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Direct Dial: 020-7901-7050

6 September 2006

National Grid Electricity Transmission Company (NGET),
CUSC Signatories and Other Interested Parties

Our Ref: IND/COD/CUSC/CAP124

Dear Colleague,

Amendment to the Connection and Use of System Code ("CUSC") - Decision and Direction in relation to Proposed Amendment CAP124: "Clarification of the withholding of payments for operational intertrips".

The Gas and Electricity Markets Authority (the "Authority"¹) has considered the issues raised in the Amendment Report² in respect of Proposed Amendment CAP124 "Clarification of the withholding of payments for operational intertrips".

The CUSC Amendments Panel ("the Panel") recommended to the Authority that Consultation Alternative Amendment (CAA) B should be approved and agreed that the Modification Proposal should be implemented ten business days after the Authority's decision.

Having considered the Amendment Report and the CUSC Amendment Panel's recommendation, as well as having regard to the Applicable CUSC Objectives³ and Ofgem's wider statutory duties,⁴ the Authority has decided to direct a modification to the CUSC in line with CAA B for CAP124.

¹ Ofgem is the office of the Authority. The terms "Ofgem" and "the Authority" are used interchangeably in this letter.

² CAP124 Amendment Report dated 15 August 2006.

³ The Applicable CUSC Objectives are contained in Standard Condition C10 of the licence to transmit electricity treated as granted to NGET under Section 6 of the Electricity Act 1989 (the "Transmission Licence") and are:
(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence;
and
(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

⁴ Ofgem's statutory duties are wider than the matters that the Panel must take into consideration and are explained in sections 3A – 3D of the Electricity Act 1989.

This letter explains the background to CAP124, and sets out the Authority's reasons for its decision. This letter constitutes notice by the Authority under section 49A of the Electricity Act 1989.

Background

CAP076: "Treatment of System to Generator Intertripping Schemes"⁵ introduced arrangements for four categories of intertrip scheme into the CUSC. For two of these categories, 2 and 4, a generator receives a payment, an "Intertrip Payment", from NGET when the intertrip scheme operates.

CAP048: "Firm Access and Temporary Physical Disconnection"⁶ introduced compensation arrangements in the event that access cannot be provided for a generator to the transmission system. Where a party is disconnected for a period greater than 24 hours, a "Restricted Export Level Payment" may be paid by NGET. This payment in effect provides a rebate against Transmission Network Use of System ("TNUoS") charges which are paid for by the Generator.

Section 4.2A.5 of the CUSC sets out the circumstances in which NGET is not obliged to make an Intertrip Payment or a Restricted Export Level Payment. NGET expressed a concern that section 4.2A.5 of the CUSC does not specifically cater for circumstances where a generator fails to disarm the System to Generator Intertripping Scheme following an instruction to disarm from NGET and the intertrip scheme operates. In this, all be it rare, circumstance, NGET would be required to pay the Intertrip Payment and possibly a Restricted Export Level Payment to the generator. Hence NGET proposed CAP124 to close the perceived loophole.

CAP124 was submitted for consideration at the CUSC Amendments Panel Meeting on 19 May 2006. The Panel determined that the Proposed Amendment should proceed to wider industry consultation by NGET. Following the closure of this consultation on 20 June 2006, E.ON UK plc proposed CAA A, to address what they saw as two practical implementation issues, and NGET proposed CAA B. A further period of consultation, which closed on 11 July 2006, was undertaken by NGET.

The CUSC Amendment Panel Recommendation Vote was conducted at the Panel meeting on 28 July 2006. The final Amendment Report was submitted to the Authority on 15 August 2006.

The Proposed Amendment

CAP124 proposes to amend CUSC 4.2A.5 to include an additional provision to clarify that a Restricted Export Level Payment or Intertrip Payment will be withheld should an intertrip operate when a generator has failed to disarm the system to generator operational intertripping scheme in accordance with an instruction from NGET.

The proposer considers that CAP124 would provide clarity for both NGET and the generators in terms of when payments will or will not be withheld and would ensure that

⁵ <http://www.nationalgrid.com/NR/rdonlyres/1E0FF9A8-9B75-4312-B40C-DBD49DA6F49D/7096/CAP076D.pdf>

⁶ <http://www.nationalgrid.com/NR/rdonlyres/14ACD9FA-F3EB-437E-B07C-024056ED79F8/2112/CAP048D.pdf>

current foreseeable events for withholding of payments for operational intertrip are stated within the CUSC. As such the proposer considers that CAP124 better facilitates achievement of CUSC Applicable Objective (a).

Respondents' views

NGET issued a consultation paper for this CUSC Amendment on 23 May 2006 inviting responses from CUSC Parties and interested parties by 20 June 2006.

NGET received 4 responses to the consultation in respect of CAP124, of which three supported and one did not support the original Amendment Proposal.

