

**Actions Arising from Meeting No.3
Held on 16th December 2004
at Brandon Hal Hotel, Brandon, near Coventry**

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
David Lane	DL	Clearenergy
Steve Moore	SM	EdF
Mark Manley	MM	Centrica
Angela Quinn	AQ	National Grid Company (item 7 only)

In Attendance:

Terry Ballard	TB	RWE/Innogy
Richard Hall	RH	Elexon
David Edward	DE	Authority Representative

1 Introductions/Apologies for Absence

1. Apologies for absence were received from Steven Eyre and Malcolm Taylor.

2 Notes of the Working Group Meeting held on 2nd December 2004

2. These notes were agreed subject to the inclusion of apologies from Bob Brown under item 1.

3 Meeting the CUSC Objectives

3. The Group unanimously agreed that both CAP077 and the Working Group Alternative Amendment (WGGA) better facilitated achievement of the Applicable CUSC Objectives (ACOs). All Members of the Group, except NGC, supported the original Amendment Proposal. NGC supported the WGAA.

4 Arguments for and Against the Proposal

4. There were 2 main arguments against CAP077:
 - (i) the Amendment Report could have alternative dates inserted at the time of writing the report which could be employed by the Authority in the event of a valid legal challenge;
 - (ii) MM suggested that a legal challenge could highlight new arguments or

issues for consideration by CUSC Parties and therefore there could be merit in allowing the Amendment Proposal to “time-out” and be considered afresh in due course.

5. All Members of the Group considered that (i) was inappropriate and inefficient since it required determination of an alternative date or dates when there was no need and could not take into account any special circumstances pertaining to the particular Amendment Proposal and the nature of the legal challenge. Group Members also believed that (ii) was unnecessarily inefficient since, if the legal challenge was subsequently unsuccessful, all the work on an approved amendment would need to re-commence and valuable time and effort in correcting a defect in the CUSC would have been lost. However, Group Members agreed that these two approaches should be mentioned in the Group’s final report to the CUSC Panel.
6. The Group noted that the Appeals mechanism will be in place at some stage next year and therefore there was a strong argument for CAP077 or WGAA to be in place as soon as possible to cater for the appeals regime when finalised by DTI and the existing risk of Judicial Review. However, In developing solutions to the agreed defect in the CUSC the Working Group agreed that any proposal should not introduce the ability to frustrate the CUSC governance arrangements.

5 Draft Working Group Report to the CUSC Panel

7. The Group agreed that the following detailed comments should be incorporated into the Working Group’s final report to the Panel:
 - (i) Paragraph 1.5 - strengthen in particular to make clear that the WG is recommending that the Panel endorse the WG Report and agree that the WG has met its Terms of Reference;
 - (ii) In Paragraph 4.10 insert “majority of the” after “The” and before “Working” in line 1;
 - (iii) Insert section in report based on BG’s worked example illustrations for Approved Amendment and Rejected Amendments;
 - (iv) the report should make it clear that there was a requirement in the Transmission Licence on NGC to propose viable Implementation dates for Amendment Proposals;
 - (v) DL said that the report should mention that the majority of the WG Members believed that the Proposed Amendment (with consultation of CUSC Parties) better facilitated the ACOs than the WGAA (without consultation). Also, if the Authority did not approve the Proposed Amendment then the report should make it clear that the Group believed that the WGAA should be approved as better facilitating the ACOs than the current CUSC baseline with its deficiency;
 - (vi) it was agreed that it should be mentioned in the Report that NGC was comfortable that CAP077 should not extend to a requirement on CUSC Parties to notify NGC of appeal or JR since NGC was confident that information about an appeal/JR would be in the public domain adequately for NGC not to learn of it by hearsay only. In addition NGC was concerned that

extending CAP077 in this way may go beyond remedy of the defect identified and thus be rejected by Ofgem as a “hybrid” Amendment Proposal.

8. MM argued for more reference to P180 in the report. However the view of the majority of the remaining Members of the Group was that the current references were adequate because of the danger of cross governance issues;

6 Process Diagrams

9. The following changes to the Process Diagrams in the draft report were agreed:
- (i) Amend both process diagrams in Section 4 to change “additional” in various task boxes to read “revised proposed”;
 - (ii) In the first Authority task box under the WGAA process diagram amend “raised” to read “granted leave to proceed”;
 - (iii) Adjust the process diagrams so that they appear on separate pages.

7 Legal Text for CAP077 and Working Group Alternative Amendment

10. The following changes to the Legal Text in the draft Working Group report were discussed and agreed:

Amendment Proposal and WGAA

- In 8.2.3.4 lines 1 & 2 delete “request” and change more to the wording in existing CUSC i.e. apply for a revision or revisions;
- In the definition of “Implementation Date” reference should be to Paragraph 8.23.3 not 8.2.3.3;
- In the definition of “Legal Challenge” adopt [not approve] and delete [reject]. As a consequence there was a need to change the first line of 8.2.3.5 to delete “reject” and replace with “not approve”;

Amendment Proposal only

- in 8.2.3.6 line 2 delete “8.2.3.4 or” and “s” at end of “Paragraphs”;
- add wording to 8.2.3.6 to tie in 8.2.3.4.

8 Consultation Questions

11. Given that the CAP077 was a narrow Amendment Proposal it was agreed that questions in the Consultation report were inappropriate.

9 Any Other Business

12. The Group noted that Elexon were seeking comments on the re-draft of the legal text for P180. It was also noted that the Competition Commission had recently issued its own consultation on the appeals procedure under the Energy Act 2004.