

Further consultation on CAP148 - Deemed access rights to the GB transmission system for renewable generation

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Target audience: Transmission licensees, renewable and conventional generators, CUSC parties and any other party who has an interest in transmission

Overview:

We are inviting views on our further assessment of proposals (CAP148 original and each of the five alternatives) to amend the Connection and Use of System Code (CUSC) to give priority access to new renewable or low carbon generators seeking to connect to and use the GB transmission system.

Our impact assessment published in July 2008 set out our qualitative and quantitative assessment of the impacts of CAP148 and the Authority's minded-to decision to reject each of the CAP148 variants. In an open letter published in December 2008 we set out why the Authority considered it would be appropriate, before it takes its final decision concerning CAP148, for further consultation to be undertaken in the light of the changes to its statutory duties following the commencement of the Energy Act 2008.

We are therefore seeking views on the impact of our change in duties – particularly the elevation of our sustainable development duty within our hierarchy of duties - on our minded-to position. We also consider issues raised by respondents to our impact assessment, and other relevant information and developments that have come to light since that document was published.

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Context

There are a large number of mainly renewable generators waiting to connect 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). The implementation of these arrangements prompted an unprecedented volume of new applications for connection to the network and use of the GB transmission system. These applications were processed according to the existing rules which assign priorities on a "first come, first served" basis. Under the existing approach any project's connection date and allocation of firm transmission access rights at a given Transmission Entry Capacity (TEC) is contingent on any identified local and wider 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, has led to bottlenecks which are causing significant delays to projects' connection dates.

CUSC Amendment Proposal CAP148 "Deemed access rights to the GB transmission system for renewable generation" proposes major changes to the current connection and access arrangements. The original CAP148 proposal seeks to prioritise the connection and dispatch of new renewable generation over all other generation including both conventional and existing renewable generation, while each of its five alternatives adopt variations of the priority connection element of the original proposal and provide firm rights once connected. There are a range of other initiatives that are also seeking to address issues relating to the GB queue and transmission access more generally. This includes a number of CUSC amendment proposals that have been raised in the light of the conclusions of the joint Ofgem and Department for Energy and Climate Change¹ (DECC) Transmission Access Review.

Ofgem has a statutory duty, introduced in 2004, to contribute to the achievement of sustainable development. As part of our work in this area we are committed to playing our part in facilitating the transition to a low carbon energy sector, for example through our decisions on industry rules for competitive markets and regulation of monopoly networks, in which we take account of environmental impacts such as carbon emissions.

In reaching a minded-to decision to reject CAP148, set out in the impact assessment consultation published in July 2008, the Authority took account of impacts on sustainable development. Since the time the Authority reached its minded-to position on CAP148 changes to our duties under the Energy Act 2008 (the 2008 Act) have given the sustainable development duty greater prominence. The changes under the 2008 Act have also highlighted that our principal objective, to protect the interests of consumers, refers to future as well as existing consumers. We think it is appropriate to consider and consult on whether our minded-to position on CAP148 will be affected by the changes to our duties under the 2008 Act.

¹ The Transmission Access Review was originally a joint project involving Ofgem and the Department for Business, Enterprise & Regulatory Reform (BERR). Following the formation of DECC and the transfer of functions from BERR to this new Department, the project is now a joint Ofgem & DECC project.

Associated Documents

CAP148 Amendment Proposal. May 2007.

CAP148 Working Group Report. September 2007.

CAP148 Final Amendment Report. December 2007.

CAP147 Amendment Proposal. February 2007.

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/current/amendmentproposals/>

CAP148 Initial Thoughts on Charging, October 2007.

http://www.nationalgrid.com/NR/rdonlyres/1D5ACF49-FEB3-4759-A0CC-8082A88126FD/20357/CAP148Charging_OpenLetter.pdf

Final Conclusions Report - GB Queue Management. July 2007.

<http://www.nationalgrid.com/NR/rdonlyres/47B95865-0225-45C2-B3BE-F753821B1E1B/18039/FinalConclusionpaper.pdf>

Transmission Access Review - A Call for Evidence for a Review of Transmission Access. August 2007.

Short Term Access Governance Report – Report to the Secretary of State. October 2007.

Transmission Access Review – Interim Report to the Secretary of State. January 2008.

Transmission Access Review – Analytical Discussion Document. April 2008.

Transmission Access Review – Final Report to the Secretary of State. June 2008.

Transmission Access Review – Initial Consultation on Enhanced Transmission Investment Incentives. December 2008.

Managing Constraints on the GB Transmission System. February 2009.

Transmission Access Review - Enhanced Investment Incentives Open Letter: Consultation on Short Term Measures. February 2009.

Derogations to facilitate earlier connection of generation – proposed interim approach. March 2009.

Transmission Owner (TO) Incentives Licence Modification. March 2009.

Transmission Access Review – Second Progress Update. March 2009.

<http://www.ofgem.gov.uk/NETWORKS/TRANS/ELECTRANSPOLICY/TAR/Pages/Traccrw.aspx>

CAP148 Impact assessment and consultation. July 2008.

CAP148 Impact assessment – Errata. July 2008

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=12&refer=Licensing/ElecCodes/CUSC/Ias>

Update on CUSC Amendment Proposal CAP148. December 2008.

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=47&refer=Licensing/ElecCodes/CUSC/Ias>

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Summary

CUSC Amendment Proposal CAP148 was raised by Wind Energy (Forse) Ltd in April 2007 and seeks to address delays to new generators gaining access to the transmission system by proposing major change to the current arrangements so as to prioritise the connection and dispatch of new renewable generation over other generation technologies, including both conventional and existing renewable generation. The proposer considered that existing European legislation, specifically the Renewables Directive, allows Member States to give priority access to renewable generation and that by utilising these provisions the proposal would support achievement of Government objectives. Five alternative amendments were developed by the Working Group, each adopting a variation of the priority connection element of the original proposal (e.g. in relation to eligibility), and assigning firm rights once connected rather than providing for priority dispatch.

In our impact assessment consultation on CAP148, published on 16 July 2008 (the July 2008 consultation), we considered both qualitative and quantitative impacts in reaching a preliminary view that CAP148 would not lead to a net positive outcome for consumers. We also reached the preliminary view that there was no objective justification for discrimination of the type envisaged by CAP148. Based on our assessment of the impact of CAP148 against the relevant CUSC objectives and the Authority's legal duties, the Authority was minded to reject CAP148 including all the alternative proposals. We highlighted that this preliminary view is subject to considering responses to consultation, and that the Authority anticipated publishing its decision on CAP148 towards the end of 2008.

In December 2008 the Authority gave further consideration to CAP148 and the implications of the then prospective changes to its statutory duties arising under the Energy Act 2008 (the 2008 Act). Those changes, which have now taken effect, increase the prominence of our duty in relation to sustainable development and highlight that our principal objective to protect the interests of consumers, refers to future as well as existing consumers. 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 anticipated change to its duties. This further consultation sets out our updated assessment of CAP148 in the context of the new duties, taking into account issues raised in responses to the July 2008 consultation and other relevant information that has come to light since the impact assessment consultation was published, including developments in European legislation. We seek views on our further assessment and the conclusions set out below.

We have further considered both quantitative and qualitative impacts of CAP148. We are not persuaded that CAP148 leads to qualitative benefits outweighing the net disbenefits identified from the quantitative analysis. Overall we consider that the net qualitative impacts are likely to be negative. We see no reason to change our initial view that the differential treatment under CAP148 does not provide for a more efficient outcome and that there is no objective justification for discrimination in favour of eligible generation under any of the variants of the proposal. We also see no reason to alter our initial view that CAP148 would create distortions in the efficient functioning of the market, by failing to provide a level playing field to all generators seeking connection, and that this would ultimately undermine effective competition in the market which would not be consistent with our principal objective.

We have updated our assessment of CAP148 against the legal and assessment framework incorporating the changes under the 2008 Act. Whilst still a preliminary view, our assessment remains that each CAP148 variant would not better facilitate the applicable CUSC objectives and we remain concerned about the discriminatory nature of the arrangements which CAP148 would introduce. Taking into account the increased prominence of our sustainability duty, we still do not consider that approving any of the CAP148 variants would be consistent with the Authority's legal duties overall. Reducing carbon emissions is important for consumers but we remain unconvinced, in the light of our principal objective, that CAP148 is an appropriate and cost-effective way of securing those reductions. Subject to consideration of responses to this consultation, we are inclined to the view that the option available to the Authority which is best calculated to further the principal objective is to maintain its minded-to decision to reject all CAP148 variants.

We have considered CAP148 on its merits and acknowledge the importance of the issues it seeks to address, which we are actively pursuing through the Transmission Access Review (TAR). The TAR project includes a range of measures having similar objectives to CAP148 in terms of addressing grid-related barriers for new generation, but without prioritising any particular technology. There has been continued progress on TAR since last July. This includes our current consultation on proposed arrangements, for an interim period until successful introduction of enduring access arrangements, which are designed to facilitate, through derogations from the minimum standards under the GB SQSS, earlier connection of projects ahead of completion of reinforcements. These arrangements, if confirmed, could potentially advance the connection up to 450MW of new Scottish renewable generation identified by National Grid, and could apply to other generators seeking to connect to transmission or distribution systems in GB that would otherwise be delayed by the need to reinforce the wider transmission system². In addition, a number of CUSC amendment proposals, at various stages of development, aimed at establishing a new enduring access regime have been raised by the industry. National Grid have also raised proposals aimed at managing more effectively the high level of constraints costs resulting from the current shortage of available transmission capacity relative to access rights sold to generators. We are also undertaking work to address the transmission investment challenges associated with connecting new generation up to 2020. We continue to work hard with the industry to develop short and longer term solutions to allow significant volumes of additional renewable generators' timely connections to the network.

We recognise that our detailed consideration of CAP148 has taken time. This reflects in large part the complexities of the issues it raises, as well as the need to consider the proposal within our amended statutory duties as well as the new Renewables Directive. In addition, during this period, Ofgem has chosen to focus our resources on the TAR process and the development of enduring reforms to the arrangements for grid access which are seeking to address the same issues as those which we have considered under CAP148.

We welcome views on the further consideration of CAP148 set out in this paper. Overall we do not consider that the Authority has to date been presented with any information to cause it to move away from its minded-to position, previously set out in the July 2008 consultation, to reject all CAP148 variants. The Authority will take into account issues raised by respondents to this consultation in reaching its final decisions on CAP148.

² But not where the delay is as a result of local connection works being incomplete, or as a result of there being no physical connection to the contiguous GB transmission system.

1. Introduction

Chapter Summary

This chapter provides background to this document and sets out a summary of its chapter structure.

Question box

There are no questions in this chapter.

CAP148 overview and process to date

1.1. CUSC Amendment Proposal CAP148 "Deemed access rights to the GB transmission system for renewable generation" was raised by Wind Energy (Forse) Ltd ("Wind Energy") in April 2007. The proposer highlighted delays to new generators gaining access to the transmission system under the current arrangements, and the problems caused by differences in the timing of transmission connection and the planning consents process. CAP148 proposes to address these issues through major changes to the current arrangements in order to prioritise connection and dispatch of new renewable generation over generation of other technologies, including both conventional and existing renewable generation. In raising CAP148, the proposer considered that existing European legislation, in particular Article 7 of the Renewables Directive³, allows Member States to provide priority access to the grid system to renewable generation. The proposer also considered that by utilising these provisions the proposal would better promote Government objectives for the growth of renewable generation and support the achievement of the Government targets for carbon emissions reductions.

1.2. Appendix 4 outlines the procedure for raising proposed amendments to the CUSC and the submission of the Final Amendment Report, incorporating the recommendations of the CUSC Panel, to the Authority for a decision on whether to approve the original proposal or any of the alternatives. Appendix 4 also outlines the legal and assessment framework for the Authority's decisions on CUSC Amendment Proposals, including the requirement to undertake an impact assessment in certain circumstances. The Working Group established for CAP148 developed five Working Group Alternative Amendments (WGAAs); no further alternatives were raised during National Grid's consultation process. The CUSC Panel unanimously recommended rejection of the original proposal and each of the WGAAs. We received the Final Amendment Report on CAP148 in December 2007 and published an impact assessment consultation⁴ on 16 July 2008 (the July 2008 consultation), which covered all the CAP148 variants.

³ Directive 2001/77 on the promotion of electricity produced from renewable energy sources in the internal market.

⁴ Our July 2008 consultation was supplemented by an open letter published on 24 July 2008 setting out some minor data corrections and clarifications. Both documents, together with the responses to the July 2008 consultation, are available at:

1.3. The original amendment proposal seeks to introduce a new capacity product – Deemed Transmission Entry Capacity, or DTEC – applicable to new renewable generation which guarantees connection by a firm date⁵ and ensures priority dispatch once connected, with an associated impact on the management and costs of constraints. The key features of each CAP148 variant are summarised in Appendix 2⁶. Each of the WGAs exclude the priority dispatch component of the original amendment but retain the priority connection element, albeit with some variations in terms of one or more of: the lead time for connection; the eligibility criteria for DTEC; and the treatment of consents risks during construction. Unless otherwise stated, any references in this document to CAP148 incorporate references to all CAP148 variants, including the original proposal and each of the five WGAs.

