant to the renewables industry in Scotland. My email address is: jason@scottishrenewables.com.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jason Ormiston', written in a cursive style.

Jason Ormiston
Chief Executive
Scottish Renewables

Reference	CAP131-CR-20
Company	Teesside Power

**TEESSIDE POWER**

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12 April 2007

Dear Ms Viney

Ref: CUSC Amendment Proposal CAP131 – User Commitment for New and Existing Generators

Teesside Power Limited (“TPL”) welcomes the opportunity to comment on CUSC Amendment Proposal CAP131.

TPL notes and is generally supportive of National Grid’s aim to transparently define the charge a TEC User would face in terminating its construction agreement. However TPL is greatly concerned regarding the proposal to make changes to Section 6 of the CUSC which would increase the period of notice required by existing TEC Users to National Grid in advance of a reduction in TEC from five days to two years.

TPL believe that to forecast capacity requirements two years ahead is extremely problematic. The addition of a two year notice period incorporates additional costs for existing TEC Users with no clear benefit to National Grid. Such changes are likely to prevent existing TEC Users from responding to market changes as TEC may only be reduced following this notice period. It is therefore of TPL’s view that the implementation of this notice period requirement will affect market competition and will directly result in a reduction in market efficiency.

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TPL believes that CAP131 in both its original form and under the "A" alternatives, as proposed by members of the Working Group, presents another regulatory change which is a further risk factor to market participants and therefore a source for further costs. It is of TPL's belief that such regulatory changes and associated additional costs result in greater uncertainty amongst market participants and that the perceived benefits of any change is outweighed by these costs.

Given TPL's concerns regarding the proposal to make changes to Section 6 of the CUSC identified above, TPL is neither supportive of the original proposed amendment nor the "A" working group alternative variants. However TPL is supportive of National Grid's aim to transparently define the charge a TEC user would face in terminating its construction agreement. Therefore TPL is supportive of the "B" alternative variants with a preference for alternative proposal B2.

We hope that you will find these comments helpful.

If you have any queries, please do not hesitate to contact me.

Yours sincerely,



PP Dr Phil Lawless
General Manager
Teesside Power Limited

Reference	CAP131-CR-21
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13 April 2007

Dear Ms Viney

CUSC Amendment Proposal 131 - User Commitment

I am responding on behalf of United Utilities to your consultation document of 16 March.

Having considered the original amendment proposal and the alternatives suggested by the Working Group, we wish to express our support for the Alternative Amendment B3, in line with the majority Working Group recommendation.

1. General

Overall, we support the view that the CUSC objectives are better facilitated by a more generic approach towards valuing the risks associated with any transmission investment required for new generation schemes. In this respect, all of the Alternative Amendments better facilitate the CUSC objectives relative to the current baseline. In particular, the increase in the transparency and certainty of the calculated liability reduces the project risks associated with the existing Final Sums arrangements, whilst the application of 50% sharing is expected to lead to lower liabilities, on average, than at present. Both of these factors should serve to reduce barriers to entry and facilitate competition in generation.

Further to this, there is some justification for believing that the non-refundable nature of the CAP131 arrangements would reduce the potential for speculative applications, which would provide more efficient investment signals to National Grid, thus facilitating the more efficient discharge of its Licence obligations.

Our main criticism of the proposal is that it does not address these same issues in the case of embedded generators who choose not to enter into TEC arrangements. We have experienced significant issues relating to such schemes, where Final Sums Liabilities calculated under the existing arrangements have been disproportionate in magnitude and risk relative to the size of the scheme, and consequently could be viewed as a barrier to

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entry. We would encourage NGET to consider further modification proposals to address the FSL issues for smaller generators so as to avoid any claims of discrimination.

2. Working Group Alternatives

2.1. Alternative A1

We have no comment on the developments made in Alternative A1 (and carried forward into Alternatives A2, A3, B1, B2 and B3) save that these are useful clarifications of the original proposal.

2.2. Alternative A2 (Investment zones)

With regard to Alternative A2, we support the view that zonal TNUoS rates are designed to provide an appropriate ongoing locational signal to users of the transmission system, and are therefore also an appropriate locational signal for prospective TEC users. The transparency afforded by basing the liabilities on published tariffs is a significant benefit and we therefore do not see justification for using investment zones, as put forward in Alternative A2.

2.3. Alternative A3 (Removal of Capacity Reduction Charges)

We do not support the provisions in the original proposal relating to Capacity Reduction Charges. We would suggest that the link between user commitment and TEC already introduces sufficient disincentive to overstate TEC requirements. In practice however it is frequently not possible to know the exact TEC required at connection application due to the timescales associated with a transmission connection and the likelihood of changes due to the consents process or other developments. Consequently, the Capacity Reduction Charge would impose further unnecessary costs on project developers acting reasonably.

We acknowledge that the intention of the Capacity Reduction Charge is to ensure that users provide their best information in terms of TEC at the earliest possible stage to prevent inefficient investment. However, we are concerned that the introduction of this charge would actually create perverse incentives to withhold information on TEC required until after completion in order to avoid the associated charges. This in turn could lead to inefficient investment.

2.4. The "B Alternatives" (Removal of 2 year notice period for TEC reductions)

We have similar concerns to the above regarding the ability of existing users to make decisions on TEC requirements 2 years out, and also the potential for perverse incentives to retain unused TEC. In a dynamic market it is often not possible for existing TEC Users

to be able to make decisions on TEC requirements 2 years in advance; indeed, arguably the requirement to pay 2 years of TNUoS charges prevents users from responding to TNUoS signals and the cost consequences may impact on competition in the market.

Although the efficiency of investment planning would be improved if National Grid had full information of TEC requirements with longer advance notice, the concern is that the 2 year notice period for a reduction in TEC could incentivise existing TEC Users to hoard TEC for 2 years when they would otherwise release it. There is a distinct possibility that the 2 year notice period adds costs to existing TEC Users but does not provide a benefit to National Grid.

