

Minutes and Actions Arising from Meeting No.94 Held on 23 March 2009

Present:

Mark Ripley	MR	Panel Chair
Bali Virk	BV	Secretary
David Smith	DS	Panel Member (National Grid)
Emma Carr	EC	Panel Member (National Grid)
Paul Jones	PJ	Panel Member (Users Member)
Paul Mott	PM	Panel Member (Users Member)
Garth Graham	GG	Panel Member (Users Member)
Bob Brown	BB	Panel Member (Users Member)
Barbara Vest	BVest	Panel Member (Users Member)
Tony Dickey	TD	Panel Member (Users Member)
Simon Lord	SL	Panel Member (Users Member) via teleconference
Dave Wilkerson	DW	Alternate Panel Member (Users Member)
Dipen Gadhia	DG	Ofgem Representative

In Attendance

Carol Hook	CH	National Grid
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1 Introductions/Apologies for Absence

1822. Apologies for absence were received from Alison Kay, Nigel Cornwall, David Jones, and Kathryn Coffin.

2 CAP170 Presentation & Meeting Discussion

1823. DS gave a presentation describing the CAP170 "Category 5 System to Generator Operational Intertripping Scheme" Amendment Proposal and the views and representation received to the Company Consultation. The presentation can be found at:
http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/Panel/2009_current/10/
1824. DS confirmed that the Company Consultation closed on the 13 March 2009 and that 14 non confidential and one confidential responses were received to the company consultation none of which were supportive of CAP170. The one private and confidential response was copied to Ofgem.
1825. A debate was held with regards to the one private and confidential response that was received by National Grid in response to the CAP170 Consultation. Panel members asked if the private and confidential consultation response received was supportive of CAP170, and DS confirmed that the response was not supportive of CAP170.
1826. Panel members expressed their concerns in relation to the Panel vote for CAP170 that they would not have the "full picture" as Panel members will not be able to take into account all fifteen consultation responses.
1827. BVest asked if the private and confidential response could have been made

anonymous, similar to the, process currently undertaken in the BSC Panel. Suggestions were made if a “Closed Panel Session” could be held to review private and confidential responses. Another option discussed was for National Grid to ask permission from the Company who have sent a private and confidential response for it to be disclosed the CUSC Panel members only.

1828. The Panel Secretary was asked to update the Terms of Reference for the GSG to include a review of the process for private and confidential consultation responses: with a view to implementing industry best practices into the CUSC.

Action: NGET

1829. It should be noted that CUSC Panel members have not had sight of the one private and confidential response received to the CAP170 consultation.

1830. BB raised concerns regarding the lack of a cost benefit analysis within the report. DS highlighted the issues regarding confidentiality provisions. The Panel noted the difficulties faced by National Grid in terms of quantifying the defect due to the bounds of confidentiality provisions but noted that this can impact on the Panels’ ability to make a recommendation. The Panel debated the issue further and made some suggestions about how this issue could be addressed in the future. However, GG reminded the Panel that the requirement for confidentiality derives from the Electricity Act 1989. DS confirmed this to be the case and clarified it was S105 of the Electricity Act.

1831. DG confirmed that Ofgem will be carrying out an impact assessment on CAP170. GG asked DG if the impact assessment will be for 12 weeks as recommended by the House of Lords Select Committee in 2007, which DG noted GG had raised at the time¹. DG confirmed that the Ofgem usual period for consultation is 6 week and this is still being considered in the case of CAP170 although DG noted that a shorter period than 6 weeks might be adopted given the urgency of CAP170. GG noted that this seemed to run counter to the 12 weeks recommended by the House of Lords Select Committee.

1832. BVest asked DG when the Authority will make a decision on CAP170. DG confirmed that the Authority will do this as soon as possible.

1833. BB raised a concern with the process (of issuing documents after normal close of business), in that the timetable as directed by the Authority was not followed (with the Company Consultation being issued at 21:15 on the 03/03/09). CUSC Panel members discussed this issue. DS explained to the Panel that the original timetable agreed by the Panel was reduced by Ofgem and therefore NGET followed the timetable set by Ofgem on the 2 March 2009, which was bought forward. EC highlighted that the timing followed for the Company Consultation remained within CUSC protocol, and whilst it may not be regarded as good industry practice similar timings for circulation have occurred for previous Amendments.

