



## **CONSULTATION DOCUMENT**

### **CUSC Amendment Proposal CAP150 Capacity Reduction**

*The purpose of this document is to  
consult on Amendment Proposal CAP150  
with CUSC Parties and other interested  
Industry members*

Amendment Ref	CAP150
Issue	1.0
Date of Issue	29 <sup>th</sup> November 2007
Prepared by	National Grid

**I DOCUMENT CONTROL****a National Grid Document Control**

Version	Date	Author	Change Reference
1.0	29/11/07	National Grid	Formal version for release

**b Document Location**

National Grid website:

[www.nationalgrid.com/uk/electricity/codes/](http://www.nationalgrid.com/uk/electricity/codes/)

**c Distribution**

Name	Organisation
CUSC Parties	Various
Panel Members	Various
Interested Parties	Various
Core Industry Document Owners	Various
National Grid Industry Information Website	-

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## 1.0 SUMMARY AND VIEWS

### Executive Summary

- 1.1 CAP150 – Capacity Reduction was proposed by National Grid at the CUSC Amendments Panel on the 29 June 2007. CAP150 seeks to address the issue of Users that have a contracted transmission capacity figure that is inconsistent with their project details (e.g. planning consent) or the construction programme is not consistent with contracted Completion Date.
- 1.2 National Grid proposed to amend the CUSC to enable National Grid to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity figure provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then National Grid would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the transmission capacity figure to an appropriate level and revise the Construction Works as necessary to reflect this. In addition National Grid would have the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in the User's transmission capacity figure and for National Grid's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application fees.
- 1.3 In addition to the Original Proposal the Working Group supported the raising of a Working Group Alternative Amendment. The Alternative provides National Grid with the contractual right to terminate the agreement, should the User not request a modification to their agreement, by introducing a Notice of Termination.

### Working Group Recommendation

- 1.4 The Working Group recommended to the CUSC Panel that CAP150 had been fully considered and that the Original proposal and the Alternative should proceed to wider Industry Consultation as soon as possible. The Working Group believed that its Terms of Reference had been met.
- 1.5 A majority of the Working Group believes that the Original Proposal is BETTER than the baseline. A minority believed that the Working Group Alternative Amendment ("WGAA") is BETTER than the baseline but a majority believed that the Working Group Alternative Amendment is WORSE than the baseline.
- 1.6 Overall a majority of the Working Group believed that the Original Proposal is BEST.

### National Grid's View

- 1.7 National Grid, as the proposer of CAP150 is supportive of the Amendment Proposal and Working Group Alternative Amendment, believing that they would both better facilitate achievement of the Applicable CUSC Objective (a) & (b), with the Original Amendment BEST meeting the CUSC objectives.

## Amendment Panels View

- 1.8 The Amendments Panel agreed that CAP150 should proceed to wider consultation by National Grid, for a period of 4 weeks.

## 2.0 PURPOSE AND INTRODUCTION

- 2.1 This is a consultation document issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State.
- 2.2 Further to the submission of Amendment Proposal CAP150 and the subsequent evaluation by the CAP150 Working Group, this document seeks views from industry members relating to the Amendment Proposal and the Working Group Alternative Amendment.
- 2.3 CAP150 was proposed by National Grid and submitted to the CUSC Amendments Panel for consideration at their meeting on 29<sup>th</sup> June 2007. CAP150 Working Group Report was submitted to the CUSC panel meeting on 26<sup>th</sup> October. Following evaluation by the Working Group, the Amendments Panel determined that CAP150 was appropriate to proceed to wider industry consultation by National Grid.
- 2.4 This consultation document outlines the discussions held by the Working Group and the nature of the CUSC changes that are proposed. Representations received in response to this consultation document will be included in National Grid's Amendment Report that will be furnished to the Authority for their decision.
- 2.5 This consultation document has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at [www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/](http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/) along with the Working Group Report for CAP150 and the Amendment Proposal form. This document invites views upon CAP150 and the **closing date is 27<sup>th</sup> December 2007 for responses** including any Consultation Alternatives.
- 2.6 CUSC Parties are reminded that any Consultation Alternatives must be submitted by the above closing date and must use the Consultation Alternative form available on the National Grid Website at [www.nationalgrid.com/NR/rdonlyres/AAC680AE-D270-4F69-A1E2-33378890FDA0/19993/ConsultationAlternativeAmendmentForm31Aug07.doc](http://www.nationalgrid.com/NR/rdonlyres/AAC680AE-D270-4F69-A1E2-33378890FDA0/19993/ConsultationAlternativeAmendmentForm31Aug07.doc)

### 3.0 PROPOSED AMENDMENT

- 3.1 At present National Grid is aware of Projects throughout Great Britain that have a transmission capacity figure in their Bilateral Agreement that is considerably in excess of the Project's apparent needs.
- 3.2 This presents a number of issues for National Grid:
- It causes uncertainty over the volume of transmission capacity necessary
  - It creates the potential risk of over investment
  - The release of this capacity could permit other Projects to connect earlier than their current contracted date and present opportunities for new Projects.
- 3.3 The proposed amendment seeks to address the issue of Users that have a contracted transmission capacity figure that is inconsistent with their Project details (e.g. planning consent) or the construction programme. Whilst there are remedies available where a User does not progress or complete a project, the nature of these remedies (i.e. termination) may not be proportionate in all cases. This means that a User can hold onto the transmission capacity figure (in their Bilateral Agreement) until very close to or after their contracted Connection Date. National Grid are required under the Planning Code to utilise the transmission capacity figure from the Bilateral Agreements together with other data held by National Grid relating to the Transmission System when considering new applications to connect to and use the GB Transmission System. This requirement, together with Users holding contracted capacity against Projects that are not being progressed (in a manner consistent with that capacity) can lead to inefficient investment and delays in connecting new Projects with a consequent adverse impact on competition.
- 3.4 It is proposed to amend the CUSC to enable National Grid to ascertain whether a User's Project will be capable of utilising the transmission capacity figure provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then National Grid would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the transmission capacity figure to an appropriate level and revise the Construction Works as necessary to reflect this. In addition National Grid would have the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in the User's transmission capacity figure and for National Grid's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification Application fees.
- 3.5 It should be noted that Annex 4A details the process of the proposal in a diagrammatic form to support the following paragraphs.
- 3.6 CAP150 specifically proposes in addition to the quarterly reports provided by the User on its Project under the Construction Agreement the right for National Grid to request information from a User regarding their Project such as the planning consents applied for.
- 3.7 The Construction Programme would identify dates for particular events (milestones) associated with the User's works e.g. grant of Section 36 planning consent.

- 3.8 Where National Grid becomes aware (e.g. Section 36 planning consent is granted for a lower capacity than is reflected in the relevant Bilateral Agreements) that there might be a discrepancy with the transmission capacity figure in the Bilateral Agreement or the User fails to meet the milestones such that it is reasonable to question whether the User can complete their Project by the Completion Date, then National Grid would notify the User and seek an explanation from the User regarding the inconsistency between the transmission capacity figure within their Bilateral Agreement (contracted position) and the available Project information.
- 3.9 If the inconsistency is not resolved, then National Grid would be entitled to vary the bilateral agreement to reduce the User's transmission capacity figure (TEC or power station capacity in relation to a BELLA) to a figure that National Grid considered was appropriate based upon the information available and make any other necessary consequential contractual changes including changes to the Construction Agreement to reflect any changes to the works or programme. The agreement to vary would also provide for recovery from the User of any costs of abortive works resulting from the capacity reduction.
- 3.10 This change would be applicable to all users who are not yet connected or are awaiting an increase in TEC.

