

## CAP150-155 Working Group

Meeting Name	CAP150 Working Group
Meeting No.	4
Date of Meeting	21 <sup>st</sup> September 2007
Time	10:00 – 15:00
Venue	National Grid Offices, Warwick

---

This note outlines the key action points from the fourth of the CAP150-155 Working Group.

### 1. Introductions/Apologies for Absence

Tim Russell.

### 2. Previous Meetings Notes

The notes from the previous meeting it was stated that some of the details addressed at the third Working Group meeting should be revised in the following points highlighted by one members : the process of notifying the Authority of ongoing disputes between the **GBSO** and the user prior to any possible referral

The extension to the working group timescale would require an approach to the Authority via the **CUSC Panel**

### 3. CAP 150 Capacity Reduction

#### Progress of meeting to date

The Chairman outlined that the feature of this meeting would be based on consideration of the working group alternative proposal and the CAP 150 original.

David Scott outlined the details of the Working Group Alternative proposal he explained that the proposal was based knowledge incorrect capacity and/or likely project delay. Should these issues not be resolved via by the informal/formal process National Grid will take the step of issuing a Notice of Termination. It was explained that this provided a strong contractual tool. To address these issues the User can take the step of modifying TEC/CEC values or modify the timescales on the CONSAG. The process provides the option to take action prior to the backstop date. Where National Grid has knowledge that a User is not on target with their project in breach of the CONSAG this tool is not currently used.

Members felt that there was a need to apply reasonableness in this process from both sides. One member indicated that there has to be acceptance that major projects are prone to delay as a fact of life. There was a need to apply a meaningful timescale that makes sense. Phil Collins explained that the Contract does not reflect the actual position as the project develops hence the need for Modification. One member indicated the concerns/risks that all developers face regarding letters of credit. Concerns were expressed with regard to the two stage process covering delays and capacity and the impact of termination. The Chairman explained that requirement to terminate users contracts should only be used in rare circumstances if the formal/informal process works.

Some members were more supportive a route which reduced TEC to zero and if concerns are not addressed within the agreed period then the agreement will be terminated. In this process where there is dispute over reduction in capacity the user/National Grid has the option of referral to the Authority. There would be a need to check the vires within the CUSC on this issue. It was felt by some members that this route was the exhaustive process allowing informal, formal notice of TEC to zero if no response in required timescales/ with authority determination. There was some feeling that this approach

## CAP150-155 Working Group

keeping the agreement in place was more passive. However it needed to be recognised that in instances with paper projects actions needed to be taken where no responses were received to information requests. It was outlined that in the current process through waiver removes all our obligations in the CONSAG and a party would have to mod app to “get back in” however, in the process the TEC would not be reduced to zero a measured process is applied.

The Chairman suggested that there was a need to give consideration to the two proposals recognising members concerns over the severity of termination.

One member raised concerns that the alternative proposal now encompassed TEC reduction in addition to project delays. It was re-stressed that delays are a fact of life but there is no clear guidance in the CONSAG as to how these issues will be addressed. The only route seems to be Mod App in response to information on delays. There was a view that the position on delays needed to be more clearly articulated. Concerns were expressed that with the submission of a Mod App there is uncertainty of what offer will be returned to a user and the risks that are associated.

Some members expressed concerns over the risks to developers, and investors in projects and introducing the factor of delay into the proposal was a step to far. However it was noted that this level of risk was evident and needed to be managed by the developer in their business plan. It was added that the final sums penalty was a significant issue for developers.

One member felt that this position is already within the CONSAG. If there is a delay the User should notify the National Grid and the position will be assessed whether a Mod App is required. If the impact of the change is limited a mod app may not be required. It was added that if users did not notify National Grid of the true position the only route was a notification of breach. The concerns expressed by certain members over including consideration of project delays would be included in the working group report.

Members discussed the options that were under consideration and felt that it would be helpful to pull together a summary of the options from start to finish in the original and the WG alternative i.e. TEC reduction, project delays and the route to termination. One member suggested that a third working group alternative could be considered setting TEC to zero prior to issuing a notice of termination however after debate it was agreed that the original and the working group alternative would go forward for consideration.

