



**CONSULTATION ALTERNATIVE
CONSULTATION DOCUMENT
CUSC Amendment Proposal CAP150 CUSC
Capacity Reduction**

*The purpose of this document is to
consult on Consultation Alternative
Amendment Proposal CAP150
with CUSC Parties and other interested
Industry members*

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Name	Organisation
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1.0 SUMMARY AND VIEWS

Executive Summary

- 1.1 CAP150 – Capacity Reduction was proposed by National Grid at the CUSC Amendments Panel on the 29 June 2007. CAP150 seeks to address the issue of Users that have a contracted transmission capacity figure that is inconsistent with their project details (e.g. planning consent) or the construction programme is not consistent with contracted Completion Date.
- 1.2 National Grid proposed to amend the CUSC to enable National Grid to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity figure provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then National Grid would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the transmission capacity figure to an appropriate level and revise the Construction Works as necessary to reflect this. In addition, National Grid would have the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in the User's transmission capacity figure and for National Grid's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application fees.
- 1.3 At the Working Group an Alternative was developed. The Working Group Alternative is based upon the Original principles but proposes that National Grid should have the right of termination, rather than enforcement action, for failure by a User to fulfil its obligations under its Construction Agreement.
- 1.4 Following the consultation period by National Grid which concluded on 27th December 2008, three Consultation Alternatives were raised. Consultation Alternative A is proposed by Heysham Offshore Wind Ltd and proposes to amend the Original proposal to prevent inconsistent treatment of Users who hold a BEGA compared to User who hold a BELLA.
- 1.5 Consultation Alternative B is proposed by Gunfleet Sands Ltd and proposes to amend the Working Group Alternative to meet the expressed aims of the Alternative regarding termination for BELLA's.
- 1.6 Consultation Alternative C is proposed by Gunfleet Sands II Ltd and proposes to amend the Working Group Alternative to include both amendments as detailed in Consultation Alternative A and B.

National Grids View

- 1.7 National Grid, as the proposer of CAP150 is supportive of Consultation Alternative A believing that the additional clauses remove any potential for discrimination between Users and therefore better facilitates the Applicable CUSC Objectives over and above those of the Original Amendment.

2.0 PURPOSE AND INTRODUCTION

- 2.1 This is a consultation document 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.
- 2.2 Further to the submission of Amendment Proposal CAP150 and the subsequent consultation, this document seeks views from industry members relating to the Consultation Alternative Amendments for CAP150, proposed by Heysham Offshore Wind Ltd, Gunfleet Sands Ltd and Gunfleet Sands II Ltd.
- 2.3 CAP150 was proposed by National Grid and submitted to the CUSC Amendment Panel for consideration at their meeting on 29th June 2007. CAP150 Working Group Report was submitted to the CUSC Panel meeting on 26th October 2007. Following evaluation by the Working Group the Amendments Panel determined that the issue should proceed to wider industry consultation by National Grid. Consultation and invited views on CAP150 concluded on 27th December 2007.
- 2.4 Under the terms of the CUSC there is a requirement for a further period of Consultation to be undertaken in order to allow the Industry to consider the proposed consultation alternative amendment. A list of the correspondence received in response to the original consultation is contained in Annex 2 along with the Consultation Alternative proposals.
- 2.5 This consultation document outlines the Consultation Alternative Amendment. Representations received in response to this consultation document will be included in National Grid's Amendment Report that will be furnished to the Authority for their decision.
- 2.6 This Consultation Alternative consultation document 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/ along with the Original Consultation Report, the Working Group Report and the Amendment Proposal form. This document invites views upon the Consultation Alternative Amendment and the **closing date is 13th February 2008 for responses.**

3.0 THE CONSULTATION ALTERNATIVE AMENDMENT

Consultation Alternative Amendment A

- 3.1 Consultation Alternative A is proposed by Heysham Offshore Wind Ltd and proposes to amend the Original CAP150 proposal to prevent inconsistent treatment of Users who hold a BEGA compared to User who hold a BELLA.
- 3.2 In the view of the proposer CAP150 discriminates between Users who hold a BELLA and those with a BEGA that are of a similar size. Pursuant to the arrangements at "BETTA" a Large Embedded Exempt Power Station in Scotland either contracted via a BEGA or a BELLA. Consequently, if the TEC reduction as proposed by CAP150 was applied to a User with a BEGA the User would not have any material impact other than alignment of its export capacity rights and this is not the case for BELLA's. Therefore, the best way in which to highlight this issue is via an example.