Two of the respondents supporting the original Amendment Proposal considered that the system operator should not have to make payments when an intertrip scheme operates as a consequence of a generator failing to disarm. These respondents considered that generators should not benefit from failing to follow an instruction to disarm.

The respondent that did not support the original Amendment Proposal stated that they agreed with the intention of the proposal but had concerns about implementation. Firstly, the respondent argued that the drafting should be changed to include a reasonable time for the generator to act following an instruction to disarm from NGET, as they considered the current wording implied this to be done immediately. Secondly, the respondent argued that the current drafting of the CUSC implied that an instruction to disarm the System to Generator Intertripping Scheme by NGET will be deemed to have been made whenever the intertrip scheme actually operates. The respondent therefore suggested that the wording implying this should be removed. The respondent also considered that the proposed wording implied that the provisions of CAP124 apply to all trips and consequently generators could be refused payments for trips which occurred as a result of the scheme being legitimately armed.

The respondents' views are summarised and contained in the Amendment Report in respect of CAP124.

Consultation Alternative Amendment A

CAA A was raised by E.ON UK plc. It seeks to clarify the timescale between NGET issuing an instruction to disarm and the time at which a generator must have disarmed the intertrip. CAA A therefore includes wording that the generator should disarm the System to Generator Operational Intertripping Scheme "as soon as reasonably practicable" after NGET has instructed it to do so. CAA A also seeks to clarify the situations in which the generators should not be paid Intertrip Payments and proposes the removal of text which implies that generators should be refused Intertrip Payments for all trips.

The Proposer considers that CAA A would better facilitate achievement of CUSC objective (a) as it provides an obligation on generators to disarm as soon as reasonably practicable following an instruction to disarm and deletes unnecessary text relating to deemed instruction to disarm.

Consultation Alternative Amendment B

CAA B was raised by NGET. Like CAA A, CAA B seeks to clarify the timescale between NGET issuing an instruction to disarm and the time at which a generator must have responded to the request. It proposes the inclusion of the text “as soon as reasonably practicable” to address this issue.

The Proposer considers that CAA B better facilitates achievement of Applicable CUSC objective (a) as it ensures there is a reciprocal obligation on both parties to act as soon as reasonably practicable.

Consultation Alternative Amendment consultation

A Consultation Alternative Amendment consultation was issued on 27 June 2006 with views invited by 11 July 2006. Three responses were received with all three respondents supporting CAA B.

One respondent who supported CAA B considered it could be improved by including a specific time for generators to respond to the request to disarm in order to remove any ambiguity surrounding what might be deemed “as soon as reasonably practicable”.

CUSC Amendment Panel's recommendation

At their vote on 28 July 2006 the Panel unanimously considered that the Original Amendment Proposal for CAP124 and CAA B would better facilitate achievement of the Applicable CUSC Objectives. The Panel also unanimously considered that CAA A failed to better facilitate the CUSC objectives. On balance, the Panel unanimously agreed that CAA B of CAP124 should be approved with an implementation date of 10 business days after the Authority's decision.

Ofgem's view

Having considered the Amendment Report, Ofgem considers, having regard to its statutory duties and the Applicable CUSC Objectives, that the Original Amendment and CAA B better facilitate the achievement of the CUSC Objectives. Additionally, we consider that CAA A does not better facilitate the achievement of the CUSC objectives as the text which it seeks to remove from the CUSC is considered necessary.

Ofgem notes that the likelihood of an intertrip operating after an instruction to disarm has been issued by NGET is low. However, to the extent that CAA B removes exposure to costs associated with intertrips operating after an instruction to disarm has been issued - and generators have had a reasonable opportunity to respond to the instruction - and removes any perverse incentives for any party to have limited regard to such instructions, Ofgem considers that CAA B better facilitates achievement of the applicable objectives than the Original Amendment.

The Authority's Direction

The Authority has decided to direct that CAA B, as set out in the Amendment Report, should be made and implemented.

Having regard to the above, the Authority, in accordance with Condition C10.7(a) of the licence to transmit electricity granted to NGET under Section 6 of the Electricity Act 1989 (the "Transmission Licence"), hereby directs NGET to modify the CUSC in accordance with CAA B as set out in the Amendment Report.

The modification is to be implemented and take effect from 10 business days after the Authority's decision.

In accordance with Condition C10.7(c) of NGET's Transmission Licence, NGET shall modify the CUSC in accordance with this direction of the Authority.

If you have any queries in relation to the issues raised in this letter, please feel free to contact Mark Copley on 0207 901 7410 or via email on Mark.Copley@ofgem.gov.uk.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Robert Hull', with a horizontal line underneath.

Robert Hull
Director, Transmission

Signed on behalf of the Authority and authorised for that purpose by the Authority