1.4. Any of the CAP148 variants, if implemented, would apply directly to all offers issued to eligible generation after the implementation date. Eligible generators which already have a signed agreement but are not connected as of the CAP148 implementation date could switch to DTEC and the new provisions would apply from the date they sign an amended agreement (rather than the date of signing their current agreement). Implementation of any of the proposals would also require consequential changes to other industry documents, including changes to the Transmission Charging Methodologies to reflect the introduction of DTEC. Given the magnitude of the potential changes and long lead time for connection of the first generation with DTEC if CAP148 is approved, NGET has indicated that it would only take forward those changes following the Authority decision.

The July 2008 consultation and minded-to position

1.5. Our July 2008 consultation set out our quantitative and qualitative assessment of the impacts of CAP148 in a range of relevant areas. The July 2008 consultation also set out the Authority's minded-to position to reject CAP148, including all five alternatives. The Authority's minded-to position was based on the findings of our impact assessment and our view that the discrimination inherent in CAP148 does not appear to be objectively justified. The July 2008 consultation also highlighted that the minded-to position was a provisional view and subject to further consideration of any points raised by respondents.

1.6. In reaching its minded-to position, the Authority followed the decision-making process described in Appendix 4⁷. In terms of the consideration of environmental impacts our preliminary assessment of CAP148 was consistent with our guidance⁸, published on 30 June 2008, on the treatment of carbon costs within the existing codes governance framework. In reaching its minded-to position on CAP148 the Authority took account of the potential carbon savings which may arise from CAP148, as part of its preliminary assessment of

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=12&refer=Licensing/ElecCodes/CUSC/IAS>

⁵ The firm connection date is subject to completion of local transmission works and commissioning of the generator, but unlike allocation of TEC it is not contingent on completion of wider transmission works.

⁶ Our July 2008 consultation includes a more detailed summary of each CAP148 variant, including the consequential changes to other documents, as well as further information on the background to CAP148 in terms of the issues it seeks to address.

⁷ As noted in Appendix 4 and discussed below, since the time the Authority reached its minded-to decision part of this framework has been modified as a result of changes to the Authority's duties under the 2008 Act.

⁸ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=158&refer=Licensing/IndCodes/Governance>

CAP148 against applicable CUSC objective (a) and against the Authority's wider duties and the Authority's principal objective to protect the interests of existing and future consumers.

Context for further consultation

1.7. Our July 2008 consultation stated that the Authority anticipated publishing its decision on CAP148 towards the end of 2008, following consideration of responses to the consultation. At its December 2008 meeting the Authority gave further consideration to CAP148 in the light of all relevant information available to it, including the responses to the July 2008 consultation. The Authority also considered the implications of the then prospective changes to its statutory duties arising under the Energy Act 2008 (the 2008 Act).

1.8. We published an open letter on 19 December 2008⁹ setting out the Authority's conclusion 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 anticipated changes to its duties. The changes to the Authority's duties under the 2008 Act, and the implications for our decision-making process for CAP148, are discussed in more detail in chapter 2.

Structure of this document

1.9. This document sets out our further consultation on CAP148 in the light of the changes to the Authority's statutory duties under the 2008 Act. In our further consideration of CAP148 we have also taken into account issues raised in responses to the July 2008 consultation and other relevant information that has come to light since the consultation was published, including developments in European legislation.

1.10. The remainder of this document is structured as follows:

- Chapter 2 discusses the implications of changes in the statutory duties of the Authority under the 2008 Act for the legal and assessment framework against which the Authority must consider CAP148.
- Chapter 3 summarises the issues raised by respondents to the July 2008 consultation and the key areas where we have updated or clarified our analysis.
- Chapter 4 sets out our further consideration of CAP148 in a range of areas, taking into account the issues raised by respondents to the July 2008 consultation and other relevant information that has come to light since that document was published.
- Chapter 5 sets out our updated preliminary assessment of CAP148 against the legal and assessment framework, incorporating the changes under the 2008 Act.
- Chapter 6 summarises our conclusions and sets out the way forward.

⁹<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=47&refer=Licensing/ElecCodes/CUSC/Ias>

2. Implications of changes to the Authority's duties

Chapter Summary

This chapter outlines the changes to the Authority's duties under the 2008 Act and discusses the implications for the legal and assessment framework against which the Authority must now consider CAP148.

Question box

Question 1: Do respondents have any comments on the way in which we have considered the changes in the Authority's duties under the 2008 Act in respect of the legal and assessment framework against which the Authority must consider CAP148?

Legal and assessment framework

2.1. The legal and assessment framework against which the Authority must consider CAP148, including the original proposal and each of its alternatives, is set out in Appendix 4. This includes consideration of which proposal, if any, better facilitates the relevant CUSC objectives, and furthers or is consistent with the Authority's principal objective and wider statutory duties.

2.2. The 2008 Act contains provisions to modify the statutory duties of the Authority in carrying out its functions under the Gas Act 1986 and the Electricity Act 1989. The 2008 Act received Royal Assent on 26 November 2008 and was given legal force when the provisions amending the Authority's duties, amongst other matters, were commenced on 26 January 2009¹⁰. The Authority's current powers and duties, incorporating the changes under the 2008 Act, are set out in Appendix 3 of this document.

Changes to the Authority's duties under the 2008 Act

2.3. Since the time the Authority reached its minded-to position on CAP148 the 2008 Act has made two changes to the Authority's duties¹¹, namely:

- the text of the principal objective has been amended to clarify that the Authority's consideration of the interests of consumers includes both future as well as existing consumers; and
- the duty to have regard to the need to contribute to the achievement of sustainable development, which was introduced in 2004, has been given greater prominence in the hierarchy of the Authority's duties.

¹⁰ The Energy Act 2008 (Commencement No. 1 and Savings) Order 2009 (SI 2009 No. 45) http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090045_en.pdf

¹¹ The Authority's powers and duties in place at the time the Authority reached its minded-to position on CAP148 were set out in Appendix 3 of the impact assessment consultation.

Implications for CAP148

2.4. We have set out below our view of the implications for the framework against which the Authority must consider CAP148 when taking into account the changes to the Authority's duties, compared to those in effect when the Authority reached its minded-to position. We welcome views on this and the wider issues raised by this consultation. In reaching its final decision on CAP148, the Authority will carefully consider all of the responses, including the responses to this and the July 2008 consultation.

2.5. In chapter 5 we set out our assessment of CAP148 against this updated framework incorporating the changes under the 2008 Act and taking into account our further consideration of CAP148, discussed in chapters 3 and 4, in the light of issues raised by respondents to our July 2008 consultation and other relevant information and developments that have come to light since the Authority reached its minded-to position.

Applicable CUSC objectives

2.6. The changes brought about by the 2008 Act have no impact on the factors relevant to the assessment of a proposal against the applicable CUSC objectives.

The Authority's legal duties

2.7. The changes brought about by the 2008 Act increases the prominence of the sustainable development duty in the hierarchy of the Authority's duties.

2.8. The Authority had previously taken account of sustainable development in its decisions, but the change to its duties brought about by the 2008 Act has given the sustainable development duty greater prominence.

2.9. While much of what is needed to deliver sustainability is not within our direct control, we play our part in facilitating change by engaging in the debate, trying to persuade relevant players to make changes where required and contributing information and expertise where we can. Ofgem's sustainable development work¹² focuses on the following five themes:

- Managing the transition to a low carbon economy
- Eradicating fuel poverty and protecting vulnerable customers
- Promoting energy saving
- Ensuring a secure and reliable gas and electricity supply
- Supporting improvement in all aspects of the environment.

2.10. For example, as part of our work in this area we are committed to playing our part in facilitating the transition to a low carbon energy sector through our decisions on industry

¹² For more information our work on sustainability, including our annual Sustainability Report first published in 2006, see the Sustainability section of Ofgem's website: <http://www.ofgem.gov.uk/Sustainability/Pages/Sustain.aspx>

rules for competitive markets and regulation of monopoly networks, in which we take account of environmental impacts such as carbon emissions.

2.11. We considered CAP148 in the context of each of these five themes in our July 2008 consultation, where we identified positive impacts in some respects and negative respects in others. In chapter 5 of this document we set out our further consideration to the impact of CAP148 on sustainability, in terms of these five themes, in the context of our assessment of CAP148 against the legal and assessment framework incorporating the changes under the 2008 Act.

The Authority's principal objective

2.12. The changes brought about by the 2008 Act mean that the assessment of the option available to the Authority which is best calculated to further the principal objective must expressly consider the need to protect the interests of future as well as existing consumers.

2.13. The Authority had previously considered the reference to consumers in its principal objective captured both existing and future consumers. Our work in relation to our sustainable development duty is also a key part of how we protect the interests of both existing and future consumers.

2.14. In the current times of difficult economic conditions and historically high energy prices, a key area of focus in protecting the interests of existing consumers, and particularly vulnerable customers including those in fuel poverty, is to minimise the costs which are ultimately reflected in customers' bills. This is relevant to both existing and future consumers, as is ensuring a secure and reliable gas and electricity supply and promoting energy saving. Achieving a sustainable low carbon economy would benefit future consumers through reduced carbon emissions. However the costs of achieving this change are significant and would ultimately be met by consumers, although for future consumers the costs of unmitigated climate change may be higher. In playing our part in facilitating the transition to a low carbon energy sector we need to strike an appropriate balance between such considerations, while promoting effective competition in accordance with our principal objective.

2.15. In our July 2008 consultation we took these considerations into account in assessing the impact of CAP148 on consumers in the context of our principal objective. In chapter 5 of this document we set out our further consideration of the impact of CAP148 on both existing and future consumers in the context of our assessment of CAP148 against the legal and assessment framework incorporating the changes under the 2008 Act.

3. Overview of responses to the July 2008 consultation

Chapter Summary

This chapter provides a high level overview of the key themes raised by respondents to the July 2008 consultation. A more detailed summary of respondents' comments is set out in Appendix 5. This chapter also identifies those areas where we have updated or clarified our analysis in the light of issues raised by respondents or to take account of relevant information that has come to light since the July 2008 consultation was published.

Question box

Question 1: Do respondents consider that we have appropriately summarised the key themes of the responses to Ofgem's July 2008 consultation on CAP148? Are there any other themes which respondents consider should have been highlighted?

Views invited

3.1. We invited respondents to the July 2008 consultation to comment on any of the issues covered in that document, as well as seeking views in certain specific areas. We asked respondents to indicate whether they considered we had appropriately identified, and where possible quantified, the impacts of CAP148 and the extent to which these impacts may differ between the CAP148 variants. Respondents were also invited to identify any further work that may be required and any other such impacts which they considered to be relevant and which we had not considered in the consultation document. We invited respondents to present any alternative arguments in relation to the discrimination issues arising under CAP148, and sought views on certain specific matters in relation to implementation issues, transmission charging and risks and unintended consequences. Finally, we invited respondents to raise any specific issues regarding the Authority's minded-to position, or to comment on the process and timetable for the Authority making its final decisions.

3.2. The impact assessment highlighted that the minded-to position was a provisional view and asked respondents to present their views on CAP148, together with any further evidence they would like the Authority to consider in reaching its final decision to show that the differential treatment proposed by CAP148 can be justified. We also stated that we are open to respondents putting forward reasons and arguments challenging our analysis of the costs and benefits and such other of our views to persuade the Authority to move from its minded-to position.

Summary of respondents' views and Ofgem response

3.3. We received a number of responses to the July 2008 consultation, including a second response from BWEA attaching a report commissioned from its consultants, Cambridge Economic Policy Associates (CEPA). The CEPA report contains an alternative cost benefit analysis to which a number of respondents to the July 2008 consultation referred. None of the responses were identified as being confidential. All responses, including the CEPA report

and accompanying covering letter from BWEA, are available on Ofgem's website¹³. Some respondents responded directly to the questions asked in the July 2008 consultation while others provided a more general response. A high level summary of the position taken by respondents and respondents' views under key themes identified from the responses is provided below, with further details provided in Appendix 5.

3.4. The responses we received to the July 2008 consultation are fairly evenly split between those who support our minded-to position and those who disagree with it. Those who support our position generally agree with the findings of our quantitative analysis of costs and benefits and/or agree that CAP148 is unduly discriminatory. Most of those who disagree with our minded-to position refer to the alternative cost benefit analysis set out in the CEPA report; some respondents think that CAP148 should be approved and are of the view that either CAP148 gives rise to no discrimination as the parties are not relevantly similar (i.e. it treats different parties differently) or that the discrimination inherent in the amendment is due discrimination as they consider such discrimination to be objectively justified.

3.5. Key themes from the responses include issues raised in relation to: our inclusion of the impact on ROC costs in our quantitative analysis of costs and benefits and our assessment of the impact on consumers; our arguments on discrimination; the references to the ongoing Transmission Access Review; and transmission charging. There are also a number of detailed issues raised concerning our analysis of costs and benefits, although some respondents referred to the CEPA report rather than commenting specifically on our analysis. Several of these respondents considered that our analysis of costs and benefits as set out in the impact assessment is flawed and should be revised in the light of the CEPA report, and a further consultation issued before the Authority reaches its final decision.

