

**Actions Arising from Meeting No.1  
Held on 17<sup>th</sup> November 2004  
at Elexon HQ, 350 Euston Road, London, NW1 3AW**

**Present:**

**Members:**

Steve Drummond	SD	Chairman
Richard Dunn	RD	Secretary
Ben Graff	BG	National Grid Company
Neil Smith	NS	E.on UK
Bob Brown	BB	Cornwall Consulting

**In Attendance:**

Steve Moore	SM	EdF
Terry Ballard	TB	RWE/Npower
Richard Hall	RH	Elexon
Mark Manley	MM	Centrica
Steve Mckay	SM	Ofgem
David Edward	DE	Authority Representative
Dipen Gadhia	DG	Ofgem

**1 Introductions/Apologies for Absence**

1. Apologies for absence were received from Steve Phillips, David Lane, Malcolm Taylor and Simon Goldring. Mark Manley was attending on behalf of Simon Goldring.

**2 Verbal Report from the BSC/GSMG Meeting held am on 17<sup>th</sup> November**

2. SD indicated that all those present had also attended the meeting of the BSC Governance Standing Modification Group (GSMG) earlier that morning to discuss the parallel modification in the BSC (P180) and therefore there was no need to provide a further report to the meeting

**3 P93 Decision Letter/CUSC/GSG Report to the September 2004 Panel**

3. These background papers were noted.

**4 Draft Terms of Reference**

4. The draft TORs were agreed. In particular the Group agreed retention of the February date for reporting back to the CUSC Panel until the Panel indicated otherwise. There was perhaps a need for separate TORs for the Governance Standing Group element of the work on CAP077 required by the Panel.

### 5 Agree Work Procedures

5. The draft Procedures were agreed.

### 6 Clarify Defect Identified by CAP077

6. Essentially the defect addressed by CAP077 was that the CUSC provisions in relation to changing Implementation Dates are not sufficiently complete should an Authority Decision be legally challenged.
7. CUSC 8.2.3.3 only applies to extending Implementation Dates in the case of Approved Amendments. 8.2.3.3 does not apply in the case of rejected Amendments or quashed decisions so that it is unclear what status the Amendment has and there is no mechanism to set revised Implementation Dates for such Amendments.
8. The risk of continuing without CAP077 was that if, as a result of a legal challenge the outcome was to overturn the Authority Decision or to order a rerun of the Authority decision making process this could result in no time remaining for implementation or that there was insufficient time for the review to be completed before the given implementation date. This situation could also arise post 1<sup>st</sup> April 2005 in the context of appeals against an approved AP under the provisions of the Energy Act 2004. However, in the case of the latter it was still not certain that the CUSC would be included in the designated Codes (although DTI were clearly minded to include the CUSC) and the nature of the appeals process was subject to a consultation by the DTI which would not close until 27<sup>th</sup> December.

### 7 Identify Possible Solutions

9. The Group agreed that a generic approach to describing the challenge (Judicial Review and Appeals under the Energy Act 2004) as discussed at the BSC/GSMG meeting earlier that day to discuss P180 could be usefully adopted in the context of legal drafting for CAP077. The legal drafting would then be sufficiently general to include appeals but would not need to await the detailed outcome of the DTI consultation on the appeals process.
10. It was important for the Group to be clear on the status of a rejected or quashed AP in the event of JR or appeal and to what extent Paragraph 8.2.3.3 could cover the situation should a rejected AP be subject to JR or appeal. It was also unclear what the status of an approved, rejected or quashed Amendment Proposal was in the event of JR or appeal. BG agreed to seek legal advice on these issues.  
**Action: BG**
11. It was also suggested that a Strawman process diagram for CAP077 on the lines of that produced by Elexon for P180 would be useful in the CUSC context and an associated timeline. BG agreed to provide these in due course  
**Action: BG**
12. One possible approach in the Strawman process diagram produced for P180 that could be adapted for the CUSC was for the Authority to set revised implementation dates in the event of JR or appeal. This approach had no support from Members of

the Working Group and BG agreed with the Group that this constituted a very different approach to remedy of the defect envisaged by the National Grid as the proposer as it implied a change of governance.

13. Another possible approach which gained wide support within the Working Group was to agree a work process that would maintain existing Governance principles in that NGC would continue to propose and determine implementation dates and the Authority would approve these or not as the case may be.

### **8 Analysis of Responses to CUSC Amendment Proposal Consultations**

14. The analysis produced by NGC was discussed and noted.

### **9 Agree Future Meeting Dates**

15. 2<sup>nd</sup> December at Elexon HQ and 16<sup>th</sup> December at NGT House, Warwick identified as provisional future meeting dates. Both meetings would commence in the afternoon.

### **10 Prepare Timetable for CAP077 WG Report to CUSC Panel**

16. The Group agreed to aim to produce a draft Working Group report by mid-December.