Overall, we believe that that the advantages of removing the 2 year notice period, in terms of facilitating effective competition, outweigh any concerns with regard to reduced planning efficiency. We therefore believe that Working Group Alternative Amendment B3, being essentially a combination of A1, A3 and B1, aligns more closely with the applicable CUSC objectives than the original proposal.

3. Conclusion

In summary, United Utilities supports Working Group Amendment B3, in line with the majority Working Group recommendation. We are however concerned that these proposals are limited in application to prospective generators who are required or choose to enter into TEC arrangements. The existing Final Sums arrangements create identical issues for embedded generators, further exacerbated by the need for the DNO to be the party contracting with NGET, and there is a need for similar resolution if this class of customers is not to be disadvantaged.

If you have any queries regarding this response, please do not hesitate to contact me.

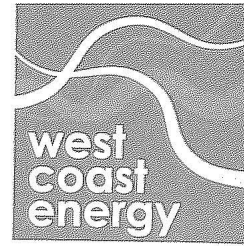
Yours sincerely,

Mike
Kay

 Digitally signed by Mike Kay
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Mike Kay
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11th April 2007

Dear Beverley

CUSC AMENDMENT PROPOSAL 131- USER COMMITMENT FOR TEC USERS

West Coast Energy Ltd welcomes the opportunity to comment on the CUSC Amendment Proposal CAP 131-User Commitment. Whilst broadly sympathetic to the background and basis of the proposal we feel that insufficient attention has been given to projects in the process of construction or close to that stage. We have a number of projects in this situation where the proposed amendment to the CUSC could be implemented either shortly before or just after energisation of the project and where the Amendment could cause us some potential difficulties. We do not believe CAP 131 should be implemented against projects where construction is underway. Our original contracts were signed on the basis of one methodology and now we could find that very far down the project construction process, the rules and whole basis of charging has the potential for significant changes to the detriment of the financial viability of the projects. Submitting projects in construction to potentially penal charges would be neither fair nor equitable, on the contrary, particularly at this stage stability is required. It is also worth pointing out that the Construction and Connection Agreements with NGC are very one sided with NGC being able to defer works because of difficulties with permissions whereas the generator by and large cannot.

As will be discussed in our response to the recent response to the NGC open letter on Management of the GB queue, the accurate matching of connection offer capacity to that inferred from the planning application is difficult, not least because the former is raised in MW and the latter in terms of number of turbines and their height. Also by nature of the planning process many projects are constructed on a phased basis. Another increasingly important factor is extremely tight market in turbines and the optimum turbine, of the appropriate size, may not be available when construction begins. The general outcome is that the final TEC requirement may not be identified until quite late in the process of bringing the project to completion. Even then the date of utilisation of the TEC may be on a staged basis as is recognised by NGC.



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Final sums liability has three components, connection charges from connection assets specific to the project, H1 Sole User final sums liabilities and H2 work for wider system reinforcements. We have the situation where if CAP 131 were to be strictly implemented, a capacity reduction charge might be imposed if it were thought appropriate for the TEC to be reduced after the CAP 131 implementation date. This might be imposed even though the connection assets charge, which is 100% chargeable to the generator, may not be changed. Also the same reinforcement assets may be required for the reduced TEC as for the original H1 final sums liability (ie there may be no additional or saved costs to NGC) or any additional design or building these works may be limited. This might also be the case if there were no H2 works and even if there were H2 works there is a big enough queue for TEC capacity that the TEC released would quickly be taken up by third parties. It would not be appropriate to impose penal charges on generators wanting to reduce TEC; such reductions should be facilitated as much as possible.

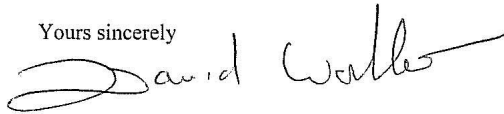
In summary, while broadly sympathetic to the aims and principles of CAP131 we feel that special attention and/ or dispensation needs to be given to advanced projects where construction is about to start or is underway. Also the issue of excess TEC has to be handled sensitively given the uncertainties from a generators perspective in terms of planning and turbine procurement. Also the phased nature of projects needs to be taken into account.

Finally the charges involved in TEC reduction should not penal; the emphasis should be on encouragement.

I hope you find the above comments useful but if you wish to discuss any points in greater detail please do not hesitate to contact me.

Kind regards

Yours sincerely



11 Gerry Jewson

Managing Director
West Coast Energy

Also on behalf of RDC Scotland.

Reference	CAP131-CR-23
Company	Wind Energy



12 April 2007

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Dear Beverley,

CAP 131 Consultation Response

Wind Energy (Services) Limited (“WES”) is writing on behalf of the eight Wind Energy associate companies which are party to the Connection and Use of System Code. With over 600MW of projects under development across Scotland, the issues addressed in CAP 131 are of considerable importance to us.

We would like to take this opportunity to express our appreciation for the work of the National Grid team in bringing forward this amendment and for all those in the industry who contributed to the final working group.

In summary:

- i) we agree with the view that the amendment in its original form would better facilitate the CUSC objectives than the status quo;
- ii) of the six Working Group amendments, we have a preference for Alternative B3;
- iii) we consider that the Trigger Date proposed in the Consultation Document and common to the original proposal and all Working Group Amendments would restrict the development of new generation when compared to an alternative approach which would better promote competition. Furthermore we consider that the description of the Trigger Date on page 34 of the Consultation Document does not reflect the views of the Working Group.
- iv) we are proposing a Consultation Amendment, set out below, to address the Trigger Date defect

Introduction

In common with our colleagues across the energy industry and as reflected in the findings of the Access Reform Option Development Group in early 2006, WES considers that an alternative to the Final Sums Methodology is essential. CAP131 introduces a transparent and broadly cost-reflective alternative (when viewed on a portfolio basis) which is much more conducive to the promotion of competition in the electricity market by enabling new generation plant to have more certain and more proportionate liabilities for new transmission facilities.

