

Alternative approaches to breach, under an access sharing arrangement

The present breach provisions covering bilateral connection agreements and the CUSC relating to Use of System issues are contained in 5.4.1 to 5.4.3 of the CUSC. Essentially if a generator breaches its total access holding then National Grid can issue a notice requiring the generator to confirm that it will not repeat the breach. If it does repeat the breach then the SO may de-energise the equipment of the relevant User.

At the 23rd June 2008 Transmission Access Working Group 1 meeting, we discussed whether these breach provisions were appropriate for the sharing of access as envisaged under CAP163 ('Entry Capacity Sharing'), particularly when the individual party which caused an overrun on the sharing arrangement could not be identified. The following sets out some alternative approaches that could be used in such circumstances. It is expected that a formal overrun product would be the most appropriate solution, but the options below seek to provide a credible alternative, should CAP162 ('Entry Overrun') not be approved.

We assume that the donor and recipient¹ have a bilateral sharing agreement with each other which determines how they share the capacity with each other. It is not for the SO to worry how the total capacity is shared between the two parties, just to ensure that the aggregate level is not breached. In order to do this it will be necessary for the donor and recipient to inform the SO that they have a sharing agreement between power station X (the donor site) and power station Y (the recipient site). With this information the SO will be able to calculate the aggregate level of access (long and short term, as appropriate) held by these two sharing sites.

There are three main scenarios which can lead to the breach:

- A) The donor breaches its agreed level under the sharing agreement, but the recipient does not.
- B) The recipient breaches its agreed level under the sharing agreement, but the donor does not.
- C) Both donor and recipient breach their sharing agreement.

Ideally, the arrangements would target the donor under scenario A, the recipient under scenario B and both of them under scenario C. Under an arrangement where the parties have notified centrally to the SO the two quantities of access to be shared at the respective power stations (eg. power station X will share 100MW with power station Y, so the access of X will reduce by 100MW and Y will increase by 100MW) this would be possible to do directly.

However, when the aggregate position is only known then any sanctions can only be applied to the sharing parties collectively, thereby relying on them to

¹ We assume, for simplicity, a single recipient: the possibility of multiple recipients sharing a single donor's access should also be considered.

make appropriate arrangements to cover their individual positions through their bilateral sharing agreement. Thus, in our example above, the aggregate level of access is 100MW. If the SO sees, in aggregate, the two power stations have done 110MW the SO does not know which of them has breached, just that in aggregate they have both breached.

Some options for alternative approaches relating to breach of sharing arrangements are as follows. It is assumed that they would replace the provisions for issuing a notice and de-energising contained in 5.4 as discussed above. However, there may be the requirement to maintain the threat of de-energising for persistent offenders.

1. Administered price such as multiple of TNUoS.

In this situation the party or parties in breach would be charged a multiple of TNUoS for each MW that they breached their total access holding. Essentially this is one of the options being considered for overrun and should probably be pursued as part of that amendment if the group deems it to be attractive. An issue to consider is whether the amount arising from using a multiple of TNUoS could be considered a penalty and therefore not legally enforceable.

2. Both stations involved in the overrun are precluded from sharing with each other for a defined period

Under this option, once the breach occurs then the notified sharing arrangement is regarded as null and void for a defined period. In this time the parties could seek to share with others, but would be unable to share between the two power stations subject to the sharing arrangement under which the breach occurred.

The parties concerned would be able to agree appropriate compensation arrangements between themselves in their bi-lateral sharing agreement. For instance, under scenario A the donor could compensate the recipient for its loss of access and the requirement for it to seek an alternative donor. Under scenario B the recipient could compensate the donor for having to seek another recipient or part of the earnings it would have received from providing access.

This in effect would be like a mini breach of CUSC which was time bound. Other Users would be protected from future breaches for the duration of the defined period.

However, this approach could be seen as inequitable between the two parties. The recipient would have more to lose, as it may not be able to find an alternative source of access rights. The donor could continue to generate when it wanted to but would presumably lose income it would have received from the recipient. This position really reflects the positions of the two parties under the arrangement (ie the donor retains ownership of the rights in the long run). It does not necessarily suggest that the breach arrangements are

inequitable, just that the ultimate consequences are not symmetric because of the relative positions of the parties.