3.6. We welcome all responses and have given careful consideration to the issues raised in the responses, including the CEPA report. We have also given careful consideration to other relevant information that has come to light since the July 2008 consultation was published, including the changes to the Authority's duties under the 2008 Act discussed in chapter 2. As part of this work we have, among other matters:

- updated our assessment of costs and benefits of CAP148
- reviewed our approach to the treatment of ROC costs
- updated our assessment of discrimination issues, taking into account latest developments in European legislation
- clarified how we have considered CAP148 in the context of the ongoing Transmission Access Review.

3.7. The next chapter sets out our further consideration of CAP148 in the light of these matters, where we have also updated or provided further clarification on information previously set out in our July 2008 consultation. This has been reflected in chapter 5 which contains our updated assessment of CAP148 against the legal and assessment framework incorporating the changes under the 2008 Act.

¹³

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=12&refer=Licensing/ElecCodes/CUSC/IAS>

4. Further consideration of CAP148

Chapter Summary

This chapter sets out and seeks views on our further consideration of CAP148 in a range of areas, taking into account the issues raised by respondents and other relevant information that has come to light since the July 2008 consultation was published.

Question box

Question 1: Do respondents wish to raise any specific issues with our further consideration of CAP148?

Question 2: Do respondents consider that in setting out our further consideration of CAP148 we have appropriately addressed issues raised by respondents to the July 2008 consultation?

Question 3: Do respondents consider that in setting out our further consideration of CAP148 we have appropriately identified and taken into account other relevant information that has come to light since the July 2008 consultation was published?

Introduction

4.1. This chapter sets out our further consideration of CAP148 in a range of areas, with reference to the following themes:

- The analysis of costs and benefits, including treatment of ROC costs
- Updated consideration of discrimination issues
- The relevance of the Transmission Access Review to our consideration of CAP148.

4.2. Within this further consideration of CAP148 we have taken account of the issues raised by respondents to the July 2008 consultation, including the CEPA report, which are outlined in chapter 3 and discussed in more detail in Appendix 5. We have also taken account of other relevant information that has come to light since the July 2008 consultation was published¹⁴, including developments in European legislation.

Analysis of costs and benefits including treatment of ROC costs

4.3. We note the comments made by respondents with respect to the analysis of costs and benefits underpinning our assessment of CAP148 set out in the July 2008 consultation. This analysis is relevant both in the context of the applicable CUSC objectives and the Authority's wider duties, including the impact on consumers. As set out below, we have reviewed our quantitative and qualitative analysis in the light of the issues raised and have also undertaken a comparison between our analysis and that set out in the CEPA report, in

¹⁴ The changes under the 2008 Act are discussed in chapter 2.

considering whether the alternative quantitative analysis set out in the CEPA report or the responses to our July 2008 consultation provide information to cause us to reach a different view than that underpinning the Authority's minded-to position.

4.4. In Chapter 3 of the July 2008 consultation we discussed the relevant factors in considering CAP148 from a perspective of efficiency and economy. This included consideration of whether the impacts in relation to the efficiency of transmission investment and the total cost of supplying electricity demand, including the cost and efficiency of transmission system operation, would be outweighed by benefits of the proposals, including the value to the consumer of any savings in carbon emissions.

4.5. In terms of the economic and efficient operation and development of the transmission system, all CAP148 variants would increase transmission-related costs, while also resulting in certain benefits. Our July 2008 consultation noted that by assigning firm access rights in advance of wider network works being completed, all CAP148 variants would increase constraints costs. They would also increase reserve costs because they would increase the volume of intermittent generation. On the other hand, through displacing existing conventional generation by new plant with low marginal costs, the average cost of generating electricity would be reduced, with corresponding benefits from a reduction in wholesale electricity prices. The displacement of conventional plant by renewable plant would also lead to an associated impact on emissions of greenhouse gases and other pollutants, resulting in benefits from reductions in carbon costs. In line with our June 2008 guidance on the treatment of greenhouse gas (GHG) emissions under the code objectives¹⁵, the economic costs of these emissions (and the benefits of reductions in GHG emissions) should be taken into account in the same way that we consider other economic costs and benefits when assessing a modification against the relevant code objective governing efficient and economic network operation. Therefore the increased constraint costs associated with CAP148 are offset in part by savings in carbon costs. Our July 2008 consultation also considered impacts of CAP148 on competition, impacts on other aspects of sustainable development including security of supply, impacts on health and safety, risks and unintended consequences and other impacts including implementation costs.

4.6. We note that the materiality of certain impacts of CAP148 will be dependent on the extent to which CAP148 facilitates earlier connection than would otherwise be available to eligible generators, and that there is a range of possible outcomes as to the volume of accelerated capacity and the associated impact on transmission-related costs. Our quantitative analysis set out in the July 2008 consultation considered a range of scenarios and sensitivities, in order to identify the potential range of these outcomes. Within our updated consideration of CAP148, set out below, we have also considered the quantitative analysis set out in CEPA's report. In comparing our analysis with that of CEPA, we have also taken into account impacts beyond those quantified including qualitative impacts. We have also considered the interaction of these impacts with the treatment of the additional transmission-related costs, and the charges applicable to DTEC generators, through the consequential changes to the transmission charging methodologies. These impacts are discussed below.

¹⁵ *Ofgem Guidance – Environmental Issues and the Code Objectives*, June 2008.

Review of quantitative analysis

Comparison with CEPA's analysis

4.7. A comparison of the key results from our quantitative analysis with those produced by the CEPA analysis is set out in Table 1 below (see page 17). Before considering the differences in results it is helpful to compare the approaches used. We note that there are three main differences between our quantitative analysis and that of CEPA, which we discuss in more detail below:

- a. **Volume of accelerated renewable capacity** - A key difference between our analysis and that of CEPA is that most of our scenarios assume a higher volume of accelerated renewable capacity than CEPA's analysis. The volume of accelerated renewable capacity represents the additional renewable generation capacity in a given year, as a result of projects being able to connect earlier under CAP148 than they would under the current arrangements.
- b. **Modelling approach** - CEPA's analysis is based on a simplified modelling approach, particularly with respect to constraint costs which are estimated through a financial model, with an assumption that there are no constraints on the output of renewable generation. Under our quantitative analysis¹⁶ we use a merit order model with constraints modelled using a simplified zonal flow analysis under which renewable generation may be constrained off.
- c. **Treatment of ROC costs** - our quantitative analysis considers the impact on ROC costs, and quantifies the net impact of CAP148 with and without this impact, while CEPA's analysis notes this impact but does not quantify it nor take it into account.

Accelerated capacity

4.8. Our July 2008 consultation highlighted that the key impact of CAP148 is to allow earlier connection of renewable generation, ahead of completion of wider works, and this is in turn the driver of certain other impacts, such as increased constraints costs, in the period until the wider works are complete. We have recognised the uncertainties surrounding the amount of connected generation capacity, both with and without CAP148. Our quantitative analysis included a range of scenarios, in turn providing a range of estimates as to the potential volume of accelerated renewable capacity, thereby illustrating how the net impact might be expected to vary according to the extent to which renewable generation is able to connect sooner under CAP148.

4.9. A number of respondents considered that our scenarios may be unrealistic in that they may overstate the volume of accelerated renewable capacity. In the July 2008 consultation we presented our high case scenario for illustrative purposes as a "worst case", and highlighted that we considered the most likely outcome lies between the results for our 4

¹⁶ Described in more detail in Chapter 3 and Appendix 2 of our impact assessment consultation.

year base case and 4 year low case scenarios¹⁷. Our 4 year low case scenario, which has the lowest volume of accelerated renewable capacity of all our scenarios, is similar to CEPA's analysis¹⁸. We note that under this scenario and all our scenarios, our quantified costs resulting from CAP148 exceed the quantified benefits¹⁹; overall we found that for scenarios with a higher volume of accelerated renewable capacity the quantified costs and (to a lesser extent) benefits are also higher, in turn leading to a higher net cost. We note that CEPA's quantitative analysis also leads to a net cost, although to a lesser extent than our 4 year low case scenario.

Modelling approach

4.10. CEPA's analysis differs from ours in terms the assumptions made about the constraints associated with renewable generation. Under CEPA's modelling approach, the output of renewable generation is unconstrained, such that it fully displaces conventional generation. As a result, CEPA's model may allow more generation output than can be accommodated by physical transmission capacity, and therefore may underestimate constraints costs. Under our modelling the output of the additional renewable generation similarly displaces conventional generation in the unconstrained merit order; however when modelling constraints using our simplified zonal flow analysis the output of this renewable generation can sometimes be constrained off due to the limited boundary capability for a given zone.

4.11. Therefore for a given volume of accelerated renewable capacity, the adoption of our modelling approach can lead to higher constraints costs and lower carbon benefits than CEPA's model, and in turn higher net costs.

Treatment of ROC costs

4.12. We acknowledge that the impact on ROC costs is a relatively large component of the costs quantified in our analysis, and that respondents have questioned both our inclusion of this impact within our analysis and the basis for our modelling of the ROC mechanism.

4.13. In considering the impacts associated with the acceleration of renewable generation capacity under the priority connection element of CAP148, we consider it appropriate to take into account the associated impact on ROC production²⁰ and ROC prices for the purposes of providing inputs to our modelling of market outcomes. Having quantified the impact on ROC production and ROC price, we quantified the associated impact on total ROC costs, and took this into account in quantifying the potential net impact on consumers, noting that the increased ROC costs would ultimately be reflected in electricity bills.

¹⁷ Our base case and low case scenarios represented our central and low case assumptions as to the volume of new renewable generation, with and without CAP148, over the modelling horizon. We presented results for both scenarios with CAP148 based on a 4 year lead time.

¹⁸ CEPA considered CAP148 for both a 3 year and 4 year lead time, for its central assumptions as to the volume of new renewable generation with and without CAP148. In terms of the volume of accelerated renewable capacity under CAP148, CEPA's results for a 4 year lead time are similar to our results for our 4 year low case.

¹⁹ This applies whether or not the impact on ROC costs is included.

²⁰ The level of ROC production depends on the MWh of ROC-qualifying output from renewable generation and the the assumed "banding" of renewable generation sources where some forms of renewable energy receive more or less than one ROC for each MWh of electricity produced.

However, this was not a factor in our assessment of CAP148 against the applicable CUSC objectives.

4.14. In our analysis, the impact on total ROC costs is primarily driven by the increase in ROC production, as a consequence of the accelerated connection of renewable generation under CAP148. This is because our ROC modelling incorporated a "headroom" mechanism which automatically increases the RO target as the level of ROC production increases. We note that our analysis also assumed that the design of the ROC mechanism would remain unchanged as the level of ROC production increased, and in particular did not place a limit on the total level of the ROC subsidy. As such it may overstate the impact on ROC costs, particularly for the high case scenario which has the highest increase in ROC production.

4.15. In our July 2008 consultation we recognised the design of the ROC scheme may differ to our assumptions, such that the impact on ROC costs may also differ. We also noted that if we exclude the impact on ROC costs from our calculations then the quantifiable costs and benefits are more finely balanced, but that this does not provide sufficient evidence of a net positive outcome for consumers and we further noted that, as discussed below, the quantitative analysis set out in our July 2008 consultation excludes some identified costs (such as implementation costs) and may underestimate others, such as constraints costs. As set out below, in our updated consideration of CAP148 we have also considered CEPA's quantitative analysis (which excludes the impact on ROC costs) and the arguments raised by respondents with respect to qualitative impacts.

4.16. The following issues were raised by respondents in the context of our treatment of ROC costs:

- the impact on ROC costs arises due to a separate policy instrument set by Government and would be in place under any proposal to allow earlier connection of renewable generation, such that inclusion of ROC costs within an assessment of the costs and benefits of the proposal biases the assessment against the proposal.
- the impact on ROC costs represents an increased transfer from consumers to generators, rather than a true additional resource cost
- the approach adopted in relation to the treatment of ROC costs in our assessment of CAP148 may create a precedent for the assessment of other proposals.

4.17. We acknowledge that there are different ways of dealing with ROC costs in the CAP148 cost benefit analysis. For this reason we have calculated the net impact of CAP148 both with and without ROC costs. In the light of these comments, for the purposes of this further consultation we have also assessed CAP148 without the impact on ROC costs. We would welcome views from respondents on which approach they consider appropriate for the purposes of the analysis of costs and benefits under CAP148. We further note that in the context of our assessment of CAP148, as discussed below, the question of whether or not the impact on ROC costs, which we quantified in our analysis, is included as a cost does not alter the conclusions of our assessment.

Transmission charging

4.18. There is an interaction between the changes to the CUSC under CAP148 and the treatment within the transmission charging methodology of the additional transmission

costs associated with CAP148, in particular the increased constraints costs. This may affect both the extent to which consumers are exposed to inefficient costs and the incentives on generators eligible for DTEC, which may in turn have implications for other impacts of CAP148. Both our analysis and CEPA's analysis were based on the assumption, according to the current transmission charging methodologies, that generators with DTEC face the same transmission charges as generators with TEC and that the additional constraints costs associated with CAP148 are socialised.