- 3.3 If a Users 35MW project in Scottish Power's Distribution licensed area with a TEC of 35MW was reduced to 20MW of TEC due to planning consent misalignment in accordance with the proposed process. The User would be required to meet the costs of reducing the capacity but would still proceed as planned with the original connection date subject to programming of any revised works.
- 3.4 In the case of the same User with a 35MW project with a BELLA, the reduction in capacity to 20MW would result in the project no longer being classified as Large; therefore the BELLA would no longer be the appropriate agreement. In affect the project changes from a Large Embedded Exempt Power Station to an Embedded Small Power Station and subject to the provisions of CUSC 6.5. Scottish Power Distribution (in this example) would need to follow the Request for a Statement of Works process in accordance with CUSC 6.5.5.
- 3.5 Due to scarcity of transmission capacity in Scotland the proposer believes that this would be classed as a "significant system effect" and Scottish Power would need to submit a Request for a Statement of Works and a Modification Application would follow assuming the User wished to continue with their project. As a consequence the Modification Offer would include all the current reinforcement works and the User would have an Offer at a later connection date (in the words of the proposer the User would be placed at the back of the "queue").
- 3.6 The proposer believes that this discriminates between User with BEGA's and BELLA and the User would not have anticipated such an issue when their application was first made.
- 3.7 The proposer considered a number of approaches to address this defect and suggested an additional clause within section 6.5.5. However, after detailed considerations with National Grid's legal team it is proposed to include additional clauses to Schedule 2 Exhibit 3 – the Construction Agreement and Schedule 2 Exhibit 5 – the BELLA. The new clauses are additional to those within the Original Proposed Amendment and cater for the situation described above to ensure BELLA's and BEGA's are treated in a consistent manner.

Consultation Alternative Amendment B

- 3.8 Consultation Alternative B is proposed by Gunfleet Sands Ltd and proposes to amend the Working Group Alternative to meet the expressed aims of the Alternative regarding termination for BELLA's.
- 3.9 CAP150 Working Group Alternative creates a right for National Grid to terminate the applicable agreement rather than enforcement action for failure by a User to fulfil obligations in its Construction Agreement. The proposer believes that the termination rights are wholly disproportionate but if the amendment were to be approved by the Authority, the drafting for Embedded Power Station's termination is inconsistent with the drafting and intent of the Consultation Document.
- 3.10 In section 5.11 of the Consultation Document, it is stated that "Upon termination of the DNO's Construction Agreement, in order for a BELLA to be terminated, there needs to be a clause inserted into the BELLA" In the view of the proposer they believe that if the DNO's Construction Agreement was terminated the BELLA would also be terminated. However, the proposed

drafting with Schedule 2 Exhibit 5 paragraph 8 proposes that the BELLA is terminated upon termination of the Distribution Agreement. However, it is possible that the termination of the DNO's Construction Agreement may lead to the termination of the Distribution Agreement but this does not always occur.

- 3.11 In addition, the proposer believes that this issue regarding the termination of Distribution Agreements and the relationship with BELLA is outside the scope of CAP150 and requires further industry debate in a separate CUSC proposal.
- 3.12 Consequently, Consultation Alternative B proposes a new paragraph 8 which refers to the Construction Agreement rather than the Distribution Agreement.

Consultation Alternative Amendment C

- 3.13 Consultation Alternative C is proposed by Gunfleet Sands II Ltd and proposes to amend the Working Group Alternative to include both amends as detailed above in Consultation Alternative A and B.

4.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

- 4.1 CAP150 Consultation Alternatives would better facilitate the CUSC Objective(s);

- (a) *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*
- (b) *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

- 4.2 In the view of the proposer Consultation Alternative A over and above the Original better facilitates both Applicable Objective (a) and (b) by preventing any possible discrimination against Users with a BELLA.
- 4.3 In the view of the proposer Consultation Alternative B over and above the Working Group Alternative better facilitates both Applicable Objective (a) and (b) by preventing the introduction of unwarranted BELLA termination provisions and correctly links the termination of the BELLA with the termination of the DNO's Construction Agreement.
- 4.4 In the view of the proposer Consultation Alternative C over and above the Working Group Alternative better facilitates both Applicable Objective (a) and (b) by preventing any possible discrimination against Users with a BELLA and preventing the introduction of unwarranted BELLA termination provisions and correctly links the termination of the BELLA with the termination of the DNO's Construction Agreement.

