

Amendment proposal:	Connection and Use of System Code (CUSC) Amendment Proposal CAP150: Capacity Reduction (CAP150)		
Decision:	The Authority ¹ directs that the Consultation Alternative Amendment A ("CAA A") be made ²		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	01 May 2008	Implementation Date:	16 May 2008 (10 business days after Authority decision)

Background to the amendment proposal

Currently there are a large number of generators awaiting connection to the GB transmission network, especially in Scotland. This situation, known as the "GB queue" arose following implementation of the British Electricity Trading and Transmission Arrangements (BETTA) which saw an unprecedented volume of new applications for connection to the network. Such applications were processed on the existing "first come, first served" basis. Under these arrangements, any contingent transmission works for a given project are identified on the basis that all projects with signed agreements proceed to connection and that all existing generators which are already connected continue to use the system. The given project's completion date is then contingent on the necessary transmission works being completed.

The limited availability of transmission capacity on the existing transmission network, particularly in areas with the highest demand for that capacity such as Scotland, has meant that many projects require significant reinforcements to the network before they can connect. As a result, many projects have signed agreements for connection dates far into the future, as transmission capacity which they might otherwise be able to use is already allocated to projects higher in the GB queue, leading to "bottlenecks".

In practice, it is likely that a proportion of projects in the GB queue will not proceed to connection, e.g. due to failure to obtain the necessary planning consents. In addition, there are a number of projects for which the contracted transmission capacity is in excess of their likely requirements, e.g. in situations where planning consents have been granted for a lower capacity figure. This has an impact on users lower in the GB queue in terms of the identification of their contingent transmission works and their earliest possible connection date. However, should a given project holding excess capacity reduce its capacity or terminate its agreement, this could potentially facilitate the earlier connection of other projects, depending on how the transmission capacity released in this way is reallocated.

NGET has been working with the industry on developing ways to manage the GB queue, including providing up to date information on project milestones and the transmission works associated with a given project in the GB queue, facilitating the creation of gaps in transmission capacity that may be utilised by parties waiting to connect and developing mechanisms for parties to move their connection date forward to make use of this transmission capacity.

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

CAP150 was proposed by NGET as part of these initiatives and seeks to facilitate the creation of gaps in the GB queue by providing a framework under which NGET may release transmission capacity which is unlikely to be required by a given project.

The original amendment proposal

CAP150 was raised by NGET on 29 June 2007. The main intention of CAP150 is to facilitate the creation of gaps in the GB queue by enabling NGET to reduce the contracted capacity figure of projects which are not progressing, or are deemed unlikely to progress, according to agreed milestones set out in the associated construction agreement.

The original amendment seeks to provide a framework for NGET to monitor project progress throughout the construction phase and to reduce its contracted capacity where NGET reasonably believes the project will be unable to use the contracted capacity by the completion date, e.g. if the contracted capacity is inconsistent with a project's consented capacity (or it has failed to obtain consents) or the developer's construction programme is inconsistent with the completion date. The effect of the capacity reduction process is intended to be similar to that in which the user submits a Modification Application to reduce the contracted capacity, and the standard Modification Application fee would apply in relation to the costs associated with processing the change. The process of reducing the capacity would also involve a reassessment of the transmission works to meet the reduced capacity figure, and the user would pay for costs in relation to any transmission works that have been done which are no longer required as a result of the capacity reduction.