4.19. We note that CAP148 would exacerbate issues relating to the current level of constraints costs on the GB transmission system. We have recently published an open letter, addressed to National Grid²¹, highlighting these issues, where we noted that a significant proportion of these constraints costs result from the current shortage of available transmission capacity, relative to transmission entry capacity rights sold to generators. We have asked National Grid to undertake an urgent review to consider whether urgent changes to the existing commercial and charging arrangements for access to the GB transmission system are necessary to more effectively manage the costs of constraints, and to ensure that any constraint costs are recovered on an equitable basis from customers, suppliers and generators. We note that any developments in this respect (see paragraph 4.45 below) may have implications for the charging arrangements under CAP148.

Commentary on quantitative analysis

4.20. Table 1 below compares key results²² from our quantitative analysis with that of CEPA. This table compares transmission-related costs (constraints costs and reserve costs) to the benefits associated with reduction in wholesale electricity prices and carbon emissions. Table 1 also presents, for comparison, the associated impact on ROC costs.

4.21. Ignoring the impact on ROC costs, and whether using our quantitative analysis or CEPA's²³, we still find that there is insufficient evidence to suggest that CAP148 would lead to a more efficient outcome.

4.22. Our July 2008 consultation highlighted a range of reasons why the net transmission-related costs (in particular constraints costs) may be higher than indicated by our quantitative analysis, and also noted additional costs associated with impacts which had not been quantified in our analysis (implementation costs, imbalance costs, transmission losses). In addition it was highlighted in responses that our modelling did not take account of transmission outages and as such may have underestimated constraints costs. Respondents also noted that our modelling may have overestimated the benefits from wholesale price reduction as a result of our simplifying assumption that prices reflect marginal costs.

²¹ Managing Constraints on the GB Transmission System. February 2009.

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=97&refer=Networks/Trans/ElecTransPolicy/tar>

²² Our results are based on our modelling horizon up to 2020, and are expressed in NPV terms with a discount rate consistent with the pre-tax real rate of return of 6.25% allowed to transmission licensees under the current transmission price control, assuming inflation at 2% per year. CEPA's results which are not NPV are based on the sum of results for each year of the modelling horizon which extends to 2018.

²³ And also taking into account the results of the full range of alternative scenarios and sensitivity analysis set out in our July 2008 consultation and in the CEPA report.

4.23. Overall, we note that CAP148 would introduce further disbenefits, both quantitative and qualitative, over and above those quantified in our analysis. The qualitative impacts are discussed below.

Table 1 Comparison of quantitative analysis

Quantified impact (£m)	Ofgem impact assessment - 4 year Base Case (NPV)	Ofgem impact assessment - 4 year Low Case (NPV)	CEPA report – 4 year lead time (not NPV ²⁴)
Benefits			
CO2 abatement	266	50	202
Wholesale price reduction	386	78	11
Costs			
Renewable constraints	-298	-151	n/a
Conventional plant constraints	-424	-200	-229
Additional reserve	-28	-7	-14
Total (ignoring the impact on ROCs)	-96	-230	-30 (-18.7 NPV)
<i>ROCs</i>	<i>-821</i>	<i>-156</i>	<i>n/a</i>
<i>Total (taking ROC impact into account)</i>	<i>-917</i>	<i>-386</i>	<i>-30 (-18.7 NPV)</i>

Consideration of qualitative impacts

4.24. We note that respondents have suggested that the proposals would have qualitative benefits which are argued to outweigh any net disbenefits (including qualitative disbenefits) associated with transmission related costs. As set out in the following paragraphs, we are not persuaded by these views.

4.25. First, we note that respondents have argued that CAP148 would help relieve the current “queue” of generators awaiting connection (the GB queue) in that CAP148 would remove the incentive on generators to apply for capacity ahead of need in order to benefit from the current first-come-first-served arrangements for allocation of transmission access. Respondents argued that relieving the GB queue would provide significant administrative benefits for transmission licencees in terms of the resources spent on managing agreements and planning investment. We note that the timing of generators’ decisions to apply for transmission capacity is a matter for them and is influenced by a range of factors. To the extent that CAP148 has an impact in this respect it is likely to only apply to future applications and will therefore have limited impact on the existing GB queue. We further note that the GB queue includes a significant volume of both renewable and conventional generators²⁵, and that the differential treatment inherent in the proposal means that DTEC

²⁴ Results which are not NPV are based on sum of impacts over individual years (see footnote 19). For comparison with our impact assessment the NPV results presented are based on a discount rate equal to National Grid’s cost of capital of 6.25%.

²⁵ Details of the latest status of the GB queue are set out in the Transmission Networks Quarterly Connections Update, the current version of which (dated January 2009) is available on National Grid’s

and non-DTEC generation could not compete against each other on a level playing field, in that only eligible generation would have the opportunity to benefit from earlier connection. As set out in more detail below, we consider that each variant of CAP148 would, if approved, discriminate in favour of generation eligible for DTEC. As such, we consider that CAP148 would create distortions in the efficient functioning of the market. This would ultimately undermine effective competition in the market which would not be consistent with our principal objective. We also note that CAP148 would require complex consequential changes to other documents associated with the implementation of the preferential connection arrangements (and priority dispatch, in the case of CAP148 Original) and the operation of those arrangements in parallel with the existing arrangements for non-eligible generators.

4.26. Second, respondents argued that CAP148 would promote security of supply by increasing the diversity of generators connected to the system. In paragraphs 3.75-3.77 of the July 2008 consultation we considered the impact of CAP148 on security of supply in the context of our assessment of the impact on sustainable development. While we accept that CAP148 is likely to promote greater diversity in electricity supply by encouraging the development of new renewable generation, we also highlighted a number of adverse impacts associated with offering more contractual capacity to the market than can be accommodated by the transmission system, such as the increased incidence of constraints and the potential to deter investment in conventional generation. While we recognise the potential to mitigate such risks through the procurement of balancing services, we note this would lead to further increased costs to consumers.

4.27. Finally, we note the argument that CAP148 will stimulate the market for renewable generation by increasing certainty by more effectively aligning planning timescales and timescales for delivering transmission access. We consider that any measure designed to provide such benefits should apply to all types of generation, and that by failing to provide a level playing field CAP148 has an adverse impact on competition. Further, as highlighted above the adoption of preferential connection arrangements for only certain classes of generation may deter investment in other forms of generation which is essential to maintaining security of supply.

Conclusions

4.28. Taking into account our further consideration of costs and benefits set out above, we still find that, whether or not ROC costs are included in the analysis, and whether using our quantitative analysis or CEPA's (for which the modelling approach leads to inherently lower constraints costs and higher carbon abatement benefits, as discussed above), the impact of CAP148 is likely to be negative overall. As such, we do not consider that the alternative quantitative analysis set out in the CEPA report, nor its consideration of qualitative impacts, provides information that would cause the Authority to reach a different conclusion as to the merits of CAP148 than that set out in the July 2008 consultation.

4.29. In reaching this preliminary view, on which we invite further comment, we have taken account of potential impacts beyond those quantified in our analysis or in CEPA's analysis, including our more detailed consideration of qualitative impacts set out above. We have

website at: <http://www.nationalgrid.com/NR/rdonlyres/22E3C271-5BDE-43A1-8B3B-F9D1B9DA686D/31412/TNOCUJanuary09v2.pdf>

concluded that the net qualitative impacts are likely to be negative. In reaching this view we have taken into account the impact on complexity of the transmission arrangements (including the need for consequential changes to other documents and the operation of the preferential arrangements for eligible generators alongside parallel operation of the current arrangements for other generators), the impact on security of supply and competition impacts, including our view (discussed below) that there remains no clear case for discrimination and that by failing to provide a level playing field to all generators seeking connection CAP148 would undermine effective competition.

4.30. We therefore remain of the view that CAP148 is not justified and that it would not be expected to lead to a net positive outcome for consumers under any scenario.

Discrimination issues

4.31. CAP148 provides for differential treatment between new renewable or low carbon generation and other generation under the CUSC arrangements. It is appropriate to consider whether such differential treatment is consistent with the legal framework against which the Authority must consider CUSC amendment proposals. This framework, set out in Appendix 4, includes consideration of the proposal in the context of the applicable CUSC objectives (including National Grid's licence obligations in relation to non-discrimination), the Authority's wider duties and principal objective and any duties arising under European law.

4.32. Situations can arise where differential treatment is lawful. This is sometimes referred to as due discrimination. Equally, differential treatment may be unlawful, and is sometimes referred to as undue discrimination. Undue discrimination arises where like cases are treated differently or where unlike cases are treated in the same way without justification. It is the identification of relevant similarities (or differences) and the consequences of them along with consideration of the justification for different (or relevantly similar) treatment which is important in assessing whether or not treatment amounts to due or undue discrimination.

4.33. In our July 2008 consultation, we took as a starting point that all generators should be treated in the same way for the purposes of connecting to and using the GB transmission system since they all produce electricity. This view is also informed by the obligations incumbent on National Grid under its licence. Standard condition C7 – 'Prohibition on discriminating between users' provides that in the provision of use of system or in the 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. This condition is reflective of the responsibilities of Transmission System Operators in respect of non-discrimination under the IMED²⁶.

4.34. We have considered whether an argument could be made that new renewables or other forms of generation are relevantly different for the purposes of considering CAP148. We note that a number of respondents to our July 2008 consultation highlighted differential factors they considered to be relevant in distinguishing between different forms of generation or referred to legislation which they considered might justify differential

²⁶ Directive 2003/54/EC concerning common rules for the internal market in electricity.

treatment based on such differential factors. All variants of CAP 148 cause concern in relation to the differential treatment of generation compared to other users, and we remain of the view that we have not been provided with any additional or sufficient evidence through the responses to the July 2008 consultation that justifies objectively why, as a class, qualifying generation under CAP 148 are inherently different to other forms of generation such that the discrimination question does not arise. As such, we still consider it appropriate to take as a starting point that all generators should be treated in the same way for the purposes of connecting to and using the GB transmission system since they all produce electricity. In taking this starting point we also acknowledge that there may be reasons why renewables should be treated differently, but they would need to be properly explained and objectively justified.

4.35. The question of whether the discrimination in favour of qualifying generation under CAP148 is objectively justified may also be informed by economic considerations of the impacts of the proposals. This would take into account both quantitative and qualitative costs and benefits, including consideration of whether any quantitative net disbenefits are outweighed by qualitative benefits. Taking into account our updated assessment of the costs and benefits of CAP148 set out above, we do not consider that differential treatment can be justified. We find that even when taking carbon savings into account (and excluding impact on ROC costs), and whether using our analysis or CEPA's analysis and taking into account qualitative impacts, the differential treatment does not provide a more efficient outcome than the current arrangements.

4.36. The proposer of CAP148 argued that the Renewables Directive provides that Member States have the ability to prioritise renewable generation, and that by raising the proposal, GB would be complying with existing European legislation. Building on this position, several respondents to the industry consultation in the development phase of CAP148 noted that the Green Package of EU legislation, and specifically the forthcoming new Renewables Directive, was likely to mandate priority access for renewable generation on Member States. To the extent that this occurs, several industry participants stated that Ofgem should introduce CAP148 to ensure UK compliance with the prospective directive.

4.37. We stated in our July 2008 consultation that any decision on CAP148 should be based on the existing legal baseline at the time of the decision, and not anticipate the adoption of EU legislation which is at the formative stage. A prominent part of the existing legal baseline is the obligations incumbent on National Grid under Standard Condition C7 of its licence which deals with non-discrimination and which is reflective of non-discriminatory obligations under the IMED. We noted that we did not consider that the current Renewables Directive provides a basis for discrimination given that there are no implementing measures in place in the UK. We also noted in the July 2008 consultation that we considered that the draft revised Renewables Directive, the terms of which had not then been agreed at a Community level, could not be taken to apply. We further noted that based on our quantitative analysis, we did not consider that the differential treatment can be justified.

4.38. Since the closure of our July 2008 consultation the wording of the new Renewables Directive (the new Directive) has been formally agreed at Community level²⁷. This is due to become Community law later this year. Once this happens, Member States shall have 18

²⁷ Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. For full text of the new Directive: <http://register.consilium.europa.eu/pdf/en/08/st03/st03736.en08.pdf>

months in which to transpose it into national law. Under the agreed wording there will be no mandatory priority access or connection for renewable energy. Instead, Member States shall provide for “*either priority access or guaranteed access to the grid-system of electricity produced from renewable energy sources*”.

4.39. The new Renewables Directive has not been published in the Official Journal of the European Union (the OJ), and as such it has not yet entered into force. As such, the present legal position remains as provided for by the current Renewables Directive (Directive 2001/77/EC), and as noted above there are no implementing measures in respect of the permissive aspect of the current Renewables Directive providing priority access for electricity produced from renewable energy sources.