5.0 PROPOSED IMPLEMENTATION

- 5.1 The proposer's of CAP150 Consultation Alternatives agrees with the Working Group and National Grid that CAP150 Consultation Alternatives should be implemented 10 Business Days after an Authority decision.

6.0 IMPACT ON CUSC

6.1 CAP150 Consultation Alternatives requires amendments to the CUSC as follows.

CUSC Section 11.3 – Definitions New definitions,
Schedule 2 – Exhibit 1 (Bilateral Connection Agreement),
Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement),
Schedule 2 – Exhibit 3 (Construction Agreement), and
Schedule 2 – Exhibit 5 (BELLA).

6.2 The text required to give effect to the Consultation Alternative A is contained as Part A of Annex 1 of this document.

6.3 The text required to give effect to the Consultation Alternative B is contained as Part B of Annex 1 of this document.

6.4 The text required to give effect to the Consultation Alternative C is contained as Part C of Annex 1 of this document.

7.0 IMPACT ON INDUSTRY DOCUMENTS

Impact on Core Industry Documents

7.1 CAP150 Consultation Alternatives have no impact on Core Industry Documents.

Impact on other Industry Documents

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

8.0 INITIAL VIEW OF NATIONAL GRID

8.1 National Grid, as the proposer of CAP150 is supportive of Consultation Alternate A believing that the additional clauses removes any potential for discrimination between Users and therefore best facilitates the Applicable CUSC Objectives over and above those of the Original Amendment.

8.2 National Grid believes Consultation Alternate B better facilitates the Applicable Objectives however to a lesser extent as it only addresses one to the defects raised by the Consultation Alternatives.

8.3 National Grid believes that Consultation Alternate C also better facilitates the Applicable Objectives over and above those in the Working Group Alternative

by preventing the potential for discrimination and correctly links the termination provisions of the BELLA with the Construction agreement.

- 8.4 With regard to all the Alternatives, National Grid believes that CAP150 will provide the necessary process and tools to maintain accurate information from User's regarding their Projects. This information will allow National Grid to obtain increased certainty over the amount of capacity connecting to the Transmission System and should facilitate efficient and timely connection of new Projects where there is a scarcity of transmission capacity.
- 8.5 In conclusion, National Grid believes Consultation Alternative A is the best because it provides a complete solution taking into account User's concerns as the outcome of this proposed process is an adjustment to capacity and not termination.

9.0 VIEWS INVITED

- 9.1 National Grid is seeking the views of interested parties in relation to the issues raised by Consultation Alternative Amendment Proposal CAP150.
- 9.2 Please send your responses to this consultation to National Grid by no later than **close of business on 13th February 2008**.

Please address all comments to the following e-mail address:

Beverley.Viney@uk.ngrid.com

Or alternatively, comments may be addressed to:

Beverley Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

ANNEX 1 – PROPOSED TEXT TO MODIFY CUSC

Part A - Text to give effect to the Proposed Consultation Alternative Amendment A

The text below amends the Original CAP150 Proposal by inserting the coloured and struck through text. A copy of the full Original legal text can be found in the Consultation document see link below:

<http://www.nationalgrid.com/NR/rdonlyres/F576CC45-9C2A-4873-88DB-060FBC7A84F3/21709/CAP150Consultationfinal.pdf>

Schedule 2 Exhibit 3 (the Construction Agreement)

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

In addition to changes in text, add new clause 7.4.10

[for use in construction agreement with associated BELLA only

7.4.10 Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

7.4.10.1 The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

7.4.10.2 Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **GB Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

7.4.10.3 **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

Edits to Schedule 2 Exhibit 5 (the Bella)

Amend Clause 8 (term) of Bella as follows

8. Term

8.1 Subject to the provisions for earlier termination set out in **CUSC** and **Clause 8.2 below**, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** at the site of **Connection** as provided in Section 5 of **CUSC**.