One member stressed that there was a need to ensure that all of proposals included a clear route identified of referral to the authority.

Members asked for information on contracts in place for local works and the legal position and the need to build for capacity. Members requested some information where projects which can't complete by the back stop date and hence close to termination. **Action PC**

Members discussed the process flows it was felt that it may be helpful to introduce some criteria in B for the working group report. One member felt that capacity data could not be confirmed at the early stages of a project and developed subsequently. It was also felt that CEC and TEC levels are indicative only at the early stages and a phased review approach may be more applicable as the developer becomes more aware of the position.

### **Working Group Alternative : Process Flow**

Members discussed the data sources that would feed into the process and the need to expand the sources to cover delays in Users projects. Also there was a need to revise the diagram (Notice of Termination ) to pick up the review National Grid if no response had been received.

One member repeated concerns with regard to lifting the lid on an existing agreement and requirements for Mod Apps leading to uncertainty in contract particularly for developers.

## CAP150-155 Working Group

Members agreed that there was a need to be realistic in the timescales outlined in the Capacity Reduction process (both the formal and informal) route. It was agreed that this process should be included in the legal text, (a light version) There were concerns as to whether these aspects should be defined in the legal text. It was also stressed that the exiting right of referral is covered in the legal text. It was also felt that there was a need to cover the cancellation charge, final sums and impacts of termination in the legal text and ensure that there were no clashes with the existing provisions.

The details of the Working Group Alternative with comments/revisions would be circulated after the meeting. **Action: PC/DS**

The legal text for both the original proposal and WGAA would aim to be circulated by Friday 28<sup>th</sup> September with comments to be submitted by members prior to the next meeting. The updated flow diagram would also be circulated to members.

It was requested that details of some previous or likely scenarios were included in the Working Group Report. It was felt that there was a need to explain the process and key criteria from the trigger point and have clarity in the key elements of the process. Some members felt that the 15 day period notice needed to be extended as this did not allow a sufficient timescale to consider the position and does not follow the reasonableness case. There was a feeling with the formal process that a total 30 day period with 2 tiers (15 days each) the first period triggered from the notice of intent and the second period providing the notice of reduction. It was felt that this timescale supported the case for reasonableness. It was felt that this phased approach should be applied to both the original and the Working Group alternative.

The fees related to TEC reduction were discussed. It was noted that the applicable charges would be driven by the actual costs driven by the amount of working involved in each case hence there would be no fixed fee.

Members discussed the principles of the reasonableness test and the data sources that would feed into the decision making process. The process would need to focus on whether the required changes were material requiring a Mod App. Also consideration would be given to the impacts on other users by changes in works. For example on a 5MW project increasing to 6MW is not significant to the individual project but may have a significant impact on another user in close proximity. It was recognised that the route for users if the dispute could not be resolved was referral therefore this ensured that process needed to be reasonable and justified on the basis of the information captured.

One member referred to cost issues and what will be returned/refunded to Users in relation to assets that are re-used for other projects. **PC** to respond to the group on this issue.

### **4. CAP 151/CAP 152 to 155 Revision of CUSC Exhibits B, D, F and I**

The proposer circulated the final version of the working group report which was due for consideration by the Panel on 28<sup>th</sup> September.

CAP 151 had been circulated to the to the Panel for consideration on 28<sup>th</sup> September.

### **5. Next Steps**

Meetings on CAP 150 to further develop the WG alternatives and address the comments from members

### **6. Date of Next Meeting**

5<sup>th</sup> October at National Grid House, Warwick.

## Members Present:

Duncan Burt	DB	Chair
Clare Talbot	CT	Technical Secretary
Phil Collins	PC	National Grid
John Norbury	BR	RWE Npower
David Scott	DS	EdF Energy
Laura Jeffs	LJ	Centrica
John Morris	JM	British Energy
Garth Graham	GG	Scottish and Southern
Ben Sheehy	BS	EON
Alec Morrison	AM	Scottish and Southern
Dennis Gowland	DG	Fairwind Orkney Ltd
Robert Longden	RL	Airtricity
Jenny Boothe	JB	Ofgem