3. Both stations precluded from sharing in the zone for a period

This is a similar option to 2 above, but would go one step further. In this instance the donor and recipient would not be able to share with anyone in the zone concerned for a defined period. This should act as a greater incentive not to breach. However, it would arguably mean that the outcomes for the donor and recipient are more unequal than under option 2, as the stakes are higher.

One way to address this inequity would be to provide for a post event dispute, where the identity of the offending party could be established and the sanction applied to that party alone. Put simply the two parties would inform the SO of what their respective agreed MW figure, under the sharing agreement, had been per site so that the party (or parties) in breach was known.

This would allow a more tailored approach which would at least allow the recipient to control whether or not it was exposed to the breach provisions. For instance, if the donor breached the sharing arrangement, the recipient would be free to seek new donors, but the donor would not be able to share its capacity with other parties for a defined period. Conversely if it was the recipient at fault the donor would be free to seek other recipients for the access, whilst the original recipient would be precluded for a defined period from seeking access, from any donor, for the power station at which the original breach occurred.

Clearly, as the arrangements under option 2 above seek only to negate the original sharing arrangement, such a dispute arrangement would be meaningless, as excluding only one party would still preclude the whole sharing arrangement anyway.

In order for the cost of such a dispute mechanism to be kept down it may be desirable to provide an incentive for the offending party to admit that it caused the breach. Therefore, perhaps the period under which it is prohibited from sharing could be reduced in such circumstances.

4. Scale back arrangement in proportion to size of total breach

A less extreme arrangement than set out in options 2 and 3 above might be for the aggregate total access rights under the sharing arrangement to be scaled down in the event of a breach. For instance, if the total amount of capacity covered by the arrangement is 500MW and the two power stations run to a total of 520MW then the effective capacity of the arrangement from then on could be scaled down to $500\text{MW} * 500/520$ or about 481MW.

This would have two effects. Firstly, it would act as an incentive against breach as the sharing arrangement would be reduced in value. Secondly, if a

similar sized breach were to occur again, the level of capacity used would be no higher than the level of the original sharing arrangement.

The parties would be able to agree between themselves what this meant for their individual capacities under the bi-lateral sharing agreement. This would be a matter for them, but presumably an equitable solution would be for the offending party to take on the full level of the reduction rather than it to be shared between both the offending and innocent parties. Thus, in our example above, the offending party would see its access, under the sharing agreement, decline by 19MW.

This could be a more flexible arrangement which wouldn't sterilise all of the capacity in the arrangement, whilst still providing some protection to other Users. Some issues to address are:

Should there be some form of backstop arrangement to avoid persistent breaches? This option 4 mechanism could work each time a breach occurred which would potentially whittle away the level of access quite quickly.

What would happen if the agreement terminates? Are the parties precluded from entering a new agreement for a while or is the pre-termination level of restriction maintained for a period?

5. Use a post event dispute with present breach provisions

Another option would be to use a post event dispute mechanism to identify the party that caused the breach of the shared TEC arrangement. This would allow the present provisions of 5.4 to be applied to that party. An issue with this option would be what to do if no party is forthcoming. The solution in this circumstance could be to implement the provisions of 5.4 on both parties. This would potentially provide an incentive for the innocent party to provide evidence of the other's guilt.

Other issues for all options

Would these provisions be brought in for TEC trading or for TEC breaches as a whole? Some of the options would be difficult to apply to general TEC breach which would raise the issue of whether they could be unduly discriminatory.

What timescales would there need be to notify a party of its breach?

Would there be an opportunity for there to be a query from the generator/s concerned?

Would there be an appeal/arbitration facility?

What would an appropriate duration over which any sanction should exist?

Should a 'three strikes and you're out' arrangement be put in place to address the situation where a party persistently breaches (under which ever of the options) that would see the power station(s) in breach being de energised for a defined period (rather than the permanent de energised in the CUSC)?