4.40. The new Directive currently provides that it shall enter into force on the twentieth day following its publication in the OJ. It will be for DECC to reach a view on what if any additional implementation measures are necessary in order to secure compliance with the new Directive in the period when it enters into force and before the expiry of the implementation period. The deadline for any such implementation measures will be dependent on the date when it is published in the OJ. While it remains the case that there are no implementation measures in relation to the new Directive we will nonetheless ensure that any future decisions we take regarding access arrangements in GB are compatible with the requirements of the new Directive following the expiry of the implementation period, or prior to this, following any implementation measures taken by DECC. We will also take on board any views expressed by DECC as to compatibility of the current GB arrangements with the new Directive.

4.41. Overall, based on our further consideration of discrimination issues set out above, we consider that the responses to the July 2008 consultation fail to provide any or any meaningful objective justification for the differential treatment under CAP148. In reaching its final decision on CAP148 the Authority will take account of the latest status of the new Directive within GB, and will carefully consider any further views that respondents to this consultation express in this regard and on the wider discrimination issue.

Relevance of Transmission Access Review

4.42. Several respondents to our July 2008 consultation referred to the Transmission Access Review (TAR)²⁸. Some respondents welcomed the fact that the debate on transmission access is moving on through TAR and considered that this process may lead to beneficial solutions. Others, while in some cases recognising TAR as a positive step, emphasised the need for urgent change and considered that the Authority should not take TAR into account in its decision-making on CAP148. Respondents questioned whether CAP148 had been considered on its own merits and thought that the Authority may have prejudged the TAR outcome. Some of these respondents also sought further evidence as to the potential benefits of TAR.

4.43. We note the issues raised by respondents regarding TAR. We consider that most of these issues raised, e.g. in relation to the potential benefits of TAR, are a matter for TAR rather than for CAP148. In terms of the issues raised regarding the extent to which the

²⁸For documents relating to the Transmission Access Review see Ofgem’s website at: <http://www.ofgem.gov.uk/Networks/Trans/ElecTransPolicy/tar/Pages/Traccrw.aspx>

Authority should take TAR into account in its decision-making on CAP148, we clarify that in reaching its minded-to position, set out in the July 2008 consultation, the Authority considered CAP148 on its own merits. In reaching its final decision on CAP148 the Authority will again assess CAP148 on its merits, relative to the prevailing baseline, taking into account the information available at the time including the responses to this consultation and the July 2008 consultation.

4.44. In the July 2008 consultation we recognised the importance of the issues CAP148 seeks to address, and highlighted that we are actively actively pursuing these issues through TAR, where we are working hard, through a range of both short and long term measures set out in the TAR Final Report published in June 2008, to help minimise the current queue for connections and to ensure that access to the transmission system does not act as a barrier to renewable and other generation, without prioritising any particular technology.

4.45. We note there has been continued progress²⁹ in this area since our July 2008 consultation was published:

- The short term package includes interim arrangements designed to facilitate earlier connection of projects, which in some cases may mean ahead of completion of reinforcements. We have recently issued an open letter consultation³⁰ on an interim approach for granting derogations from the minimum requirements of the GB Security and Quality of Supply Standard (GB SQSS), which we are minded to take in order to facilitate earlier connection of generation. We noted that National Grid had identified scope to advance the connection dates of 450MW of Scottish renewable generation seeking connection to the network, based on the respective network owners' abilities to advance local network connection work and the generators' own willingness and ability to utilise earlier connection. We proposed that the interim arrangements would apply to the 450MW identified by National Grid, and any other generators seeking to connect to the transmission and distribution systems in GB that would otherwise be delayed by the need to reinforce the wider transmission system, provided that their local transmission works are complete and they are connected to the contiguous GB Transmission System. We note that this approach, if confirmed following the consultation, would address immediate grid-related barriers for generators ready to connect to the network and the proposed approach would differ from CAP148 in that it would be adopted for an interim period (specifically until the successful implementation of enduring access arrangements) and would apply on a non-discriminatory basis, i.e. to all types of generators, subject to the granting of objectively justified derogations.

²⁹ For an update on progress see: Transmission Access Review – Second Progress Update. March 2009.

³⁰ Derogations to facilitate earlier connection of generation – proposed interim approach. March 2009.

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- As noted above, we have also written to National Grid³¹ requesting an urgent review to consider any changes necessary to manage more effectively the high level of constraints costs resulting from the current shortage of available transmission capacity relative to access rights sold to generators. In response to that letter, National Grid has raised urgent CUSC³² and charging³³ modification proposals which are currently undergoing industry development and consultation before being submitted to the Authority.
 - In terms of longer term access reform, a suite of CUSC amendment proposals (CAP161-166), raised in response to the TAR Final Report published in June 2008, have now been submitted to the Authority. A number of further CUSC and charging modification proposals aimed at establishing a new enduring access regime have been raised by the industry and are at various stages of development or are already submitted to the Authority for assessment and decision.
 - In addition, to address the transmission investment challenges associated with connecting new generation up to 2020, we are taking forward work³⁴ to provide appropriate incentives on the transmission companies to anticipate future demand from generators and to invest efficiently to meet that demand. The 2020 transmission system study³⁵ undertaken jointly by the transmission companies, and overseen by the Electricity Networks Strategy Group (ENSG) jointly chaired by Ofgem and DECC, provides a context for our work on transmission investment incentives through which we have recently introduced short term measures³⁶ to provide initial funding for a number of transmission reinforcement projects.

4.46. We continue to work hard with the industry to develop short and longer term solutions to allow significant volumes of additional renewable generators timely connections to the network.

³¹ Managing Constraints on the GB Transmission System. February 2009.

³² Information on current CUSC amendment proposals is available on National Grid's website at: <http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/>

³³ Information on charging modification proposals is available on National Grid's website at: <http://www.nationalgrid.com/uk/Electricity/Charges/modifications/>

³⁴ Transmission Access Review – Initial Consultation on Enhanced Transmission Investment Incentives. December 2008.

³⁵ <http://www.ensg.gov.uk/index.php?article=126>

³⁶ Transmission Access Review - Enhanced Investment Incentives Open Letter: Consultation on Short Term Measures. February 2009.

Transmission Owner (TO) Incentives Licence Modification. March 2009.

5. Updated assessment taking into account changes under the 2008 Act

Chapter summary

This chapter sets out our updated assessment of CAP148 against the legal and assessment framework incorporating the changes to the Authority's duties under the 2008 Act which have taken effect since the Authority reached its minded-to position. This assessment also takes into account our further consideration CAP148 set out in chapter 4.

Question box

Question 1: Do respondents wish to raise any specific issues regarding our updated assessment of CAP148 against the legal and assessment framework and the conclusions we have reached based on that assessment?

Question 2: Do respondents have any comments on the manner in which we have taken account of the changes to the Authority's duties within our updated assessment of CAP148?

Question 3: Do respondents wish to present any further evidence or arguments for the Authority to take into account in reaching its final decision on CAP148?

Introduction

5.1. As set out in the preceding chapters, we have given careful consideration to the issues raised by respondents and we have also undertaken a comparison between our analysis, set out in the July 2008 consultation, and the alternative analysis set out in CEPA's report. We have also considered the implications of the changes to the Authority's duties under the 2008 Act, compared to those in effect when the Authority reached its minded-to position, for the framework against which the Authority must consider CAP148. The changes under the 2008 Act have increased the prominence of the sustainable development duty in the hierarchy of the Authority's duties, and clarified that the Authority's consideration of the interests of consumers include both future as well as existing consumers.

5.2. These considerations have been reflected in our updated assessment of CAP148, set out below, on which we invite views. We have undertaken this updated assessment in terms of the legal and assessment framework set out in Appendix 4, incorporating the changes to the Authority's duties under the 2008 Act which have taken effect since the Authority reached its minded-to decision. Within this updated assessment we have given further consideration to the impact of the proposal on sustainable development and the impact on both current and future consumers following the changes brought about by the 2008 Act.

Key factors relevant to our assessment

5.3. Our July 2008 consultation set out our preliminary assessment of the impacts of CAP148 according to a number of key themes. In this section we have updated our

assessment of CAP148 in the relation to certain of these themes³⁷, identified below, to incorporate the findings of our updated consideration of CAP148 set out in the previous chapters of this document.

Impact on consumers

5.4. Our updated assessment of the costs and benefits of CAP148, taking into account issues raised by respondents to our July 2008 consultation, is set out in chapter 4. In addition, as highlighted in chapter 2, our assessment of a proposal in terms of the impact on sustainable development, which is set out below, is also a key part of how we consider the impact on both existing and future consumers.

5.5. From our updated assessment of costs and benefits we have concluded that, even when ROC costs are excluded from the analysis, and whether using our quantitative analysis or the alternative analysis set out in the CEPA report, we still find that the impact of CAP148 is at best broadly neutral and more likely reasonably negative. Overall, we do not consider that the alternative quantitative analysis set out in the CEPA report, nor its consideration of qualitative impacts, provides information that would cause the Authority to reach a different conclusion as to the merits of CAP148 from the perspective of efficiency and economy than that based on our analysis set out in the July 2008 consultation.

5.6. In reaching this view we have taken account of potential impacts beyond those which we quantified in our analysis, including our more detailed consideration of qualitative impacts. We have concluded that the net qualitative impacts are likely to be negative taking into account the impact on complexity of the transmission arrangements including the need for consequential changes to other documents, the impact on security of supply, and competition impacts including our view that there remains no clear case for discrimination. As set out below, we have also concluded that while CAP148 may be expected to lead to certain, chiefly environmental, benefits, the overall impact on sustainable development would appear to be finely balanced.

5.7. As discussed in chapter 4, we acknowledge that there are different ways of dealing with ROC costs in the CAP148 cost benefit analysis. However in the context of our assessment of CAP148, the question of whether or not the impact on ROC costs, which we quantified in our analysis, is included as a cost does not alter the conclusions of our assessment. If we exclude the impact on ROC payments from our calculations of quantitative impacts then the quantified costs and benefits, while still negative, are more finely balanced, particularly if CEPA's analysis is used. However, based on our updated assessment of both quantitative and qualitative impacts as set out above, we remain of the view that there is not sufficient evidence of a net positive outcome for either current or future consumers.

5.8. Overall, based on these considerations, we remain of the view that CAP148 is not justified and that it would not lead to a net positive outcome for either existing or future consumers under any scenario.

³⁷ For our assessment of the impact on health and safety, risks and unintended consequences and other impacts including implementation costs see chapter 3 of the July 2008 consultation.

Impact on competition

Discrimination issues

5.9. We have carefully considered the existing legal baseline. Since the permissive aspect of the Renewables Directive which permits Member States to provide priority access to the grid system of electricity produced from renewable energy sources has not been implemented, and the new Renewables Directive has not yet come into effect, we consider that the obligation on National Grid under Standard Condition C7 of its licence relating to non-discrimination and is reflective of non-discriminatory obligations flowing from the IMED, provides the appropriate legal baseline in terms of considering the discrimination issue. Condition C7 provides that in the provision of use of system or in the 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, on which to consider CAP 148.

5.10. As set out in chapter 4, we consider that the responses to consultation to date fail to provide any or any meaningful objective justification for the differential treatment in favour of eligible generation under any of the CAP148 variants. We have considered whether an argument could be made that new renewables and other forms of generation are not relevantly similar for the purposes of considering the CAP 148 proposal. Overall, based on the information currently available to us, we remain of the view that in considering the discrimination issue raised by the proposal the Authority should continue to take as its starting point the approach that all generators should be treated in the same way since they all generate electricity. We have taken account of our updated assessment of the costs and benefits of the proposals, in the context of the applicable CUSC objectives, and counter-arguments put forward by respondents as to the extent to which qualitative benefits may outweigh any net quantitative and qualitative disbenefits. As set out above we find that the impact of CAP148, taking into account both qualitative and quantitative impacts, is likely to be negative. We therefore remain of the view that there is no objective justification for discrimination the proposal if implemented would give rise to. We consider the differential treatment under CAP148 does not in our view provide for a more efficient outcome.

5.11. Overall, based on the information currently available to us, we remain of the view that there is no sufficiently clear or compelling objective justification for the discrimination in favour of eligible generation under any of the CAP148 variants. We therefore consider that CAP148 may conflict with NGET's licence obligations not to unduly discriminate between any persons or classes of person in discharging its functions.

Competition in electricity generation

5.12. As set out in the July 2008 consultation, we acknowledge that on the one hand, CAP148 may have some positive effects on competition from a market concentration perspective in that it would enable accelerated connection of renewable plant, the ownership of which is relatively diverse. However, we remain of the view that any such pro-competitive effect may be negated and outweighed by the fact that the differential treatment inherent in the proposal means that DTEC and non-DTEC generation could not compete against each other on a level playing field, in that only generation eligible for DTEC would have the opportunity to benefit from earlier connection. These issues are particularly pertinent in the context of the current "queue" of generators awaiting connection, which as

discussed in chapter 4 includes a significant volume of both renewable and conventional generators.