#### **4.0 SUMMARY OF WORKING GROUP DISCUSSIONS**

- 4.1 In summary the proposer detailed how the Original Amendment aligned with the current contractual arrangements and the GB Queue initiatives. Following this the Working Group members unanimously supported the principles of the original proposal.
- 4.2 Following the presentation of the original proposal some Working Group members felt that National Grid should have been seeking this right earlier and that by not actively managing such agreements that this might be considered by some to be negligent and in breach of its licence conditions. The group noted that National Grid has been reticent in enforcing existing clauses in the CUSC construction agreement as it considers bringing a generator developer into breach of the code impractical.
- 4.3 Other members felt that the developers were also acting in a manner that would not be consistent with competition legislation or the licence obligations of certain generators. In such cases certain Working Group members felt that the Authority should be taking action against these generators.
- 4.4 A Working Group member commented that generators were being unfairly labelled as capacity hoarders as they were just acting in accordance with the terms of their contract in a rational economic manner. Whilst the generator may have notified National Grid of any changes fully and correctly under the terms of the Construction Agreement and in accordance with the Grid Code, he/she may be unwilling to also submit a Modification Application at the request of National Grid, due to the risk and uncertainty arising from the resultant variation. It was also noted that Grid Code PC5.6 already provides for National Grid to use data other than TEC and CEC in assessing background conditions for new applications.
- 4.5 The proposer explained how the process would be robust whilst ensuring that there was sufficient opportunity for the User to provide information to National

- Grid, revise the data sent under the CONSAG or Grid Code, or to provide information to the Authority that would support their transmission capacity figure for their contracted completion date.
- 4.6 National Grid set out that they would need the right to seek clarification from a User of their transmission capacity figure (in their Bilateral Agreement) in the face of any information that National Grid became aware of. This can be set out in three categories:
- Information provided under the Grid Code or CONSAG,
  - Information provided by the User to the public domain, and
  - Other relevant information or data.
- 4.7 There was debate about suitable triggers for the initiation of the process and the group developed a more appropriate methodology with associated safety checks (including being able to refer such proposed modifications to the Authority). This ensured that the overall approach was a robust and would not lead to the unnecessary reduction of a developer's transmission capacity figure or burden developers with requests from National Grid.
- 4.8 After considerable debate the Working Group agreed that the following key criteria would be a good initial list of criteria for National Grid to use when deciding if a reduction is required.
- Reduction would result in different assets or works
  - Assets are being or could be used by another User
  - If the holding onto the capacity results in inefficient investment
  - If it causes a (significant) cost to a third party
  - Potentially has an affect on charge setting (including TNUOS)
  - Has an affect on the outages required
- 4.9 As this provision would be applicable from signature of an Offer (or upon implementation) it was recognised that it would be unreasonable to require a developer to have the required consents ahead of when they would be require in the normal course of a Project. A developer should achieve the required consents in time to complete the Project by the completion date and in cases where the developer is unable to achieve this then the transmission capacity figure would need to be reduced to zero. This would effectively terminate the Project.
- 4.10 An informal process was discussed by the Working Group which gave the User time to remedy any error or omission in data or information relevant to the transmission capacity figure provided to National Grid. If the User considered the information to be confidential and the User did not wish for the information to be known by National Grid then the User has the opportunity in the formal process to pass this information to the Authority (where the information would remain confidential).
- 4.11 The detail of the process for the original proposal is shown with an associated description of the process flow diagram in Annex 4 to this report. The process is divided into two sections the informal process which has been codified to reflect that an informal stage should take place and the more formal (two phase) process where the two formal notices are received and counter notices served and the rights of Users to refer matters to the Authority for determination are set out.

- 4.12 During the discussion on the reduction of TEC and transmission capacity figure some Working Group members felt that when TEC was reduced the corresponding CEC of the Plant should not be reduced. It was explained to the group that CEC was not a product and that the requirement for CEC in itself did not currently drive any investment. Investment would only be carried out if it was accompanied by a corresponding TEC. Several Working Group members questioned if works directly associated with connecting the generator (i.e. CEC rather than TEC specific works) could be unilaterally curtailed/stopped by National Grid if a User had a contract in place to pay for that work. These Working Group members were mindful that with such CEC related works in place the User could opt (via for example the CAP142 arrangements) to obtain TEC via a commercial agreement with another User or seek LDTEC, STTEC products from National Grid. These Working Group members felt that were the (CEC) connection works are fully paid for by the User that this work should be completed as to do otherwise would limit competition.
- 4.13 Several Working Group members argued that as the original amendment proposal did not include a reference to CEC that it would be beyond the scope of the amendment proposal and as such could not be included in the drafting of the Original Amendment. National Grid disagreed with this and after some debate the Chair of the Working Group ruled that the inclusion of CEC was outside the scope of the Amendment Proposal and as such could not be included.
- 4.14 The Working Group discussed the timing of the release of TEC and whether this should wait until the end of the process when the consequences had been evaluated or if there should be a more timely release when National Grid had identified that the User was holding excess transmission capacity. National Grid was initially of the view that the capacity should be released fifteen Business Days following the initial notice if not referred to the Authority. Several Working Group members thought that it would be prudent to have an additional stage following the initial notice to give the User every possible opportunity to remedy the situation. Therefore, as shown in Annex 4, the Working Group agreed that there would be two phases to the formal process.
- 4.15 In the first phase National Grid would issue a "Notice of Intent" to the User informing the User of National Grid's intention to reduce the User's transmission capacity figure. The User would have fifteen Business Days to respond. If the User did not respond (or the User's response was judged by National Grid to be unsatisfactory) then the second phase (of the formal process) would be enacted by National Grid who would issue a "Notice of Reduction" to the User informing the User of its reduced transmission capacity figure. The User would have fifteen Business Days to accept the change or refer the matter to the Authority for determination. In the event that the User failed to respond within the timeframe then the User's agreement would be changed accordingly (and the User charged appropriately).
- 4.16 The transmission capacity associated with this change to the affected User's transmission capacity figure would be released by National Grid immediately after the change to the User's agreement had come into effect. However, where the User sought a determination from the Authority then no release (of the User's transmission capacity) would arise until the Authority had determined the matter at hand. The process flow and legal text for the original proposal was modified.

- 4.17 It was recognised by the Working Group that following the initial reduction of the transmission capacity figure there would remain a period of up to three months where there was uncertainty for the developer over the works and programme. This is required to review the works required to connect the development at the new transmission capacity figure and to prepare the required agreement to vary. The timescales proposed are consistent with National Grid's Licence timescales for production of an Offer following a Modification Application. The Working Group considered this was acceptable.
- 4.18 The Working Group discussed how embedded developments with no direct Construction Agreement with National Grid should be managed. It was recognised that certain changes would need to be made to the developer's agreement as part of the implementation of any reduction, as the works identified and capacity listed in the agreement would need to change.
- 4.19 The Working Group discussed their perceptions of Project risk. Following discussion as detailed in the Working Group Report the group agreed to keep the original solution confined to capacity. A Working Group Alternative Amendment was then proposed to include Completion Date delays.
- 4.20 The Working Group discussed the issue of costs. These costs fell into two categories (i) costs of processing the change and (ii) costs that are a consequence of the change.
- 4.21 When a User submits a Modification Application the User has the choice of whether they apply on the basis of a fixed price application or pay the actual costs. The Working Group agreed that Users should pay the fees as consistent with them submitting a Modification Application. This means that the User is not incentivised not to amend their agreement and that they will pay all the costs associated with processing their reduction in capacity and any consequential amendments.
- 4.22 The consequential costs of any reduction in capacity were discussed these costs can be considered to be very much like Final Sums where any cost is subject to reuse of any assets and certain timescales. For the purpose of drafting the treatment of the consequential costs of any reduction are treated as a termination for the purposes of Final Sums due. The exception is where any User has agreed to pay a User Commitment amount, in these cases the amount due will be the User Commitment and this amount will become payable when the TEC has been reduced.

