



## **AMENDMENT REPORT VOLUME 2**

### **Urgent CUSC Amendment Proposal CAP168 Transmission Access Under-use and reallocation of TEC**

**This document contains consultation responses and requests**

Amendment Ref	CAP168
Issue	1.0
Date of Issue	20 <sup>th</sup> May 2009
Prepared by	National Grid

## 1.0 INDUSTRY VIEWS AND REPRESENTATIONS

### 1.1 Responses to the National Grid Pre-consultation

The following table provides an overview of the responses received to the National Grid pre-consultation. These are attached as Annex 1.

Reference	Company
CAP168-NGPC-01	EDF Energy
CAP168-NGPC-02	Immingham CHP LLP
CAP168-NGPC-03	Rio Tinto Alcan
CAP168-NGPC-04	RWE
CAP168-NGPC-05	Scottish and Southern Energy
CAP168-NGPC-06	Sembcorp
CAP168-NGPC-07	Uskmouth Power

## 1.2 Representations Received During Company Consultation

The following table lists the representations received following circulation of the Consultation Document (circulated on 17<sup>th</sup> April 2009 requesting comments by close of business on 1<sup>st</sup> May 2009). These are attached as Annex 2.

Representations were received from the following parties:

No.	Company	File Number
1	BWEA	CAP168-CR-01
2	Centrica	CAP168-CR-02
3	ConocoPhillips / Immingham CHP LLP	CAP168-CR-03
4	E.ON	CAP168-CR-04
5	EDF Energy	CAP168-CR-05
6	GDF Suez	CAP168-CR-06
7	InterGen	CAP168-CR-07
8	International Power / First Hydro	CAP168-CR-08
9	Scottish Power	CAP168-CR-09
10	Scottish and Southern Energy	CAP168-CR-10
11	Uskmouth Power	CAP168-CR-11

### **1.3 Representations received upon the Daft Amendment Report**

No representations were received following circulation of the Draft Amendment Report (circulated on 8<sup>th</sup> May 2009, requesting comments by close of business on 15<sup>th</sup> May 2009).

## **ANNEX 1 – NATIONAL GRID PRE-CONSULTATION RESPONSES**



To : [Cusc.Team@uk.ngrid.com](mailto:Cusc.Team@uk.ngrid.com)

18 March 2009

Dear CUSC Team,

EDF Energy response to CAP168 : "Transmission Access: Under-use and reallocation of TEC"

EDF Energy has a number of serious concerns over this CUSC Amendment Proposal, which we do not believe better facilitates the CUSC Applicable Objectives. We set out below our key points, followed by our more detailed response.

**Key points**

- We recognise the deficiencies in existing arrangements for temporary transfer of transmission entry capacity (TEC)
- We do not support the solution described by CAP168 of an under-use charge for access and 'use it or lose it' arrangements
- We believe that this proposal lacks sufficient detail for meaningful comment and that the timescales for development are extremely challenging
- Any charging mechanisms for under-use of TEC turn this right of access into an obligation to generate which we view as a fundamental, and undesirable, shift from the current baseline.

**Existing defect in TEC trading arrangements**

We have some sympathy with the concerns raised by the proposer of CAP168 "Transmission Access: Under-use and reallocation of TEC". We have direct experience of the current arrangements for temporary TEC transfer (CUSC 6.34) and believe them to be inefficient. In particular we see that the requirement for both the donor and recipient to pay a full TNUoS charge for the duration of the transfer to be the key barrier to successful TEC transfers. We have offered TEC in Scotland on three occasions and although receiving an expression of interest from a third party on one occasion (and providing an offer) we failed to come to commercial terms with that party. Perhaps the main reason for this is that any donor of TEC will seek value from a right of access for which there are continued TNUoS liabilities and the recipient is required to pay TNUoS to National Grid. Generally speaking, the donor and recipient are therefore unlikely to come to terms bilaterally.

Whilst our views regarding a defect with the existing arrangement for TEC transfer align with those of the proposer, we do not support CAP168 for a number of reasons which we will discuss later in our response.

**Our solution**

We would like to take the opportunity to ask the working group, National Grid and the proposer of CAP168, and particularly Ofgem in its consideration of all of the proposals now before it, to consider an alternative solution to this defect. We propose that the requirement for duplicate TNUoS payments under the existing arrangements for TEC transfer (CUSC

6.34) should be removed. This solution aligns with the proposals for CAP163 “Entry Capacity Sharing”, where the liability for TNUoS (other than the charge for any local circuit/substation) remains with the donating party. Furthermore it seems that the intention of any assignment of TEC under CAP 168 is that one party is liable for TNUoS. We feel that this simple CAP163 change will address the defect that exists in the current arrangements by providing greater incentives on generators to transfer (i.e. assign) TEC to other generators on a bilateral basis. We note the unanimous support of the CUSC Panellists for CAP163 at their closing vote on it, which would tend to imply a high probability of it being implemented.

### **Proposal CAP168**

We now explain in more detail why EDF Energy believes CAP168 does not better meet the Applicable Objectives. Our key concerns with CAP168 are the lack of detail and development time of the proposal, the application of an under-use charge and the consequential ‘use it or lose it’ arrangements.

The timescales agreed for this amendment proposal leave insufficient development time available to the working group, and leave the closing date for this consultation falling before the proposal has even been clarified in terms of the basis of measurement of annual utilisation of TEC. We therefore appreciate this opportunity to respond to a pre-consultation but do not believe that the proposal contains sufficient detail for us to provide meaningful comment. The short time available to the working group to develop this proposal is particularly concerning, the proposal covers a number of areas of transmission access which have been extensively debated over many months and which developed into a number of alternative proposals. It is not clear from the proposal which aspects of the many alternatives that have been considered from other Amendment Proposals, the proposer intends to be incorporated into CAP168. Specifically, with regard to notice periods, user commitment and capacity reduction charges which were extensively debated in CAP165 and its alternatives, we feel there is presently a lack of clarity on what is intended.

We view the proposals for an under-use charge as inefficient and inappropriate. We believe TEC to be a right of access to the transmission system to ensure a route to market for our power. Any charging mechanisms for under-use of TEC turn this right of access into an obligation to generate which we view as a fundamental shift from the current baseline. Furthermore, any retrospective application of the “use it or lose it” arrangements (question 9 of the pre-consultation) is wholly inappropriate; the proposal seeks (yet fails) to create incentives on generator behaviour, and generators will take decisions dependent on arrangements in place at the time. We cannot, by definition, respond to incentives that do not apply at a point in time, but which are later announced as retrospectively-in-force at that time. CAP168 introduces penalties on generator behaviour and taking history into account would be an unacceptable step in implementation of these proposals.

We believe the proposals for assignment of TEC (and the option to return TEC to National Grid) in order to avoid the under-use charge and potential consequential loss of TEC, to be severely under-developed and are likely to require significant administrative burden both for generators and National Grid. Current TEC transfers must be undertaken using an exchange rate which is unknown at the time of application and can take a number of weeks to be provided to both parties (we note that these timescales and uncertainty is a further inefficiency in existing temporary TEC transfer). Any daily or weekly assignment of TEC under CAP168 will therefore carry with it major system and bureaucratic requirements, the benefits of which are unproven.

## Conclusion

Due to the timescales available for us to respond to this consultation we have not been able to address each of the areas on which views are invited. Whilst we cannot provide support for the proposal as currently described, we do believe that that our proposed solution to the defect will be a more efficient and simple way of addressing the deficiencies in existing TEC transfer arrangements.

If you have any further questions please contact me on 020 724 29050

Yours Sincerely,

Dr Sebastian Eyre,  
Energy Regulation Manager, EDF Energy (submitted on behalf of both EDF Energy and British Energy)

This is a response by Immingham CHP LLP to the pre-consultation on CAP168. Our answers to the questions are indicated in bold type.

### **Charging**

It is proposed that an under-use charge is levied on the difference between a generator's maximum output on at least three separate days in a given year and its booked TEC.

1. Views are invited regarding whether this is the appropriate capacity to base an under-use charge on?

**The key objective should be to establish a fair proxy for use across the year against which the TEC capacity "booking" can be compared. Consideration should be given to:**

- +more than three days**
- +applying the charge on a monthly basis**
- +some combination of the above (that is, a time-weighted threshold).**

It is proposed the under-use charge would apply in positive charging Zones and should be based on a multiple of the total relevant zonal TNUoS charge.

2. Views are invited regarding whether TNUoS is the appropriate basis for an under-use charge.

**Yes, especially as TNUoS is calculated to produce cost-reflective zonal values.**

3. Views are invited regarding the appropriate level of under-use charge to incentivise parties to make available TEC which they do not require and the rationale for this level of charge?

**As a minimum, the charge should be related to the TNUoS payment applicable in the zone as these are, as noted above, intended to be cost-reflected.**

**A multiple of 1.5 would sharpen the incentive to book appropriate levels of TEC. This is no less arbitrary than the judgement inherent in the current charging structure that charges should be split 3:1 between suppliers/distributors and generators, and would provide some measure of compensation to consumers because of the higher network charges they see under the baseline.**

4. Views are invited regarding whether an under-use charge would be appropriate in negative zones?

**Applying the under-use across all zones would avoid discrimination between generators in different zones (e.g. positive vs negative). In the case of operators in negative zones, the "charge" should take the form of a loss of payments to the generator.**

It is proposed that any extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it

would be used to help offset BSUoS or used by the system operator to invest in operational enhancements.

5. Views are invited regarding the appropriate use of any extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it?

**There are two basic reasons why the rebate should be against BSUoS:**

- **rebating receipts against TNUoS would be a complicated money-go-round because of the smearing back to other generators so that National Grid's total allowed revenue from generators can be recovered. The value of an under-use charge could be significantly undermined especially if the rebate was on a zonal basis;**
- **a real benefit of achieving more efficient allocation and use of TEC should be mitigation of constraints on the transmission system. It follows that inefficient holding of TEC will increase short-run costs of operating the system and therefore any charges levied to deal with this should be used to offset the effects of unnecessary TEC retention (i.e. netted against BSUoS).**

### **Access**

It is proposed that if TEC is not used or assigned for two years continuously or three years in five "use it or lose it" arrangements should come into operation.

6. Views are invited regarding whether these are the appropriate timescales for "use it or lose it" arrangements to become active and the rationale for such timescales?

**Yes.**

7. Views are invited as to whether there should be any extenuating circumstances where use it or lose it should not apply?

**The arrangements should be flexible to:**

- **unforeseen short-term shifts in operating parameters**
- **enforced changes in operating patterns, which means that exclusions should be applied in circumstances such as outages for all types of plant.**

8. Views are invited as to how a generator whose plant has broken down could demonstrate that they still require TEC and therefore should not lose their unused TEC?

**Guidelines would need to be developed. Some form of appeal mechanism is likely to be necessary.**

9. Views are invited regarding whether "use it or lose it" arrangements should look retrospectively at the two years previous to implementation?

**This depends on the extent to which capacity sterilisation is considered a problem, and analysis is needed to quantify the scale of TEC retention across the year.**

It is proposed that closing plant shall be required to give two full years notice of it's intention to close. If only one year's notice is given it is suggested the plant would pay 50% of the transmission charges it would have incurred.

10. Views are invited regarding if this is the correct timescale for providing notice?

**Two years has been selected to be symmetrical with the period over which the "use it, sell it or lose it" period is to be applied. It is far superior to the five day notice period applied under the current baseline.**

11. Views are invited as to whether this is an appropriate incentive to provide closure signals?

**It is a much stronger incentive than the current baseline, and the proposer considers the two year timeframe appropriate.**

### **Implementation**

12. Views are invited as to the appropriate timescales for implementing such and amendment in the CUSC?

**Implementation should occur in parallel to CAP161-164 (if approved), which this change proposal complements. It is expected that this date would be April 2010.**

Please let me know if I can provide anything further.