The framework under the original amendment includes two stages: an informal process and a formal process. Under the informal process NGET would, having identified a project it considers incapable of generating the contracted capacity by its completion date, approach the relevant user for clarification and set out the basis of its concerns, e.g. with reference to the information provided by the user through the quarterly report and under the Grid Code, and information available as to the project's consents status. The user would have 15 business days to respond. If NGET is satisfied that its concerns had been addressed, it would confirm this to the user in writing. Otherwise NGET could initiate the formal process by issuing a formal Notice of Intent, confirming NGET's intention to apply a capacity reduction. The user would have a further 15 days to respond before NGET would issue a formal Notice of Reduction to the user, to take effect 15 business days later. Within 3 months of the Notice of Reduction taking effect NGET would issue an agreement to vary the relevant agreement to reflect any changes in the transmission works associated with the change to the contracted capacity. In addition, the formal process includes a mechanism for the user to refer the Notice of Reduction to the Authority for determination, in the event that any disputes have not been resolved during the earlier stages of the process. Any such referral must take place within 15 business days of the issue of the Notice of Reduction.

The above framework applies directly to all users with construction agreements associated with contracted Transmission Entry Capacity (TEC), including distributed generators with a Bilateral Embedded Generation Agreement (BEGA). For a distributed generator (DG) holding a Bilateral Embedded Licence exemptable Large power Station Agreement (BELLA) and for Relevant Embedded Small Power Stations and Relevant Embedded Medium Power Stations affected through the Statement of Works process, the relevant provisions are applied via the construction agreement held by the Distribution Network Operator (DNO) for the associated transmission works.

The proposer considered that CAP150 would better facilitate applicable CUSC objectives (a) and (b). It argued that by improving the level of certainty over the capacity connecting CAP150 would help facilitate efficient transmission investment, and that it would also allow NGET to release capacity to parties that are able to use it thereby facilitating competition. NGET also argued that through the inclusion of checks and balances, including the right of referral to the Authority, the process ensures a user's capacity cannot be revised inappropriately.

Working group alternative amendment (WGAA)

The CAP150 working group developed one working group alternative amendment (WGAA), which was proposed by EDF Energy. The WGAA differs from the original amendment proposal in that it seeks to terminate the construction agreement for the affected projects, rather than reducing the contracted capacity. On termination the usual termination provisions would apply and the user would become liable for the secured amount (either the Final Sums Liabilities or the amount due under the Interim Generic User Commitment (IGUC) arrangements) due under the construction agreement.

As is the case for the original amendment, the framework under the WGAA involves an informal process and a formal process. While the informal process is similar to that described above for the original amendment proposal, the WGAA follows a different formal process which is initiated by NGET issuing a Notice of Intended Termination. The user is given the opportunity to submit a Modification Application, otherwise the agreements are terminated within 15 business days of the Notice of Intended Termination. In the case of DG where the construction agreement is held by the DNO, the DNO would be served with the Notice of Intended Termination and where it is associated with a BELLA then that BELLA would also be terminated. If the user submits a Modification Application then that would be processed in the normal manner, including the right for the user to refer the resulting Modification Offer to the Authority for determination.

The proposer of the WGAA argued that the amendment would provide an incentive for users to behave properly with regard to their CUSC obligations, and an efficient process for NGET to penalise those who act improperly, without the legal implications associated with notifying the Authority that the user is in breach of the CUSC. The majority of the working group believed that the WGAA did not better facilitate the applicable CUSC objectives, on the basis that it is too severe and would introduce additional project risk.

Consultation alternative amendments (CAA A, CAA B, CAA C)

NGET issued a consultation on CAP150 on 5 October 2007, and three consultation alternative amendments (CAAs) were raised by respondents to the consultation.

The CAA A was raised by Heysham Offshore Wind Ltd and proposes to amend the original amendment proposal to prevent inconsistent treatment between users holding a BELLA and those holding a BEGA. The proposer noted that for a project holding a BELLA a reduction in capacity may result in the project no longer being classified as Large under the Grid Code. As a result the BELLA would no longer be appropriate as the project would change from an Embedded Exemptable Large Power Station to an Embedded Small Power Station, such that the capacity reduction would lead to a requirement for the DNO to submit a Request for a Statement of Works. However, if the same project initially held a BEGA rather than a BELLA then the original amendment proposal would lead to a reduction in TEC and the BEGA agreement would continue to apply. The proposer of the

CAA A argued that the user would not have anticipated this issue when choosing whether to apply for a BEGA or a BELLA. The CAA A includes additional clauses which ensure that BELLAs and BEGAs are treated in a consistent manner, by treating a project holding a BELLA in the situation described above on the same basis as if its original application had resulted in a Request for a Statement of Works. The proposer argues that this would better facilitate the applicable CUSC objectives by preventing any possible discrimination against users with a BELLA.