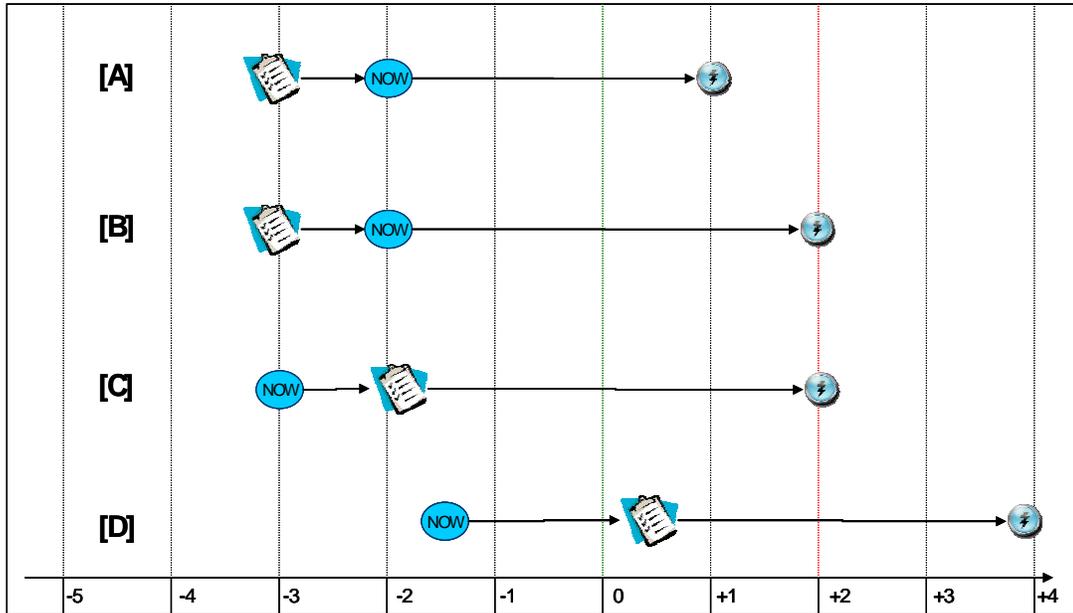
## **5.0 WORKING GROUP ALTERNATIVE AMENDMENT**

- 5.1 A member of the Working Group proposed a Working Group Alternative Amendment (WGAA): Termination upon failure to modify agreements.
- 5.2 If CAP150 Original is implemented, National Grid would have:
- [1] The right to allow the Project to progress even if delayed, enforcing termination upon the backstop date. (Existing rights).
  - [2] After being notified of a significant delay, the right to notify the User to submit a modification application for a later connection. (Existing rights)
  - [3] After being notified of having an incorrect transmission capacity figure against the plant likely to be commissioned, the right to notify the User to submit a modification application and if this is not done,

- use enforcement action to reduce the transmission capacity figure in Appendix C of the User's BCA.
- 5.3 [1] & [2] are existing rights for the GBSO, through clauses, 4.8 Backstop date and 3.3 Delays. [3] is a new right, provided by implementation of CAP150.
- 5.4 The Working Group member who proposed the Alternative Amendment considered there to be an asymmetry between [2] and [3] above, where the incorrect transmission capacity figure is proposed to have enforcement action and a delay in the construction programme does not. The proposer believes this is inappropriate and would represent a defect in the code if CAP150 were implemented.
- 5.5 WGAA proposes that National Grid should have the right of termination, (rather than enforcement action), for failure by the User to fulfil obligations of the CUSC Construction Agreement. Therefore the WGAA will:
- Include a further clause to ensure the User is developing a power station in accordance with the Transmission Entry Capacity and Connection Entry Capacity specified in Appendix C of the Bilateral Connection Agreement. As such, it follows the intention of CAP150).
  - Update the existing clause in the Construction Agreement, pertaining to delays, such that there is consistency between arrangements in the new (aforementioned) clause and existing clauses.
  - Rather than introduce enforcement action, as proposed under CAP150 Original, the WGAA intends to provide National Grid with the contractual right to terminate the agreement, should the User not request a modification to their agreement.
- 5.6 It should be noted that Annex 4B details the process of the proposal in a diagrammatic to support the following paragraphs.
- 5.7 CAP150 WGAA introduces a Notice of Termination which can be issued to Users failing to fulfil the requirements of Appendix C of the BCA and Appendix J of the Construction Agreement. The Notice of Intended Termination will follow an informal process initiated by the GBSO, (when the GBSO is concerned the User will not satisfy the requirements of Appendix C of the BCA and Appendix J of the Construction Agreement), which should give the chance for a User to justify their project's progression through the submission of revised Quarterly Report (and Grid Code DRC) data or the User can submit a Modification Application to align the Appendices with the project's actual progression.
- 5.8 The Notice of Termination is intended to provide an incentive for CUSC Users to behave properly with regard to their CUSC obligations. It also provides an efficient process for National Grid to penalise Users acting improperly, without the legal implications associated with notifying the Authority the User is in breach of the CUSC.
- 5.9 With regard to embedded generators, it is expected the DNO will be served with a Notice of Termination. This is because the DNO holds the Construction Agreement with National Grid; the generation Project the DNO is representing is bringing the DNO into breach of the CUSC.
- 5.10 The DNO will not be exposed to the termination of the Construction Agreement as (although it will have to pay National Grid Final Sums upon

termination); it will have required the generator to secure the Construction works being completed on its behalf. Therefore all BELLA agreements will be affected by the WGAA. Those generators being managed by DNOs, yet considered to be Relevant Embedded Power Stations will also be affected as it is expected the DNO will ensure the generator is fulfilling its agreements to connect the correct capacity in a timely manner.

- 5.11 Upon termination of the DNO's Construction Agreement, in order for a BELLA to be terminated, there needs to be a clause inserted into the BELLA. This will ensure when the DNO's Construction Agreement is terminated all generator agreements directly associated with the terminated DNO Construction Agreement are terminated. This would be consistent with the treatment of Bilateral Connection Agreements.
- 5.12 The proposer of the WGAA believes that notice of termination for failure to progress the Project would interact with clause 4.8 backstop date. The proposer believes National Grid would aim to use the backstop date rather than the notice of termination if a generator is delayed, but likely to connect within the backstop date. An example would be where a CCGT developer has committed to plant and construction, however the equipment delivery and installation timescales prevent it connecting at the completion date. In this case National Grid can allow the developer to accept the risk of the backstop date and connect within two years. On the other hand, if the generator is not consented and has no equipment on order, it cannot accept the risk of the backstop date (i.e. it is delayed by 2 or more years). In this case National Grid would be inclined to issue the notice of termination. The proposer considered it would be unreasonable for National Grid to enforce the notice of termination clause introduced by the WGAA should it be more reasonable for the Backstop Date clause to be enforced.
- 5.13 The following diagram considers the relationship between the notice of termination and the backstop date. The number sequence represents the Project timeline, with the Connection Date being year 0 and +2 being the backstop date. The clip board represents power station consents, the "now" symbol places today's date upon the year sequence and the electrification symbol represents the developer's anticipated Connection Date.



- 5.14 Project [A] has a consented Project has two years before the agreed Connection Date, yet expects to complete construction in Y+1. It would have reasonable certainty over the delay after securing delivery / installation contracts and should therefore not be too concerned in passing the backstop date. In this instance it would be reasonable for the GBSO to exercise the backstop date rather than the Notice of Termination. On the other hand, example [B] is expecting to connect on or around the backstop date after confirming the construction programme with contractors. For Project [B] there is a great risk that if it should not modify the Connection Date with the GBSO, it will pass the backstop date. In this case, the GBSO would be more inclined to utilise the notice of termination rather than the backstop date as it realises the assets it is building are likely to remain unused for over two years. For [B] the backstop date is clearly inappropriate for both parties.
- 5.15 Project [C] has yet to obtain consents but expects (should the Project run to plan), to connect on or around the backstop date. Project [C] is at risk of the backstop date being enforced without it connecting, so it should look to modify its agreements. For the GBSO there is a high likelihood that transmission works will be stranded unless it reconfigures the reinforcements needed to connect Project [C] and other applicants. In this case the Notice of Termination, rather than the backstop date is appropriate should the developer not modify its agreements willingly.
- 5.16 Project [D] has not yet gained consents, yet remains with a Connection Date four years in advance of when it can connect. The developer is clearly negligent in managing the construction agreement and has not progressed the Project in the manner agreed under Appendix J: Construction Programme. In this case the Notice of Termination is more suitable than enforcing the backstop date when the generator does not connect in Y+2.

## 6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

### Proposed Amendment

- 6.1 CAP150 would better facilitate the CUSC Objective(s);
- (a) *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*
  - (b) *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*
- 6.2 CAP150 will improve the level of certainty over the actual capacity connecting, reduces the amount of short term attrition and removes any potential risk of over investment. Also by facilitating release of capacity from a Project that is manifestly unable to use it The Company can release this capacity to other Projects that are able to use it.

### Working Group Alternative Amendment

- 6.3 The majority of the Working Group believed that CAP150 Working Group Alternative did not better facilitate the CUSC Objective(s);
- (a) *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*
  - (b) *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*
- 6.4 The group believed CAP150 WGAA solution was too severe and inappropriate with a number of members indicating that it would place additional risk on their Projects.

## **7.0 PROPOSED IMPLEMENTATION**

- 7.1 The Working Group and National Grid propose CAP150 Original or Working Group Alternative Amendment should be implemented 10 business days after an Authority decision.
- 7.2 This change would be applicable to all Users who are not yet connected or are awaiting an increase in TEC
- 7.3 Following the implementation National Grid will issue agreements to vary the relevant Bilateral Agreements as soon as is reasonably practical. These are anticipated to come into legal effect immediately.