10th July, 2008

Appendix 1 – Current Breach Provisions

5.4.1 Site Specific Breach by the User

If a **User** shall be in breach of any of the provisions of the relevant **Bilateral Agreement**, or the provision of the **CUSC** in relation to that particular connection to and/or use of the **GB Transmission System**, or (other than in relation to a **Supplier**, a **Small Power Station Trading Party**, an **Interconnector User** or an **Interconnector Error Administrator**) of the provisions of the **CUSC** enforcing the provisions of the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4), and such breach causes or can reasonably be expected to cause a material adverse effect on the business or condition of **The Company** or other **Users** or the **GB Transmission System** or any **User Systems** then **The Company** may:-

(a) where the breach is capable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and requiring the **User** within 28 days after receipt of such notice, or within any longer period agreed between **The Company** and the **User** to remedy the breach, the agreement of **The Company** not to be unreasonably withheld or delayed; or

(b) where the breach is incapable of remedy, give written notice to the **User** specifying in reasonable detail the nature of the breach and the reasons why the breach is incapable of remedy and requiring the **User** within 5 **Business Days** after receipt of such notice to undertake to **The Company** not to repeat the breach.

5.4.2 Grid Code Procedures - Future Compliance

Whenever **The Company** serves a notice on a **User** pursuant to Paragraph 5.4.1, **The Company** and the **User** shall discuss in good faith and without delay the nature of the breach and each shall use all appropriate procedures available to it under the **Grid Code** (including testing rights and the procedures set out in **OC5** (Testing and Monitoring)) in an attempt to establish as quickly as reasonably practicable a mutually acceptable way of ensuring future compliance by the **User** with the relevant provision of the **Grid Code**.

5.4.3 Site Specific Deenergisation

(a) If:

- (i) a **User** fails to comply with any valid notice served on it by **The Company** in accordance with Paragraph 5.4.1(a) or is in breach of any undertaking given in accordance with Paragraph 5.4.1(b) and such breach causes or can be reasonably expected to cause a material adverse effect on the business or condition of **The Company** or other **Users** or the **GB Transmission System** or any **User System**; or

- (ii) five **Business Days** have elapsed since the date of any valid notice served on the **User** in accordance with Paragraph 5.4.1(b) and no undertaking is given by the **User** in accordance with Paragraph 5.4.1(b);

The Company may:

- (iii) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate **Deenergise** the **User's Equipment**; or
- (iv) provided **The Company** has first complied with **OC5** Monitoring and Testing if appropriate request the owner/operator of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or such **User's Customers** (as the case may be); or
- (v) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transport of power by or on behalf of that **User** across the **Interconnector**,

upon the expiry of at least 48 hours prior written notice to the **User**, provided that at the time of expiry of such notice the breach concerned remains unremedied and that neither party has referred the matter to the **Dispute Resolution Procedure**. In such event **The Company** may:

- (aa) **Deenergise** the **User's Equipment**, or
- (bb) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is or to which the **User's Customers** are connected to **Deenergise** the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the relevant site of connection or the **User's Customers** (as the case may be), or
- (cc) in the case of an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or to procure the cessation of the transfer of power by or on behalf of that **User** across the **Interconnector**, forthwith following completion of the **Dispute Resolution Procedure** and final determination of the dispute in **The Company's** favour, subject to **The Company** having given, in the case of **Deenergisation** of an **Embedded Small Power Station**, the relevant **User** not less than

24 hours prior written notice and at the expiry of such notice the breach concerned remaining unremedied.

(b) If the **User** fails to comply with the **Grid Code** (but subject always to Paragraphs 6.3.3 and 6.3.4 of the **CUSC**) and the **Authority** makes a final order or a confirmed provisional order as set out in sections 25 and 26 of the **Act** against the **User** in respect of such non-compliance which order the **User** breaches **The Company** may in respect of the relevant **Connection Site(s)** or site(s) of connection:

- (i) **Deenergise the User's Equipment**, or
- (ii) request the owner of the **Distribution System** to which the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) is connected to **Deenergise the User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**),

upon the expiry of at least 48 hours prior written notice to the **User** provided that at the time of expiry of the notice the **User** continues to fail to comply with the order.