The CAA B was raised by Gunfleet Sands Ltd and proposes to amend the legal drafting of the WGAA to meet the express aims of the WGAA regarding termination for BELLAs, by correctly linking termination of the BELLA with termination of the DNO construction agreement rather than the distribution agreement. The proposer argued that this would prevent the introduction of unwarranted BELLA termination provisions.

The CAA C was raised by Gunfleet Sands II Ltd and proposes to amend the WGAA to include the amendments proposed under both CAA A and CAA B.

CUSC Panel³ recommendation

The CUSC Panel (the Panel) discussed the proposal at its meeting of 29 February 2008. The outcome of the Panel recommendation vote as to whether each proposal better facilitated the applicable CUSC objectives was:

Original	- Yes unanimously
WGAA	- No majority
CAA A	- Yes unanimously
CAA B	- Equal split – 4 voted Yes, 4 voted No
CAA C	- Equal split – 4 voted Yes, 4 voted No
BEST	- CAA A by a majority of 7 out of 8

The Panel considered that the consultation alternative amendment proposal CAA A best facilitated achievement of the Applicable CUSC Objectives, and therefore recommended it for Authority approval.

The Authority's decision

The Authority has considered the issues raised by the amendment proposal and the final Amendment Report (AR) dated 28 March 2008. The Authority has considered and taken into account the responses to NGET's consultation on the amendment proposal which are attached to the AR⁴. The Authority has concluded that:

- 1. implementation of CAA A will better facilitate the achievement of the applicable objectives of the CUSC⁵; and**
- 2. directing that the amendment be made is consistent with the Authority's principal objective and statutory duties⁶.**

³ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with the section 8 of the CUSC.

⁴ CUSC amendment proposals, amendment reports and representations can be viewed on NGET's website at <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/>

⁵ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=5327

⁶ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

Reasons for the Authority's decision

Ofgem has considered the views of the Panel as well as those expressed by respondents to NGET's consultation, and agrees with the Panel recommendation that both the original proposal and the consultation alternative amendment proposal CAA A better facilitate achievement of the Applicable CUSC Objectives. Ofgem also agrees with the Panel recommendation that, of these two proposals, CAA A best facilitates achievement of the Applicable CUSC Objectives. Ofgem also considers that the CAA A is consistent with the Authority's wider duties.

Given the limited availability of transmission capacity on the existing transmission network, particularly in areas with the highest demand for that capacity such as Scotland, the issues relating to the GB queue are exacerbated where developers' contracted capacity does not reflect their actual requirements or where they are unable to progress the project according to agreed timescales.

The current arrangements already take account of the fact that there may be some uncertainty as to the project requirements at the time the agreement is entered into, by allowing the user to submit a Modification Application or seek to terminate its agreement should its requirements subsequently change. Failure to do so is likely to mean that the user will ultimately be unable to meet its obligations under the construction agreement. While the construction agreement includes provisions which allow NGET to terminate the agreement in certain circumstances, in practice these provisions alone provide limited incentive to users to voluntarily give up contracted capacity which the project is unlikely to require. In addition, the remedy of termination may not be proportionate in all cases.

The proposer of CAP150 identified an issue whereby the current arrangements effectively allow developers to hoard capacity until a late stage in the project. CAP 150 and its alternatives seek to address this by providing an additional tool for the efficient management of capacity. While the details of the proposals differ, they each provide a framework for NGET to monitor project progress against agreed milestones, to raise any concerns with the user, and to release transmission capacity in circumstances where NGET reasonably believes that a given project is unlikely to use its contracted capacity by the completion date but where the user has failed to submit a Modification Application or to terminate its agreement.