## **8.0 IMPACT ON THE CUSC**

- 8.1 CAP150 Original Proposal requires amendments to:
- CUSC Section 11.3 – Definitions New definitions,
  - Schedule 2 – Exhibit 1 (Bilateral Connection Agreement),
  - Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement),
  - Schedule 2 – Exhibit 3 (Construction Agreement), and
  - Schedule 2 – Exhibit 5 (BELLA).
- 8.2 The text required to give effect to the Original Proposal is contained as Part A of Annex 1 of this document.

### **Working Group Alternative Amendment**

- 8.3 CAP150 Working Group Alternative Amendment requires amendments to;
- CUSC Section 11.3 – Definitions New definitions,
  - Schedule 2 – Exhibit 1 (Bilateral Connection Agreement),
  - Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement),
  - Schedule 2 – Exhibit 3 (Construction Agreement), and
  - Schedule 2 – Exhibit 5 (BELLA).
- 8.4 The text to give effect to the Working Group Alternative Amendment is attached as Part B of Annex 1 of this document.

## **9.0 IMPACT ON INDUSTRY DOCUMENTS**

### **Impact on Core Industry Documents**

- 9.1 CAP150 has no impact upon Core Industry Documents

### **Impact on other Industry Documents**

- 9.2 CAP150 Original Proposed Amendment has a minor impact upon the STC under STCP18-1. The STC Committee will be informed of the potential consequential impact on the STC in the event of CAP150 Amendment Proposal being approved by the Authority and subsequently implemented within the CUSC. The STC Committee will be requested to review the impact of CAP150 and any associated STC changes will be proposed and progressed in line with the STC Amendment Proposal process in accordance with Section B, paragraph 7.2

## **10.0 WORKING GROUP RECOMMENDATION**

- 10.1 A majority of the Working Group believes that the Original Proposal is BETTER than the baseline. A minority believed that the Working Group Alternative Amendment (“WGAA”) is BETTER than the baseline but a majority believed that the Working Group Alternative Amendment is WORSE than the baseline. Overall a majority of the Working Group believed that the Original Proposal is BEST.

## **11.0 INITIAL VIEW OF THE AMENDMENTS PANEL**

- 11.1 The initial view of the Amendments Panel on the way forward for CAP150 is that National Grid should initiate a period of wider consultation in order to seek industry views on the Amendment Proposal and the Working Group Alternative Amendment, with regard to better facilitating the Applicable CUSC Objectives. Subject to addressing a Panel Members queries regarding the draft legal text within the Working Group Report.
- 11.2 It should be noted that the Panel Members legal text queries have been addressed and minor amendments have been made to clause 7.4.1 of the Original, and an additional sentence has been included at the end of 7.4.8 of the Original.

## **12.0 INITIAL VIEW OF NATIONAL GRID**

- 12.1 National Grid, as the proposer of CAP150 is supportive of the Amendment Proposal and Working Group Alternative Amendment, believing that they would both better facilitate achievement of the Applicable CUSC Objective (a) & (b), with the original Amendment BEST meeting the CUSC objectives.
- 12.2 National Grid believes that both CAP150 Original and WGAA will provide the necessary process and tools to maintain accurate information from User’s regarding their Projects. This information will allow National Grid to obtain increased certainty over the amount of capacity connecting to the Transmission System and should facilitate efficient and timely connection of new Projects where there is a scarcity of transmission capacity.

12.3 National Grid prefers the Original over the WGAA because the Original provides a more appropriate solution taking into account User's concerns as the outcome of the process only adjusts User's capacity rather than terminating their agreement.

### **13.0 VIEWS INVITED**

13.1 National Grid is seeking the views of interested parties in relation to the issues raised by Amendment Proposal CAP150 and the Working Group Alternative.

13.2 Please send your responses to this consultation to National Grid by no later than close of business on **27<sup>th</sup> December 2007**

13.3 Please address all comments to the following e-mail address:

Beverley.Viney@uk.ngrid.com

Or alternatively, comments may be addressed to:

Beverley Viney  
Amendments Panel Secretary  
Electricity Codes  
National Grid  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

**ANNEX1 - PROPOSED LEGAL TEXT TO MODIFY THE CUSC****Part A - Text to give effect to the Original Proposed Amendment****1. Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA)**

Amend Schedule 2 Exhibit 3 (the Construction Agreement) as follows:

Add the following as Clause 7.4 in the Construction Agreement

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

**[7.4 Transmission Entry Capacity Reduction**

- 7.4.1 If, at any time prior to the **Completion Date The Company** reasonably believes from data provided by the **User to The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.
- 7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User to The Company** to reflect this.
- 7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity The Company** shall notify the **User** accordingly.
- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **GB Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Capacity Reduction Charge** and **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence.**"]

Amend Clause 15.3 of Schedule 2 Exhibit 3 (the Construction Agreement) to include reference to Clause 7.4

- 15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, ~~and 2.11~~ and 7.4 and Paragraph 6.9 of the **CUSC**.

Add the following definitions to Clause 1 of Schedule 2 Exhibit 3 (the Construction Agreement)

***Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following***

<b>[Capacity Reduction Charge</b>	<p><i>[where on interim methodology a sum equal to the difference between a) the <b>Cancellation Charge</b> that would have been payable by the <b>User</b> had this <b>Construction Agreement</b> terminated in the <b>Financial Year</b> (or part of <b>Financial Year</b>) in which the <b>User</b> reduced its <b>Connection Entry Capacity</b> and/or <b>Transmission Entry Capacity</b> as appropriate and the <b>User</b> had not reduced it's <b>Connection Entry Capacity</b> and/or <b>Transmission Entry Capacity</b> as appropriate and b) the <b>Cancellation Charge</b> that would have been payable in such <b>Financial Year</b> (or part of <b>Financial Year</b>) if such charge was calculated on the basis of the reduced <b>Connection Entry Capacity</b> and/or <b>Transmission Entry Capacity</b>.]</i> or</p> <p><i>[Where on CAP 131 the definition implemented as part of that amendment]</i></p> <p>or</p> <p><i>[where on final sums -"Final Sums and as such subject to the provisions of Clauses [9.2 and 9.3 -if user meets credit rating] [9.6 and 9.7 - if user does not meet credit rating] of this <b>Construction Agreement</b> except that the <b>Final Sums</b> will be assessed by reference to those elements of the <b>Construction Works</b> no longer required as a result of a <b>Notice of Reduction</b> taking effect rather than on termination of this <b>Construction Agreement</b>"] ]</i></p>
<b>Notice of Intent</b>	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4
<b>[Notice of Reduction</b>	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .]
<b>Preliminary Request</b>	the request issued by <b>The Company</b> pursuant to Clause 7.4.1
<b>[Reduction Fee</b>	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application</b> .]

## 2 Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station

Amend Schedule 2 Exhibit 3 (the Construction Agreement) as follows:

Add the following as a new Clause 7.4 in Schedule 2 Exhibit 3 (the Construction Agreement)

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

### **[7.4 Developer Capacity Reduction**

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.

7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.

7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.

7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment**

will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.

- 7.4.7 Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Capacity Reduction Charge** and **Reduction Fee**. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence.**"]

Amend Clause 2.8 of the Construction Agreement as follows

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. **The User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent

that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

Amend Clause 15.3 of Schedule 2 Exhibit 3 (the Construction Agreement) to include reference to Clause 7.4

15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, ~~and~~ 2.11 and 7.4 and Paragraph 6.9 of the **CUSC**.