5.13. As set out above, we still consider that CAP148 would introduce undue discrimination in favour of qualifying generation. As such, we consider that CAP148 would create distortions in the efficient functioning of the market, by failing to provide a level playing field to all generators seeking connection. These market distortions would ultimately undermine effective competition in the market.

5.14. We further note that, as discussed in chapter 4, CAP148 would exacerbate issues relating to the current level of constraints costs on the GB transmission system. As a consequence it may also increase the vulnerability of the GB electricity sector to undue exploitation of market power, as the increased incidence of constraints under CAP148 may lead to an increased risk of anti-competitive behaviour by generators that are in a position to relieve constraints. We note that such behaviour could have a detrimental effect on the competitiveness of the wholesale market and result in increased costs³⁸ which would ultimately be reflected in bills to consumers. We are currently consulting on measures to address issues relating to undue exploitation of market power in the GB electricity sector³⁹.

Impact on sustainable development

5.15. The July 2008 consultation set out our consideration of CAP148 in the context of the following five themes⁴⁰ relevant to the Authority's duty in relation to sustainable development:

- Managing the transition to a low carbon economy;
- Promoting energy savings;
- Eradicating fuel poverty and protecting vulnerable customers;
- Ensuring a secure and reliable gas and electricity supply, and
- Supporting improved environmental performance.

5.16. The first theme above, *managing the transition to a low carbon economy*, is particularly relevant to CAP148, as the proposal may be expected to give rise to benefits through the acceleration of renewable generation and consequential reduction of greenhouse gas emissions as such generation displaces existing plant. This may similarly lead to benefits in terms of the fifth theme above, *supporting improve environmental performance*, through reducing the volume of pollutants emitted by power stations. It may also lead to benefits under the second theme, *promoting energy savings*, by reducing the energy intensity of the electricity sector.

³⁸ For example, our quantitative analysis of CAP148 assumed generator prices based on marginal costs and socialisation of constraint costs, while our sensitivity analysis suggested the impact on constraint costs may be £600m higher in NPV terms in the case that generators increase BM offers by 100% above marginal costs.

³⁹ Addressing Market Power Concerns in the Electricity Wholesale Sector - Initial Policy Proposals. March 2009.

⁴⁰ These themes are set out in our published guidelines on impact assessments and identified by the Authority as being relevant to our consideration of sustainable development.

5.17. However, these environmental benefits are offset by impacts in other areas relevant to sustainable development. We consider that there would be negative impacts in relation to the third theme above, *eradicating fuel poverty and protecting vulnerable customers*, specifically in terms of the overall impact on consumers. In this context we note that taking into account our updated assessment of the range of costs and benefits (including those relating to the reduction in carbon emissions) of CAP148 set out in chapter 4, and discussed above in the context of efficiency and economy, we remain of the view that, even when excluding the impact of ROC costs in the analysis, CAP148 would put both existing and future consumers at a financial disadvantage compared to the status quo. We also consider that the overall impact on the fourth theme above, *ensuring a secure and reliable gas and electricity supply*, would be negative, for the reasons set out in paragraph 4.26.

5.18. We note that to the extent that CAP148 increases the volume of electricity generated in the north of GB, it may also lead to an increase in the volume of transmission losses, which would in turn reduce the environmental benefits associated with the accelerated connection of renewable generation and increase the financial impact on consumers. However the impact on transmission losses is likely to be a second order effect, and therefore of significantly lower magnitude, compared to the impact on constraints costs.

5.19. Overall, while CAP148 may be expected to lead to certain, chiefly environmental, benefits in relation to some aspects of sustainable development, its impact on sustainability is not entirely positive when taking into account the negative financial impact on consumers and the negative impact on security of supply. Overall, the impact on sustainable development would appear to be finely balanced.

Applicable CUSC objectives

5.20. Overall, based on our further consideration of CAP148 (see chapter 4 and paragraphs 5.3-5.19), and in particular the discrimination issue and our assessment of both quantitative and qualitative impacts (taking into account the potential carbon abatement benefits), in which we have taken into account the counter-arguments provided by respondents, we still consider each of the CAP148 variants fail to better facilitate applicable CUSC objective (a), the efficient discharge by National Grid of the obligations imposed on it by the Act and by the Transmission Licence. This is also true in terms of the issues discussed above relating to the economic and efficient operation of the transmission system and facilitating competition.

5.21. We consider that each of the CAP148 variants also fail to better facilitate applicable CUSC objective (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. Our rationale for this view is set out above in paragraphs 5.12-5.14. We also consider that the arguments in relation to discrimination are relevant and work contrary to CUSC objective (b). CUSC objective (b) is reflective of section 9(2)(b) of the Electricity Act, as facilitating effective competition may well assume, amongst other matters, non-discriminatory treatment between users.

5.22. Taking the above considerations into account we remain of the view that none of the CAP148 variants would better facilitate the achievement of the applicable CUSC objectives.

5.23. Notwithstanding our preliminary view that we consider each of the CAP148 variants fails to better facilitate the achievement of the applicable CUSC objectives and should therefore be rejected on this basis, as set out below we have also considered CAP148 against the Authority's wider statutory duties, European obligations and principal objective.

The Authority's legal duties

5.24. Noting that the changes under the 2008 Act have increased the prominence of the sustainable development duty since the time the Authority reached its minded-to position, we have given further consideration to the impact of the proposal on sustainable development in isolation, as set out above, before considering CAP148 in context of the Authority's legal duties including duties under European law.

5.25. As set out above (paragraphs 5.15-5.19), we have found that the overall impact of CAP148 on sustainable development appears to be finely balanced. We note there is a degree of overlap between the above considerations in relation to sustainable development, and certain other statutory duties of the Authority set out in Appendix 3. Overall, based on the conclusions set out in paragraph 5.3-5.19, we do not consider that the environmental benefits identified in terms of sustainable development outweigh the negative aspects of CAP148, discussed above, in relation to the impact on consumers, security of supply, efficiency and economy, and competition.

5.26. Furthermore, as set out above we continue to have concerns about the discriminatory nature of the arrangements which CAP148 would introduce and our conclusion so far is that that this discrimination is not justified in terms of the current Renewable Directive. Whilst we recognise that Article 7 of the current Renewables Directive gives Member States permission to provide priority access, this provision is permissive and as such does not impose a duty on a Member State to prioritise the connection of renewable energy generation. This permissive aspect of the Directive has not been implemented in Great Britain. We further note that, as discussed in Chapter 4, given that the new Directive has not yet entered into force, the present legal position is as provided for by the current Renewables Directive. In reaching its final decision on CAP148 the Authority will take account of the latest status of the new Directive within GB, and will carefully consider any further views that respondents to this consultation express in this regard and on the wider discrimination issue.

5.27. We recognise that any measure which accelerates the connection of renewable generation may lead to an impact on ROC costs. However in the light of our assessment of CAP148 excluding the impact on ROC costs, and taking into account our consideration of discrimination issues, we would question whether it is a cost-effective way of achieving its objectives, and also whether it is a proportionate response to the issue at hand taking into account the additional complexity, particularly for CAP148 original for which the consequential changes are more wide ranging and more complex.

5.28. We further note that, as discussed in chapter 4 (paragraphs 4.42-4.46), there is other ongoing work on both short and longer term measures to address grid-related barriers for new generation across all technologies, not just renewables. While not a dominant factor in our assessment of CAP148, we note that continued progress in this area could potentially lend some weight in favour of a rejection of CAP148.

5.29. Overall, in the absence of implementing measures to transpose Article 7 of the current Renewables Directive and the absence of objective reasons for the difference in treatment under CAP148 between qualifying generation and other forms of generation, our preliminary view remains that none of the CAP148 variants are consistent with National Grid or the Authority's European obligations. Equally, whilst CAP148 may have benefits in the context of the Authority's statutory duty in respect of sustainable development, these do not of themselves augur in favour of an acceptance of any of the variants when the proposal and its impact is considered by reference to the Authority's wider statutory duties.

The Authority's principal objective

5.30. The Authority's principal objective is to protect the interests of consumers, where appropriate through promoting effective competition.

5.31. In setting out our assessment of CAP148 against the principal objective in the July 2008 consultation, we considered the interests of both current and future consumers, and we have given further consideration to these matters in paragraphs 5.4-5.8. We note that while each of the CAP148 variants may benefit future consumers in terms of reducing carbon emissions, this would be at a financial cost to both current and future consumers through the increased transmission costs discussed above, which would be ultimately reflected in electricity bills. In addition, the overall impact on sustainable development, which is relevant to both current and future consumers, would appear to be finely balanced.

5.32. Clearly reducing carbon emissions is important for future customers but we need to consider whether CAP148 is an appropriate and cost-effective way of securing these reductions, particularly at a time of high energy costs and fuel costs and an adverse financial climate. We must make sure that measures we need to take to tackle climate change aren't any more expensive than they need to be. In the light of our updated assessment of CAP148, which supports our preliminary view that the proposals would fail to promote effective competition and would lead to a negative impact on consumers and on security of supply, we would question whether CAP148 is in the interests of both current and future consumers.

5.33. Overall, we remain of the view that the option available to Authority which is best calculated to further the principal objective is to reject CAP148 Original and each of the WGAAs.

The Authority's minded-to position

5.34. Based on the information currently available to us, taking into account the changes to the Authority's duties under the 2008 Act, we do not consider that the Authority has to date been presented with any information to cause it to move away from its minded-to position to reject CAP148, including the CAP148 Original and each of the five Working Group Alternative Amendment proposals.

5.35. We seek views on the conclusions we have reached on our updated assessment of CAP148. We also invite respondents to this consultation to present any further evidence they wish the Authority to take into account in reaching its final decision on CAP148.

5.36. In reaching that final decision, the Authority will consider CAP148 on its merits, against the prevailing baseline, and taking into account the information available at the time including the responses to this consultation and the July 2008 consultation.

6. Conclusions and way forward

Chapter Summary

This chapter summarises our conclusions and sets out the way forward.

Question box

Question 1: Do respondents have any views on the proposed process and timetable for the Authority making its final decision on CAP148 and for publishing that decision?

Conclusions

6.1. In this consultation we have set out our updated assessment of CAP148 in the light of changes to the Authority's duties under the 2008 Act which have taken effect since the Authority reached its minded-to position. Within this updated assessment we have taken into account issues raised by respondents to our July 2008 impact assessment consultation, including the CEPA report, and other relevant information and developments that have come to light since the July 2008 consultation was published.

6.2. On the basis of this updated assessment we do not consider that the Authority has yet been presented with any information to cause it to move away from its minded-to position, previously set out in the July 2008 consultation, to reject CAP148, including the CAP148 Original and each of the five Working Group Alternative Amendment proposals.

6.3. We seek views on our updated assessment of CAP148 and the conclusions we have reached based on that assessment. We also welcome views on any other aspect of this document and invite respondents to this consultation to present any further evidence they wish the Authority to take into account in reaching its final decision on CAP148.

Way forward and timetable

6.4. This document provides six weeks for respondents to submit any comments.

6.5. The Authority will consider any responses to this consultation before reaching its final decision on CAP148. We currently anticipate that the Authority's decision on CAP148 will be published in Summer 2009.

Further information

6.6. Appendix 1 sets out both the details for responding to this consultation and the appropriate contact details should you have any questions. It also sets out a list of all the key areas where we have sought respondents' views in this document. Respondents' views are also welcomed on any other aspect of this document.

Appendices

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Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 26 May 2009 and should be sent, preferably in electronic format by e-mail to:

cheryl.mundie@ofgem.gov.uk

or alternatively by post to:

Cheryl Mundie
Senior Manager – Electricity Transmission Policy
Ofgem
70 West Regent Street
Glasgow
G2 2QZ

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses submitted in writing could also be submitted electronically. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: The Authority will consider any responses to this consultation before reaching its final decision on CAP148. We currently anticipate that the Authority's decision on CAP148 will be published in Summer 2009.

1.7. Any questions on this document should, in the first instance, be directed to Cheryl Mundie (e-mail: cheryl.mundie@ofgem.gov.uk, tel: 0141 331 6003).

CHAPTER: One

There are no questions in this chapter.

CHAPTER: Two

Question 1: Do respondents have any comments on the way in which we have considered the changes in the Authority's duties under the 2008 Act in respect of the legal and assessment framework against which the Authority must consider CAP148?

CHAPTER: Three

Question 1: Do respondents consider that we have appropriately summarised the key themes of the responses to Ofgem's July 2008 consultation on CAP148? Are there any other themes which respondents consider should have been highlighted?

CHAPTER: Four

Question 1: Do respondents wish to raise any specific issues with our further consideration of CAP148?

Question 2: Do respondents consider that in setting out our further consideration of CAP148 we have appropriately addressed issues raised by respondents to the July 2008 consultation?

Question 3: Do respondents consider that in setting out our further consideration of CAP148 we have appropriately identified and taken into account other relevant information that has come to light since the July 2008 consultation was published?

CHAPTER: Five

Question 1: Do respondents wish to raise any specific issues regarding our updated assessment of CAP148 against the legal and assessment framework and the conclusions we have reached based on that assessment?