8.2 This **BELLA** shall terminate on the earlier of

- (a) the **Notice of Reduction Effective Date** where as a result of the **Notice of Reduction** the **User** is no longer an **Embedded Exemptable Large Embedded Power Station**.
- (b) termination of the **DNO Construction Agreement** pursuant to Clause 7.4.10.2 of the **Construction Agreement** and provided that the **Bilateral Connection Agreement** between the **DNO** and **The Company** has, where required by **The Company**, been amended to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**

Part B - Text to give effect to the Proposed Consultation Alternative Amendment B

The text below amends the CAP150 Working Group Alternative by inserting the coloured and struck through text. A copy of the full Working Group legal text can be found in the Consultation document see link below:

<http://www.nationalgrid.com/NR/rdonlyres/F576CC45-9C2A-4873-88DB-060FBC7A84F3/21709/CAP150Consultationfinal.pdf>

2 **Users in the capacity of a Directly Connected Distribution System where works are required in respect of a Bella or a relevant embedded medium Power Station or a relevant Embedded Small Power Station**

B BELLA

Edits to Schedule 2 Exhibit 5 (the Bella)

Add the additional following new definitions at Clause 1

DNO *name address and registered number of owner/operator of the distribution network to which user is to connect.*

DNO Construction Agreement *the agreement between The Company and the DNO for Transmission Reinforcement Works as a consequence of the User's connection to the Distribution System.*

Replace amended Clause 8 (Term) of the BELLA as follows

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

Part C - Text to give effect to the Proposed Consultation Alternative Amendment B

The text below amends the CAP150 Working Group Alternative by inserting the coloured and struck through text. A copy of the full Working Group legal text can be found in the Consultation document see link below:

<http://www.nationalgrid.com/NR/rdonlyres/F576CC45-9C2A-4873-88DB-060FBC7A84F3/21709/CAP150Consultationfinal.pdf>

2 **Users in the capacity of a Directly Connected Distribution System where works are required in respect of a Bella or a relevant embedded medium Power Station or a relevant Embedded Small Power Station**

A Construction Agreement

Add the following as new clause 2.y.5

[in the case of a BELLA

2.y.5 Where as a result of the reduction in the **Developer Capacity** [specified in the **Notice of Intended Termination**] the **Developer** is no longer an **Embedded Exemptable Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

2.y.5.1 **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5 and b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5 and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

2.y.5.2 Clause 2.y.4 shall be deleted and replaced as follows

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

a) **The Company** requires a revised **Request for a Statement of Works** and the **User** does not submit the same within 15

Business Days of the date of the **Notice of Intended Termination**; or

b) the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,

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

2.y.5.3 The **Modification Offer** referred to in Clause 2.y.5.2(b) shall also provide for such amendments as are necessary to this **Construction Agreement** and the [**Bilateral Connection Agreement or Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

B BELLA

Edits to Schedule 2 Exhibit 5 (the Bella)

Add the additional following new definitions at Clause 1

DNO	<i>name address and registered number of owner/operator of the distribution network to which user is to connect.</i>
DNO Construction Agreement	the agreement between The Company and the DNO for Transmission Reinforcement Works as a consequence of the User’s connection to the Distribution System .
Notice of Intended Termination	a notice given by The Company to the DNO pursuant to Clause 2.y.3 of the DNO Construction Agreement .

Replace amended Clause 8 (Term) of the BELLA as follows

“8.1 Subject to the provisions for earlier termination set out in the **CUSC** and **Clause 8.2 and Clause 8.3 below**, this **BELLA** shall continue until all of the

User's equipment is **Disconnected** from the relevant **Distribution System** as provided in Section 5 of **CUSC**.

- 8.2 This **BELLA** shall terminate where the **User** is no longer an **Embedded Exemptable Large Embedded Power Station** as a result of a revised **Request for a Statement of Works** made by the **DNO** following a **Notice of Intended Termination** and provided that the **DNO** has accepted the **Modification Offer** as required pursuant to Clause 2.y.4 of the **DNO Construction Agreement**.
- 8.3 This **BELLA** shall terminate if the **DNO Construction Agreement** is terminated prior to the issue by **The Company** of the **Operational Notification**.