Add the following definitions to Clause 1 of Schedule 2 Exhibit 3 (the Construction Agreement)

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

<b>[Developer Capacity</b>	the MW figure [ <i>for export</i> ] specified in the <b>Developer’s Data.</b> ]
<b>[Capacity Reduction Charge</b>	the fees, expenses and costs (whether external or internal) paid, payable or incurred by <b>The Company</b> in respect of those elements of the <b>Construction Works</b> no longer required when a <b>Notice of Reduction</b> takes effect.]
<b>[Developer</b>	<i>Insert name address and registered number</i> who is party to a <b>BELLA</b> with <b>The Company</b> or the subject of the <b>Request for a Statement of Works.</b> ]
<b>[Developer’s Data</b>	the information provided by the <b>[Developer-BELLA]</b> <b>[User</b> in respect of the <b>Developer</b> in the <b>Request for a Statement of Works-relevant embedded medium\small power station]</b> and set out in Appendix [P].]
<b>[Developer’s Project</b>	the connection of a [xMW wind farm\power station to the <b>User’s Distribution System</b> at [ ]]
<b>Notice of Intent</b>	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4
<b>[Notice of Reduction</b>	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 revising the <b>Developer’s Capacity</b> for this <b>Construction Agreement</b> and Appendix A to the <b>BELLA.</b> ]
<b>Preliminary Request</b>	the request issued by <b>The Company</b> pursuant to Clause 7.4.1
<b>Reduction Fee</b>	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application.</b>

Attach a new Appendix P to Schedule 2 Exhibit 3 (the Construction Agreement) - Appendix [P] (Developer's Data) and amend Contents Page accordingly

Appendix [P]

Developer's Data

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

Amend Schedule 2 Exhibit 5 (the BELLA) as follows:

Add the following definitions to Clause 1

<b>User's Capacity</b>	the MW [ <i>export</i> ] figure specified in the <b>User's Data</b> .
<b>DNO</b>	<i>name address and registered number of owner/operator of the distribution network to which user is to connect.</i>
<b>DNO Construction Agreement</b>	the agreement between <b>The Company</b> and the <b>DNO</b> for <b>Transmission Reinforcement Works</b> as a consequence of the <b>User's</b> connection to the <b>Distribution System</b> .
<b>Notice of Reduction</b>	the notice of that name given by <b>The Company</b> to the <b>DNO</b> and the <b>User</b> pursuant to Clause 7 of the <b>DNO Construction Agreement</b> .
<b>Notice of Reduction Effective Date</b>	the date the amendments proposed by the <b>Notice of Reduction</b> take effect.
<b>User's Data</b>	the data submitted by the <b>User</b> and set out in Appendix A to the <b>BELLA</b> against which the effect on the <b>GB Transmission System</b> of the <b>User's</b> connection to the <b>Distribution System</b> has been assessed.

The following shall be added as a new Clause 9.4 of Schedule 2 Exhibit 5 (the BELLA) and reference to Clause 9.4 added to Clause 9.1.

**“9.1** Subject to Clause 9.2, ~~and 9.3~~ **and 9.4**, no variation to this **BELLA** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.”

**“9.4** Appendix A shall be automatically amended to reflect any **Notice of Reduction** on the **Notice of Reduction Effective Date**.”

Amend Appendix A to Schedule 2 Exhibit 5 (the BELLA) as attached

APPENDIX A

**THE SITE OF CONNECTION AND USER'S DATA**

**SITE[s] OF CONNECTION**

**Company:**

**Site[s] of Connection:**

**Size of Power Station:**

**Owner[s] / Operator[s] of Distribution System:**

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

**Part B - Text to give effect to the Working Group Alternative Amendment****1. Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA)****Construction Agreement**

Add the following as new clause 2.x in section 2 of the Construction Agreement.

***Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following***

**[2.x Power Station**

The **User** shall be responsible for designing building and installing the **Power Station** and the **User's Equipment** shall be such that it will be capable of generating at the **Transmission Entry Capacity** [*directly connected power stations only* - and of a type and size that matches the **Connection Entry Capacity**].

Add the following as new clauses 2.y and 2.z in section 2 of the Construction Agreement.

***Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following***

**["2.y Power Station Build**

- 2.y.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process generally or otherwise that the **User** is not meeting its obligations under Clause 2.x **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 2.y.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.
- 2.y.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation set out in the **Preliminary Request** is correct, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.
- 2.y.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:-
- a) the **User** does not submit a **Modification Application** requesting the appropriate changes to the **User's Works** and **Transmission Entry Capacity** [*directly connected power stations only* - and **Connection Entry Capacity**] such as to satisfy **The Company** that it can fulfil its obligations under 2.x within 15 **Business Days** of the date of the **Notice of Intended Termination**; or

- b) if a **Modification Application** as required under (a) above has been made but the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,

and upon such termination the provisions of Clause 11 shall apply.

## 2.z **User's Progress**

- 2.z.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process generally or otherwise that the **User** will not complete its **User's Works** in accordance with the **Construction Programme** **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 2.z.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.
- 2.z.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation set out in the **Preliminary Request** is correct, and the **User** has not exercised its rights under Clause 3.2, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.
- 2.z.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:-
  - a) the **User** does not submit a **Modification Application** requesting the appropriate changes to the **Construction Programme** within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
  - b) if a **Modification Application** as required under (a) above has been made but the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,

and upon such termination the provisions of Clause 11 shall apply.”]

Amend Clause 12.1 of the Construction Agreement to refer to Clauses 2.y and 2.z.

The following new definitions shall be added to Clause 1 of the Construction Agreement.

***Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following***

<b>Notice of Intended Termination</b>	the notice issued by <b>The Company</b> to the <b>User</b> pursuant to Clause 2.y.3 and/or Clause 2.z.3
<b>Power Station</b>	the [ ] power station as set out in the <b>User's Works</b> .
<b>Preliminary Request</b>	the request issued by <b>The Company</b> to the <b>User</b> pursuant to Clause 2.y.1 and/or Clause 2.z.1

## **2 Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station**

### **A Construction Agreement**

Add the following as new clause 2.x in section 2 of the Construction Agreement.

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

#### **[2.x Developer's Data**

The **User** shall notify **The Company** in the event that it becomes aware of any changes to the **Developer's Data**.”]

Add the following as a new Clause 2.y in section 2 of the Construction Agreement

#### **[“2.y Change in Developer's Data**

2.y.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, notification from the **User** under Clause 2.x of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that there are changes to the **Developers Data** **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

2.y.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 to reflect this.

2.y.3 In the event that the **User** does not respond or, notwithstanding the **User's** response, **The Company** remains of the view that the situation set out in the **Preliminary Request** is correct, **The Company** shall issue a written notice to the **User** advising of its intention to terminate this **Construction Agreement**.

2.y.4 Once a **Notice of Intended Termination** has been issued **The Company** shall be entitled to terminate this **Construction Agreement** forthwith in the event that:

*[In the case of a BELLA*

- a) the **Developer** does not submit a **Modification Application** requesting the appropriate amendments to the **Developer's Data** within 15 **Business Days** of the date of the **Notice of Intended Termination**; and
- b) the **User** does not submit a **Modification Application** requesting the corresponding amendments to the **Developer's Data** for the purposes of this **Construction Agreement** within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- c) if the **Modification Applications** as required under (a) and (b) above have been made but the **Developer** and/or the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,]

*[in the case of relevant embedded medium\small power stations*

- a) where either **The Company** requires a revised **Request for a Statement of Works** and the **User** does not submit the same within 15 **Business Days** of the date of the **Notice of Intended Termination**; or
- b) the **User** does not accept the resulting **Modification Offer** within the period specified by **The Company** as such period might be extended if the **Modification Offer** is referred to the **Authority** for determination,]

and upon such termination the provisions of Clause 11 shall apply.]

Amend Clause 2.8 of the Construction Agreement as follows.

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

The following new definitions shall be added to Clause 1 of the Construction Agreement.

**Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following**

<b>[Developer</b>	<i>name registered address and co number]</i>
<b>[Developer's Capacity</b>	the MW figure [ <i>for export?</i> ] specified in the <b>Developer's Data.</b> ]
<b>[Developer's Project</b>	the connection of a [ <i>xmw wind farm\power station</i> ] to the <b>User's Distribution System</b> at [ .].]
<b>[Developer's Data</b>	the information provided by the <b>[Developer-BELLA]</b> [ <b>User</b> in respect of the <b>Developer</b> in the <b>Request for a Statement of Works-relevant embedded medium\small power station</b> ] and set out in Appendix [P].]
<b>Notice of Intended Termination</b>	the notice issued by <b>The Company</b> to the <b>User</b> pursuant to Clause 2.y.3.
<b>Preliminary Request</b>	the request issued by <b>The Company</b> to the <b>User</b> pursuant to Clause 2.y.1.

Attach a new Appendix - Appendix [P] (Developer's Data) and amend Contents Page accordingly

Appendix [P]

Developer's Data

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to\use of the Distribution System will be energised.

## B BELLA

Add the following new definitions at Clause 1 of the BELLA.