¹ For example see GG comments at the November 2007 CUSC Panel (para 1289) regarding the House of Lords Select Committee report on Economic Regulators:-

“1289. With regard to CAP131 and the previous indication from Ofgem that it would undertake a six week Regulatory Impact Assessment GG asked, in the light of the recent House of Lords Select Committee report, if a longer consultation period was envisaged. GG was mindful of the Committee’s recommendation “In particular, we recommend that wherever possible regulators allow for at least a 12 week consultation period in their forward planning to give industry a reasonable amount of time to respond to their papers”

1834. The Panel Chair asked the Panel members in turn to express their view on the process followed in the case of CAP170 and the views expressed are detailed below:
1835. Bob Brown – Felt that the consultation could have been brought forward and in the absence of definition in the CUSC, good industry practice should be applied. In this case the Company Consultation was sent out too late on 3 March 2009 and therefore did not meet the timetable set by Ofgem or good industry practice.
1836. Paul Jones – Did not consider the Company Consultation being sent out after the close of business was an issue, as long as it is available for the start of the following business day, and therefore did comply with the timetable set by Ofgem.
1837. Barbara Vest – Agreed with BB and overall this did not meet good industry practice.
1838. Garth Graham – Noted that there was a definition of business day / working day in both the CUSC and the Electricity Act 1989 and therefore the Company Consultation Document was sent out too late.
1839. Tony Diccico – Agreed with BB and BVest and stated in the future any timetable needs to ensure clarity regarding business days.
1840. Paul Mott – Agreed with BB, BVest and TD, commenting particularly that the consultation closed at 14:00 and yet here we were over an hour before then about to vote without having seen the responses – as had been flagged and raised by Bob Brown in correspondence on Friday (20th March).
1841. Simon Lord – Did not consider the Company Consultation being sent out after the close of business was an issue, as long as it is available for the start of the following business day, and therefore did comply with the timetable set by Ofgem.
1842. Emma Carr – Stated that National Grid has adhered to the Ofgem timetable.
1843. BVest indicated that had the Panel been aware of the breadth of impact associated with the CAP 170 proposal, relating to the changes to Bilateral Agreements and application regarding future derogations, they may not have recommended it be processed as urgent. This was debated by the Panel with a majority of five supporting this view including GG, who confirmed that he did not vote for urgency at the Panel meeting on 27th February (which discussed CAP 170 urgency) and in his opinion, the issue of costs of constraints had been known about since at least last November and therefore could have been raised earlier.
1844. DS highlighted to the Panel that he did not believe that the detail within the Company Consultation extends beyond the scope of the Amendment Proposal, which explicitly states the requirement to amend Bilateral Agreements, as well as indicating that the proposal relates to a generic derogated non-compliant transmission boundary, rather than explicitly referencing an existing boundary. GG asked if there currently existed a derogated non-compliant transmission boundary in GB. DS confirmed that the Cheviot boundary was the only one currently.
1845. BB and PM raised concerns regarding the deadline for comments by industry on the draft Amendment Report closing at 14:00 on the 23rd March after the Panel meeting started at noon on 23rd March. The Panel debated this issue and highlighted this was undertaken as an additional step and was not required as part of the urgency

timetable approved by the Authority but National Grid believed that it would be beneficial for industry to comment (National Grid informed the Panel of this intention on the 6th of March 2009). EC also confirmed that this step was undertaken in accordance with CUSC and has been undertaken in a similar manner for previous Amendments. DS reminded the Panel that his presentation had included main points raised by respondents up to noon on 23rd March and if any response raised a significant issue after the Panel, the Panel would be informed and necessary steps taken to obtain the Panel's views prior to the submission of the Final Amendment Report to the Authority.

1846. PM raised concerns regarding the methodology which is subject to a separate consultation under the Procurement Guidelines. His main concerns were that there was insufficient detail on the methodology and the document was published on 12th March, a day before the CAP170 Company Consultation closed on the 13th March. The Panel debated this issue and DS confirmed the Procurement Guidelines are subject to a separate consultation process, and all responses will be separately considered. The Panel agreed that CUSC Parties should be encouraged to respond to the Procurement Guidelines consultation.
1847. The Panel discussed the contents of the Draft Amendment Report and highlighted a number of changes. CH agreed to update the Amendment Report.

Action: CH

3 CUSC Amendment Panel Vote

1848. CAP170 Category 5 System to Generator Operation Intertipping Scheme

1849. The Panel voted as to whether CAP170 facilitated the Applicable CUSC Objectives. The outcome, and discussion was as follows:

CAP170 No – Majority (7 No, 1 Yes)

The Panel recommends that CAP170 should not be approved by the Authority and requested that the report, minutes and headline report note that if the Authority decides to approve CAP170 it would be potentially appealable to the Competition Commission.

The voting is detailed below:

Paul Jones AGAINST – Uncertainty regarding the Amendment and the lack of detail in relation to the methodology. He believes the Amendment is not clear in terms of who is liable if erroneously the signal is or is not sent to a user's circuit breaker. In addition he does not support the retrospective nature of CAP170, or its applicability in relation to any further boundaries becoming derogated. This creates further uncertainty and CAP170 would therefore be detrimental to competition. Therefore does not better facilitate the Applicable CUSC Objectives.