**Maureen McCaffrey**

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17 March 2009

Our reference  
Your reference

Dear Sarah

### **Response to National Grid's Consultations re CAP168**

Rio Tinto Alcan welcomes the opportunity to respond to National Grid's pre-consultation in relation to CUSC Amendment Proposal CAP168.

Rio Tinto Alcan undertakes aluminium smelting activities at sites connected to the Northern Electric Distribution and Scottish Hydro-Electric Distribution Ltd networks. We have only a peripheral role in the electricity market and we are not CUSC parties. In this context, our primary concern is the security of electricity supply to our smelters. However, these proposals have the potential to affect this and so to impact upon our operations considerably. Rio Tinto Alcan's specific and unique position must be considered during the evaluation of these proposals.

We are concerned that the changes to the transmission access arrangements proposed under CAP168 may undermine Rio Tinto Alcan's property rights in relation to firm access to the transmission and distribution system. Our sites are demand sites supplied by a combination of onsite electricity and grid-supplied electricity. However, we can provide balancing services to the grid, including frequency response services, and are often requested to do so. We need export capacity and flexibility in order to be able to provide these services to the grid. Our concern is that CAP168 will compromise this flexibility. For example, our use of export capacity may be infrequent, potentially resulting in under-use charges and ultimately the loss of access rights, with significant ramifications for both our commercial operations as an aluminium smelter and our ability to provide valuable services to the grid. It is, therefore, essential for the operation of our business that our export capacity is maintained on a firm and ongoing basis.

We believe that our sites must have their rights recognised and preserved in the context of any reforms to the transmission access arrangements. Considerable investment has been undertaken at these sites on the basis of the present arrangements, delivering benefits to the system as a whole without imposing any quantifiable cost on the transmission system. In order to maintain this situation, we believe that the enduring arrangements should ensure that our rights are maintained. We consider that this is justifiable as due discrimination, as the unique nature of our operations means that our situation is sufficiently distinct from that of other parties to warrant different treatment.

Whenever, as is the case with CAP168, there is the potential for the transmission access arrangements to be revised, the specific impact upon Rio Tinto Alcan, given the unique nature of its sites, must be specifically assessed in a careful and thorough manner.

Therefore, we would expect explicit consideration to be given to the impact of this proposal (and any other proposals in relation to transmission access arrangements) upon Rio Tinto Alcan's position.

We are keen to work with National Grid and the electricity industry in developing appropriate transmission arrangements for our sites following the conclusion of the Transmission Access Review. To that end, we would welcome the opportunity to participate further in the process to ensure that our needs are taken fully into account in the development of the enduring arrangements.

Bob Nicholson  
Power Commercial Manager

cc Stuart Cook, Director, Transmission, Ofgem

Sarah Hall  
Electricity Charging and Access Development  
National Grid Electricity Transmission plc  
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18<sup>th</sup> March 2008

Email: sarah.a.hall@uk.ngrid.com

**Pre Consultation Document CUSC Amendment Proposal CAP168 Transmission Access Under use and reallocation of TEC.**

Dear Sarah,

Thank you for the opportunity to comment on the Pre Consultation Document CUSC Amendment Proposal CAP168 Transmission Access Under use and reallocation of TEC. This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply and Trading GmbH and RWE Innogy.

The pre consultation raises a number of specific questions in relation to the definition of the solution for CAP168. However, we have a number of more general observations in relation to CAP168 and these are set out below.

Transmission capacity is currently defined by reference to the Connection Entry Capacity (CEC) and Transmission Entry Capacity (TEC). These capacities are set out in the bilateral connection agreement (BCA). The CEC and TEC cannot be changed except by a variation to the BCA. As far as charging is concerned, Users will pay or be paid for capacity up to the level of the TEC irrespective of use under the terms of the charging methodologies and subject to the conditions in National Grid's transmission licence. The transmission owners will build transmission capacity that reflects the CEC and TEC of users in BCAs subject to the conditions established under the GBSQSS. This is the context under which CAP168 should be evaluated.

Under the current regime, users have an incentive to optimise their capacity holdings. In positive zones the capacity based charge can be avoided if users reduce their capacity. In negative zones users must demonstrate their availability to receive the negative charges. Capacity optimisation by users takes account of potential opportunities to generate in the energy market. Users may of course

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reduce capacity but this restricts their ability to generate. Given the current number of users seeking connection existing users that give up capacity may not be able to receive new capacity without being subject to the GB queue. Therefore, users with existing capacity will tend to retain capacity and pay for it if they have an intention to use the capacity at some point in the future.

The various measures under consideration through the Transmission Access Review will of course change incentives on parties to reserve and retain capacity and introduce new opportunities to release capacity.

CAP168 seeks to introduce a new concept, that of “under use” with consequential remedies if users do not give up capacity including the reallocation (sequestration) of capacity holdings by National Grid. This raises a number of general concerns relating to the nature of current capacity holdings and the associated rights of users.

In particular the amendment changes the current capacity-based holdings in positive zones into holdings that are defined by the “use” of the system. This presumably will require users to operate up to their TEC levels to “prove” their availability in a manner similar to the runs required in negative charging zones. Any “excess” capacity could be removed (TEC less the output in the proving runs) by National Grid, requiring an associated change to the users’ BCA.

The extent to which CAP168 will impact on users depends on the amount of “unused” capacity on the transmission system. Although NGET provide some estimates of this level it does not indicate that this capacity is not capable of being used. It is perfectly feasible for users to retain and pay for TEC while their power stations are otherwise unavailable through outages or mothballing. This should result in the cost of short term access trending to very low levels. However, the availability of “unused” capacity does not indicate that the capacity should be removed and made available to other users. We would question the amount of unused capacity that actually exists as indicated in Annex 2 if there was a strong incentive on users to use capacity under CAP168.

The basis for the “under use charge” under CAP168 is difficult to understand. As far as the CUSC, the charging arrangements and the GBSQSS are concerned National Grid and the transmission owners will design and build transmission capacity that up to the level of the CEC and TEC and to “use” the system” up to the level of the TEC subject to appropriate cost reflective charges. Applying further arbitrary charges for “under use” would appear to result in a double charge for capacity and an over recovery of required revenue.

If under CAP168 the SO/TOs were to over recover the required revenue in particular year then this should result in a reduction in the revenue requirement in a subsequent year. Therefore TNUoS charges should be adjusted to reflect this (and not BSUoS charges).

Our response to the specific questions raised in the pre consultation document are outlined below

### **Charging**

*It is proposed that an under-use charge is levied on the difference between a generator’s maximum output on at least three separate days in a given year and its booked TEC.*

1. *Views are invited regarding whether this is the appropriate capacity to base an under-use charge on?*

Since users currently pay for capacity up to the level of the TEC in the BCA it does not appear appropriate to introduce an under use charge since this will charge twice for the same capacity.

- 2. It is proposed the under-use charge would apply in positive charging Zones and should be based on a multiple of the total relevant zonal TNUoS charge.*

Any under use charge based on a multiple of TNUoS will result in the double charging for capacity and does not seem to be appropriate.

- 2. Views are invited regarding whether TNUoS is the appropriate basis for an under-use charge?*

Capacity based TNUoS is not an appropriate basis for an under use charge. Since users currently pay a cost reflective charge based on the capacity we do not believe that a relevant cost reflective basis for an under use charge can be established.

- 3. Views are invited regarding the appropriate level of under-use charge to incentivise parties to make available TEC which they do not require and the rationale for this level of charge?*

Given the current capacity based charging regime it is not clear as to the rationale for any under use charge.

- 4. Views are invited regarding whether an under-use charge would be appropriate in negative zones? It is proposed that any extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it would be used to help offset BSUoS or used by the system operator to invest in operational enhancements.*

It is not clear as to what purpose an under use charge would serve in a negative charging zone.

- 5. Views are invited regarding the appropriate use of any extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it?*

Since it is difficult to determine the cost reflective basis for an under use charge it is difficult to comment on any "extra monies" that may be generated. However, since the costs relate to TNUoS then they should form part of the TNUoS methodology.

### **Access**

*It is proposed that if TEC is not used or assigned for two years continuously or three years in five "use it or lose it" arrangements should come into operation.*

- 6. Views are invited regarding whether these are the appropriate timescales for "use it or lose it" arrangements to become active and the rationale for such timescales?*

The current charging arrangements provide an incentive on parties to manage the required capacity holdings resulting in the economic and efficient provision of required transmission capacity. Therefore there is no obvious rationale for a use it or lose it charge.

- 7. Views are invited as to whether there should be any extenuating circumstances where use it or lose it should not apply?*

We do not understand the rationale for use it or lose it arrangements and therefore we cannot comment on any circumstances where this provision should not apply.

- 8. Views are invited as to how a generator whose plant has broken down could demonstrate that they still require TEC and therefore should not lose their unused TEC?*

The users' commitment to pay the required TNUoS indicates that the capacity is required. There is nothing to prevent the SO selling the capacity through short term products

*9. Views are invited regarding whether "use it or lose it" arrangements should look retrospectively at the two years previous to implementation? It is proposed that closing plant shall be required to give two full years notice of its intension to close. If only one year's notice is given it is suggested the plant would pay 50% of the transmission charges it would have incurred.*

We do not believe that there is appropriate justification for the change from the current arrangements.

*10. Views are invited regarding if this is the correct timescale for providing notice?*

The current timescales for providing notice appear appropriate.

*11. Views are invited as to whether this is an appropriate incentive to provide closure signals?*

The current timescales for providing notice appear appropriate.

### **Implementation**

*12. Views are invited as to the appropriate timescales for implementing such and amendment in the CUSC?*

We do not support implementation.

If you wish to discuss any aspect of our response, please do not hesitate to contact me.

Yours sincerely

By email

Bill Reed,  
Market Development Manager



Sarah Hall  
National Grid

16 March 2009

Dear Sarah,

### **CAP 168**

I write on behalf of Sembcorp Utilities (UK) Limited (“Sembcorp”) with reference to CAP168.

Sembcorp fully supports the general principles and intention of CAP168. We agree, however we have some severe reservations regarding the details of implementation which we feel must be addressed.

#### Background

Sembcorp provides utilities and services to customers in the chemicals industry located on the Wilton International manufacturing site on Teesside. Sembcorp owns a licence-exempt distribution network, a 197MW fossil-fired combined heat and power station on the site and a 33 MW renewable (wood fired) station “Wilton 10”. There is an on-site electricity demand of 200MW and the site network is directly connected to the National Grid at Lackenby.

Sembcorp participated in the only TEC exchange to have occurred (as recipient in Q4 2008)<sup>1</sup>.

Response to Pre-consultation questions:

1. We agree with the principle of an under use charge.

However the means for determining whether a party has fully used its TEC should be the same as the means by which National Grid monitors that a party has not exceeded its TEC. We understand the National Grid monitor compliance with TEC on an instantaneous basis (or at least half-hourly). The same basis should therefore be used to determine if TEC has been fully utilised. We think it unlikely that the industry would consider it appropriate to move to monitoring that exports were compliant with TEC by taking the average of the three highest export periods.

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<sup>1</sup> The statement in the third paragraph of the Amendment Proposal that the TEC exchange facility has not been utilised is incorrect. We found the procedure to be unnecessarily clumsy and would have done further exchanges if the notice periods had been shorter and the exchange periods more flexible.