<b>User's Data</b>	the information provided by the <b>User</b> in its application and set out in Appendix A against which the effect on the <b>GB Transmission System</b> has been studied.
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Amend Clause 8 (Term) of the BELLA as follows

“Subject to the provisions for earlier termination set out in the **CUSC**, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** as provided in Section 5 of **CUSC** or earlier if the **Distribution Agreement** is terminated prior to the issue by **The Company** of the **Operational Notification**.

Amend Appendix A to the BELLA as follows

**APPENDIX A**  
**THE SITE OF CONNECTION AND USER'S DATA**

**SITE[s] OF CONNECTION**

**Company:**

**Site[s] of Connection:**

**Size of Power Station:**

**Owner[s] / Operator[s] of Distribution System:**

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

**ANNEX 2 – AMENDMENT PROPOSAL FORM**

<b>CUSC Amendment Proposal Form</b>	<b>CAP:150</b>
<b>Title of Amendment Proposal:</b>	
<b>Capacity Reduction</b>	
<b>Description of the Proposed Amendment (mandatory by proposer):</b>	
<p>In summary, it is proposed to amend the CUSC to enable The Company to ascertain whether a User's power station project (Project) will be capable of utilising the transmission capacity provided for in its Bilateral Agreement by the Completion Date. If the User is unable to provide satisfactory evidence that this is the case then The Company would have the right to propose changes to the User's Bilateral Agreement and Construction Agreement to reduce the capacity to an appropriate level and revise the Construction Works as necessary to reflect this. In addition The Company has the ability to recover the cost from the User of any abortive works (or relevant User Commitment Charges) as a consequence of this reduction in capacity and for The Company's costs associated with processing such changes (as if the changes were requested by the User) on same basis as Modification application Fees.</p> <p>It is proposed:</p> <ol style="list-style-type: none"> <li>1. In addition to the quarterly reports provided by the User on its Project under the Construction Agreement The Company has the right to request information from a User regarding their Project such as planning consents applied for</li> <li>2. The Construction Programme will identify dates for particular events (milestones) associated with the User's works e.g. grant of Section 36 consent</li> <li>3 Where the Company becomes aware (e.g. Section 36 planning consent is granted for a lower capacity than is reflected in the relevant bilateral agreements) that there might be a discrepancy with the capacity in the Bilateral Agreement or the User fails to meet the milestones such that it is reasonable to question whether the User can complete their Project by the completion date, then The Company would notify the User and seek an explanation from the User regarding the inconsistency between the transmission capacity within their bilateral agreement (contracted position) and the available Project information.</li> <li>4. If the inconsistency is not resolved, then The Company would be entitled to vary the bilateral agreement to reduce the User's capacity (TEC or power station capacity in relation to a BELLA) to a figure that The Company considered was appropriate based upon the information available and make any other necessary consequential contractual changes including changes to the Construction Agreement to reflect any changes to the works. The agreement to vary would also provide for recovery of any costs of abortive works resulting from the capacity reduction.</li> </ol> <p>This proposal would require amendment to the standard forms of the Bilateral Connection Agreement as set out in Exhibit 1 to Schedule 2 of the CUSC, the Bilateral Embedded Generation Agreement as set out in Exhibit 2 to Schedule 2 of the CUSC, the Construction Agreement as set out in Exhibit 3 to Schedule 2 of the CUSC and the BELLA as set out in Exhibit 5 to Schedule 2 of the CUSC</p> <p>This change would be applicable to all existing and future Users with one of the agreements described above prior to completion of the User works.</p>	
<b>Description of Issue or Defect that Proposed Amendment seeks to Address (mandatory by proposer):</b>	
<p>There has recently been an unprecedented level of applications for connection to and use of the GB Transmission System. In several locations this level of applications has resulted in many Users' receiving offers for connection dates later than their aspirational connection date. This is particularly relevant in Scotland where as a consequence of the transition to BETTA a "queue" of 168 Projects totalling some 13.5GW of capacity exists. The Company's offers of connection in some cases are 10 years in future. The Company is also aware of connection "queues" in parts of England and Wales such as the Thames Estuary and South Wales.</p> <p>At present The Company is aware of Projects throughout Great Britain that have a capacity in their Bilateral Agreement that is considerably in excess of the Project's apparent needs (e.g. based on planning consent applications, planning consent approvals etc) or where the User's Works required to utilise this capacity are unachievable by the Completion Date but nevertheless the User refuses to reduce their contracted position or</p>	

seek a delay to their Completion date.

This presents a number of issues for The Company:

- It causes uncertainty over the volume of transmission capacity necessary
- It create the potential risk of over investment
- The release of this capacity could permit other Projects to connect earlier than their current contracted date and present opportunities for new projects.

The proposed amendment seeks to address the issue of Users that have a contracted position that is inconsistent with their Project details (e.g. planning consent) or the construction programme. Whilst there are remedies available where a User does not progress or complete a Project, the nature of these remedies means that a User can hold onto TEC or capacity until very close to their connection date. Consequently, The Company is unable to utilise this capacity for other Users in a timely manner or review the works required, which has an adverse impact on competition. In addition the current remedies of termination may not be proportionate in all cases.

**Impact on the CUSC** *(this should be given where possible):*

As a minimum, the following changes are expected:

- New definitions in CUSC Section 11.3 – Definitions.
- Schedule 2 – Exhibit 1 (Bilateral Connection Agreement).
- Schedule 2 – Exhibit 2 (Bilateral Embedded Generation Agreement).
- Schedule 2 – Exhibit 3 (Construction Agreement).
- Schedule 2 – Exhibit 5 (BELLA).

**Impact on Core Industry Documentation** *(this should be given where possible):*

The proposed amendment may require a minor consequential changes to the STC (in particular the procedures relating to connection offers, STCP-18). In addition charging methodology changes may also be required for abortive works and deemed application fees.

**Impact on Computer Systems and Processes used by CUSC Parties** *(this should be given where possible):*

None.

**Details of any Related Modifications to Other Industry Codes** *(where known):*

None

**Justification for Proposed Amendment with Reference to Applicable CUSC Objectives\*\*** *(mandatory by proposer):*

The proposed amendment better facilitates the achievement of the Applicable CUSC Objectives as follows:

*(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence*

National Grid has a range of statutory duties and licence obligations which include ensuring the efficient, economic and co-ordinated operation of the GB Transmission System, the facilitation of competition and non-discrimination. The proposed amendment better facilitates the efficient discharge by National Grid of these obligations and, in particular, it is observed that:

- Existing arrangements allow Users to hoard capacity until the backstop date.
- The new arrangements would allow The Company to release capacity to Projects that are able to use it and thereby facilitate competition.
- It improves the level of certainty over the actual capacity connecting, reduces the amount of short term attrition and removes any potential risk of over investment

For these reasons, the proposed amendment would better facilitate Applicable CUSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence.

*(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent*

therewith) facilitating such competition in the sale, distribution and purchase of electricity

- By facilitating release of capacity from a Project that is manifestly unable to use it The Company can release this capacity to other Projects that are able to use it.
- The present arrangements may act as a barrier to entry to new Users to the extent that capacity is being hoarded.
- The connection process may be prolonged; this may deter new entrants to the generation market.

For this reason, the proposed amendment would better facilitate Applicable CUSC Objective (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

<b>Details of Proposer:</b>	
Organisation's Name:	National Grid Electricity Transmission plc
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	CUSC Party
<b>Details of Proposer's Representative:</b>	
Name:	Philip Collins
Organisation:	National Grid
Telephone Number:	01926 656143
Email Address:	Phil.collins@uk.ngrid.com
<b>Details of Representative's Alternate:</b>	
Name:	Andy Balkwill
Organisation:	National Grid
Telephone Number:	01926 655988
Email Address:	Andy.balkwill@uk.ngrid.com
Attachments (No):	

## ANNEX 3 - WORKING GROUP TERMS OF REFERENCE AND MEMBERSHIP

### Working Group Terms of Reference and Membership

#### TERMS OF REFERENCE FOR CAP150 WORKING GROUP

##### RESPONSIBILITIES

1. The Working Group is responsible for assisting the CUSC Amendments Panel in the evaluation of CUSC Amendment Proposal CAP150 tabled by National Grid at the Amendments Panel meeting on 29 June 2007.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the applicable CUSC objectives. These can be summarised as follows:
  - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence; and
  - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC amendment provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

##### SCOPE OF WORK

4. The Working Group must consider the issues raised by the Amendment Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Working Group shall consider and report on the following specific issues:
  - **assess impacts on CUSC parties**
  - **define the key milestones**
  - **understand scenarios when clause would be used**
  - **refunds if the works/assets are used elsewhere**
6. The Working Group is responsible for the formulation and evaluation of any Working Group Alternative Amendments (WGAAAs) arising from Group discussions which would, as compared with the Amendment Proposal, better facilitate achieving the applicable CUSC objectives in relation to the issue or defect identified.
7. The Working Group should become conversant with the definition of Working Group Alternative Amendments which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual Member of the Working Group to put forward a Working Group Alternative Amendment if the Member(s) genuinely believes the Alternative would better facilitate the achievement of the Applicable CUSC Objectives. The extent of the support for the Amendment Proposal or any Working Group Alternative Amendment arising from the Working Group's discussions should

be clearly described in the final Working Group Report to the CUSC Amendments Panel.