ANNEX 2 – REPRESENTATIONS RECEIVED TO THE CONSULTATION DOCUMENT

This Annex includes list of all representations received following circulation of the Consultation Document of CAP150 (circulated on 29th November 2007, requesting comments by close of business on 27th December 2007) and a copy to the Consultation Alternative. Complete copies will be provided in the Amendment Report.

Representations were received from the following parties:

No.	Company	File No.
1	British Energy	CR_CAP150 _01
2	Centrica	CR_CAP150 _02
3	Dong Walney, SeaScape, Gunfleet	CR_CAP150 _03
4	E.ON	CR_CAP150 _04
5	EDF	CR_CAP150 _05
6	Falck Renewables	CR_CAP150 _06
7	Highlands and Islands Enterprise	CR_CAP150 _07
8	InterGen UK	CR_CAP150 _08
9	RWE	CR_CAP150 _09
10	Scottish Power	CR_CAP150 _10
11	Scottish Renewables	CR_CAP150 _11
12	SSE	CR_CAP150 _12
13	Welsh Power	CR_CAP150 _13
14	West coast energy	CR_CAP150 _14
15	Wind Energy	CR_CAP150 _15



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27 December 2007

Beverly Viney
Amendments Panel Secretary
Electricity Codes
National Grid
National Grid House
Warwick Technology Park
Gallows Hill, Warwick
CV34 6DA

Dear Beverley

Amendment Proposal CAP150: Capacity Reduction

Thank you for the opportunity to comment on this amendment proposal and the associated Working Group Alternative Amendment ("WGAA"). These comments are made on behalf of Heysham Offshore Wind Ltd, a CUSC party and affiliate of DONG Energy A/S operator and developer of a number of power stations in Great Britain. They are supported by DONG's affiliates DONG Walney (UK) Ltd, SeaScape Energy Ltd, Gunfleet Sands Ltd and Gunfleet Sands II Ltd.

We are aware that there has been debate about whether a CUSC Party may submit more than one Consultation Alternative Amendment in respect of a single Proposed Amendment. If it is believed that each Party may submit only one Consultation Alternative Amendment we would like Consultation Alternative Amendment A to be considered to be made by Heysham Offshore Wind Ltd, Consultation Alternative Amendment B to be considered to be made by Gunfleet Sands Ltd and Consultation Alternative Amendment C to be considered to be made by Gunfleet Sands II Ltd. The attached Consultation Alternative Amendment forms have been completed accordingly

Original Amendment: Comments and Consultation Alternative Amendment

Our key concern with the proposed amendment is that it discriminates unfairly against holders of BELLAs when compared with similarly sized projects that hold BEGAs. A Large Embedded Exempt Power Station in Scotland will have contracted with NGET either via a BEGA or a BELLA, pursuant to arrangements put in place for "BETTA". The project developer will be affected by CAP150 but in very different ways if the reduction in transmission capacity is such that the station cases to be "Large" (ie below 30MW in the south of Scotland or below 10MW in the north).



In the case of a project contracting by way of a BEGA, a reduction in TEC under the CAP150 process will not have any material impact other than to align its export capacity rights with its permits and/or generating capacity as built – for instance a 35MW project in Scottish Power Distribution's licensed area might be reduced to 20MW due to a planning constraint. Whilst the generator would need to meet the costs of reducing its capacity, it could still be able to proceed as planned with the original connection date, albeit for a smaller capacity.

In contrast, if the same project had contracted by way of a BELLA, a reduction in capacity to 20MW would mean that the station is no longer Large and therefore the BELLA would not be applicable to the station. In fact the station would now be an Embedded Small Power Station and subject to the provisions of 6.5.1(a) of the CUSC. This means that the DNO would now need to follow the "Request for a Statement of Works" process in 6.5.5. Our understanding is that in Scotland today, NGET would invariably regard an embedded station of this size as having a "significant system effect on the GB Transmission System" and therefore require the DNO to submit initially a Request for a Statement of Works and then a Modification Application. Further, the offer associated with the Modification Application would contain substantial reinforcement requirement as this "new" capacity requirement was effectively assessed at the end of the Scottish queue. The developer's station would thus be subject to substantial delays until reinforcements were completed.

In the case of projects who made an application prior to the end of 2004, the effect of this process (where the project reduces its size from "Large" to "Small") would be to move the BELLA-holding project to the back of the "queue", whereas the BEGA-holding project would retain its place in the queue and its original connection date. This is wholly inequitable. It is also an event that could not have been foreseen when in 2005 developers had to choose between BELLA and BEGA as contracting approaches for BETTA.