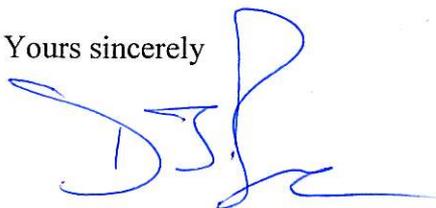
The principle should not apply or there should be a margin or error allowed for certain groups of generation:

- i) Certain CHP plants can control their electrical output absolutely as this is a function of the host steam demand and
- ii) CHP plants are usually connected via the same connection as 3<sup>rd</sup> party demand (although the CHP operator may own the connection). The CHP operator therefore cannot have absolute control over the export at any precise time.

Sembcorp falls into both of these categories and we find that it is necessary to target 90% of our TEC limit in order to stay within 100%. This means that Sembcorp might appear to be underutilising its TEC, but in fact we are extremely keen to use all of it and more if it were available.

2. We disagree with the use of TNUOS as the basis for the under-use charge. Sembcorp is a independent power producer operating on a single site which has been in existence for over 50 years. We are totally unable to respond to locational signals, yet we are being increasingly punished for an accident of geography and 'purist economic' regulatory thinking.
3. We suggest unused TEC capacity should initially be set to costs double the normal, with a review after a few years.
4. No, we favour a flat rate, see 2.
5. We would support the use of these monies to reduce TNUOS, BSUOS, or to re-inforce the network or to reduce the TEC burden for those parties who do fully utilise their TEC.
6. We consider three years to be sufficient.
7. Extenuating circumstances should apply in the situations exemplified in 1. Above.
8. A technical report, subject to audit.
9. Yes
10. No comment
11. No comment
12. We agree that the issue to TEC needs to be addressed rapidly, however this must not be at the expense of a handful of unique sites which may have complexities which need to be taken into account.

Yours sincerely



Dr D J Bone  
VP Utilities

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Our Reference:

Your Reference:

Date : 17<sup>th</sup> March 2009

Dear Sarah,

### **Pre-Consultation Document for CAP 168**

This response is sent on behalf of Keadby Generation Ltd.; SSE Energy Supply Ltd.; SSE Generation Ltd.; Medway Power Ltd.; Slough Energy Supplies Ltd.; Airtricity Ltd. and Airtricity Generation (UK) Ltd.

We welcome the opportunity to respond to this Pre-Consultation for CUSC Amendment Proposal CAP168. Our comments are in two parts; firstly on the process followed with respect to CAP168 and secondly our indicative answers to the questions in the pre-consultation document.

### **PROCESS**

Firstly, we do not accept that CAP168 should have been granted 'urgency'. The reasons for this will be expanded upon at the Company Consultation stage. Suffice to say that the extremely limited time has unduly limited our ability to respond comprehensively to this pre-consultation.

Secondly, the lack of even some outline detail of what, even approximately, the CAP168 proposal entails has severely hampered our ability to respond to this pre-consultation. Therefore, as the details of CAP168 emerge we may well change our responses to these pre-consultation questions.

## **ANSWERS to QUESTIONS**

### Charging

*1. Views are invited regarding whether this is the appropriate capacity to base an under-use charge on?*

We note the brief discussions in the first CAP168 Working Group meeting; and in particular that the three day (associated with some form of 'validation') might be, substantially, increased and that there are technical reasons why 'extra' TEC might, legitimately, be held.

The initial CAP168 proposal, and the pre-consultation document, talked of the 'extra' TEC amounting to the difference between a generator's maximum output on at least three separate days in a given year and its booked TEC holding (for which it is charged TNUoS in positive zones).

However, during the Working Group discussions it appears that the three separate days, per annum, might be, substantially, increased. Such a move would unfairly discriminate against those, non base-load power stations, which operate for short periods of time per year (and whose operating regime is taken into account by the GBSO - who may well have 'reallocated' that TEC capacity for other operational purposes). It would also disproportionately discriminate between CUSC Parties in negative zones (who, currently, have a similar concept of a three day 'validation test' regime to receive TNUoS) and those CUSC Parties with power stations in positive zones (who would, if the three day test were increased, face a far harsher 'validation testing' regime).

As per the discussions last Friday there are well known, and understood, technical reasons as to why, for operational purposes, a CUSC Party might, legitimately, hold 'extra' TEC. For example, CCGTs generally have circa 2-3% of headroom in their TEC holding (for which, in positive zones they pay for) to take account of ambient weather conditions. This is because in periods of extreme cold (when, for example, the maximum demand for electricity generally might be expected to occur) this type of technology can produce an additional 2-3% of electricity. A similar situation is believed to exist with renewable generators where, depending upon weather conditions, maximum output might not be achieved at all times.

Another example is where a power station holds some TEC headroom, compared to their 'normal' day to day operational needs, because they are (or intend) providing additional balancing services to the GBSO, such as reactive power, fast reserve, short term operating reserve, tendered frequency reserve, etc.

A further example would be where plant operates in the 'peaking' sector of the GB electricity market; i.e. they aim to produce power over the traditional peak periods of demand. The proposer of CAP168 appears to currently operate a base-load CHP power station. As such they might not have appreciated that there are a plethora of other generating technologies providing power into a host of other sectors of the GB electricity market; from base-load to peaking. Whilst, in their view, CAP168 might be appropriate for a base-load CHP power station (not a view we share) this is certainly not the case for other market sectors.

If CAP168 were to be implemented it would require CUSC Parties with this TEC headroom to either hand it back or hold it (be charged a penal rate for it) and lose it in two(?) years. The consequences (arising from CAP168) on the security of electricity supplies if generators are no longer able to provide reserve and other balancing services etc., (due to a lack of TEC headroom) to the GBSO need to be considered by the Working Group. It would appear, on the face of it, to run counter to applicable objective (a).

In addition we believe the removal of these (positive zone) generators from offering their capability in the market to the GBSO would be detrimental to competition in the GB electricity market (and run counter to the achievement of applicable objective (b)).

Furthermore, the inequity of removing this TEC headroom only from generators in positive zones (and not those in negative zones) would be discriminatory.

A further aspect to CAP168 is the presumption that CUSC Parties will be able to freely trade any 'extra' TEC they hold (in order to avoid (i) the penal charge and (ii) asset confiscation). However, we are mindful of the discussions held, as part of the recent TAR Working Group 3, on exchange rates. This clearly showed, even where power stations were both physically and electrically very closely 'co-located' that the exchange rate for TEC traded / shared etc., between them could be atrocious. In some cases a 1:23 rate was suggested for some power stations in the sample area of the 'Humber' region. Thus the seller would offer 230MW, from their node, but the buyer would receive, at their node, 10MW (but pay for the TNUoS etc., on the full 230MW).

This issue could be compounded if the GBSO is incentivised to further frustrate the trading of 'extra' TEC between CUSC Parties. This arises because in offering a very poor exchange rate to the two parties it, effectively, halts that commercial trade and forces (by default) the seller to give the 'extra' TEC to the GBSO (for free) in order for the seller to avoid paying the penal 'under use' charge. The GBSO could then re-use that 'extra' TEC for its own operational reasons (such as avoiding paying for balancing services?) or re-sell this TEC and 'pocket' the income at no cost to itself.

Although we do not agree with CAP168, if it were to proceed we conclude, in answer to question 1, that all 'extra' TEC held for operational purposes should be taken account of in the process and that the timeframe for the 'validation test' is limited to only three separate days per annum. In other words if a power station has 103MW of TEC holding and 3MW is held for operational purposes (such as a CCGT for cold weather operations) then if the power station achieves (or could have achieved but for technical reasons, such as mechanical failure) 100MW over three separate days in a year that there would (a) be no 'extra' TEC payments or (b) no confiscation of that 'extra' TEC.

Finally, as a point of clarity, what approach is to be taken, with CAP168, where a power station is Bid back by the GBSO or, in some other contractual way with the GBSO, production is reduced?

In our view where this happens the adjusted output level (had the GBSO action not taken place) should be used to determine the power station's performance when calculating the 'extra' TEC. In other words if the power station intended to produce 100MW (and its TEC holding is 100MW) and is asked, by the GBSO, to reduce this by 10MW then it would be deemed, for the purposes of CAP168, to have accomplished 100MW if it achieves 90MW actual production during the timeframe in question. However, if it only achieved 85MW then, under CAP168, it would be deemed to have accomplished 95MW (with the balance of 5MW classified, according to CAP168, as 'extra' TEC).

*2. Views are invited regarding whether TNUoS is the appropriate basis for an under-use charge?*

Given that the current TNUoS charging regime is NOT cost reflective (in that generators located in negative zones pay nothing, even though, demonstrably, they give rise to costs associated with (i) providing the transmission towers, cables and substations for their output and (ii) operating & maintaining those assets) we can see no merit in increasing still further the inequitable transmission charging regime.

*3. Views are invited regarding the appropriate level of under-use charge to incentivise parties to make available TEC which they do not require and the rationale for this level of charge?*

Given the lack of detail at this stage, we reserve our position on what, if anything, the under-use charge might be.

*4. Views are invited regarding whether an under-use charge would be appropriate in negative zones?*

Whilst we question the overall ‘defect’ within the CUSC that CAP168 purports to address; we can find no justification as to the blatant discrimination in the treatment of ‘extra’ TEC between positive and negative TNUoS charging zones.

Fundamentally why is the ‘extra’ TEC held by a one CUSC Party deemed to be ‘OK’ whilst the ‘extra’ TEC (quiet possibly of a lesser volume?) held by another CUSC Party is said to be ‘Bad’ (and is subject to (i) a penal charge and (ii) confiscated, without compensation).

What, for example, happens if, due to the charging regime administered by National Grid (over which generators / CUSC Parties have no control) a generator (with ‘extra’ TEC) flips into/out of a negative zone over a number of years. Will they still be subject to the risk of losing their ‘extra’ TEC (as an identical generator, in a positive zone, would) and if so, just for those years when they are ‘positive’?

The issue of negative zones is further brought into sharp focus by the analysis shown in Annex 2 of the pre-consultation document. This clearly show that the ‘extra’ TEC held in the negative zones is broadly comparable with that held in Scotland (10% and 11% respectively) and three times as much as that held in the positives zones in England & Wales (3% v 10%).

*5. Views are invited regarding the appropriate use of any extra monies above expected TNUoS payments received by the system operator from under-use charges or from the resale of TEC assigned to it?*

There are two aspects proposed, with CAP168, to reallocate the windfall gains arising from this change proposal; namely offsetting BSUoS and GBSO operational enhancements.

We have serious concerns as to the potential for windfall gains and losses arising from the proposed treatment of the penal charge income. These concerns would be magnified if no penal charge were to apply in negative zones yet generators in those negative zones were to receive a payment via BSUoS.

In addition, with respect to the use by the GBSO of some (or all?) the funds raised for operational enhancements we note that this may give rise to a multitude of ‘conflicts of interest’ between this (CAP168) ‘scheme’ and, for example, the System Operator Incentive Scheme and its Five Year Transmission Price Control.

We note that the successful trading of ‘extra’ TEC, between CUSC Parties, will rely on the TEC exchange rate provided by the GBSO. Thus the GBSO might be incentivised (under CAP168) to offer a very poor TEC exchange rate to two parties to a potential trade in order

to, effectively, halt that commercial trade and force (by default) the seller to give the 'extra' TEC to the GBSO (for free) in order for the selling party to avoid paying the penal 'under use' charge. The GBSO could then re-sell this TEC and 'pocket' the income for 'operational enhancements'.