8. The Working Group is to submit their final report to the CUSC Panel Secretary on 20 September for circulation to Panel Members. The conclusions will be presented to the CUSC Panel meeting on 28 September 2007.

## MEMBERSHIP

9. It is recommended that the Working Group has the following members:

Chair	Duncan Burt	
National Grid	Phil Collins	
Industry Representatives	Garth Graham	Scottish and Southern
	Dennis Gowland	Fairwind Orkney Ltd
	Laura Jeffs	Centrica
	Robert Longden	Airtricity
	John Morris	British Energy
	Alec Morrison	Scottish and Southern
	John Norbury	RWE
	David Scott	EDF
	Ben Sheehy	E.ON
	Tim Russell	Russell Power
Authority Representative	Jenny Boothe	Ofgem
Technical Secretary	Clare Talbot	National Grid

[NB: Working Group must comprise at least 5 Members (who may be Panel Members) and will be selected by the Panel with regard to WG List held by the Secretary]

10. The membership can be amended from time to time by the CUSC Amendments Panel.

## RELATIONSHIP WITH AMENDMENTS PANEL

11. The Working Group shall seek the views of the Amendments Panel before taking on any significant amount of work. In this event the Working Group Chair should contact the CUSC Panel Secretary.
12. Where the Working Group requires instruction, clarification or guidance from the Amendments Panel, particularly in relation to their Scope of Work, the Working Group Chair should contact the CUSC Panel Secretary.

## MEETINGS

13. The Working Group shall, unless determined otherwise by the Amendments Panel, develop and adopt its own internal working procedures and provide a copy to the Panel Secretary for each of its Amendment Proposals.

## REPORTING

14. The Working Group Chair shall prepare a final report to the 28 September Amendments Panel responding to the matter set out in the Terms of Reference.

15. **A draft Working Group Report must be circulated to Working Group members with not less than five business days given for comments.**
16. Any unresolved comments within the Working Group must be reflected in the final Working Group Report.
17. The Chair (or another member nominated by him) will present the Working Group report to the Amendments Panel as required.

#### WORKING GROUP ATTENDANCE REGISTER

		18/7/07	22/08/07	7/09/07	21/09/07	5/10/07	12/10/07
Duncan Burt	Chair	x*	✓	✓	✓	✓	✓
Clare Talbot	Technical Secretary	✓	x	✓	✓	✓	✓
Phil Collins	National Grid	✓	✓	✓	✓	✓	✓
Chris Newett	National Grid	✓	✓	x	x	x	x
Garth Graham	Scottish and Southern	✓	✓	✓	✓	x	✓
Dennis Gowland	Fairwind Orkney Ltd	✓	✓	✓	✓	✓	✓
Laura Jeffs	Centrica	✓	✓	✓	x	✓	✓
Robert Longden	Airtricity	✓	✓	✓	✓	✓	x
John Morris	British Energy	✓	✓	✓	✓	✓	✓
Alec Morrison	Scottish and Southern	x	x	✓	✓	x	✓*
John Norbury	RWE	✓	✓*	✓	✓	✓	✓
David Scott	EDF	✓	✓	✓	✓	✓	✓
Ben Sheehy	E.ON	✓	x	✓	✓	✓	✓
Tim Russell	Russell Power	✓	✓	✓	x	✓	✓
Jenny Boothe	Ofgem	✓	✓	x	✓	✓	✓

#### Note

\* Indicates an alternative representative attended the Working Group meeting on their behalf.

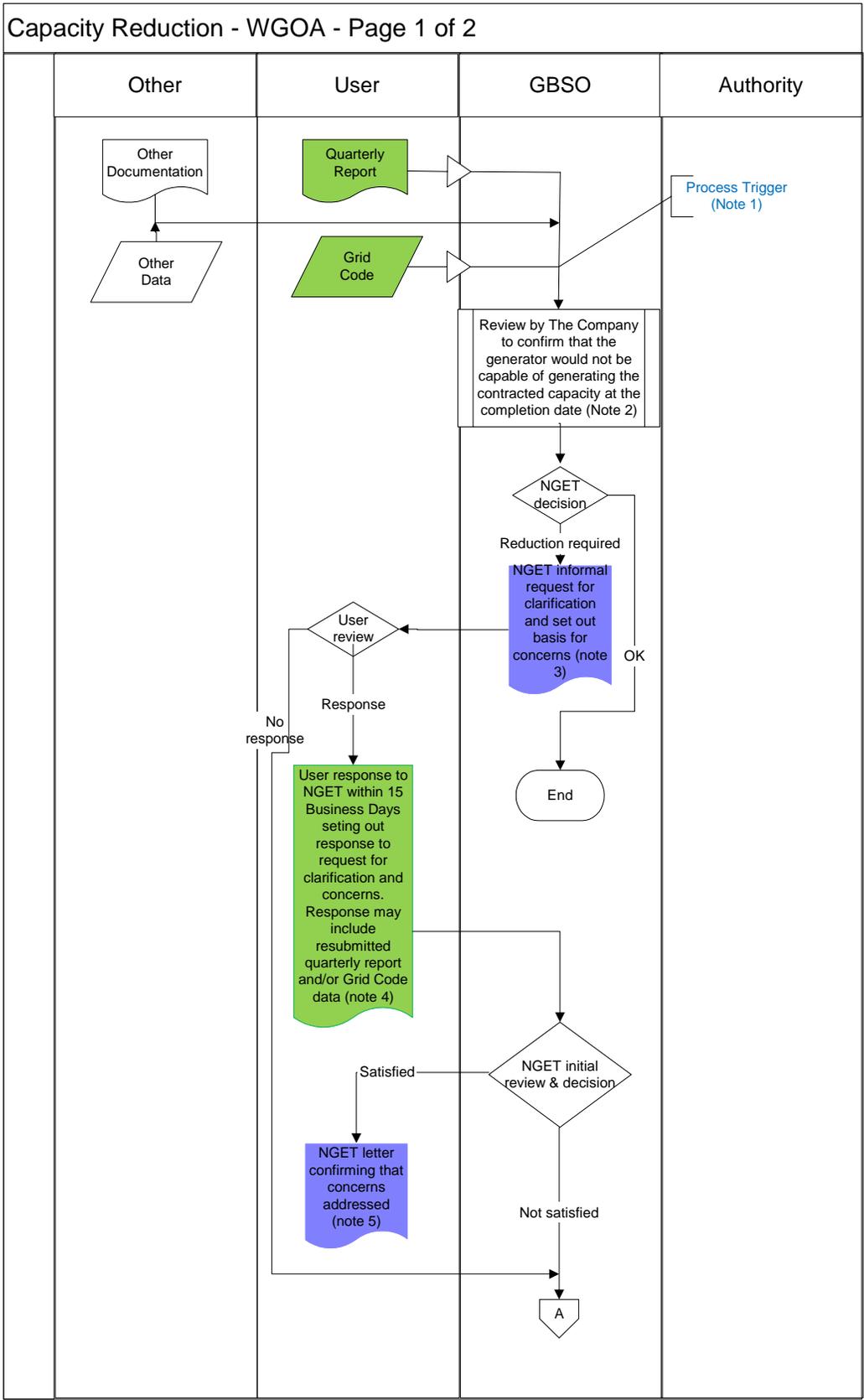
**ANNEX 4A – PROCESS FLOW DIAGRAMS****Part A****PROCESS FLOW DIAGRAM TO GIVE EFFECT TO THE ORIGINAL PROPOSED AMENDMENT**