Having given careful consideration to the respective merits of the original proposal and its alternatives compared to the existing CUSC baseline, and taking into account the views of the Panel and respondents to NGET's consultation, Ofgem considers that both the original proposal and consultation alternative CAA A would better facilitate the applicable CUSC objectives, although the CAA A would do so to a greater extent than the original.

We note that where a user retains contracted capacity which is unlikely to be used, this has consequences for other users in terms of the identification of their contingent works and their earliest possible connection date. However, should such excess contracted capacity be relinquished, then this could potentially facilitate the earlier connection of other projects, depending on its timing and how the transmission capacity released in this way is reallocated. Both the original proposal and the CAA A enable NGET to accelerate the release of excess contracted capacity, while having the same effect on the user as if they had submitted a Modification Application.

Ofgem considers that these proposals would better facilitate applicable CUSC objectives (a) and (b). By improving the level of certainty over the actual capacity connecting, the proposals would help facilitate efficient transmission investment. They also provide a mechanism stopping the progression of transmission investments which will not be required by a given project. They would facilitate effective competition in electricity generation by enabling NGET to release transmission capacity, at an earlier stage than it would otherwise, to parties that are able to use it, reducing barriers to entry. Ofgem agrees that the framework introduced by CAP150 should apply to all projects with an associated construction agreement, including BELLAs and Relevant Embedded Small Power Stations and Relevant Embedded Medium Power Stations for which the construction agreement is held by the DNO. Ofgem also notes that the informal stage of the framework provides the user with opportunity to address any concerns before the formal stage is initiated, which in turn provides the user a further right of referral to the Authority. Ofgem considers that these measures should ensure that NGET would not initiate the capacity reduction process without due cause, and that the proposals would have minimal impact on project risk. However, while we agree that users should have the right of referral we expect that parties should seek to resolve issues prior to referral to the Authority.

Ofgem also considers that the CAA A has additional benefits over the original proposal in dealing with the situation where a project with a BELLA is no longer classed as Large under the Grid Code following a reduction in capacity. We do not consider that the alternatives involving termination (WGAA, CAA B, CAA C) would better facilitate the applicable CUSC objectives than either the original proposal or CAA A. While these alternatives have similar benefits in terms of facilitating the release of transmission capacity, we consider that they would increase project risk and are more likely to lead to disputes. We also consider that the remedy of termination may not be proportionate in all cases.

Overall, Ofgem considers that the CAA A best facilitates the applicable CUSC objectives and should be implemented.

Ofgem notes the concerns raised by respondents as to the practicalities of the process. In the light of these concerns we welcome NGET's commitment to undertake a post-implementation review. We note that these concerns included the need for clarity as to the materiality thresholds for triggering the capacity reduction process. We consider that further clarification in this respect may minimise the need for referrals to the Authority. In addition, a number of wider issues were raised in relation to the GB queue, which we note NGET are considering as part of its ongoing work on GB queue management. As part of this work it may also be beneficial to consider the extent to which the current level of application fees creates a barrier to parties seeking to reduce contracted capacity. Finally, in terms of the application of the proposal to DG projects for which the construction agreement is held by the DNO, we note there is an interaction with the provisions introduced by CAP097, which provide the framework by which the construction agreement is entered into through the Statement of Works process. As an area of further work it may be beneficial to develop in more detail the contractual provisions between NGET, the DNO and DG in order to define rights and obligations associated with the "developer capacity" introduced by CAP150.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that amendment proposal CAP150: Capacity Reduction, specifically the consultation alternative CAA A, be made.

The implementation date is 10 business days after an Authority decision which is 16 May 2008.



Steve Smith
Managing Director, Networks

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