As a point of clarity we would like to understand what, exactly, these 'operational enhancements' taken by the GBSO could / would be and why they are not already undertaking these 'operational enhancements' in accordance with the requirements of (i) the Transmission Licence (ii) the Five Year Transmission Price Control and (iii) the existing incentive schemes applicable to the GBSO. In addition the spending, by the GBSO, of any money raised under CAP168 would need to be fully reported back to industry (as well as being subject to regulatory oversight).

### Access

*6. Views are invited regarding whether these are the appropriate timescales for "use it or lose it" arrangements to become active and the rationale for such timescales?*

We believe that sufficient time must be allowed for CUSC Parties to reasonably repair or re-plant power stations without the risk of losing their TEC holding. This is both the economic & efficient thing to do (re-using existing infrastructure and assets) and also the most environmentally beneficial thing to do (as, repeatedly, expressed by Government Ministers regarding 'using brown field sites' etc.).

*7. Views are invited as to whether there should be any extenuating circumstances where use it or lose it should not apply?*

Yes, we can see a host of potentially extenuating circumstances that it might be suitable to not apply the 'use it or lose it' provision. Examples could include where there has been a technical fault at the plant requiring a major overhaul, or re-planting etc., which necessitates a long term outage, or where the fault arose from a 'force majeure' type event etc.

In addition we note that on the fifth of the National Grid slides presented at the first meeting of the CAP168 Working Group it refers to "how can users demonstrate best endeavours to repair plant". Given that National Grid has no such 'best endeavours' obligation with respect to transmission system availability/repairs etc., it is unacceptable for them to impose such an onerous obligation on generators. A 'reasonable endeavours' obligation (as exists elsewhere in the CUSC etc.) would suffice for these purposes.

*8. Views are invited as to how a generator whose plant has broken down could demonstrate that they still require TEC and therefore should not lose their unused TEC?*

Noting the recent discussions, as part of CAP166 WGAA3, on 'validation tests' (see section 4.2.6 of the CAP166 report) we believe that CUSC Parties should be allowed to provide independent engineering analysis to demonstrate that they still require the TEC. It needs to be recognised that it may be some considerable time before equipment can be (i) obtained from the suppliers (ii) installed and (iii) commissioned. For example, we are conscious that prior to the 'credit crunch' sourcing wind turbines in a timely manner was problematic (to say the least).

*9. Views are invited regarding whether "use it or lose it" arrangements should look retrospectively at the two years previous to implementation?*

NO. It is fundamentally wrong to retrospectively apply anything. Whatever the rights or wrongs of a change; parties need to be in a position to react to mitigate the effect of the change. CUSC Parties have acted according to the CUSC (and other industry code) obligations in the correct manner. To say that, by slight of hand, what you did in the past was right (according to the rules at the time) and is now wrong and penalise someone is totally abhorrent, unreasonable, disproportionate, unfair and runs counter to natural justice.

*10. Views are invited regarding if this is the correct timescale for providing notice?*

We have expressed previously (see, for example, CAP131) our views on the correct timescales for providing notice: two years is, in our view, too long a notice period. A fifteen month notice period (as we suggested for CAP165 – see WGAA4, paragraphs 5.32-5.34 of the CAP165 report) is more appropriate, and aligns the electricity and gas transmission notice (of withdrawal) periods.

*11. Views are invited as to whether this is an appropriate incentive to provide closure signals?*

See our answer to question 10. If a fifteen month notice period is used then we would expect CUSC Parties to be liable to pay the appropriate TNUoS charge (but NOT any 'penal' charges on top of that) for the remainder of the 15 months. Thus if they gave 5 months notice, then they would be liable to pay the remaining 10 months TNUoS.

## Implementation

*12. Views are invited as to the appropriate timescales for implementing such and amendment in the CUSC?*

CAP168 should not be implemented within a charging year as this will distort the market. For example, if it were introduced half-way through a year then CUSC Parties might have, by chance, taken an outage (or some other technical step) which means they will be unable to react to mitigate the effects of CAP168 (i.e. avoid the penal charge etc.). In our view CAP168 should be implemented at the beginning of a new charging year (1<sup>st</sup> April) with at least six months notice provided to CUSC Parties (to enable them to plan / prepare for mitigating its impact / risk on their business). For the avoidance of doubt, just because an amendment has been raised does not mean that CUSC Parties should undertake their future planning / preparations on the basis that it WILL be approved and implemented - to do so would be inefficient and impractical (for example, do we plan for CAP164, CAP165, CAP166 and CAP168 all being implemented (!) and if so, the working group alternatives as well?!)

## Alternatives

Whilst we do not accept the need for CAP168 it seems to us that if a defect did exist then it exists (as manifestly shown in Annex 2 of the pre-consultation document) across the whole of GB and is not limited to the positive TNUoS zones alone. Indeed the 'extra' TEC held in negative TNUoS zones in England & Wales is three times that held in positive zones in England & Wales (and broadly equal to that held in Scotland). If CAP168 were not to apply to negative zones then, in our view, it would be discriminatory; and as such fail to meet applicable objective (a).

In addition the application of CAP168 to just positive TNUoS zones would remove generators in those areas from offering reserve and other balancing services to the GBSO which would be detrimental to competition; which would be detrimental to applicable objective (b) as well as threatening the security of electricity supplies (which would be detrimental to applicable objective (a)).

Yours sincerely

Garth Graham

Electricity Market Development Manager, Energy Strategy



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17 March 2009

Dear Sarah

**Response to the Pre-Consultation Document of the Urgent CUSC Amendment Proposal 168  
“Transmission Access – Under –use and reallocation of TEC”**

Uskmouth Power agrees with the principle of addressing the “hoarding” of transmission access. We recognise that there are currently numerous sites with Transmission Entry Capacity (TEC), which is not being utilised now and may not be used in the future. However, Uskmouth Power is unable to support this proposal, as drafted as we do not believe that there has been sufficient thought given to the design of the proposal.

The proposal raises numerous questions, listed below:

- How is the proposal applied when changes to the TNUoS zones arise i.e. a negative TNUoS zone becomes a positive TNUoS zone? Will the relevant generator have to incur two years of under-use charges before the Use It Or Lose It (UIOLI) mechanism is triggered? Would you only become subject to the start of the two year clock at the point the zone changes to positive?
- The proposal states that the UIOLI mechanism is not triggered “if the TEC holder is able to confirm that it has offered to sell the unused capacity on reasonable terms into the market”. Who defines what is considered to be reasonable terms and shall there be an appeals route?
- CAP168 introduces a daily and weekly access product. Are there any practical issues with such short term trades? It would be extremely helpful understanding how such trades are executed when taking into consideration the applicable exchange rate and the timeframe required by National Grid to notify such access trades.

- Has NGC considered if a generator is holding TEC at an old plant that it be allowed to maintain its TEC rights while it decommissions an old plant and builds a new plant, if in an area with an access queue, if it makes a commitment to longer term TNUoS exposure. This would allow generators to pay to keep a connection option open.
- Where a plant has a booking but is late in coming back, for example from an extended outage, or late commissioning for new plant, what exactly is the appeals process for holding their TEC rights for over the two years?

On retrospection, Uskmouth understands why retrospection is appealing in freeing up some capacity in the short term. However, we cannot support the principle of retrospective changes to the regulatory regime as it will add to regulatory risk. We do not believe that the potential benefits of the modification justify such increases in risk.

I hope these comments are of help.

Yours sincerely

A handwritten signature in black ink that reads "Rebecca Williams". The signature is written in a cursive style with a large, stylized initial 'R'.

Rebecca Williams  
Head of Trading

## **ANNEX 2 - REPRESENTATIONS RECEIVED DURING COMPANY CONSULTATION**

**Hall, Sarah**

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**From:** Helen Snodin [helen.snodin@xeroenergy.co.uk]  
**Sent:** 01 May 2009 16:14  
**To:** Hall, Sarah  
**Cc:** 'BWEA Gordon Edge'; 'Robert Longden'; richard.ford@res-ltd.com; nic.rigby@rwe.com  
**Subject:** BWEA response on CAP 168

Dear Sarah

I am making this response on behalf of my client BWEA. Given the volume of access and charging proposals that have been brought forward recently BWEA has had to prioritise work and has not been able to prepare a detailed response. It has however had feedback from BWEA members sitting on the CAP 168 group and Xero Energy has made some comments on CAP 168's relationship to the other TAR proposals.

First and foremost BWEA does not think this is the time to be bringing forward under-developed proposals that do not have a clearly defined objective, such as CAP 168.

On the proposal itself, it was initially described as a mechanism that would encourage users to relinquish booked, long-term TEC. It was being offered as an alternative to CAPs 165 and 166, and hence an alternative to finite rights. As then described, and if effective as intended, it might have been expected to give a small improvement on closure signals, compared to today. As such it was similar to some of the discussions under TAR which were looking for a compromise on finite rights.

The proposal has changed in the Working Group. The incentive to relinquish long-term TEC seems very weak, and instead it has turned into an attempt to focus on short-term useage. In so far as National Grid under CAPs 161-163 can re-allocate TEC in the short-term based on existing information from generators under the grid code, the CAP 168 proposals do not seem to do anything in terms of improved signals to National Grid. Instead it seems to be acting as an information imbalance charge which will penalise the less predictable generators, with no justification or explanation as to why this is necessary. Where National Grid has a fixed revenue to collect this will simply transfer monies from less predictable to predictable generators. BWEA disagrees very strongly with this and would note that it runs counter to TAR and the focus on connecting queued renewables. There is also a grid code workstream underway looking at Physical Notifications from intermittent generators and BWEA believes that the technical focus of this group is the right place for considering short-term information provision from intermittent generators to National Grid.

BWEA also fails to see how an information imbalance charge bears any resemblance to the original intent of CAP 168 and this raises serious questions of the governance process.

I hope you find these comments useful and if you would like to discuss this any further please don't hesitate to contact me.

Kind Regards

Helen



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*By e-mail*

1 May 2009

Dear Sarah,

**Re: Company Consultation CAP168**

Centrica welcomes the opportunity to respond to the CAP168 Company Consultation. In summary, we believe that neither the original proposal nor the working group alternative ("WGAA1") would better facilitate the achievement of the applicable CUSC objectives. In our view CAP168 should therefore be rejected by the Authority.

**The CAP168 proposal**

CAP168 seeks to address the issue identified by the proposer that the current CUSC rules are deficient in delivering robust "trading" of TEC rights and as a consequence TEC holders can be unwilling to "give up" TEC to make better use of the existing transmission system and allow earlier connections.

Due to the short timescales, the working group has not been able to develop new TEC "trading" arrangements (and the proposal therefore relies in that respect on the approval of CAP161-163). The working group has, however, considered the introduction of an under/over-use charge and a use-it-or-lose-it ("UIOLI") mechanism. (For convenience I will only refer to under-use charge in the remainder of this letter).

It is our understanding that the aim of the under-use charge is to enhance TEC "trading" by incentivising existing generators to "give up" TEC in the short/medium term. If a generator does not utilise TEC for a period of time, that level of TEC would be taken away by the UIOLI-mechanism.

**General issues with CAP168 proposal**

We share the proposer's concern with regards to the GB Queue. We believe the key solution to this issue is investment in the transmission system, but at the same time we also consider it beneficial to make better use of the existing transmission capacity. In our view, however, it is unlikely that under-use charges coupled with a UIOLI-mechanism will deliver this. In addition, they may be discriminatory.

We are not convinced that the methodology to establish under-use and the TEC utilisation test are sufficiently robust, and hence generators may be able to avoid an under-use charge

and TEC reduction (other than by offering TEC to the SO or the market). We expect that generators will be able to prove their TEC level by increasing their output at the relevant times, even though this might not be the most economic and efficient way to run their power stations. The question is therefore – in the absence of a “carrot” – how much TEC in practice would be made available and, more importantly, how much TEC could be used, and therefore whether the implementation of the proposed arrangements can be justified (of which the costs have yet to be established).