Question 2: Do respondents have any comments on the manner in which we have taken account of the changes to the Authority's duties within our updated assessment of CAP148?

Question 3: Do respondents wish to present any further evidence or arguments for the Authority to take into account in reaching its final decision on CAP148?

CHAPTER: Six

Question 1: Do respondents have any views on the proposed process and timetable for the Authority making its final decision on CAP148 and for publishing that decision?

Appendix 2 – Overview of CAP148

Original amendment proposal

1.1. The original amendment proposal seeks to introduce a new capacity product – Deemed Transmission Entry Capacity, or DTEC – applicable to eligible new renewable generation entering a Bilateral Connection Agreement (BCA) or Bilateral Embedded Generation Agreement (BEGA). DTEC guarantees connection by a firm date and ensures priority dispatch for these new renewable generators once connected. The priority connection element of the original amendment proposed that the firm date for connection is based on a lead time of 3 years after the later of (a) the date on which the user signs a relevant bilateral agreement with NGET or (b) the date on which the project obtains its project planning consent, unless Transmission Entry Capacity (TEC) can be allocated sooner.

1.2. The priority connection element of the original amendment requires that the transmission works identified as being necessary to connect the generator under the current arrangements be broken down into:

- **Directly Consequential Works (DCW):** local works required to connect the generator to the electricity grid; and
- **Wider Works (WW):** deep reinforcement works required to provide capacity to support the additional generation coming online.

1.3. The firm connection date is subject to completion of DCW and commissioning of the generator, but unlike allocation of TEC it is not contingent on completion of WW. This differentiation between DCW and WW underpins the proposed financial liability arrangements. In this respect, the original amendment proposal provides that NGET has relief from the risk exposure associated with delays linked to DCW caused by external events but does not have any relief for delays to the WW caused by external events.

1.4. The priority despatch element of the original amendment seeks to ensure that generators holding TEC would be constrained off prior to generators holding DTEC⁴¹. Administered Interruption Payments would apply to any DTEC or non-DTEC generators which are constrained off the system in the circumstance that the GB transmission system cannot accommodate both plant with TEC and plant with DTEC. The administered Interruption Payments would cover the “associated losses” associated with being constrained, i.e. foregone profits, including any foregone ROC payments in the case of renewable generators. The costs of the administered Interruption Payments would be recovered via Transmission Network Use of System (TNUoS) charges.

⁴¹ The Working Group also recognised that under National Grid’s licence obligations with regard to system security, in the event of constraints, balancing actions may need to be taken on plant with DTEC before all other feasible balancing actions have been exhausted.

1.5. Under the original amendment the eligibility criteria for DTEC generation are based on eligibility for Renewable Energy Guarantees of Origin (REGO) under the Electricity (Guarantees of Origin of Electricity Produced from Renewable Sources) Regulations 2003. This includes generation provided by technologies that can only produce REGO eligible output, for example wind or hydro-generation, as well as technologies that can produce a proportion of output that qualifies for REGOs, for example, co-fired generation and mixed holding plants. Generators in the latter category are referred to as "proportionally qualifying plant", with only the output produced from energy crops eligible for REGO certificates.

Alternative amendment proposals

1.6. During its consideration of CAP148, the Working Group found the original amendment proposal complex to develop in terms of the priority despatch element and the application to proportionally qualifying plant (defined above). The Working Group considered several possible candidates for alternative proposals, based upon variations on certain key principles contained within the original CAP 148 proposal.

1.7. None of the potential alternative proposals considered by the Working Group included the priority despatch element of the original proposal; instead they all assign firm access rights and allow for DTEC generation to receive constrained off payments through the Balancing Mechanism (BM). As such, under all of the alternative proposals, NGET would take constraint management actions on the basis of bids and offers submitted to the Balancing Mechanism (BM). In this respect, market forces would determine which generators should be constrained down or off the system in the event that such actions were necessary, with DTEC generators treated on the same basis as generators with TEC. The working group considered that in practice eligible generators would be likely to set bid prices which would make them least attractive to constrain down or off, resulting in the same outcomes as under priority dispatch.

1.8. Each of the potential alternative proposals considered by the Working Group retained the priority connection element of the Original amendment, albeit with some variations. In developing options for alternatives the Working Group considered a range of potential variations in terms of the eligibility of generation, the allocation of risk associated with delays and lead times for connection. For example, an alternative lead time of 4 years was proposed as being more reflective of the duration that transmission reinforcement takes to complete, while a range of alternative eligibility criteria were considered in order to simplify the proposal by excluding proportionally-qualifying generation.

1.9. The specific options considered within each of these categories are outlined below and described in more detail in the CAP148 amendment report:

- **Eligibility:** The Working Group considered four main categories of eligibility in terms of whether particular forms of generation would be able to obtain priority grid connection under CAP148. These are set out at 1-4 below, although only

options 3 and 4 were supported by the Working Group as forming the basis of an alternative amendment:

1. **All REGO generation (as under CAP148 Original)**: under this option all generation that qualifies for REGOs would be eligible, including proportionally qualifying plant.
 2. **Intermittent REGO generation only, minus proportionally qualifying plant** - this differs from option 1 above in that only *intermittent* REGO generation (defined as generation technologies with a variable fuel source over which the generator has limited or no control) would be eligible for DTEC. Like option 4, this option excludes proportionally qualifying plant.
 3. **Low carbon generation, minus proportionally qualifying plant** - under this approach any form of generation identified as low carbon would be eligible for DTEC. The Working Group defined low carbon generation as plant which emitted no more than 0.2 tonnes of carbon per MWh generated. Like option 4, this option excludes proportionally qualifying plant.
 4. **All REGO generation, minus proportionally qualifying plant**: this differs from option 1 above in that it specifically excludes proportionally qualifying plant from being eligible for DTEC, as a pragmatic solution to avoiding the complexities associated with allocating DTEC for a proportion of a generator's output.
- **Risk allocation for delays**: The Working Group identified three potential options in terms of the allocation of risk associated with delays to completion of wider transmission works (WW) due to external events, as follows:
 - A. **Relief from external events (as now)** - NGET has all current relief from external events that cause delays to WW.
 - B. **No relief for planning** - Under this option, NGET has no relief from external events arising from delays in obtaining planning permissions for WW. However, NGET would be eligible for relief for delays caused by force majeure events, for example in the event of flood, famine, war or terrorism etc.
 - C. **No relief (as under CAP148 Original)** - Under this option, NGET would have no relief from external events that cause delays to WW, however arising.
 - **Lead time**: The Working Group identified two possible options in relation to the lead time for an eligible generator to obtain DTEC, subject to completion of DCW and commissioning of the generator, as follows:
 - X. **48 months** - this provides a period of 48 months from the later of signing the relevant bilateral agreement or receiving planning approval for the station.
 - Y. **36 months (as under CAP148 Original)** - this provides a period of 36 months from the later of signing the relevant bilateral agreement or receiving planning approval for the station.

1.10. Overall, based on consideration of the range of potential alternatives arising from the above options, not all of which were supported, five Working Group Alternative Amendments (WGAAs) were developed by the Working Group. No consultation alternatives were raised by respondents to the industry consultation.

Summary of CAP148 variants

1.11. The matrix of CAP148 variants developed by the Working Group is summarised in Table 2 below. In this document, any reference to CAP148 relates to all the CAP148 variants referred to in Table 2, including both the Original and each of the five WGAAs, unless otherwise stated.

1.12. Table 2 uses the labelling system developed by the Working Group for the WGAAs, where the first character represents the choice of eligibility criteria, the second the risk allocation and the third the choice of lead time. For example, WGAA 4BX is based on eligibility option 4 (All REGO generation minus proportionally qualifying plant), risk allocation option B (NGET does not receive relief for delays in obtaining planning permissions for wider works) and lead time option X (4 years).

Implementation issues

1.13. Any of the CAP148 variants, if implemented, would apply directly to all offers issued to eligible generation after the implementation date. Although the proposal would not apply retrospectively, eligible generators which already have a signed agreement but are not connected as of the CAP148 implementation date could switch to DTEC and the new provisions would apply from the date they sign an amended agreement (rather than the date of signing their current agreement). This means that the earliest any user could hold DTEC is three years after implementation of CAP148. New users could, however, still access the system earlier in the event that full TEC is made available prior to 3 years elapsing.

1.14. Implementation of any of the proposals would also require consequential changes⁴² to other industry documents, including changes to the Transmission Charging Methodologies to reflect the introduction of DTEC. Given the magnitude of the potential changes and long lead time for connection of the first generation with DTEC if CAP148 is approved, NGET has indicated that it would only take forward those changes following the Authority decision. However, in parallel with the CAP148 process NGET published an open letter⁴³ to assist parties in understanding the potential consequences of the proposals on the Charging Methodologies.

⁴² The consequential changes to other documents are discussed in more detail in chapter 3 of the July 2008 consultation.

⁴³ Available on National Grid's website at http://www.nationalgrid.com/NR/rdonlyres/1D5ACF49-FEB3-4759-A0CC-8082A88126FD/20357/CAP148Charging_OpenLetter.pdf

Table 2: Matrix of CAP148 variants

		Priority	Connection	Priority Despatch
Variant	Eligibility	Lead time	Risk Allocation	Included?
Original	All REGO generation	3 years	Relief from external events causing delays to local works but no relief from external events causing delays to wider works	Yes
WGAA 3BX	Low carbon generation	4 years	No relief for planning	No
WGAA 4AX	All REGO generation minus proportionally qualifying	4 years	Relief from external events (as now)	No
WGAA 4BX	All REGO generation minus proportionally qualifying	4 years	No relief for planning	No
WGAA 4CX	All REGO generation minus proportionally qualifying	4 years	No relief	No
WGAA 4CY	All REGO generation minus proportionally qualifying	3 years	No relief	No

Appendix 3 – The Authority’s Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.⁴⁴

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly⁴⁵.

1.4. The Authority’s principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁴⁶;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁴⁷

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

⁴⁴ entitled “Gas Supply” and “Electricity Supply” respectively.

⁴⁵ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

⁴⁶ under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

⁴⁷ The Authority may have regard to other descriptions of consumers.

- promote efficiency and economy on the part of those licensed⁴⁸ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁴⁹ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁴⁸ or persons authorised by exemptions to carry on any activity.

⁴⁹ Council Regulation (EC) 1/2003

Appendix 4 – Legal and assessment framework

Introduction

1.1. The Connection and Use of System Code (CUSC) sets out the standard commercial terms between generators (and other network users) and National Grid. The CUSC also sets out the set series of procedures which must be followed in relation to proposals to amend the CUSC. Anyone who is party to the CUSC can propose an amendment to the CUSC. Once a CUSC amendment proposal has been raised, the CUSC Panel assess it before referring it to the Authority for a decision.

1.2. After receipt of the Final Amendment Report from the CUSC Panel, the Authority makes a decision as to whether or not to direct implementation of the Amendment Proposal or any of the alternatives. It makes its decision in the context of a prescribed legal and assessment framework.

1.3. This Appendix outlines the procedure for raising proposed amendments to the CUSC, including the development of alternative amendments by the Working Group. It also outlines the legal and assessment framework for our decision, including the requirement to undertake an impact assessment in certain circumstances and the criteria, including the duties of the Authority, against which a CUSC amendment proposal must be assessed.

Procedure for proposing amendments to the CUSC

1.4. Any proposed amendment to the CUSC should address a defect and must better facilitate the achievement of the **applicable CUSC objectives** than the existing CUSC baseline. These objectives⁵⁰ are;

- a. The efficient discharge by National Grid of the obligations imposed on it by the Act⁵¹ and the Transmission 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.

1.5. Where the CUSC Panel considers it necessary, particularly for more complex amendments, a working group may be created to fully consider a proposal. Any member of the working group may propose a working group alternative amendment proposal. A working group's findings will be contained in a working group report which is then consulted on. Any CUSC party may raise a consultation alternative amendment at this stage⁵². Each proposal and alternative amendment will be

⁵⁰ The applicable CUSC objectives are set out in standard licence condition C3 of the electricity transmission licence of National Grid Electricity Transmission plc ("NGET").

⁵¹ As set out in the Utilities Act 2000.

⁵² This was the framework at the time CAP148 was raised. The ability to raise a consultation alternative amendment has subsequently been modified by the approval of CUSC amendment

assessed and voted upon by the CUSC Panel before the Final Amendment Report is submitted to the Authority.

1.6. The Final Amendment Report includes the recommendation from the Panel on whether or not the proposal or alternatives should be made on the basis of whether each of the individual proposals better facilitate the applicable CUSC objectives when compared against the current baseline. It also includes a proposed implementation date in the event that the proposal is approved by the Authority.

1.7. An assessment of a proposal against applicable CUSC objective (a), detailed above, includes an assessment against **section 9 of the Electricity Act 1989**. This requires transmission licensees to:

- Develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
- Facilitate competition in the supply and generation of electricity.

1.8. As transmission licensee, National Grid is also required by its licence **not to unduly discriminate** between any persons or any class or classes of person or persons in discharging its functions.