We considered a number of approaches to remedy this defect, including granting the User the right to switch from BELLA to BEGA without losing its place in the queue, or simply excluding projects that have held BELLAs from the Request for a Statement of Works process. Whilst these seemed reasonable ways forward we were concerned that adopting such an approach may have raised other issues which we could not properly consider in formulating a Consultation Alternative Amendment. Instead we suggest that an additional clause be included in section 6.5.5 of the CUSC to make it clear that the Transmission Reinforcement Works imposed on the DNO as a result of the Request for a Statement of Works cannot be such that they delay the developer's project beyond the date that would have been caused by the original Construction Agreement prepared in relation to the BELLA. Other amendments could however be considered so long as they address the same defect.

The attached Consultation Alternative Amendment (A), proposed by Heysham Offshore Wind Ltd, contains illustrative wording for the additional CUSC provision needed.



Working Group Alternative Amendment: Comments and Consultation Alternative Amendments

Having reviewed the proposed we agree with the majority view of the CUSC Panel in that the proposed termination rights in this formulation of CAP150 appears wholly disproportionate to what may be a relatively minor mismatch between capacity reserved and capacity being developed. It is unclear how NGET would exercise the judgement indicated in the diagram and text of sections 5.13 to 5.16 of the Consultation Document and this would add greatly to uncertainty in the development process. Indeed, the very presence of these draconian termination rights may cause otherwise viable projects to fail as equity investors and financiers supporting projects would understandably be reluctant to continue where there was a risk that NGET could unilaterally terminate key agreements. For Embedded Power Stations a further problem is that all communications go via the DNO and there is only 15 days to respond to the requesting (including making a full Mod App within 15 days of a Notice of Intended Termination). Whilst this is also a problem for the Original Amendment Proposal, at least in that formulation the ultimate effect is only downsizing of the transmission capacity, whereas in the WGAA the result is termination. There are no additional checks and balances for the Embedded generator reflecting the longer communication chain.

In addition, the proposed CUSC drafting for the WGAA does not fully align with the text of the Consultation Document. In section 5.11 it is stated that "Upon termination of the DNO's Construction Agreement, in order for a BELLA to be terminated, there needs to be a clause inserted into the BELLA". One would therefore expect that the BELLA would state that if the DNO's Construction Agreement was terminated the BELLA would also be terminated. In fact, the proposed drafting is that the BELLA would be terminated upon termination of the Distribution Agreement (that is "an agreement entered into by a User with the owner/operator of the Distribution System for the connection ... and use of such Distribution System"). Whilst the termination of the DNO's Construction Agreement *may* lead to termination of the Distribution Agreement this is not necessarily the case, and in any event termination of the Distribution Agreement and its relationship to the BELLA is a much bigger issue than discussed in CAP150.

It is noted that the Consultation Document did not expressly refer to the termination of the Distribution Agreement, although there was the rather obscure comment "[this new BELLA Clause] will ensure when the DNO's Construction Agreement is terminated all generator agreements directly associated with the terminated DNO Construction Agreement are terminated". This is not how the drafting works and the question of termination of the BELLA for reasons other than the termination of the DNO Construction Agreement needs to be properly debated if that is what is being sought.

Indeed it is known that NGET has been seeking termination of BELLAs where there is a termination or replacement of the Distribution Agreement, although it has been shown that this cannot be done without the User's consent. It therefore seems entirely inappropriate for such a significant provision to be added to existing BELLAs without the matter being properly debated through the CUSC governance process. As proposed the drafting change fails to meet its stated aim and raises significant issues outwith the scope of the proposed amendment.



The attached Consultation Alternative Amendment (B), proposed by Gunfleet Sands Ltd, contains illustrative wording for the proposed change to the BELLA to meet the express aim of CAP150 WGAA as set out in the Consultation Document and to address our concerns above.

We also noted that the WGAA process has the same defect as the Original Amendment in that a BELLA holder, forced by the threat of the "Notice of Intended Termination", may have to reduce its capacity below the "Large" threshold and thus need to have its capacity request reconsidered through the Request for a Statement of Works process.

The attached Consultation Alternative Amendment (C), proposed by Gunfleet Sands II Ltd, combines the illustrative wording for the additional CUSC provisions needed to address both the defects mentioned in Consultation Alternative Amendment (A) and Consultation Alternative Amendment (B).

Yours sincerely

A handwritten signature in black ink that reads "Anthony Cotton". The signature is stylized and cursive.

Anthony Cotton
Signed for on and behalf of Heysham Offshore Wind
Gunfleet Sands Ltd and Gunfleet Sands II Ltd

ANNEX 3 – CONSULTATION ALTERNATIVE AMENDMENT PROPOSAL FORMS

CUSC Consultation Alternative Amendment Proposal Form
CUSC working title of the Amendment Proposal and corresponding CAP reference CAP150: Capacity Reduction
Description of the Proposed Consultation Alternative Amendment (<i>mandatory by proposer</i>): CCA (A): Consistency of treatment of holders of BELLAs and BEGAs
Description of differences between the proposed Consultation Alternative Amendment compared to Original proposal / Working Group alternative (<i>mandatory by proposer</i>): New provision in CUSC 6.5.5 to ensure such consistency
Justification for the proposal of the Consultation Alternative (<i>including why the original proposal / Working Group alternative does not address the defect</i>) (<i>mandatory by proposer</i>): Avoids discrimination as more fully set out in covering letter
Impact on the CUSC (<i>this should be given where possible</i>): New provision CUSC 6.5.5.12
Impact on Core Industry Documentation (<i>this should be given where possible</i>): None
Impact on Computer Systems and Processes used by CUSC Parties (<i>this should be given where possible</i>): None
Justification for Proposed Consultation Alternative Amendment with Reference to Applicable CUSC Objectives** (<i>mandatory by proposer</i>): (a) <i>the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence;</i> By avoiding discrimination against BELLA holders (b) <i>facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.</i> By avoiding discrimination against BELLA holders

Details of Proposer of Consultation Alternative Amendment: Organisation's Name:	Heysham Offshore Wind Ltd
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Consultation Alternative Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Anthony Cotton c/o DONG Energy 01473 780 933 xanco@dongenergy.dk
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Ivan Christiansen DONG Energy 0045 2540 2186 ivach@dongenergy.dk
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	No, CUSC text below

Illustrative amendments to the CUSC changes proposed in CAP150 Amendment Proposal:

In addition to the changes proposed in the Consultation Document, add the following new clause to section 6.5.5 of the CUSC:

"6.5.5.12 Where the developer of a **Power Station** that is the subject of the **Request for a Statement Works** is a **User** that holds a **BELLA** for that **Power Station**, then provided the **User** consents to the termination of that **BELLA**, no **Transmission Reinforcement Works** shall be included in the **Modification Offer** or **Construction Agreement** made as a result of the **Request for a Statement of Works** which would delay **Energisation** of the **Power Station** or use of the **Distribution System** beyond the date of such as would have been caused by the original **Construction Agreement** prepared in relation to the **BELLA**."

CUSC Consultation Alternative Amendment Proposal Form
CUSC working title of the Amendment Proposal and corresponding CAP reference CAP150: Capacity Reduction
Description of the Proposed Consultation Alternative Amendment (<i>mandatory by proposer</i>): CCA (B): Correction to BELLA termination provisions
Description of differences between the proposed Consultation Alternative Amendment compared to Original proposal / Working Group alternative (<i>mandatory by proposer</i>): Variation to BELLA clause 8 to refer to DNO's Construction Agreement rather than the Distribution Agreement
Justification for the proposal of the Consultation Alternative (<i>including why the original proposal / Working Group alternative does not address the defect</i>) (<i>mandatory by proposer</i>): Correctly deals with this issue as more fully set out in covering letter
Impact on the CUSC (<i>this should be given where possible</i>): Change to pro-forma BELLA clause 8
Impact on Core Industry Documentation (<i>this should be given where possible</i>): None
Impact on Computer Systems and Processes used by CUSC Parties (<i>this should be given where possible</i>): None
Justification for Proposed Consultation Alternative Amendment with Reference to Applicable CUSC Objectives** (<i>mandatory by proposer</i>): (a) <i>the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence;</i> Does not introduce unwarranted BELLA termination provisions and correctly relates termination of BELLA to termination of DNO's Construction Agreement (b) <i>facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.</i> Does not introduce unwarranted BELLA termination provisions and correctly relates termination of BELLA to termination of DNO's Construction Agreement