It is clear from the work carried out by the TAR working groups, that TEC is not a commodity that can be freely “traded”. The uptake of both short-term TEC (under-use mechanism) and long(er)-term TEC (UIOLI-mechanism) very much depends on TEC exchange rates and unless the donor and recipient are in close proximity, these might not be very favourable. In addition, it is likely there will be little or no uptake because short-term TEC products in particular are unlikely to be bankable for developers.

Another fundamental problem with this proposal is that in our view it fails to take into account the fact that the GB generation fleet consists of different types of generation with different technical characteristics and running patterns. These differences mean that different generators have different abilities to provide an accurate forecast of their weekly TEC MW five weeks ahead of the relevant TEC week to avoid the penalty of an under-use charge.

As relevant factors such as weather and market conditions are outside the control of the generator, we believe this proposal would give some generators an unfair competitive advantage and could be considered discriminatory, with potentially a negative impact on competition and the energy market. We appreciate that for the under-use charge a so-called deadband has been included to address this issue. However, we consider the WGAA1 deadband to be too narrow, and have sympathy with the view of the proposer that the deadband included in the original proposal would defeat the objective of the proposal.

In conclusion, we are not persuaded that the original proposal or WGAA1 would deliver what they aim to deliver, namely robust TEC “trading”, better use of existing transmission capacity and possibly earlier connections. In addition, we believe the proposal is discriminatory and could have a detrimental impact on competition and the energy market, as well as perhaps security of supply by potentially reducing generators’ ability to provide services to the SO. Therefore we do not believe that the original proposal or WGAA1 would better facilitate the achievement of the applicable CUSC objectives. CAP168 also includes a notice period and pre-commissioning user commitment methodology that are different from what we have supported under CAP165, and this is another reason why we cannot support the proposal.

### **Specific issues with CAP168 proposal**

As mentioned earlier, the working group has been given limited time to consider the CAP168 proposal (see also our comments at the end of this letter). We have listed below a number of areas (in random order) where we believe further justification and/or development may be required. We have included a comment about the under-use charge because this element is integral to the proposal and has been considered by the working group, but we understand it will be further developed as part of a change to the charging methodology.

- **Under-use charge** – We consider the under-use charge to be a penalty and are therefore unclear why the charge should (can) be cost-reflective. The level of the charge should be an incentive for parties to give up TEC, but we have not seen a proper justification for the proposed £5/kW/year charge.
- **Deadband** – We would like to understand the justification for the level of the under/over-use deadband (greater of 5MW or 10% of the generator’s TEC holding) and whether or not something comparable would be required as part of the TEC utilisation test process.
- **Interaction with CAP161-163** – The assumption is that for CAP168 to be fully effective, it would be desirable if CAP161-163 were approved. We would like to see further evidence that these proposals would indeed complement and not distort each other (in terms of TEC “trading” and transmission investment signals) and we like would to understand the financial impact of these combined proposals on National Grid.

- **Implementation costs** – For a cost-benefit analysis it would be helpful to have an indication of how much it would cost National Grid and the industry to implement CAP168.
- **TEC offers** – We understand that under-use charges and TEC reduction can be avoided if TEC is offered to the SO or the market, but we are unclear what the exact timescales would be for these notifications.
- **Force majeure** – Not clear is whether (unplanned) transmission outages (electricity/gas) would be taken into account in the under/over-use calculation.
- **National Grid TEC analysis** – Further detailed analysis (station level) may be required to understand and draw firm conclusions with regards to the level of TEC consistently not being used.

### **Modification process**

Finally, we would like to make a few comments on the CAP168 modification process. We appreciate that in principle it would be helpful for Ofgem to be able to consider TAR related modifications together and that for this reason urgent status was requested and granted. However, we are not convinced that these circumstances warrant urgent status and we would not wish this decision to set a precedent for future modification proposals.

Urgent status means very short timescales and this makes it difficult for a working group to properly assess a modification proposal, particularly when a proposal is not yet fully developed when raised. As indicated above, CAP168 still lacks detail and analysis which makes it difficult for the industry as well as Ofgem to review it. We believe modification proposals should be considered in appropriate timescales, whether they are TAR related or not.

Please do not hesitate to contact me if you have any questions regarding this response.

Kind regards,

Merel van der Neut Kolfshoten  
Centrica

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Dear Sarah

**Urgent CUSC Amendment Proposal CAPI68**  
**Transmission Access: Under-use and reallocation charge**

ConocoPhillips (CoP) /Immingham CHP LLP welcomes the opportunity to comment on the CAPI68 “company” consultation report. We are of course the proposer of this amendment proposal. We support the CAPI68 Alternative, which in our view properly captures the spirit of the modification proposal in the form of a practical and implementable solution.

The merits primarily arise under applicable objective (b) and better facilitate competition. This is because CAPI68 Alternative:

- removes TEC from parties that cannot or will not be able to use it;
- incentivises users to release TEC which they are not likely to use on a medium-term basis (such as commissioning delays or planned outages);
- stimulates secondary trading of TEC, which is an important objective;
- should enable the more efficient use of access by both existing users and by connecting parties in the queue, thereby stimulating competition;
- given many imminently connecting parties utilise lower carbon technologies, should help reduce emissions; and
- would lower BSUoS charges as under-use payment will be offset against it.

Other benefits occur under applicable objective (a), because the proposal:

- enables more efficient use of existing transmission capacity;
- in doing so should reduce risks of asset stranding and customers incurring unnecessary costs; and
- should also create more efficient investment signals for new capacity.

It is disappointing that, despite being referenced in the CAP form we initially completed and being mentioned by us during the working group discussions, a more complete description of these benefits is not set out in the report.

However we do not support CAPI68 Original. To label it as such is somewhat misleading as the “original” emerged from majority voting in the working group. Setting aside terminology in our view, as proposer, it fails to capture the intention of the high-level change proposal we brought forward. The inclusion of a 10% dead-band—essentially a 20% tolerance as it operates in both directions of forecast TEC usage—against our wishes effectively renders the change proposal redundant. It is also discriminatory as it disproportionately favours scale players because of the absolute size of the tolerance band, which could be hundreds of MWs for the largest generators.

We are also surprised that some of the points raised by us on the draft report have not been reflected in the industry consultation. While we recognise that under the current CUSC approach, it is conventional to reflect the majority view or views of the working group, in a number of respects we asked for a counter-view to be reflected as well. For instance:

- para 1.1.4 and 2.8: while the Working Group's view is that CAPI61-163 would need to be approved alongside CAPI68, CoP believes CAPI68 has merit without CAPI61-163 (though they are complementary), and would improve against the base-line on its own and could offer benefits by addressing defects arising from CAPI42; and
- para 4.3.1: during the working group process there were a number of explicit criticisms of the current TEC trading arrangements and difficulties of utilising CAPI42. These comments should be reflected in the report as they are part of the defect, namely ineffective secondary trading, we have been trying to address.

We consider these points, together with the additional merits identified above, should be incorporated in the report to add balance to the discussion.

At a higher level we set store throughout the assessment process on the argument that, if effective secondary markets can be created, more fundamental and higher risk changes to the current TEC regime could be avoided. We consider—as an established participant already operating in the sector and with committed further capacity shortly to come on line—that there are considerable benefits to be gained in terms of more effective allocation and reallocation of rights (and their trading) to be secured from CAPI68. Our experience is that there would have been real value from having such mechanisms available during our entry process. Access rights made available through reallocation or resale would be bankable and would stimulate new entry and enable earlier access across the market. In this context, the relationship with CAPI61-163 is relevant, as CAPI68 would, in our view, work well with them. Equally we think that implementation of these changes in combination would pre-empt the need to approve either CAPI65 or 166, which would greatly increase market risk (and therefore costs) and complexity (and therefore create barriers to entry). Indeed—as a developer of future schemes—we think any solution based around CAPI66 (and possibly CAPI65) could fatally deter new investment into the future.

Finally we have a number of comments about CUSC processes based on our experience of CAPI68. Our primary concern relates to the procedures of the working group, which in effect mean, a core of group members with strong opinions can take-over the change proposal and develop it into a form that the proposer is not in agreement with. At a lower level, the timetable set out by the CUSC Panel was poorly structured, with opportunities to progress the analysis and debate at the front end and back-end of the timetable missed. We note:

- it took two weeks to organise the first meeting, which was then followed by two further meetings within seven working days;
- this concentration of effort did not permit analysis to be conducted between meetings, papers to be properly prepared or even to provide members with “thinking time”;
- consequently much of the time in the working group was devoted to assertion and argument, not discussion and debate;
- the coverage of the report to include an alternative had to be negotiated, and there is clearly a need for clearer guidance on how CAPI60 should work and the boundaries of National Grid's discretion and how it might apply it; and
- two months on there would have been time for a proper industry consultation based on fuller analysis without impacting adversely on the timing of delivery of the report.

Please let me know if I can comment further and clarify any of these comments.

**Maureen McCaffrey**



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Paul Jones  
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1 May, 2009

Dear Sarah,

### **CAP165 - Transmission Access – Under-use and reallocation of TEC**

Thank you for the opportunity to respond to the above consultation. This response is made on behalf of E.ON UK plc. We do not support the original or alternative amendment proposals.

#### **The TEC feasibility test**

We do not believe that the TEC feasibility test is appropriate. As a general principle the rationale for this element of the amendment too closely links the rights that generators hold with the system that the transmission companies build to accommodate them. The implication appears to be that the Transmission Owners (TOs) currently build a system to accommodate the full access rights that people hold or intend to hold. Therefore, if someone under uses their TEC for a period that this means that either access rights cannot be provided to someone else or that too large a network has been built. The present system of TEC rights allow generators to generate at the level of their TEC at any time in the year. However, the transmission companies do not assume that they will use all their rights during all periods of the year when designing the system. Instead they use assumptions on how supply may meet demand at peak times. Therefore, if some generators are clearly not generating at their maximum TEC level during a particular year it does not necessarily follow that this negates the assumptions under which rights have been provided in the past, or will be in the future.

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It could be argued that there is scope for better information to be provided for the purposes of planning the system. However, it is not clear how this test would provide this. All it would do is incentivise generators to run for one period during the year regardless of what they will be doing for the rest of the year. It also does not appear to be particularly efficient, on an economic or environmental basis, for an entire generation station to generate at full output for a half hour simply to prove that it is technically feasible.

It is also not clear why a further incentive is required to force generators to reduce their TEC. If a generator purchases an access product but does not use it, then it loses out in that it has paid for something it didn't need. This in itself should be an incentive not to buy too much TEC. The test also appears to be largely arbitrary. Why would what a generator generates in two consecutive years be a reflection of what it will do thereafter? Yet, this is the test under which TEC will be confiscated from a generator under CAP168.

There are good reasons why a generator may run at lower than its full TEC for a period of more than a year, not least because it finds itself out of merit due to changes in relative fuel costs. These changes can occur relatively quickly and it cannot be assumed that generators will be able to predict when their stations will be in merit and acquire TEC for those years only. What happens when such a generator who finds itself out of merit for a couple of years comes back into merit, but finds that it has lost its access rights? This is a particular issue if the generator who has acquired these rights consequently finds itself out of merit at the same time. Under CAP168, the original generator would have to wait for these rights not to be used for two years before it can reacquire them. This all seems hugely inefficient, particularly when the TOs may never have assumed that both generators would run at the same time anyway.

Another major issue is the retrospective nature of the test. Under both proposals 5 year's worth of past data will be analysed and the provisions of CAP168 applied to it. Therefore, if a generator "under used" its TEC for two years in a row or for 3 years in total during this period, this amount of TEC will be removed from its bilateral. This does not appear to be a fair way to implement the proposal. The generators concerned cannot have known this test would be applied to their running in such a manner. Additionally, what if the generator has subsequently reduced its TEC during this time? Is the further reduction applied to this figure or the higher level of TEC it held before?

### **Introduction of an Under-use and Over-use Charge for TEC**

We oppose this element of the proposal as it effectively requires a weekly firm physical notification from a particular generation station five weeks ahead of time. This should be contrasted with the Final Physical Notification which is required at gate closure (ie one hour before the period concerned).

The additional information that this declaration would provide to the System Operator (SO) appears to be minimal. At present, the SO would use information provided to it under the Grid Code plus its own judgement to assess the amount of short term access it would be able to release to users. Therefore, there is presently the ability for extra capacity to be released. Anything this element of CAP168 provides would be additional to the information already used. We doubt whether generators will be able to state

accurately five weeks ahead of time what the maximum output of each of their stations will be. Therefore, we do not see that any additional signals provided would be particularly accurate or useful.

It is also not clear how the level of any under-use or over-use charge would be set. It cannot reflect the costs or damage caused to other parties by the data provided being wrong. As stated above the information is unlikely to be of particular use to the SO given the difficulty that generators will have in providing accurate data. Consequently, the concept of it causing damage by not being available is a difficult one to understand. If it does not reflect an underlying cost caused, then it will represent a penalty. This is likely to leave it open to legal challenge as being unenforceable. Additionally, if the charge is not cost reflective then it is unlikely to meet National Grid's charging obligations in its licence and will also result in inefficient incentives on participants in the market.

The whole declaration process will also add further to participants' costs of operating in the market. If these transaction costs are not offset and outweighed by more efficient market outcomes, then this will result in increased over all costs for customers. It is also likely to represent a barrier to entry.

### **Choice between the Original or Working Group Alternative Amendments**

We therefore believe that neither of the options for CAP168 is better than the current baseline. We would not be able to choose which is better than the other.

I hope the above comments prove helpful.

Yours sincerely

Paul Jones  
Trading Arrangements



To: [sarah.a.hall@uk.ngrid.com](mailto:sarah.a.hall@uk.ngrid.com)

30 April 2009

Dear Sarah,

EDF Energy response to CAP168: "Transmission Access: Under-use and reallocation of TEC"

EDF Energy has a number of serious concerns over this CUSC Amendment Proposal, which we do not believe better facilitates the CUSC Applicable Objectives. We set out below our key points, followed by our more detailed response.

**Key points**

EDF Energy do not support this proposal for the following reasons:

- Any charging mechanisms for under-use of TEC turn this right of access into an obligation to generate which we view as a fundamental and undesirable shift from the baseline
- Users are already sufficiently incentivised to book the correct level of TEC; a feasibility test introduces an unnecessary administrative burden for no benefit to transmission planning or system operation
- Charging for under-use of TEC is arbitrary and penal, as it is not possible to determine a cost reflective charge
- The proposal will impact on the energy market; in particular, it is likely to significantly reduce short term liquidity
- The proposer identifies a defect in TEC trading arrangements, which in EDF Energy's view could be addressed by CAP161-163 or by a simple amendment to charging arrangements for Temporary TEC transfer (CAP142)

**Existing defect in TEC trading arrangements**

We have some sympathy with the concerns raised by the proposer of CAP168 "Transmission Access: Under-use and reallocation of TEC" that existing rules do not deliver robust trading of TEC rights. We have direct experience of the current arrangements for temporary TEC transfer (CUSC 6.34) and believe them to be inefficient. In particular we see that the requirement for both the donor and recipient to pay a full TNUoS charge for the duration of the transfer to be the key barrier to successful TEC transfers. We note the view of the working group that current trading arrangements could be improved (by removal of this dual charge) and in our view the proposal for nodal sharing of TEC (where only one party will be liable for the wider TNUoS charge) in CAP163 will also address this concern.

EDF Energy do not believe that the proposals described in CAP168 are proportionate in addressing this defect and we discuss our concerns below.

## **Concerns with CAP168**

We now explain in more detail why EDF Energy believes CAP168 does not better meet the Applicable Objectives. Our key concerns with CAP168 are the lack of detail and development time of the proposal, the application of an under-use charge and the consequential 'use it or lose it' arrangements.

### **Process**

The short time available to the working group to develop this proposal is particularly concerning, the proposal covers a number of areas of transmission access which have been extensively debated over many months and which developed into a number of alternative proposals. Although a working group alternative (for one aspect of the proposal) has been included in this consultation we believe that the urgent timescales prevented the working group from giving due consideration to this and a number of possible alternatives.

### **Under-use charges**

We view the proposals for an under-use charge as inefficient and inappropriate. We believe TEC to be a right of access to the transmission system to ensure a route to market for our power. Any charging mechanisms for under-use of TEC turn this right of access into an obligation to generate which we view as a fundamental shift from the current baseline.

The development of the original proposal to include a weekly TEC nomination represents a more practical approach to the manner in which a charge for under use of access would be levied. However the administrative burden is likely to be significant, it is unclear why this would provide any benefit to system operation and the charges are clearly penal and therefore inappropriate. EDF Energy also agree with the views of the working group that the requirement to give a firm weekly TEC nomination will impact on plant despatch decisions and as a consequence effect short term market liquidity. Furthermore these proposals include a number of exemptions and exceptions such as the arbitrary definition of peaking plant (of 500 hours in a charging year) which could be viewed as discriminatory.

EDF Energy note the difficulties faced by the working group in discussing an appropriate cost reflective charge for under or over use of access, in particular the consideration that in the short term the under use of access should theoretically be providing a benefit to the system and therefore charges should be negative or zero. This double charging for a right of access introduces an unnecessary penalty rather than providing an appropriate incentive to relinquish TEC (which was the intent of the proposer).

EDF Energy are of the opinion that an appropriate balance of cost reflective short and long term access arrangements have already been extensively discussed as part of CAP161-163 and that this proposal therefore provides no additional benefit. Furthermore we support the view that an additional charge on the holders of long term access is likely to have inefficient outcomes for the booking of long term rights and transmission investment as a consequence of this.

### **Feasibility tests**

We agree with the view of the working group that any retrospective application of the “use it or lose it” arrangements (Feasibility test) is wholly inappropriate. Furthermore as it has been demonstrated under CAP163, TEC is not a commodity and cannot be efficiently moved around the network therefore we do not understand how an enforced withdrawal of TEC can provide any benefit to system planning or operation.

### **Offering TEC and TEC trading**

We believe the proposals for assignment of TEC (and the option to return TEC to National Grid in order to avoid the under-use charge and potential consequential loss of TEC) to be under-developed and are likely to be an administrative burden both for generators and National Grid. The working group have stated that CAP161-163 should be implemented for CAP168 to be effective but it is not clear how this would work in practice.

### **Conclusion**

EDF Energy does not support CAP168 which we believe does not better meet CUSC applicable objectives for the reasons discussed above. We further note that the working group does not support CAP168 and the overwhelming number of concerns that have been identified in section 6.0 of the consultation document. We therefore expect Ofgem to reject this proposal.

If you have any further questions please contact me on 020 724 29050

Yours Sincerely,

Dr Sebastian Eyre,  
Energy Regulation Manager, EDF Energy (submitted on behalf of both EDF Energy and British Energy)

Sarah Hall  
National Grid  
Warwick Technology Park  
Warwick  
CV34 6DD

01 May 2009

Dear Sarah,

### **Response to CUSC Amendment Proposal CAP168 "Under-use and reallocation of TEC"**

Thank you for the opportunity to respond to the above modification proposal. GDF Suez Energy UK does not support the implementation of either CAP 168 or the working group alternative.

#### **Relevant objectives**

GDF Suez Energy UK has the following comments to make in respect of the applicable objectives of the CUSC which are relevant to these proposals:

#### **1. Efficient Discharge of Licence Conditions**

The Transmission Licence requires that actions on the system are economic and efficient and are reflected to users on a cost reflective basis. The additional administration cost, both on generators and the System Operator implicit in these proposals needs to be fully assessed against benefits.

Whilst it is clear that where TEC trades are completed between counterparties there is a parallel transfer of TNUoS charge obligation, it is not clear whether any compensation is received where TEC is given up to the SO. Therefore there seems to be no incentive in the proposed regime to give up TEC over and above the current arrangements where TEC can be exchanged on a nodal basis.

#### **2. Facilitates Competition**

We understand the intent of the proposal is to incentivise the release of TEC to better enable the SO to accommodate the requirements from new or intermittent generators. We have sympathy with this intent and we believe that the principles of the proposal may work for mothballed or de-commissioned stations where it can be argued that the SO should have powers to re-allocate TEC however the principles will not work in practice for operational stations. Generally the penalties associated with under-run would seem to provide an incentive to generate inefficiently to satisfy the test criteria, this is at odds with rational incentives and the current market arrangements.

The CAP 168 proposal is detrimental to competition in that it does not properly consider the variety of generation assets within the GB infrastructure and merit order related contributions from all plant to Security

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of Supply both now and in the future. It is widely recognised that there is a requirement within the GB market to maintain a diverse but lower carbon fuel mix. This requirement for diversity will increase in importance in future to underpin increased intermittency in generation as wind-power becomes more prevalent.

The complexity of TEC release prescribed under this proposal seems to disproportionately benefit plant with predictable generation patterns at the expense of more flexible production. Technologies such as OCGT and plant with supplementary firing capability have a low utilisation rate but yet are necessary to the system to provide flexible, near real time response. Such technologies will be disproportionately disadvantaged both in terms of running incentives as highlighted above but also the administrative burden will be higher. This is particularly true where companies own one or two flexible assets, the relative unit costs to administer would be significantly more onerous than for those companies operating base-load stations.

Whilst the proposals may work for mothballed or decommissioned stations it is not clear how the proposal will work for those plant undergoing extended periods of outage including those re-investing in improved technology to extend the life of the station. Furthermore, many generation plant are sensitive to temperature changes and vary in their level of maximum output seasonally therefore will not be able to reach their booked TEC level for technical reasons. This may result in plant being constrained in winter when demand is highest and plant margins are low.

### **Environmental Obligations**

Further to the comments above, in the assessment of any code proposal, participants are required to take account of any potential environmental impacts. It would seem that CAP 168 is detrimental in this regard in that it would introduce a perverse incentive with regard to generators' environmental obligations and indeed more widely to Government targets to reduce emissions from electricity generation. The introduction of an under-run charge where a generator cannot notify its intention to reduce output within given timescales may have the effect of incentivising plant to run higher than necessary to its booked TEC level in order to avoid the charge. This point may particularly apply to low merit order plant, who run at peak and are likely to run on more environmentally polluting fuel types.

Such potential outcomes should be assessed as part of the Regulatory Impact Assessment conducted by Ofgem in respect of the suite of Transmission Access proposals over the coming months.

I trust this information is helpful and if you have any questions or would like to discuss further, please do not hesitate to contact me on 0113 306 2104 or mobile 07733 322460.

Yours Sincerely,



**Phil Broom**  
**Regulatory Affairs Manager**  
**GDF Suez Energy UK**



Sarah Hall  
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National Grid House  
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CV34 6DA

24<sup>th</sup> April 2009

Dear Ms Hall,

**InterGen response to CAP 168: Under-use and reallocation of TEC**

InterGen welcomes this opportunity to respond to the consultation on *CUSC Amendment Proposal CAP 168*. InterGen is the largest independent gas fired generator in the UK and has developed one third of the UK's new installed gas-fired electricity generating capacity in the last ten years, investing £1.4 billion.