## Stage:

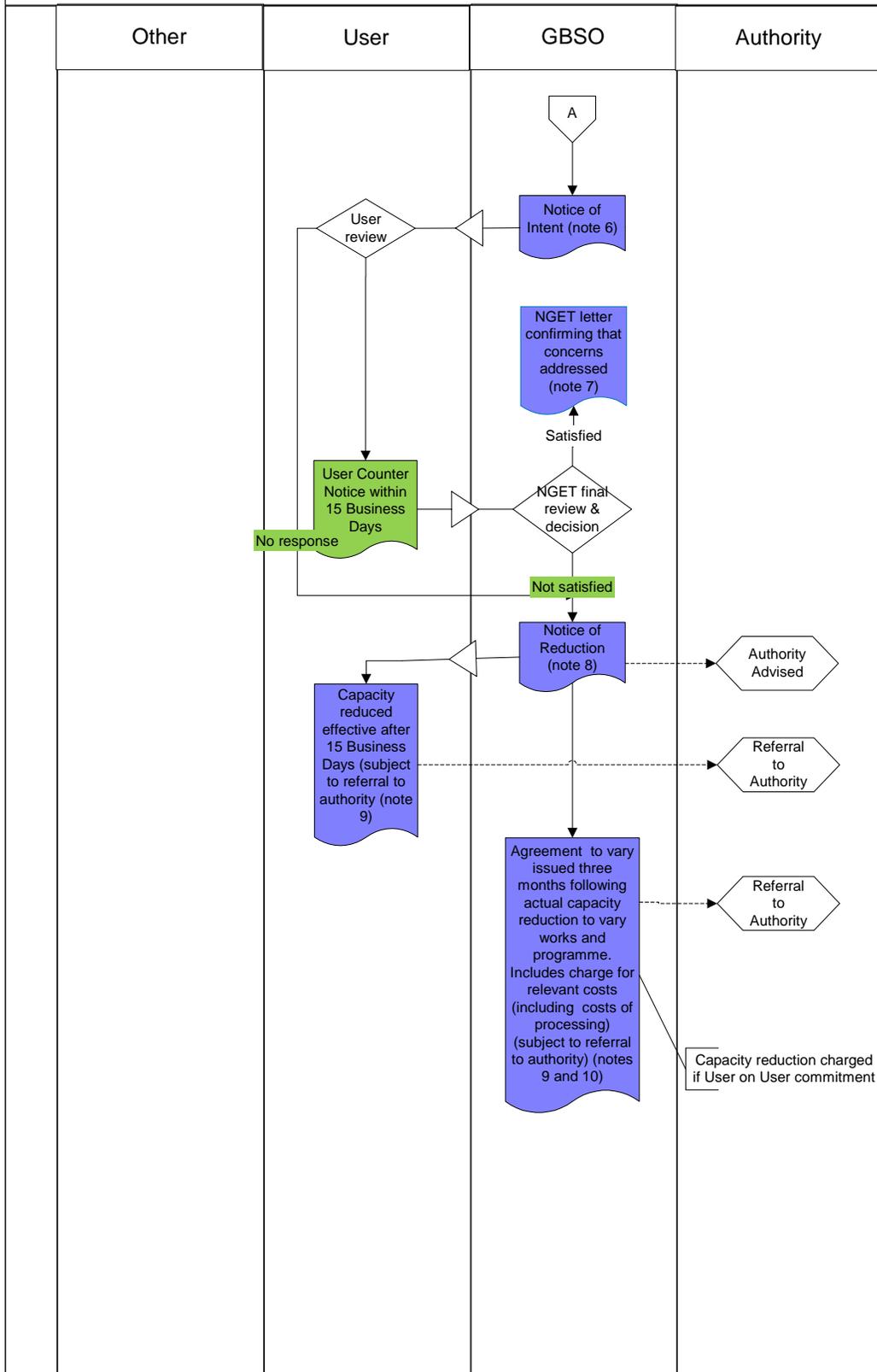
1. Information is provided to through the developer's quarterly report (Construction Agreement clause 2.8) or Grid Code submissions (Detailed Planning Data). Information may also be gained from other sources, of which National Grid expects to be of sound legal basis in the pursuing process. Should this information be different from or cause effect to the GBSO to doubt the relevance of the Transmission Entry Capacity in App C of the Bilateral Connection Agreement or BEGA; the User Works set out in Appendix I or the Construction Programme App J of the Construction Agreement, it shall initiate an internal review.
2. The following key criteria would be a good initial list of criteria for National Grid to use when deciding if a reduction is required.
  - Reduction would result in different assets or works
  - Assets are being or could be used by another User
  - If the holding onto the capacity results in inefficient investment
  - If it causes a (significant) cost on a third party
  - Potentially has an affect on charge setting (including TNUOS)
  - Has an affect on the outages required
3. National Grid will issue a letter to the developer requesting clarification over the aforementioned discrepancy, requiring the developer to respond in 15 business days.
4. At this stage the developer has to assuage National Grid's concerns, possibly through submitting a Modification Application or by providing adequate reason as to why the BCA/BEGA and Construction Agreement are not in agreement with the information that initiated this process.
5. If the developer satisfies National Grid's concerns then National Grid will inform the developer in writing.
6. Should the developer fail to satisfy National Grid it shall be served a Notice of Intent, which offers the developer 15 business days before further action is taken.
7. If the developer satisfies National Grid's concerns within this period then National Grid will inform the developer in writing.
8. Upon no adequate response by the developer, a Notice of Reduction will be issued to the developer, stating capacity will be reduced (Transmission Entry Capacity – App C of the BEGA or Bilateral Connection Agreement). The developer has the right to refer this to the Authority, where the notice will be deferred until a determination is made. At this point the Authority is advised.
9. After 15 business days of the Notice of Reduction, National Grid will automatically issue an Agreement to Vary, which will change Appendix C of

the BEGA or Bilateral Connection Agreement (TEC). This change is subject to referral to the Authority.

10. Within three months of the change to Appendix C (or A in the case of a BELLA) National Grid will issue an Agreement to carry to make the necessary changes to the construction agreement as a consequence of the reduction in capacity.
11. The developer will be charged by the GBSO for the costs of processing the agreement and revising the programme of works. Upon reduction the developer will be lose the final sums placed with the GBSO (associated with the reduced capacity), which may be refunded should there be reuse of the assets. The developer has the right to refer this Agreement to Vary to the Authority.



Capacity Reduction - WGOA - Page 2 of 2



**ANNEX 4B – PROCESS FLOW DIAGRAMS****Part B****PROCESS FLOW DIAGRAM TO GIVE EFFECT TO THE WORKING GROUP  
ALTERNATIVE AMENDMENT****Stage:**

1. Information is provided to through the developer's quarterly report (Construction Agreement clause 2.8) or Grid Code submissions (Detailed Planning Data). Information may also be gained from other sources, of which the GBSO expects to be of sound legal basis in the pursuing process. Should this information be different from or cause effect to the GBSO to doubt the relevance of either the Connection Entry Capacity and/or Transmission Entry Capacity figures in App C of the Bilateral Connection Agreement or BEGA; or the Construction Programme App J of the Construction Agreement, it shall initiate an internal review.
2. The GBSO will issue a letter to the developer requesting clarification over the aforementioned discrepancy, requiring the developer to respond in 15 business days.
3. At this stage the developer has to assuage the GBSO's concerns, possibly through submitting a modification application or by providing adequate reason as to why the BCA/BEGA and Construction Agreement are not in agreement with the information that initiated this process.
4. Should the developer fail to satisfy the GBSO, it shall be served a Notice of Intended Termination, which requires the developer to submit a modification application or face termination of the Construction Agreement. At this stage the developer may refer the notice to Ofgem, which would defer the termination until a determination is made by the Authority.
5. Faced with a Notice of Intended Termination, the developer is incentivised to submit a Modification Application which must satisfy the concerns originally expressed by the GBSO. The GBSO will then, in accordance with the CUSC, treat the application in the manner of any other and prepare an offer.
6. The developer has the right to refer this offer to the Authority (as it can with any offer), however if the Authority has already determined on the original Notice of Intended Termination, the developer should not refer the original points of dispute between the GBSO and itself. Should the developer not sign the offer, such that it lapses, the original construction agreement will be terminated. Upon termination the developer will be lose the final sums placed with the GBSO, which may be refunded should there be reuse of the assets.