Details of Proposer of Consultation Alternative Amendment: Organisation's Name:	Gunfleet Sands Ltd
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Consultation Alternative Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Anthony Cotton c/o DONG Energy 01473 780 933 xanco@dongenergy.dk
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Ivan Christiansen DONG Energy 0045 2540 2186 ivach@dongenergy.dk
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	No, CUSC text below

Illustrative amendments to the CUSC changes proposed in CAP150 WGAA:

Instead of making the proposed amendment to Clause 8 (Term) of the BELLA, this should be amended as follows:

"Subject to the provisions for earlier termination set out in the **CUSC**, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** as provided in Section 5 of **CUSC** or earlier if the **Construction Agreement** (as entered into between **The Company** and the owner/operator of the **Distribution System** in relation to the **Transmission Reinforcement Works**) is terminated prior to the issue by **The Company** of the **Operational Notification**."

CUSC Consultation Alternative Amendment Proposal Form
CUSC working title of the Amendment Proposal and corresponding CAP reference CAP150: Capacity Reduction
Description of the Proposed Consultation Alternative Amendment (<i>mandatory by proposer</i>): CCA (C): (1) Correction to BELLA termination provisions and (2) Consistency of treatment of holders of BELLAs and BEGAs
Description of differences between the proposed Consultation Alternative Amendment compared to Original proposal / Working Group alternative (<i>mandatory by proposer</i>): (1) Variation to BELLA clause 8 to refer to DNO's Construction Agreement rather than the Distribution Agreement and (2) new provision in CUSC 6.5.5 to ensure such consistency
Justification for the proposal of the Consultation Alternative (<i>including why the original proposal / Working Group alternative does not address the defect</i>) (<i>mandatory by proposer</i>): (1) Correctly deals with this issue as more fully set out in covering letter (2) Avoids discrimination as more fully set out in covering letter
Impact on the CUSC (<i>this should be given where possible</i>): Change to pro-forma BELLA clause 8 and New provision CUSC 6.5.5.12
Impact on Core Industry Documentation (<i>this should be given where possible</i>): None
Impact on Computer Systems and Processes used by CUSC Parties (<i>this should be given where possible</i>): None
Justification for Proposed Consultation Alternative Amendment with Reference to Applicable CUSC Objectives** (<i>mandatory by proposer</i>): <i>(a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence;</i> Does not introduce unwarranted BELLA termination provisions and correctly relates termination of BELLA to termination of DNO's Construction Agreement By avoiding discrimination against BELLA holders <i>(b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.</i> Does not introduce unwarranted BELLA termination provisions and correctly relates termination of BELLA to termination of DNO's Construction Agreement By avoiding discrimination against BELLA holders

Details of Proposer of Consultation Alternative Amendment: Organisation's Name:	Gunfleet Sands II Ltd
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
Details of Consultation Alternative Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Anthony Cotton c/o DONG Energy 01473 780 933 xanco@dongenergy.dk
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Ivan Christiansen DONG Energy 0045 2540 2186 ivach@dongenergy.dk
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	No, CUSC text below

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"Subject to the provisions for earlier termination set out in the **CUSC**, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** as provided in Section 5 of **CUSC** or earlier if the **Construction Agreement** (as entered into between **The Company** and the owner/operator of the **Distribution System** in relation to the **Transmission Reinforcement Works**) is terminated prior to the issue by **The Company** of the **Operational Notification**."

In addition to the other changes proposed in the Consultation Document, add the following new clause to section 6.5.5 of the CUSC:

"6.5.5.12 Where the developer of a **Power Station** that is the subject of the **Request for a Statement Works** is a **User** that holds a **BELLA** for that **Power Station**, then provided the **User** consents to the termination of that **BELLA**, no **Transmission Reinforcement Works** shall be included in the **Modification Offer** or **Construction Agreement** made as a result of the **Request for a Statement of Works** which would delay **Energisation** of the **Power Station** or use of the **Distribution System** beyond the date of such as would have been caused by the original **Construction Agreement** prepared in relation to the **BELLA**."