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Existing User Commitments

The original proposal and all "A" alternatives recognise that new transmission investment is triggered by a combination of demand from new users and use of existing system capacity by existing users. For this reason these proposals all envisage existing users providing a term commitment to prevent unnecessary investment in new assets.

WES recognises the commercial justification for this view. However there are potential unintended consequences in implementation. Provision of a term commitment implies some form of security such as guarantees or letters of credit. There is a justification for seeking up to 6 years of TNUoS, matching the obligations sought from new generation. The quantum of this figure (only positive zones would require guarantees so it is much more than 6 times the total TNUoS revenue of NGET) and the resultant cost to the industry from having to supply such financial commitment is disproportionate to the risk it would address.

Furthermore we question if the imposition of such a commitment would affect decisions to close existing generation plant. This financial burden to the industry would therefore be of questionable value to the TO's decision making processes with respect to upgrades. The concept of a fixed term of TEC, for which parties pay, may even lead to perverse negative consequences where parties otherwise closing plant elect to nominally keep such plant open as they have already paid for the associated TEC, which may then be eligible to trade.

For these reasons we support the B alternatives in preference to either the original proposal or the A alternatives and all our subsequent comments deal only with the B alternatives. We do believe however that alternative structures could be identified with further work which would allow some meaningful commitment to be provided from existing users without the negative consequences inherent in the arrangements discussed as part of CAP131. This could be the subject of a future Amendment Proposal.

Working Group Alternative B1

We consider that Alternative B1 introduces sensible refinements to the original Amendment Proposal, in particular regard to the absence of any liabilities for works more than 7 years into the future. We prefer this Alternative to the original Proposal.

Working Group Alternative B2

We consider that the use of re-zoned TNUoS tariffs reduces transparency for users while adding little benefit and is an unnecessary complication. We do not support Alternative B2.

Working Group Alternative B3

This Alternative introduces the concept of waiving the Capacity Reduction Charge. In raising this Alternative, Eon has recognised that developers, most particularly of wind generation, are unable to be specific about the exact amount of TEC required for legitimate operational reasons until a very late stage in the development process, after planning consent has been granted and when equipment is finally being selected. Different turbine manufacturers offer different product specifications, for example 2.0MW or 2.3MW turbines and the final selection can only be made based on equipment prices ruling at the time of the order. Absent this alternative, generators will be faced with penal charges for TEC reductions in the late stages of a project.



There is a risk in Alternative B3 that parties will use TEC reduction to reduce liabilities before project cancellation. Overall however we believe that the package of documentation provides protection to the SO from project developers seeking to act in this way. We therefore support Working Group Alternative B3 in preference to the other Alternatives.

Error in the Consultation Document

The Consultation Document, on page 34, refers to the Trigger Date as equating to a date "...when The Company reasonably believes it will incur significant costs in relation to the Construction Works associated with that Offer.". This was not the finding of the Working Group which concluded that the Trigger Date should be the date when the Company reasonably believes it will incur significant costs in relation to the *last element* of the Construction Works associated with that Offer.

The difference is key for projects with multiple deep upgrades. A project developer is exposed to the risk of major delay until the final phase of upgrades is consented. When work on that phase ultimately starts, there is then a case for seeking increased commitments but not before.

This error was pointed out to National Grid prior to the release of this document by a number of Working Group members. We presume that the current version was therefore released inadvertently. If our Consultation Amendment is not adopted, we ask that the correct findings of the Working Group be put to Ofgem for consideration in due course.

Consultation Amendment

WES wishes, on behalf of its CUSC Panel associates, to propose a Consultation Amendment in relation to the concept of Trigger Date. The Trigger Date should be the later of:

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

Planning consent in this context means either local consent or approval from the Scottish Executive in Scotland or the equivalent in other parts of GB.

The rationale for the amendment is that the increase in commitment from the £1/2/3 level to a multiple of TNUoS is very substantial for projects in Scotland, where the majority of schemes in the Transmission queue are located. To require such increase when projects still lack consent would almost certainly lead to projects falling away. This should not be the intention of the regulations which are designed to promote competition. The Consultation Amendment, by revising the Trigger Date to allow consent to be obtained, overcomes this problem and thus better promotes effective competition.

If you require this Consultation Amendment to be in the name of one specific CUSC member then please consider it to be in the name of Wind Energy (Forse) Limited.



If you wish to discuss further any of the points arising from this letter, we would be happy to meet to do so.

With kind regards.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Davies', with a horizontal line underneath.

Michael Davies
Managing Director

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This part of Annex 4 includes copies of any representations received following circulation of the Consultation Alternative Document (circulated on 8th May 2007, requesting comments by close of business on 21st May 2007).

Representations were received from the following parties:

No.	Company	File Number
1	British Energy	CAP131-CAAR-01
2	Carron Energy	CAP131-CAAR-02
3	Centrica	CAP131-CAAR-03
4	EDF Energy	CAP131-CAAR-04
5	E.ON UK	CAP131-CAAR-05
6	RWE	CAP131-CAAR-06
7	Scottish Power Energy Wholesale	CAP131-CAAR-07

Reference	CAP131-CAAR-01
Company	British Energy



21st May 2007

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

Dear Beverley

CUSC AMENDMENT PROPOSAL CAP131

Thank you for the opportunity to comment on the issues raised by the Consultation Alternative consultation document on the above amendment proposal.