InterGen is committed to the UK and seeks to continue to build on its investment. InterGen supports the Government's commitment to address Transmission Access and Renewable Deployment. InterGen appreciates the efforts of the Working Groups that were formed to expand upon the original six Transmission Access Reform (TAR) proposals as well as subsequent additions over the last few months, particularly in light of the limited time available and urgent need to address the current connection queue stagnation.

InterGen agrees with National Grid's proposal to review this issue, whereby users hold on to transmission capacity they are unable to fully utilise, and has long supported the CAP 150: Capacity Reductions amendment as a means to freeing up capacity currently held in the queue behind generation projects that have little or no chance of being able to achieve their current connection date. It is estimated that up to 20GW of new generation will need to be built in the UK or order to address the supply gap during the next decade, due to emissions legislation and an ageing generation fleet.

InterGen agrees there is presently little incentive for existing transmission access right holders to release TEC when it is not being used, as CAP 150 only incentivises new generators in the current

queue, not those who have generating assets already. However, InterGen does not agree that the current proposal under CAP 168 will effectively address this issue.

For existing generators, TEC is a right of access to transmission system as determined in the generator's Bilateral Connection Agreement (BCA) with National Grid and paid for via TNUoS charges. Any charge for under-use would penalise generators who are on temporary outage and those who are not generating for economic reasons but who are available during times of system stress. Such a charge is a fundamental shift from the current baseline set out in the BCA. Since users already pay for their full TEC capacity as defined in their BCA it does not appear appropriate to introduce an under-use charge since this will effectively charge twice for the same capacity.

There are legitimate reasons as to why a generator may hold extra TEC (above an 'average' generation level). InterGen's fleet of 3 CCGT's are able to generate at increased output levels during periods of colder weather, which tend to coincide with periods of highest electricity demand. Seasonality is a major factor in thermal plant output and penalising underuse of TEC in the warmer months would no doubt reduce the output level such generators can offer to the grid in the form of balancing services during the Winter, as they seek to optimise the TEC level across the year as a whole. Under this proposal (and the alternative WGAA1) generators could be forced to run at full output to prove TEC requirement each year even if this is not the most economic or efficient load profile.

InterGen believes that generators currently withholding TEC who don't currently use it but plan to in the future will have their incentives change under TAR and therefore spare capacity should be released, depending on which of the short-term and long-term TAR modification proposals are adopted. Until this time, progress made under the CAP 150 regime as well as through the current free TEC reduction review offered by National Grid should continue to be supported.

## **In Conclusion**

The urgent status has hampered proper development of this proposal in the timescales allowed. The lack of details in the proposal and lack of time to develop fully the alternatives means InterGen cannot support CAP 168 as it currently stands, and does not believe it is better than the current baseline. InterGen has secured contractual evergreen transmission access rights and CAP 168 will give National Grid powers to remove those rights without the introduction of primary legislation.

InterGen has been committed to transmission access reform and has taken every opportunity, where time has allowed, to express our view on the issues. We are keen to continue work with National Grid and the Authority to develop appropriate transmission arrangements for the UK. To that end, we would welcome the opportunity to participate further in the process to ensure that our needs are taken fully into account in the development of the enduring arrangements.

Yours sincerely,

**InterGen (UK) Ltd**

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First Hydro Company is part of a joint venture between  
International Power plc and Mitsui & Co., Ltd.

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1<sup>st</sup> May 2009

[sarah.a.hall@uk.ngrid.com](mailto:sarah.a.hall@uk.ngrid.com)

Dear Sarah,

### **CAP 168 - Under-use and Reallocation of TEC**

International Power (IPR) is responding to your consultation on behalf of First Hydro Company, Saltend Cogeneration Company Ltd, Rugeley Power Ltd, Deeside Power Development Company Ltd and Indian Queens Power Ltd.

We do not support this proposal. We believe that the proposal is based around the requirements of baseload plant and ignores the realities of a dynamic electricity market.

The proposal does not recognise the true nature of TEC. From the lengthy discussions on CAP 161-166 it became apparent that TEC is tradable only at a very local level, TEC given up in one part of the county is unlikely to be of value to other plant unless that plant is electrically proximate.

Energy is traded for delivery up to a few hours before real time to meet a variable demand requirement driven primarily by the weather and availability of other generation plant. The proposal fails to recognise this feature of the market. Some 3-6 GW is traded base load day ahead and we believe that this proposal will damage liquidity in this area. Plant that is active in the shorter term traded markets will need to declare the level of TEC week ahead. This will place an artificial barrier to trading as the additional cost of TEC over/under run charge will need to be priced into products sold after week ahead. Overall, this has the potential to increase costs and lead to the economically inefficient short-term despatch of plant Demand forecasts change significantly from the week ahead stage to real time and this changing demand is met

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by Suppliers fine tuning their contract book to meet the expected supply requirement. At the very least, the week ahead firm TEC declaration will simply produce additional costs that need to be borne ultimately by the customer.

Wind powered plant will be penalised by the proposal. The load duration, although predictable at an annual level, is difficult to forecast at a week ahead level, meaning that wind plant will be unable to manage their TEC requirements in the precise fashion necessitated by the proposal, exposing such generators to penalties. This is an undue form of discrimination.

The costing of under/over run set at 10p/kw/week has no justification. The working group could not arrive at a cost reflective charge as there are no short term costs associated with under running a TEC position. We believe that the fact that there are no costs associated with under running a TEC position undermines the premise of the proposal.

The proposal is likely to do little to help the investment climate for new generation as TEC released on a short term basis is unlikely to be bankable and is unlikely to lead to additional generation being able to connect. For example, TEC released in Northern England is of little use to prospective Scottish generation. This means that the proposal will fail to remedy one of the defects that it seeks to address.

We hope that these comments are useful.

Yours sincerely,

Simon Lord,

Transmission Services Manager



Sarah Hall  
UK Transmission Commercial  
NGT House  
Warwick Technology Park  
Gallows Hill  
Warwick CV34 6DA

01 May 2009

Dear Sarah,

**Response to Consultation on CUSC Amendment Proposal CAP168**  
**Transmission Access – Under-use and reallocation of TEC**

Thank you for the opportunity to comment on this consultation document. These comments are submitted on behalf of ScottishPower Energy Management Ltd, ScottishPower Generation Ltd and ScottishPower Renewable Energy Ltd.

ScottishPower does not support the proposed amendment nor the working group alternative amendment and does not believe that either would better meet the applicable CUSC objectives.

**Urgent Process**

ScottishPower does not accept that this proposal should have been granted “urgency”. Adoption of the urgent process severely restricted the time available to the Working Group to fully develop and assess the amendment proposal particularly, as in its initial form, the proposal was lacking in sufficient detail to enable assessment.

In our opinion insufficient justification was provided for the necessity to enable Ofgem to consider this proposal alongside the existing TAR proposals (CAP161 to CAP166) and this has unduly restricted the time available to industry to consider the proposal.

**TEC Trading**

ScottishPower fully supports the development of trading of transmission access products but believes that this should be achieved through the willing participation of generators in a commercially operated market and not through the imposition of penal charging for holding “excess” capacity.

The CUSC amendment proposals (CAP161-163) under consideration by Ofgem seek to improve the availability of TEC in a short term market and are incremental to the provisions for TEC trading available under the existing CUSC arrangements. If approved, these amendments should be given time to demonstrate their effectiveness before the requirement for further action is considered. At that time, if required, alternative proposals to CAP168 may be brought forward for consideration by industry.

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### **Existing and future access holders**

We believe that the introduction of this amendment as a method of removing transmission access capacity would increase the uncertainty faced by generators and make GB less attractive for future investment in generation, particularly in the current economic climate, and when significant investment is required both in renewable technologies and in replacement of the existing thermal generation fleet.

Generators are currently incentivised to hold the optimum level of TEC through the TNUoS charges which apply in positive zones. Reducing TEC enables the TNUoS charge to be avoided. Generators who continue to hold access capacity in “excess” of their current running pattern do so as they perceive a commercial value in retaining the ability to increase output at a future date.

### **TEC Feasibility Test and Firm Weekly TEC Notification**

The introduction of a TEC feasibility test and firm weekly TEC notifications changes the nature of the TEC product from the right to generate up to the TEC limit in the generator’s Bilateral Connection Agreement to an obligation to generate up to the level contained in the weekly notification. Generation plant is dispatched economically against energy market prices and its running should not be determined by a requirement to meet the TEC feasibility test or weekly notification as proposed in CAP168.

The running regime of generation plant varies widely according to the technology employed and therefore the definition of a single feasibility test for all technologies is not practical. Generators would be discouraged from holding back capacity for trading close to gate closure or for the provision of balancing service to the system operator to the potential detriment of both of these markets.

### **Under-use Charge**

The introduction of an under-use charge would result in users paying twice for their access capacity (TNUoS plus under-use charge). The proposed charge of £5/kW/year is not cost reflective and is in effect a penal charge and therefore not justifiable in law. The proposal states that revenue from the under-use charge, although derived from transmission access which is charged through TNUoS, should be reallocated through BSUoS. The treatment of revenue flows would be discussed in any associated charging amendment but the proposed approach appears to be flawed.

### **Retrospection**

ScottishPower agrees with the working group recommendation that the proposed amendment should not be introduced retrospectively.

I hope you find these comments useful. Should you have any queries on the points raised, please feel free to contact us.

Yours sincerely,

**James Anderson**  
**Commercial and Regulation Manager**

Sarah Hall  
UK Transmission Commercial  
National Grid House  
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Warwickshire

Telephone: 01738 457377

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Date : 1<sup>st</sup> May 2009

Dear Sarah,

### **Company Consultation Document for CAP 168**

This response is sent on behalf of Keadby Generation Ltd.; SSE Energy Supply Ltd.; SSE Generation Ltd.; Medway Power Ltd.; Slough Energy Supplies Ltd.; Airtricity Ltd. and Airtricity Generation (UK) Ltd.

We welcome the opportunity to respond to this Company Consultation for CUSC Amendment Proposal CAP168. Our comments, based on our previous response to the Pre-Consultation in March, are in two parts; firstly, on the process followed with respect to CAP168 and, secondly, our general comments on CAP168. For the avoidance of doubt, we would like our response to the Pre-Consultation (dated 17<sup>th</sup> March 2009) to be read in conjunction with this response to the Company Consultation. All references to "CAP168" include both the Original and WGAA1.

### **PROCESS**

Firstly, we do not accept that CAP168 should have been granted 'urgency'. The reason for urgency was, according to the Proposer of CAP168, "linked to a date imminent event" (one of the three 'triggers' set out by Ofgem for justifying urgency being granted).

In considering the issue of a date imminent event it seems to us important that consideration is given to:-

- a) what date was the "imminent date related event" reasonably known to the industry;
- b) what date was the proposal raised; and
- c) what is that "imminent date" (and is it 'fixed' or could it 'move' back).

In our view, if the Proposer could reasonably have known date (a) and has delayed (for their own internal reason) date (b) then they must accept, as time ticks by towards (c), that the less time there is between (b) and (c); compared, for example, to the time elapsed between (a) and (b); for the CUSC to assess any changes then there is, perhaps, an increased risk that the CUSC Panel may consider that urgency should not be given.