Bob Brown AGAINST – Welcomes measures to reduce costs but CAP170 needs to clearly demonstrate both the costs and benefits. Considers the retrospective application not to be a concern, if justified by the benefits. However, in his view the report is deficient in terms of a cost benefit analysis but he recognised that this was caused by confidentiality issues. BB believes that urgent amendments carry a higher degree of risk, because of the compressed timescale, and that this risk needs

to be taken into account when judging costs and benefits. He believed that the report does not clearly set out demonstrable benefits and for that reason is unable to support CAP170. Therefore does not better facilitate the Applicable CUSC Objectives and is not better than the current baseline.

Barbara Vest AGAINST – Major uncertainty regarding CAP170 and continues to advocate concerns regarding the breadth of impact associated with the proposal. CAP170 would have a negative impact on competition and the retrospective nature will impact future investment in the UK. Therefore does not better facilitate the Applicable CUSC Objectives.

Garth Graham AGAINST – In relation to CUSC Applicable Objective (a) regarding the proposed CUSC drafting 4.2.A.8 Implementation, he believes the 5 day period will not allow for a full assessment, including technical and safety issues, to be undertaken prior to a generator receiving an agreement to vary. For that reason he believes that this will threaten security of supply and future investment in the UK arrangements. In relation to CUSC Applicable Objective (b) CAP170 removes commercial agreements that are currently in place and discriminates against different users. In addition, administered pricing and a retrospective change do not facilitate effective competition. Therefore does not better facilitate the Applicable CUSC Objectives.

Tony Diccico AGAINST – Shares the Proposer's concern over the scale of constraint costs and believes actions should be taken to address these costs. However, he does not believe that CAP170 is the best solution. TD believes that an administered solution is not the best solution and would prefer a market based approach and does not support the retrospective nature of CAP170. In addition there needs to be appropriate incentive on the TO's to reduce constraint costs. Therefore does not better facilitate the Applicable CUSC Objectives.

Paul Mott AGAINST – No clear relevant defect – root cause of high BSUoS appears to be onerous bid prices being accepted on fossil generators North of the B6 boundary. CAP170 does not address this. It does not better facilitate competition (CUSC Applicable Objective B) as competition would imply commercial, not regulated, intertrip prices. Terribly damaging to investment incentives (therefore detrimental to CUSC Applicable Objective A), and comes with talk, as announced at the last Panel, of other change proposals soon to be released, to impose offer and bid price regulation (other than in the context of abuse of a dominant position). These changes represent a move away from the market. The UK competes to attract investment into generation as part of a global market. By 2013 it will be short of capacity.

The effect of CAP170 is unclear - as more boundaries may be "derogated" in future, and it is clear that new intertrips could be imposed even on those without a commercial scheme in place at present – it's not just limited to regulating the price of existing schemes.

Poor process (it is really bad that voting is taking place before the final consultation responses are in), and lack of industry scrutiny as there were no working group meetings, mean that CAP170 is likely to turn out to be more flawed than already appreciated. There was no change that justified urgency, high BSUoS was known about since the BSC Panel was told in October 2007. Against new areas of price regulation as this represents a move away from the market, but taking CAP170 as it stands: giving a flat £400k per trip for a 51 MW hydro or wind plant in South Scotland that can come back in hours versus larger plant that may in some cases take several

days to come back, is unjustified and needed review in category 2 and 4 intertrips anyway.

Simon Lord AGAINST – Does not facilitate CUSC Objective (a) or (b) and CAP170 is not developed enough in particular in terms of the way it would be implemented on different plant types, fails to take into account different plant risk profile and provides no financial incentives.

Emma Carr FOR – CUSC Applicable Objective (a) Allows National Grid to efficiently manage constraints at a non-compliant boundary and an administered solution is appropriate in this case as competition is limited and does not provide a sustainable long term solution. EC also noted and appreciates the industry and CUSC Panel members concerns regarding the lack of industry involvement.

4 A.O.B

1850. DG informed Panel members that Ofgem intend to carry out an impact assessment for CAP167 “Definition of a threshold(s) associated with a request for a Statement of Works”. The Transmission Access CAP161– CAP166 impact assessments are to be published in due course.. Ofgem are giving consideration of the interaction between CAP168 and CAP164 to CAP166 and may issue separate impact assessments for CAP161 to 163 and CAP164 to CAP166 plus CAP168, with the CAP161 to 163 impact assessment coming out by the end of April with the CAP164 to CAP166 plus CAP168 impact assessment to follow later.

5 Record of Decisions – Headline Reporting

1851. The Panel Secretary will circulate an outline Headline Report after the meeting and place it on the National Grid website in due course.

Action: Panel Secretary.

6 Date of Next Meeting

1852. The next meeting is scheduled for Friday 3 April 2009, at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA.