

CAP179: Prevention of “Timing Out” of Authority decisions on Amendment Proposals

CUSC Amendments Panel, 29th January 2010



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CAP179: Background

- ◆ “Timing Out” of a BSC Modification Proposal occurred in 2007 for P198, P200, P203 and P204
 - ◆ The Authority was unable to reach a decision before the “decision by” date included in the Final Modification Reports
- ◆ Subsequent Judicial Review ruled that Authority was unable to make a decision once latest “decision by” date had elapsed
- ◆ Following this, Ofgem consulted the industry on “timing out”, which raised a number of concerns
- ◆ Ofgem’s last consultation, in May 2009, included proposed licence modifications to try to prevent “timing out” reoccurring
- ◆ National Grid’s response to that consultation stated our preference for a code-based solution
- ◆ BSC, UNC and CUSC modification proposals all raised in January 2010

CAP179: Issues to be addressed

- ◆ CAP179 seeks to address three issues:
 1. “Timing out” of decisions on Amendment Proposals
 - ◆ May cause unnecessary costs to the industry from wasted time/resource spent in developing an Amendment Proposal
 - ◆ May result in uncertainty over the future of a timed out proposal and the timescales surrounding it (e.g. whether it will be raised a second time)
 2. Concerns over ongoing validity of supporting analysis
 - ◆ where a sufficient period of time has elapsed between a Final Amendment Report being submitted and an Authority decision
 3. Timely decision making on Amendment Proposals

CAP179: Proposal

1. Wherever possible, Implementation Dates should use the existing working practice construction:
 - ◆ "XX business days/months after receipt of an Authority decision"
2. Where a "fixed" implementation date may be preferable, the Panel should be mindful of the potential for "timing out" when setting proposed implementation/ "decision by" dates

In addition, when using "fixed" implementation dates, a process should be created to:

- ◆ allow the Authority, on identifying its inability to meet a "decision by" date, to write to the Amendments Panel, setting out its reasons for not meeting the date and requesting a revised set of dates
- ◆ allow the Panel to consult with the industry on a revised set of implementation dates and whether the industry wishes to raise any other relevant time-bound issues
 - ◆ e.g. to question whether any analysis undertaken to support the Amendment Proposal has also "timed out"

CAP179: Proposal

3. Introduce a new process to trigger the Panel Secretary, at the request of the Amendments Panel, to write to the Authority to request an indication of a likely date for an Authority decision
 - ◆ Trigger could be either a set period of time elapsing after receipt by Authority of a final Amendment Report; or
 - ◆ the Amendments Panel raising a reasonable concern related to the pending Amendment Proposal, for example that the analysis may soon become out of date.

CAP179: Assessment against Applicable Objectives

- ◆ National Grid considers that CAP179 would better facilitate achievement of applicable objective (a): "the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence"
- ◆ Specifically with regard to standard condition C10 of the licence, as follows:
 - "6. The licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the applicable CUSC objectives, which procedures shall provide [...]:*
 - (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Authority."*
- ◆ This Amendment Proposal seeks to clarify and formalise the arrangements by which an implementation timetable could be extended as described above and therefore better meets Applicable CUSC Objective (a).

CAP179: Proposed Next Steps

- ◆ Send CAP179 to Working Group for development
- ◆ Return to April 2010 Amendments Panel for consideration
 - ◆ Allow sufficient time for Working Group consultation