Taking an extreme (hypothetical) example, if CAP168 had been raised for consideration at the March 2009 CUSC Panel would urgency be granted, noting that under the CUSC (8.21.1.8<sup>1</sup>) that it is possible to amend the CUSC "on the day on which such proposal is submitted" so, in theory, we could still achieve a 1<sup>st</sup> April 2009 date.

As regards date (c) and the 'movability' of that date, we are aware; as with, for example, P205 in the BSC; that the "imminent date related event" maybe 'fixed' (in the case of P205 that being the date of implementation for P194).

In this particular case the suggested "imminent date related event" is Ofgem's issuing of an Impact Assessment for CAPs 161-166. However, that date could, as it has already done (twice?<sup>2</sup>) be moved back from April to later in Spring. One reason for this could, perversely, be (as the Proposer of CAP168 seeks) because the Authority needs, if CAP168 were to proceed (urgently), to take onboard the CAP168 Final Amendment Report itself as part of that (CAPs 161-166) Impact Assessment; work on which we understand may already be underway.

In addition we wish to record that as a result of urgency having been granted (erroneously in our view) that the extremely limited time that has arisen as a result of this has unduly limited our ability to respond comprehensively to this consultation.

Secondly, with respect to the raising of Working Group Alternative Amendment Proposal 1 for CAP168 we are mindful of the advice provided by National Grid (in mid March) with respect to paragraph 8.21.1.9 of the CUSC and the raising of WGAAAs to urgent Amendments:-

"We would not consider that 8.21.1.9 results in this [raising of alternatives] being carried out during the urgent process, nor would we consider the drafting was intended in this way. Rather it is intended to provide a check of what has been done through the urgent process."

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<sup>1</sup> 8.21.1.8

"Each CUSC Party and each Panel Member shall take all reasonable steps to ensure that an Urgent Amendment Proposal is considered, evaluated and (subject to the approval of the Authority) implemented as soon as reasonably practicable, having regard to the urgency of the matter and, for the avoidance of doubt, an Urgent Amendment Proposal may (subject to the approval of the Authority) result in the CUSC being amended on the day on which such proposal is submitted."

<sup>2</sup> The production timeline for the CAPs 161-166 Impact Assessment is linked to (i) the delivery of the Final Amendment Reports and (ii) the decide by date suggested by the Authority. In respect of (i) the 'original' date, talked of in the Ofgem June 2008 TAR report, was October 2009. Subsequently, with the extensions sought this was moved to December 2008 and has since moved to March 2009. In respect of (ii) the 'original' date, set out in the Ofgem June 2008 TAR report, was of a decision in April 2009. Subsequently, with the extensions sought this was moved to 'Spring' 2009 and has since moved to 'Summer' 2009.

Given this advice from National Grid (which, for example, precluded the raising of WGAAAs to CAP170) we do not believe that it is possible to have a Working Group Alternative Amendment to CAP168. Nothing in this response should be taken as (i) endorsing the process followed in permitting CAP168 WGAA1 to be raised / progressed, or (ii) supporting CAP168 WGAA1 in anyway.

## **GENERAL COMMENTS**

### Defect

We do not accept the underlying premise behind CAP168 namely that a defect exists within the CUSC.

In our view there are legitimate technical reasons why power stations have TEC holdings above their short term usage. The operational reasons for holding this 'headroom' are well known and understood. For example, as outlined in Annex 6 of the consultation document, CCGTs generally have circa 2-3% of headroom in their TEC holding (for which, in positive zones they pay for) to take account of ambient weather conditions. This is because in periods of extreme cold (when, for example, the maximum demand for electricity generally might be expected to occur) this type of technology can produce an additional 2-3% of electricity. A similar situation is believed to exist with renewable generators where, depending upon weather conditions, maximum output might not be achieved at all times.

Another example is where a power station holds some TEC headroom, compared to their 'normal' day-to-day operational needs, because they are (or intend) providing additional balancing services to the GBSO, such as reactive power, fast reserve, short term operating reserve, tendered frequency reserve, etc.

A further example would be where plant operates in the 'peaking' sector of the GB electricity market; i.e. they aim to produce power over the traditional peak periods of demand. The Proposer of CAP168 appears to currently operate a base-load CHP power station. As such they might not have appreciated that there are a plethora of other generating technologies providing power into a host of other sectors of the GB electricity market; from base-load to peaking. Whilst, in their view, CAP168 might be appropriate for a base-load CHP power station (not a view we share) this is certainly not the case for other market sectors.

If CAP168 were to be implemented it would require CUSC Parties with this TEC headroom to either hand it back or hold it (and be charged a penal rate for it) and lose it in two(?) years. The consequences (arising from CAP168 and WGAA1) on the security of electricity supplies if generators are no longer able to provide reserve and other balancing services etc., (due to a lack of TEC headroom) to the GBSO could, in our view, be significant. Given these concerns CAP168 appears to run counter to CUSC Applicable Objective (a) and, in so far as it limits the number of generators able to provide reserve and other balancing services etc., to the GBSO it also runs counter to CUSC Applicable Objective (b).

### TEC Feasibility Test

Whilst we do not accept the need for CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution to performing a feasibility test.

### Firm Weekly TEC Notification

The practicality is that Users, five weeks out, are highly unlikely to know what their 'firm' weekly TEC level is going to be. This is because power stations are 'living/breathing' entities that, even with the best will in the world, are subject to breakdowns and faults which mean they do not operate as planned / intended. In addition to this the price of input fuel (such as coal and gas) compared with the market rate for the electricity means that operationally things can change hour (let alone days or weeks out). All CAP168 does is penalise Users for things out-with their direct control.

### TEC Trading Arrangements

A further failure with CAP168 is the presumption that CUSC Parties will be able to freely trade any 'extra' TEC they hold in order to avoid (i) the penal charge and (ii) asset confiscation (i.e. of their TEC property rights). However, we are mindful of the discussions held, as part of the recent TAR Working Group 3, on exchange rates. This clearly showed, even where power stations were both physically and electrically very closely 'co-located' that the exchange rate for TEC traded / shared etc., between them could be atrocious. In some cases a 1:23 rate was suggested for some power stations in the sample area of the 'Humber' region. Thus the seller would offer 230MW, from their node, but the buyer would receive, at their node, 10MW (but pay for the TNUoS etc., on the full 230MW).

This issue could be compounded if the GBSO is incentivised to further frustrate the trading of 'extra' TEC between CUSC Parties. This arises because in offering a very poor exchange rate to the two parties it, effectively, halts that commercial trade and forces (by default) the seller to give the 'extra' TEC to the GBSO (for free) in order for the seller to avoid paying the penal 'under use' charge. The GBSO could then re-use that 'extra' TEC for its own operational reasons (such as avoiding paying for balancing services?) or re-sell this TEC and 'pocket' the income at no cost to itself.

### Calculation of Under-use and Over-use Capacity & Charge

Whilst we do not accept the need for CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution to calculating the volume of Under-use and Over-use capacity to which a charge could apply.

With respect to the charge to apply to that volume of capacity it is a serious deficiency with CAP168 that a cost reflective charge has not been developed.

### 'Dead-band'

We note the deliberation by the Working Group regarding a 'dead-band'. Whilst we do not accept the need for CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution; with the introduction of a 5MW or 10% of the generators TEC (MW holding); with a 'dead-band' applied to the volume of Under-use and Over-use capacity prior to the application of an Under-use or Over-use charge.

For the avoidance of doubt, we do not support the much more restrictive 5MW (only) 'dead-band' proposed with WGAA1. We believe it compounds (rather than reduces) the plethora of faults with CAP168 (original) which mean CAP168 (original) and WGAA1 do not better facilitate either of the CUSC Applicable Objectives when compared with the baseline.

### Negative Zones

Whilst we do not accept the need for CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution to address our concerns regarding the application of the proposed CAP168 regime across the GB marketplace (including, specifically negative TNUoS zones). Had it not done so then, given that the volume of 'extra' TEC in negative zones (both the overall MW amount and % compared with TEC holdings) it would have discriminated against Users located in positive TNUoS zones.

### Offering TEC to the SO & the Market

Whilst we do not accept the need for CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution for the User to offer their TEC to either the GBSO or the market in order to avoid the penal charges associated with CAP168.

### Retrospection

It remains our position that industry code changes should not be retrospective. It is, in our view, wholly wrong to retrospectively change the rules upon which Users have, up to that point, been bound by their Licence to conform with. Such an injustice would have been compounded if penal charges were then applied and existing property rights confiscated without compensation.

### User Commitment

Whilst we do not accept the need to CAP168 it appears, in the limited time available to it, that the Working Group has developed a potentially workable solution with regard to the Pre- commissioning and Post-commissioning User Commitment associated with CAP168.

### Applicable Objectives

We do not believe that CAP168 (Original) better meets either of the CUSC Applicable Objectives when compared with the 'baseline'. The reasons for this have been detailed in the 'Demotes' column of section 6 of the Company Consultation.

We do not believe that CAP168 (WGAA1) better meets either of the CUSC Applicable Objectives when compared with the 'baseline'. The reasons for this have been detailed in the 'Demotes' column of section 6 of the Company Consultation.

We do not believe that CAP168 (WGAA1I) better meets either of the CUSC Applicable Objectives when compared with CAP168 (Original). The reasons for this have been detailed in the 'Demotes' column of section 6 of the Company Consultation.

Whilst we do not accept the need for CAP168, if we were forced (against our will) to choose between CAP168 (Original) or WGAA1, we would choose CAP168 (Original). However, as noted above, this should not be taken in anyway as endorsing CAP168 (Original).

Yours sincerely

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1 May 2009

Dear Sarah

**Response to the Consultation Document of the Urgent CUSC Amendment Proposal 168 “Transmission Access – Under –use and reallocation of TEC”**

Uskmouth Power does not support the implementation of CAP168 Original and WGAA1 compared to the current baseline. Both proposals have the means of introducing numerous adverse impacts upon the UK Power market without delivering its ultimate aim of releasing unused TEC to other generators or to System Operator (SO). This consultation response highlights those adverse effects which are of greatest concern for Uskmouth Power.

Firstly, predictable, base-load generators would gain a competitive advantage if either CAP168 or WGAA1 were implemented. The proposals involve imposing a penalty, upon those generators who cannot accurately estimate their TEC usage, 5 weeks in advance. However, these flexible generators provide a valuable service to the market, through being available in short lead times i.e. up to gate closure and also in the Balancing Mechanism (BM). Some 3-6GW is traded base load day ahead. The proposer has neglected to recognise the importance of the shorter term energy market.

Short-term liquidity would also be destroyed due to the introduction of the TEC nomination process. Any variation in generation from the TEC nomination would incur the additional over/under use charge. As a consequence of introducing over/under use charges that are not cost reflective, perverse incentives arise. For example, generators are unlikely to respond to short term market signals like covering plant or demand shortfalls in the market due to penal charges being imposed from any deviation of the TEC nomination, thus creating potential implications for security of supply.

Finally, Uskmouth Power dislikes the introduction of double counting for access which this proposal creates. Generators are still required to pay TNUoS charges for their full capacity entitlement, whilst incurring an additional ‘under use charge’ for not generating. In reality, no additional costs should be incurred by a User not generating up to its TEC, it’s merely the generator’s commercial decision.

To conclude, Uskmouth Power believe as a consequence of CAP168 receiving urgent status and being fast tracked through the work group and consultation process, greater assessment shall be required under the Impact Assessment (IA) process compared to the previous Transmission Access Amendment Proposals (CAP161 – CAP166). The crucial analysis under the IA is confirmation that all the adverse impacts have been captured plus the potential magnitude of these perverse effects.

Yours sincerely

Rebecca Williams  
Head of Trading