Our views on each of the consultation alternatives set out in the document are set out below:

CAA C – Capped Net Final Sums:

CAP 131 is seeking to address a number of perceived defects in the current arrangements in respect of the ‘commitment’ provided by those seeking to connect to the transmission system. The most significant defects are the uncertainty and volatility of the financial exposure faced by new users under the existing final sums liability (FSL) arrangements. It would appear that by capping the final sums liability during the maximum four year period prior to connection at the time of the connection offer as proposed by CAA C would adequately address both these defects and thereby lowering an existing barrier to entry. However, we have some reservations as to whether National Grid will be able to adequately estimate and fix a ‘cost reflective’ profile up to four years before placing contracts and thus leaving existing users with a potentially significant exposure through under-securitisation. Consequently, although we consider that this proposal better facilitates the CUSC objectives compared to the current baseline we remain of the view that the CUSC objectives are best facilitated by the adoption of WGAA B3.

CAA D – Cost Reflective User Commitment Amount:

We note that this amendment relates to WGAA A3 and B3 only. In our response to the initial consultation on CAP131 we did not support WGAA A3 and we are of the view that the concerns we expressed with WGAA A3 are not addressed by this amendment proposal. Further, we concur with the views expressed by National Grid on this proposal in that it is apparent that the current cost reflective regime (final sums) is not working and may indeed be exacerbating the GB queue. Consequently, as this proposal seeks to maintain the final sums

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arrangement prior to the trigger data we do believe that this amendment better facilitates the CUSC objectives when compared to WGAA B3.

CAA E - Adjusted User Commitment and Cancellation Amount

We believe that a generic user commitment methodology should be just that and applied consistently to all users irrespective of location. We do not support any arbitrary adjustments to the commitment provided by users located in different investment opportunity zones. Consequently, we concur with National Grid that this amendment does not better facilitate the CUSC objectives compared to the current baseline.

CAA F – Cancellation Amount for BEGAs & CAA G – No User Commitment Amount for Embedded Generators:

Similar to the views expressed above we believe the user commitment arrangements should be applied consistently across all applications for TEC irrespective of where the generation is located or whether it is an embedded or a directly connected station. Consequently, we do not support either CAA F or CAA G on the basis that they each provide for separate arrangements for embedded generators.

CAA H – Trigger Date:

We can concur with the views expressed by National Grid in that this proposal may lead to an unacceptable risk for all users as National Grid may be undertaking infrastructure works to enable a given application well in advance of the a developer achieving planning consents. It is therefore in the interests of all users that those works are underwritten through the generic methodology. Therefore, although this proposal better achieves the CUSC objectives compared to the current baseline it does not better facilitate them when compared to WGAA B1 or B3.

Yours sincerely

Steven Eyre
Regulation Analyst

Direct Line: 01452 653741
Fax: 01452 653246
E-Mail: steven.eyre@british-energy.com

Reference	CAP131-CAAR-02
Company	Carron Energy



21 May 2007

Beverley Viney
Amendments Panel Secretary
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Dear Ms Viney,

CAP131 User Commitment

Carron Energy (Carron) are the owners of Uskmouth Power and Severn Power. Carron welcomes the opportunity to comment on the alternative CUSC amendment proposals under CAP131. Carron remains supportive of the general move towards a more equitable basis for calculating the costs of new connections.

Carron likes the principles behind RWE's amendment C proposal, but we are concerned that the methodology would result in NG over estimating the costs associated with the connection. They are likely to build in a higher inflation rate over the period of the construction and potentially gold plate the design to cover their risks. While third parties could appeal to Ofgem, this is a slow and expensive route for parties that many will want to avoid. That said we would fully support the idea of final sums remaining capped and the termination amount being based on actual costs incurred. On balance we do not believe the proposal does better facilitate the relevant objectives, as the potential costs of connections may remain very high.

Amendment D, like C has the benefit of the use only securing amount against costs incurred and more importantly only local costs are covered, rather than the current levels reflecting deep reinforcement requirements. However, we have some sympathy with NG's view that where no commitment is required the GB queue could be further worsened by speculative connection applications. Carron does not therefore support this alternative.

Amendment E again has merit in trying to incentivise development in the correct areas, but we do believe that the use of TNUoS already offers a regime with variable payments based on location. It is up to developers where they wish to build their plants and further incentives along the lines proposed seem unnecessary. If the connection charging favours certain areas based on NG forecasts we will also move further from cost reflectivity.

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Finally, Carron is concerned that the proposal does not address the cases where the status of an area has changed, as one would expect as plant is connected. Carron does not therefore feel that the modification better facilitates the relevant objectives.

Carron is not convinced that the alternative proposals originally raised do discriminate against the interests of embedded plant and we therefore do not support amendments F or G.

Finally, Carron agrees with NG that the trigger date may have to be before the developer receives planning permission due to the nature of the planning regime in the UK. Were amendment H to be adopted, developers may find NG unwilling to undertake work until consents are achieved and they will then be unable to connect new plant in a timely manner. However, as a general principle we do feel that much "up-stream" work should be being done by NG as part of its price controlled role as the developer and maintainer of the transmission system. Amendment H becomes a viable alternative if the industry moves back to a regime based on shallow connection costs.

Carron continues to support the alternative modification B3 as proposed by E.On and continue to believe that it would better fulfil the relevant objectives, as outline in our previous response.

Carron Energy hopes that these comments are helpful, but if you do wish to discuss any of the issues raised please contact Lisa Waters on 020 8286 8677.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rebecca Williams', with a long horizontal flourish extending to the right.

Rebecca Williams
Head of Trading

Reference	CAP131-CAAR-03
Company	Centrica



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Our Ref.
Your Ref.
13 April 2007

Dear Beverley,

CUSC Amendment Proposal CAP131 – User Commitment – Consultation Alternatives

Centrica welcomes the opportunity to comment on the consultation alternatives to this amendment proposal.

In summary, we maintain our belief, as stated in our previous response, that Working Group Alternative B3 better facilitates the achievement of the relevant CUSC Objectives, and is the best of the previously-presented alternatives. We do not believe that any of the consultation alternatives presented improves upon WGAA B3.

CAAs 'C' and 'D' try to reduce the generic nature of CAP131 and return to a more cost-reflective, but less firm and predictable commitment. With 'C', there is also the concern that costs are increased to all users in the event of cost overrun of a project, which as NGET acknowledges, is entirely possible and the main reason behind the original raising of CAP131. We also believe that there would be an increased likelihood of users appealing the FSLs to Ofgem under a capping regime, and this would reduce efficiency in the process.

Centrica believes that CAAs 'C' and 'D' better achieve the CUSC objectives compared to the current baseline, although they are not better than WGAA B3.

CAA 'E' addresses an issue that was raised at the working group by a small minority of members and discarded. It reduces clarity and certainty in the arrangements. We believe that it better achieves the CUSC objectives compared to the current baseline, although it is inferior to WGAA B3.

CAA 'F' and CAA 'G' try to introduce special provisions for embedded generation – effectively asking the remainder of the user community to subsidise the connection. We do not see that this is due discrimination – any argument that embedded generation has to pay twice because it needs to pay for a connection to the DN could be counterbalanced with the view that embedded generators receive embedded benefits, and so already receive more than adequate 'compensation'. We

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believe that CAAs 'F' and 'G' better achieve the CUSC objectives compared to the current baseline, although they are both inferior to WGAA B3.

We have some sympathy with CAA 'H'. As noted in our earlier response to CAP131, there is a real risk that in areas where liabilities would increase under the generic arrangements, projects may fall away as they may be asked to provide significant security prior to obtaining relevant consents. We do not believe, however, that this provision should be directly inserted into CAP131. It would be most efficient and economic for NGET to take consents issues into account when planning works, and where possible bilateral discussions should resolve any issues that arise.

Therefore, we believe that CAA 'H' is better than the current baseline, although not better than WGAA B3.

If you have any queries in relation to this response, please do not hesitate to contact me.

Best regards,

Dave Wilkerson
Centrica Energy

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E: dave.wilkerson@centrica.co.uk

A *centrica* business

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Reference	CAP131-CAAR-04
Company	EDF Energy

Beverley Viney
Amendments Panel Secretary
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CV34 6DA



21st May 2007

Dear Beverley,

CAP131 assessment of Consultation Alternative Amendments (CAAs)

EDF Energy is pleased to have the opportunity to comment on the CAP131, its alternatives (WGAAAs) and consultation alternative amendments, (CAAs) C, D, E, F, G and H.

We believe CAP131 is an important modification to the CUSC which must assist the implementation of the Government's energy policy.

Our general view is that generators should be responsible for paying for their connection, as this should ensure economic investment in the transmission system, yet this is not the prevailing connection policy favoured by the Authority. Therefore we pragmatically support the generic User commitment methodology for new Users, but oppose the proposals for existing Users.

EDF Energy supports WGAA B1 rather than the original.

- WGAA B1 is better than the baseline arrangements for new Users. WGAA B1 is better than the other proposals as there is no justification to enforce greater liabilities on existing Users. We believe it will force Users to hold onto TEC.

However, if WGAA B1 is not implemented, then we could accept WGAA B3.

Of the CAAs, only C has any merit, yet we do not support its implementation.

- CAA C (Fixed net FSL) is better than the baseline arrangements in removing the volatility in FSLs and aiming to secure 100% of the works. However the FCFS principle may result in projects triggering significant reinforcement being exposed to high secured amount liabilities.

We are strongly opposed to CAA H which would result in under-securitisation of works.

- CAA H aims to reduce the CAP131 liabilities prior to the project being consented, theoretically encouraging more projects to connect, rather than terminate. However this would lead to massive under-securitisation on projects unlikely to gain consent. As a developer, even where it would be to our commercial advantage, we would not wish to expose other Users to significant risk for a project we know, but NGET does not, is unlikely to gain consents.

There follows reasoning for our view and a summary table outlining our thoughts on the proposed alternative amendments.

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OUR REASON FOR COMING TO THIS VIEW

EDF Energy is a major supplier of electricity, an existing generator and present developer of CCGT and renewable power stations.

In formulating this response we have the following concerns to balance:

- The FSL process may not assist the connection of viable generating stations;
- We may end up paying for transmission works that have been under-secured by developers.

Our view, explained in the previous consultation, was that:

- The 50% sharing factor with the User community has not been justified;
- User Commitment Amount (UCAM) is a good addition to the baseline arrangements;
- Non-refundable nature of the security is a suitable deterrent;
- TNUoS tariff as the measure of cost reflectivity is a gross generalisation;
- The Trigger Date should reflect the point at which cost is being incurred;
- A Capacity Reduction Charge is required to prevent Users avoiding liabilities;
- 2 year liability for Existing Users will not release TEC, rather the opposite.

It is our opinion that although the 50% sharing factor with the User commitment has not been justified, the chances of transmission assets being “stranded” is relatively low as other projects would proceed to utilise assets not fully secured by the terminating project. If however, numerous projects terminate and significant liabilities are placed on other Users (in higher TNUoS tariffs) we would expect CAP131 arrangements be reviewed, possibly by increasing the multiple of TNUoS from the value of six.

Although we had some reservations, we pragmatically support the generic User commitment methodology for new Users but oppose the proposals for existing Users – therefore we support WGAA B1.

This view has not changed with the submission of six further CAAs, many of which we believe to be prompted by partisan views of developers. Five of the CAAs D, E, F, G & H aim to reduce the secured amount liabilities for developers further from the 50% sharing factor with other Users, which is unacceptable.

CAAs F&G, referring to embedded generators with BEGA agreements, have no basis of argument. If the developer has a construction agreement (CONSAG) with NGET, then it must be treated identically to a transmission connected generator, irrespective of whether it is paying for a connection to a DNO network.

CAA C merits further consideration as it disregards the 50% sharing factor with other Users and aims to introduce a fixed FSL profile for the period after the trigger date. EDF Energy welcomes the greater cost-reflectivity of CAA C and fixing of the secured amounts.

In the event of termination should actual costs be:

- lower than the capped FSL (over-secured), then developers will only be charged the actual cost;
- higher than the capped FSL (under-secured), then NGET (works excluded from the regulated asset base) or other Users (in higher TNUoS charges) will be exposed to the cost.

By starting at circa 100% securitisation for works we believe other Users are less exposed to developers terminating their projects.



We do have some concerns over the level of secured amounts that may fall on the project that triggers significant reinforcement. The party that triggers the fixed step investment in transmission will effectively be excluded by its higher FSL, proving a barrier to investment.

An example of where this may occur is the Severn crossing, where the 275kV and 400kV system needs to be upgraded to ensure greater export capacity from South Wales.

Under current FSL arrangements each project in the region would have the works classified as App H Part1 works and would share in securing the works. This means that all the projects with agreements prior to the offer that triggers the works would see their liabilities increase if the subsequent offer is accepted. At the same time, the project accepting the triggering offer only has to secure the pro-rata proportion of the reinforcement works.

Under CAA C each project that accepted offers prior to the NGET's requirement to build the Severn crossing would remain with their original, lower FSLs, but the triggering project would have a capped net FSL to secure the full sum of upgrading the crossing. The difference could easily be £15m for the first project to £150m for the triggering project.

NGET would theoretically have the full cost of the Severn crossing secured, however if the earlier projects terminate and the triggering project connects, it will undoubtedly have to face questions as to whether it should have commenced with the works. If the triggering User terminates, such a question is irrelevant as NGET would have the works secured.

We hope these comments have been of help, if you have any questions please do not hesitate to ask.

Yours sincerely,

David Scott
Electricity Regulation
Energy Branch



	Name	Proposer	Support	Rank	Reasoning
A1	Revised User commitment	NGET	No		No justification to enforce greater liabilities on existing Users as we believe it will force Users to hold onto TEC
A2	TPRC investment zone proxy for cancellation amount	Int. Power	No		Although the zonal TNUoS charges are not an ideal proxy for cost reflectivity (especially in the Midlands and South) they are more transparent than TPCR investment zones
A3	Without capacity reduction charge	E.ON	No		As A1, although worse we favour the Capacity Reduction Charge
B1*	With capacity reduction charge	EDF Energy	Yes	1	A Capacity Reduction Charge is required to prevent Users avoiding liabilities and to over book capacity – the most balanced proposal
B2*	TPRC proxy for cancellation amount	Int. Power	No		As A2
B3*	Without capacity reduction charge	E.ON	Yes	2	If a User commitment method is to be introduced, then we could accept it without a capacity reduction charge, however we would not support a method with greater liabilities for existing Users: B3 is acceptable
CAA C	Capped NET FSL	RWE Trading	No		It is more cost reflective than A1, as it rejects the unjustified 50% sharing factor, whilst improving the process – however it reintroduces the triggering concept exposing some Users to higher fixed FSLs
CAA D	Cost reflective UCAM	RES/BWEA	No		Places little/no obligation on Users immediately after signature - we prefer immediate commitment commensurate with "booking" capacity
CAA E	Adjusted UCAM and Cancellation Amount to SYS	Farm/DONG	No		The generic User commitment introduces a 50% sharing factor with other Users - this proposal further reduces the security and exposes other Users further to under-securitisation of works.
CAA F	BEGAs discount by £3/kW	DONG	No		Users with a BEGA have full rights to export power onto the Tx system, extracting value from the balancing mechanism: If this requires works (CONSAG) the secured amount should be identical to Tx connected Users
CAA G	No UCAM for Embedded	DONG	No		The UCAM is a financial commitment for "booking" TX capacity that has no relation to works. It is irrelevant that an embedded generator with a BEGA must also pay for the DNO connection.
CAA H	Trigger Date is linked to Power Station Consents	WES	No		By reverting the trigger date to power station consents, this proposal would under secure projects unlikely to be built

*B options have no commitment for existing Users

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Reference	CAP131-CAAR-05
Company	E.ON UK



Beverley Viney
Amendments Panel Secretary
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CV34 6DA

21 May, 2007

Dear Beverley,

CAP131: Consultation Alternative Consultation Document

Thank you for the opportunity to respond to the above consultation document. E.ON UK does not believe that any of the Consultation Alternative Amendment (CAA) Proposals improve on the options developed by the CAP131 Working Group.

We are assuming when making this response that each of these CAAs could be added to the 6 options already derived by the working group. That is, each CAA in fact would in reality represent an additional 6 solutions (eg A1 plus CAA C, A2 plus CAA C ... etc). We also assume that the CAAs cannot be added together (eg A1 plus CAA C plus CAA D) as they have been raised in the context of the working group amendments not other CAAs. Therefore, our comments are made on the basis of whether we believe each CAA represents an improvement on the options derived by the working group. We also do not attempt to rank each of the possible 36 different combinations.

Our comments on each CAA are as follows.

CAA C – Capped Net Final Sums (RWE)

When we first raised issues with the current Final Sums provisions, we suggested a solution which would fix the profile of the FSLs in a similar manner as proposed in CAA C. Therefore, we have some sympathy with the aims of this CAA.

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However, we have become more comfortable with the principles behind the interim arrangements and the CAP131 proposal, both of which use a generic TNUoS based approach. Indeed, basing the profile of the Cancellation Amount on a multiple of TNUoS allows project developers to estimate their likely exposure ahead of receiving their connection offer. This greater certainty would be lost under CAA C. Therefore, on balance we do not believe that this alternative is an improvement on the options developed by the working group.

CAA D – Cost reflective User Commitment Amount

We do not support this option. The User Commitment Amount provides two functions. Firstly, it limits the level of commitment that a generator has to enter into until the trigger date is achieved. Secondly, it ensures that some form of commitment is forthcoming from all parties that enter into Construction Agreements with National Grid. This second element has the potential to make a positive contribution to the management of the GB queue.

As with other elements of the proposals, implementation of CAP131 will create winners and losers as existing parties move on to the new generic arrangements. This amendment would simply change who the winners and losers are. However, if it is implemented the positive effects that CAP131 may have on the GB queue will be lost. Therefore, we do not believe that it is better than the working group proposals.

CAA E – Adjusted User Commitment Amount and Cancellation Amount

We do not support this option as it leads to locational signals being double counted. The present proposals for CAP131 already include a locational signal in the calculation of the Cancellation Amount, as it is related to the level of TNUoS for the zone within which the generator wishes to connect. This CAA would introduce an additional signal by reducing the liability faced by generators wishing to connect in areas identified in the Seven Year Statement as having medium, high and very high investment opportunity ratings.

The level of distortion would be significant. For instance, using 2007/08's TNUoS charges as an example, under the original CAP131 proposal generators connecting in the highest priced area of the country, North Scotland, would be exposed to liabilities associated with a TNUoS charge of £21.6/kW. In the cheapest areas generators would be exposed to the floor price of £3/kW. In other words the liabilities in the most expensive area would be just over 7 times those in the cheapest zones. We believe that this level of difference is appropriate and proportionate. However, under CAA E, the floor in some areas would reduce to just £0.9/kW whilst the highest area would be unaffected. In other words under CAA E liabilities in the highest priced zone would be just under 24 times those in the cheapest areas.

It is almost certain that the number of years' TNUoS that generators would be

exposed to would have to increase from the proposed 6 years, to ensure that an adequate proportion of costs are covered by the total package of arrangements.

This means that companies in northern areas would see their exposure increased as a result of these proposals, even though on the face of it CAA E simply provides reductions in liabilities for more southerly zones.

We therefore do not believe that it is better than the working group proposals.

CAA F – Cancellation Amount for BEGAs to be discounted by £3/kW

Whilst we understand the concerns that resulted in this alternative, we do believe that it deals with the issue adequately. We agree that where an embedded generator is connecting under a BEGA that it would be incorrect for the generator to be exposed both directly to the generic Cancellation Amount and indirectly to Final Sums through the DNO. If the works are being covered by the generic methodology under a BEGA, there is no reason why specific Final Sums should be targeted at the DNO. Otherwise the works are being covered twice. We do not believe however that CAA F takes the appropriate approach to this issue, in that it assumes that double counting will occur and attempts to apply a discount to rectify it. We believe that the correct solution would be for National Grid to confirm that they will not operate in such a manner that would result in the same works being covered twice in respect of the same generator through both a BEGA and an agreement with the relevant DNO.

We therefore on balance do not think that this alternative is better than the options devised by the working group.

CAA G – No User Commitment Amount for Embedded Generators

This amendment arises from the same concerns as CAA F, but instead addresses the pre trigger date User Commitment Amount, rather than the post trigger date Cancellation Amount. Our views on this alternative are similar to those for CAA F. We therefore on balance do not believe that this alternative is better than the working group alternatives.

CAA H – Trigger Date

When we originally raised concerns with the present Final Sums arrangements we supported a trigger date which was linked in some way to consents being achieved by the generation project. However, in the course of the CAP131 assessment process we have become more comfortable with the trigger date being related to when significant transmission expenditure could be expected. This CAA, whilst close to our original suggested approach, would complicate the setting of the trigger date and we are uncertain whether generators would receive significant additional

comfort as a result. Therefore, on balance we do not believe that it is better than the trigger date principles set out in the options derived by the working group.

I hope that the above comments prove helpful. Should you wish to discuss this further please contact me on the above number.

Yours sincerely,

Paul Jones
Trading Arrangements

Reference	CAP131-CAAR-06
Company	RWE

RWE Trading



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Amendments Panel secretary
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Name Bill Reed
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Friday 19th May 2007

■ E-mail: beverley.viney@uk.grid.com

Consultation Alternative Consultation Document CUSC Amendment Proposal CAP 131 User Commitment - RWE Consultation Response

Dear Beverley,

Thank you for the opportunity to comment on the CAP131 "Consultation Alternative Consultation". This response is from RWE and its relevant CUSC signatories.

RWE supports the implementation of Consultation Alternative "C" – Capped Final Sums. As we indicated in our CAP131 consultation response, we believe that the RWE alternative better achieves the CUSC objectives and we note that NGET supports this view. However, NGET argues that Alternative C does not address "one of the main drivers" behind CAP 131, the "absolute level of these liabilities" achieved through the 50% sharing factor. While NGET illustrate this through the example of a small wind farm that may incur a large final sums liability we would note that under CAP131 "Original" a large wind farm located some distance from the existing transmission system may incur a small final sums liability under the generic approach when compared to the cost reflective final sums under Alternative C.

We would also note that the example cited by NGET illustrates one of the major weaknesses of the CAP131 approach in that a small wind farm that would trigger a "significant investment" would not then be subject to cost-reflective calculation of final sums (and associated locational signal).

The "small wind farm" would be subject to a lower level of final sums with the increased risk that other users will secure the "significant investment" in the event that the "small wind farm" was to terminate its agreement prior to completion.

We note that NGET are concerned that there may be variance between the level of final sums secured under Alternative C and the actual outturn level. We believe that NGET are in the best position to manage such variance and must determine in accordance with its licence the economic and efficient level of investment in the transmission system. We would also note that while there may be differences between an estimated level of final sums and actual outturn these differences would be expected to be lower than the variances between actual costs and the levels secured by generic final sums.

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It should be noted that Consultation Alternative C is a stand alone alternative and does not include any capacity reduction charge or notice period for TEC reduction since, in our view, this is not part of the defect that the amendment is seeking to address.

RWE does not support the implementation of the other Consultation Alternatives presented in the report. We have the following comments:

- Consultation Alternative D: We note that according to NGET the generic user commitment amount in the original proposal is a "reasonable approximation for pre-construction costs". Consequently we support the use of the original proxy and not the alternative for the calculation of final sums in this initial period.
- Consultation Alternative E: The seven year statement provides indicative zones for investment and we do not believe that a case has been made for using it as a basis for setting final sums.
- Consultation Alternative F: We support the conclusion that the user commitment arrangements in CAP131 and its working group alternatives (and Consultation Alternative C) do not discriminate against embedded generation.
- Consultation Alternative G: We support the application of the user commitment amount to all TEC users.
- Consultation Alternative H : As noted in the consultation document, the definition of the trigger date was debated at length in the working group and we support the conclusion that Alternative H "would lead to unacceptable risk for all users"

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely

By email

Bill Reed,
Market Development Manager

Reference	CAP131-CAAR-07
Company	Scottish Power Energy Wholesale



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

Ref CAP131 Alternative

Date 21st May 2007

Tel No. 01355 845208

Email: ukelectricityspoc@saic.com

Dear Beverley,

CAP131 User Commitment – Consultation Alternative Amendments

Thank you for the opportunity to respond to this consultation document. This response is submitted on behalf of ScottishPower Energy Wholesale, which includes the UK energy businesses of ScottishPower, namely ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Energy Retail Ltd.

As stated in our response to the CAP 131 Consultation Document, ScottishPower welcomes the removal of the uncertainty and volatility associated with the existing final sums liability arrangements and is generally supportive of the generic approach to securing infrastructure works. Our previously stated preference is for Working Group Alternative B1, subject to certain reservations, as outlined in that response.

ScottishPower does not consider that any of the Alternative Amendments identified would meet the CUSC objectives better than Working Group Alternative B1.

Resolution of the GB Queue requires a number of steps including reform of the User Commitment. The proposed Alternative Amendments would weaken the signals of User Commitment, reducing the incentive on developers to declare down their capacity, and would encourage developers with unviable projects to remain in the GB Queue.

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

Yours sincerely

Gary Henderson

SAIC Ltd.

For and on behalf of ScottishPower Energy Wholesale, which includes the UK energy businesses of ScottishPower, namely ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Energy Retail Ltd.

ANNEX 5 – REPRESENTATIONS RECEIVED UPON THE DRAFT AMENDMENT REPORT

This Annex includes copies of any representations received following circulation of the Draft Amendment Report (circulated on 14th June 2007, requesting comments by close of business on 21st June 2007).

Representations were received from the following parties:

No.	Company	File Number
1	AMEC	CAP131-AR-01

Reference	CAP131-AR-1
Company	AMEC



22 June 2007

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

Direct tel +44 (0)1434 611300
E.mail david.hodkinson@amec.com

By email to beverley.viney@uk.ngrid.com and by post

Dear Ms Viney

**Amendment Report
CUSC Proposed Amendment CAP131
User Commitment (the "Proposal")**

Thank you for the opportunity to respond in relation to the above.

AMEC notes that the proposal aims:

"...to replace the current arrangements for cost reflective final sums in relation to infrastructure transmission works with a non-refundable liability calculated on the basis of a generic methodology." (Paragraph 3.4)

and

"...to de-link the project-specific costs of transmission infrastructure investment currently secured by TEC Users through 'final sums'..." (Paragraph 3.5)

In respect of 'User Commitment Amounts', AMEC believes that National Grid's proposal is acceptable and achieves the aims of the proposal set out at paragraphs 3.4 and 3.5. However, the levels that have been set for user commitments are considered to be far too low to have any bearing on developer behaviour, for example a 40 MW wind farm facing a liability of £120,000, which might be less than 25% of its overall development cost.

In respect of 'Cancellation Amounts', AMEC questions the selection of GenTNUoS as an appropriate proxy. The Working Group Report states (para 4.4.11) that 'cost reflectivity is not an applicable CUSC objective'. Unfortunately there is insufficient detail in the Annexes to properly understand the reasons for the selection. For example Annex 6 lists unspecified groups, describes calculations and provides one graph (of we believe 12), but none of the

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figures thus calculated. The amendment report (4.4) mentions that other options, including a non-locational option, were considered, but the Working Group report mentions these only briefly, and appears (4.4.8) to dismiss the non-locational option on the basis it is not locational, despite the contrary statement in 4.4.11. Using a locational proxy serves to compound the disadvantage already felt by projects in the north and Scotland, perpetuating the discrimination which pervades the cost reflective TNUoS regime despite it being at odds with the principles of the EU Renewables Directive.

It is proposed that the cancellation charge would apply whether or not a substitute generator can be found. In other words, the charge might bear no relationship to the losses incurred by NGC - locally or nationally - and would, should a substitute generator actually be available - be a punitive payment. It would be most unusual for such an arrangement to exist in a competitive market, where cancellation or delay would normally be linked to damages that were a proxy for the losses the damaged party would face (with additional obligations for the damaged party to mitigate its losses). NGC's proposal could therefore be seen as being an abuse of its regulated monopoly position.

Further to questions raised in response to the previous consultation, NGET has confirmed that an embedded generator, subject only to TIRG re-inforcements, and only defined as distribution due to a short length of MV infrastructure, would be required to provide final sums under the new methodology, where previously there had been none as the principle of TIRG was that Ofgem approved funding such that generators were not required to do so. Such a generator would also still be required to provide final sums under the old regime to the DNO for the local works. Thus the generator will be required to underwrite twice. This is inequitable, does not facilitate competition, and provides a perverse incentive for such, and other, embedded generators to request a transmission connection instead.

Please do not hesitate to contact me if you wish to discuss this matter further.

Yours sincerely



David Hodkinson
Managing Director
AMEC Wind Energy