



To CUSC Parties and any other party who has an interest in the transmission arrangements

Promoting choice and value for all customers

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Dear Colleague

Update on CUSC Amendment Proposal CAP148

The purpose of this letter is to update the industry on our decision-making process for CUSC Amendment Proposal CAP148 "Deemed Access Rights to the GB Transmission System for Renewable Generation".

CAP148 was raised by Wind Energy (Forse) Ltd in April 2007 and proposes to change the arrangements set out in the Connection and Use of System Code (CUSC) for certain classes of new generators (renewable or low carbon) to connect to and use the GB transmission. Specifically, the original amendment proposal seeks to provide for priority connection for new renewable generation and priority dispatch for such generation once connected. Five alternative proposals have also been raised. These alternatives each retain the priority connection element of the original proposal, albeit with some variations for example in relation to eligibility criteria, and assign firm rights once connected.

On 16 July 2008 Ofgem published an impact assessment consultation in relation to CAP148, including the original proposal and each of the alternatives. The impact assessment consultation set out our quantitative and qualitative assessment of the impacts of CAP148 and set out the Authority's minded-to decision, reached at its May 2008 meeting, to reject each of the CAP148 variants. It also stated that the Authority anticipated publishing its decision on CAP148 towards the end of 2008, following consideration of responses to the impact assessment consultation.

At its December 2008 meeting the Authority gave further consideration to CAP148 in the light of all relevant information available to it, including responses to the 16 July 2008 impact assessment consultation. The Authority also considered the implications of changes to its statutory duties arising under the Energy Act 2008. The Authority concluded that it would be appropriate, before it takes its final decisions concerning CAP148, for a further consultation to be undertaken in the light of the changes to its duties.

The purpose of this open letter is to set out the Authority's reasons for deciding at this stage not to make its final decisions concerning CAP148, and the proposed way forward.

New duties under the Energy Act 2008

The Energy Act 2008 (the "Energy Act") contains provisions which, once commenced, will modify the general duties of the Authority in carrying out its functions under the Gas Act 1986 and the Electricity Act 1989. In particular, those changes will mean that, when carrying out its functions in the manner which it considers is best calculated to further its

principal objective, the Authority must do so by having regard to the need to contribute to the achievement of sustainable development equally with the need to have regard to the need to secure that all reasonable demands for electricity and gas are met and that licensees are able to finance their regulated activities.

It has also been highlighted within the text of the principal objective that the Authority's consideration of the interests of consumers includes both future as well as existing consumers.

The Energy Act received Royal Assent on 26 November 2008 but these provisions do not have legal force until they are commenced. We do not yet have a commencement date for the new provisions but it is likely to be early in 2009.

During the period between the Energy Act having received Royal Assent and commencement of the provisions which affect its duties, the Authority must continue to apply the principal objective and its statutory duties in accordance with the Gas Act 1986 and the Electricity Act 1989 as they currently stand (i.e. prior to the Energy Act amendments taking effect), although it will be mindful of the changes that are forthcoming. The Authority already takes account of sustainable development in its decisions but with the change in duties the weight that is attached to such considerations will be increased.

Our 16 July 2008 impact assessment consultation on CAP148 highlighted that sustainable development is a particularly relevant consideration in our assessment of CAP148. As such we think it is appropriate to consider whether our decision on CAP148 will be affected by the change to our duties. The Authority has decided that, before reaching its final decisions on CAP148, it would be appropriate to seek industry views on this matter.

Way forward

The Authority has requested Ofgem to undertake further industry consultation on CAP148 before it reaches its final decisions. We currently intend to publish this consultation in early February 2009. As well as considering the changes to our statutory duties, the consultation will also consider issues raised by respondents to the impact assessment consultation and other relevant information since the impact assessment consultation was published.

The Authority will take into account responses to the proposed consultation in making its final decisions. The Authority currently expects to be in a position to make its final decisions on CAP148 in Spring 2009.

Yours faithfully



Stuart Cook
Director, Transmission