Legal Framework for Decision

Impact assessment

1.9. Section 5A of the Utilities Act 2000 (Duty of the Authority to carry out an impact assessment) imposes a duty on the Authority to undertake an impact assessment in certain cases. Section 5A of the Utilities Act 2000 applies where: (a) the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable under or by virtue of Part 1 of the Electricity Act or the Gas Act; and (b) it appears to the Authority that the proposal is important within the meaning set out in section 5A, but does not apply where the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the requirements of section 5A.

1.10. Where section 5A applies, the Authority must either carry out and publish an **impact assessment** or publish a statement setting out its reasons for believing that it is unnecessary for it to undertake an impact assessment. An impact assessment must include an assessment of the likely effects on the environment of a proposal.

1.11. Section 5A(2) sets out the matters which would determine whether or not a proposal is "important" for the purposes of section 5A. These are where a proposal:

- a. Involves a major change in the activities carried out by the Authority;
- b. Has a significant impact on market participants in the gas or electricity sectors;

proposal CAP160 by the Authority.

- c. Has a significant impact upon persons engaged in commercial activities connected to the gas or electricity sectors;
- d. Has a significant impact on the general public in GB or in a part of GB; and
- e. Has significant effects on the environment.

Decision-making process

1.12. With regard to a CUSC amendment the Authority must:

- assess the amendment proposal against the **applicable CUSC objectives** set out above;
- consider whether the proposal is compliant with its **wider statutory duties**, including those arising under European law; and
- determine which of the options available to the Authority is best calculated to further the Authority's **principal objective** to protect the interests of consumers (including existing and future consumers) in relation to electricity conveyed, wherever appropriate by promoting effective competition.

The Authority's powers and duties

1.13. A brief description of the **Authority's powers and duties** is set out at Appendix 3 of this document. Neither the above summary nor the summary at Appendix 3 is intended to be a substitute for referring to the relevant legal instrument.

1.14. Appendix 3 incorporates changes to the Authority's duties under the 2008 Act, which are now in effect⁵³.

⁵³ As discussed in chapter 2, the legal and assessment framework in place at the time the Authority reached its minded-to position on CAP148 preceded the changes to the Authority's duties under the 2008 Act.

Appendix 5 – Responses to the July 2008 consultation

List of Respondents

1.1. The following table lists the respondents to our July 2008 consultation on CAP148 and summarises the position taken by each respondent with respect to our minded-to position to reject all variants of CAP148.

1.2. Responses received by Ofgem which were not marked as being confidential have been published on Ofgem's website www.ofgem.gov.uk. Copies of non-confidential responses are also available from Ofgem's library.

Position taken	Respondents
Supports minded-to position to reject all variants of CAP148	British Energy, Centrica, EDF Energy, E.ON, National Grid, RWE, Scottish and Southern Energy, Welsh Power
Opposes minded-to position	British Wind Energy Association (<i>submitted 2nd response with CEPA report</i>) Combined Heat and Power Association (<i>supports WGAA 3BX</i>), Fred Olsen Renewables, Highlands and Islands Enterprise, Renewable Energy Systems, Scottish Renewables Forum (<i>supports WGAA 4BY</i>), Wind Energy (<i>proposer of CAP148</i>)
No comment on whether to approve/reject CAP148	ScottishPower

Key issues raised by respondents

1.3. The key issues raised by respondents, which are outlined in Chapter 2, are discussed in further detail below in terms of key themes. In Chapter 3 we present our further consideration of CAP148 in the light of the issues raised.

Assessment of costs and benefits, including treatment of ROC costs

1.4. Several respondents agreed with the CBA conclusions and agreed with our conclusion that the additional constraints costs would outweigh carbon savings.

1.5. A number of respondents considered that our impact assessment is flawed in relation to the methodology used to assess costs and benefits, such that it would skew the results towards higher net costs. Several respondents questioned the inclusion of the impact on ROC costs, noting that this element is a dominant component of the CBA such that its exclusion would significantly alter the results. It was further argued that its inclusion sets an inappropriate precedent and would effectively mean any proposal which promotes renewable generation would be rejected, and that this shows a disjoint between Ofgem and UK renewables policy. Some parties also considered it inappropriate that our analysis was based on an assumed future ROC scheme and yet we did not take account of the draft Renewables Directive in assessing discrimination issues. Parties also argued that the scenarios used may be unrealistic as they may overstate the volume of generation accelerated by CAP148. Several respondents referred to the CEPA report for an alternative CBA which they considered may support different conclusions to the analysis in the IA. Some respondents questioned the transmission charging assumptions used in the modelling.

1.6. On the other hand, a number of detailed issues were raised with respect to Brattle's modelling which would suggest the net costs may have been understated. This included the modelling of the impact on wholesale electricity prices, specifically whether it took account of the need for generators to recover fixed costs over a lower load factor, and whether the modelling of short term operation took account of transmission outages. A respondent expressed the view that constraints costs could be higher due to gaming.

1.7. A number of respondents commented that the approach used for the CBA on CAP148 may have implications for consideration of the TAR proposals.

1.8. Some respondents considered that the IA did not give sufficient consideration to qualitative costs and benefits, nor to the assessment of administered pricing under CAP148 Original.

Discrimination

1.9. The respondents were split between those who agreed with our conclusion that the discrimination under CAP148 is not objectively justified, and those who disagreed with our analysis of discrimination issues. A respondent who agreed with our view considered any new access product should be available to all users, referring to TAR for similar proposals being developed without discrimination. Those who disagreed mostly considered that there are objective reasons to discriminate, on the basis that this would be consistent with government policy and the draft Renewables Directive (while recognising that the current Renewables Directive is permissive only), and also referred to policies used by other EU states. Some respondents referred to other legislation they considered relevant, such as the Cogeneration Directive in the context of CHP plant. Some respondents considered that renewable and non-renewable generators should not be treated as "like cases", arguing this meant there is no legal discrimination at all. The BWEA response includes as an attachment some legal advice on this specific point.

1.10. A number of respondents considered that Ofgem should have raised its concerns about discrimination in the Working Group so that the group could have taken this into account in developing alternative proposals.

Transmission Access Review

1.11. Several respondents referred to the Transmission Access Review. Some respondents welcomed the fact that the debate on transmission access is moving on through TAR and considered that this process may lead to beneficial solutions. Others, while in some cases recognising TAR as a positive step, emphasised the need for urgent change and considered that the Authority should not take TAR into account in its decision-making on CAP148. Respondents questioned whether CAP148 had been considered on its own merits and thought that the Authority may have prejudged the TAR outcome. Some of these respondents also sought further evidence as to the potential benefits of TAR.

Transmission charging

1.12. A number of respondents commented on the issue of transmission charging. Some respondents agreed with National Grid's view that the additional constraints costs should be targeted to those causing them rather than socialised, but considered that this may be difficult to achieve in practice. Other respondents argued DTEC generators should pay the same as TEC generators and that cost-reflective charges would negate any benefits of CAP148 and be discriminatory. National Grid noted that if CAP148 is approved it would bring forward proposals for cost-reflective charges but if those charging proposals are rejected then the costs would be socialised.

Appendix 6 – Glossary

A

Access Rights

The rights to flow specified volume of electricity, usually from a specified location (node or zone) to an explicitly or implicitly defined destination (e.g. market hub), and for a defined period. For firm access rights, a failure to deliver access due to insufficient network capacity is associated with financial compensation. For non-firm access rights, the flow is terminated without compensation when capacity is unavailable.

The Authority/ Ofgem

Ofgem is the Office of the Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (GEMA), the body established by section 1 of the Utilities Act 2000 to regulate the gas and electricity markets in GB.

B

Balancing Mechanism (BM)

The mechanism for the making and acceptance of offers and bids pursuant to the arrangements contained in the BSC.

Bid

In the context of the Balancing Mechanism, a bid is a tool used by the GBSO, whereby a user submits data representing its willingness to reduce generation or increase demand. National Grid then decides whether or not to accept the bid.

British Electricity Trading and Transmission Arrangements (BETTA)

The arrangements for the trading and transmission of electricity across Great Britain provided for by Chapter 1 of Part 3 of the Energy Act 2004. BETTA replaced the separate trading and transmission arrangements which existed prior to 1 April 2005 in Scotland and in England and Wales.

Balancing Services Use of System Charges (BSUoS)

The charges levied by National Grid in respect of the activities it undertakes to keep the transmission system in electrical balance at all time.

C**Connection Entry Capacity (CEC)**

A measure of the maximum capability, expressed in MW, of a connection site and the associated generation units' connection to the transmission system.

Connection and Use of System Code (CUSC)

Multi-party document creating contractual obligations among and between all users of the GB transmission system, parties connected to the GB transmission system and National Grid in relation to their connection to and use of the transmission system.

Consents

The process of obtaining Consents for the construction of a new overhead line to serve, for example, a wind farm can essentially be broken down into two distinct areas. Consents to be obtained from the Secretary of State/ Planning authorities etc in relation to permission allowing a line to be built and secondly, and more practically, consents from landowners who will be affected by the construction of the new line. For a new line consent under section 37 of the 1989 Act will be required.

In addition to section 37 consent, the DNO/TO must also obtain consent from the landowners over whose land the line will run. If a voluntary agreement cannot be struck, then either the land will have to be compulsorily purchased, under the provisions of section 10 and Schedule 3 (which is usually used for substations), or a Necessary Wayleave obtained over it, under the provisions of section 10 (Schedule 4 paragraphs 6-8).

Constraints

In the event that the pattern of generation may exceed the safe operational limits of a particular line or transmission system equipment, the GBSO will take actions to reduce the output of generators at specific locations on the system. At present these actions are taken in the Balancing Mechanism in the form of bids, and also via ancillary services, such as Pre-Gate Closure Balancing Mechanism Unit Transactions (PGBTs). Where a user's output is constrained down at a point on the system, the overall balance of energy will need to be retained, and costs will be incurred by the GBSO in bringing replacement energy onto the system.

Contracted background

This is the planning background against which National Grid assesses applications for connection and use of system. The contracted background includes all users that have entered into an (ongoing) agreement with National Grid for connection or use of system.

D**Deemed Transmission Entry Capacity (DTEC)**

The deemed Transmission Entry Capacity allocated to certain generators under CAP148.

Deep reinforcement

Deep reinforcement refers to the works conducted on the wider transmission system in order to accommodate a change in the generation and demand pattern.

Directly Consequential Works (DCW)

The transmission works identified for a given generator which comprise local works required to connect a generator to the electricity grid.

G**GB System Operator (GBSO)**

The entity responsible for operating the GB transmission system and for entering into contracts with those who want to connect to and/or use the GB transmission system. National Grid is the GB system operator.

GB Transmission System

The system of high voltage electric lines providing for the bulk transfer of electricity across Great Britain.

K**Kilowatt (kW)/Megawatt (MW)/Gigawatt (GW)**

A kW is the standard unit of electricity, roughly equivalent to the power output of a one-bar electric fire. A MW is a thousand kilowatts. A GW is a thousand megawatts.

Kilowatt hour (kWh)/Megawatt hour (MWh)/Gigawatt hour (GWh)

One kilowatt hour is the amount of electricity expended by a one kilowatt watt load drawing power for one hour. A MWh is a thousand kilowatt hours. A GWh is a thousand megawatt hours.

L**Long-run marginal costs (LRMC)**

In the context of electricity transmission, long-run marginal costs are the marginal costs of establishing and using network capacity. They include, for example, marginal

costs for network reinforcement, as well as resulting network losses and residual congestion costs.

Local works

Those works required to provide a generator with a connection to the transmission network that would enable it to export power.

O

Offer

In the context of the Balancing Mechanism, an offer is a tool used by the GBSO, whereby a user submits data parameterising its willingness to increase generation or reduce demand. National Grid then decides whether or not to accept the offer.

S

Short-run marginal costs (SRMC)

In the context of electricity transmission, short-run marginal costs are the marginal costs of using established network capacity. They include, for example, network losses and congestion costs.

Short Term Transmission Entry Capacity (STTEC)

STTEC is a firm capacity provided, provided within-year, in 4, 5 or 6 week blocks.

T

Transmission Asset Owner (TO)

There are three separate transmission systems in Great Britain, owned by three Transmission Asset Owners, National Grid Electricity Transmission plc, Scottish Hydro Electric Transmission Ltd and Scottish Power Transmission Ltd. National Grid also has the role of system operator across the whole of Great Britain.

Transmission Entry Capacity (TEC)

The contracted maximum amount of electricity that each user is permitted to export on to the GB transmission system at any given time.

Transmission Network Use of System (TNUoS) charges

Charges that allow National Grid to recover the costs of providing and maintaining the assets that constitute the GB transmission system.

W**Wider Works (WW)**

The transmission works identified for a given generator which comprise deep reinforcement works required to provide capacity to support the additional generation coming online.

Appendix 7 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

- Do you have any comments about the overall process, which was adopted for this consultation?
- Do you have any comments about the overall tone and content of the report?
- Was the report easy to read and understand, could it have been better written?
- To what extent did the report's conclusions provide a balanced view?
- To what extent did the report make reasoned recommendations for improvement?
- Please add any further comments?

1.2. Please send your comments to:

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