

Dear Sirs,

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd., Medway Power Ltd. and SSE Energy Supply Ltd.

In relation to the eight questions contained within your note of 9th January 2008 that arose from the Offshore Access Workshop on 3rd December 2007 we have the following comments to make. Before answering the eight questions we have some general comments to make.

In general, we believe that the access and charging regime for offshore generators should mirror, as closely as possible, the existing regime for onshore generators. Where differences do require a difference between the two groups of generators, then National Grid should be mindful of its obligations to avoid undue discrimination.

In regard to discrimination we have been mindful of the recent discussions, within the CUSC, on this matter and in particular as regards CAP148 (see for example paragraphs 4.90-4.92 (pg32) of the CAP148 Final Amendment Report) which we reproduce here for completeness.

"4.90 The WG agreed that the CAP148 proposals would introduce a degree of discrimination under the CUSC in favour of new (DTEC) renewable generation projects which would be offered different and more advantageous connection arrangements when compared with other TEC generation projects (i.e. existing conventional and renewable plus new conventional).

4.91 The key issue for the WG was whether this comprised "due" or "undue" discrimination. In the Ofgem/DTI (now BERR) letter to the CUSC Panel referenced earlier (see section 2.2) help is provided with the concept of 'due discrimination'. '... no discrimination arises where like situations are treated differently provided that the difference in treatment can be objectively justified.' A WG member noted that Ofgem had recently, in its discussion of matters of discrimination relating to the (UNC) Mod 116 Appeal to the Competition Commission, stated in its 'Summary of Case' at paragraph 11, that "the fact that two categories of persons are different in some respects cannot make it right to treat them differently in every respect. The question must always be whether the differences between them are sufficiently material to justify the particular difference in treatment". Also in its Mod 116 Appeal Ofgem referred to the 'Carson v Secretary of State' case (2005) which indicated, at paragraph 61, that were there is a difference in treatment that the Court would need to determine "did the difference in treatment have an objective and reasonable justification: in other words, did it pursue a legitimate aim and did the differential treatment bear a reasonable relationship of proportionality to the aim sought to be achieved?"

4.92 The WG member also noted that the 'Gebhard v Milan Bar Council' case (1995) indicated, at paragraph 37, that where "national measures [are] liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty [they] must fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it".

For the avoidance of doubt, taking the matter raised by Ofgem in its (UNC) 116 statement ("The question must always be whether the differences between them are sufficiently material to justify the particular difference in treatment.") we do not believe that the differences between onshore and offshore generators (as regards access and charging regime) are sufficiently material to justify a difference in treatment.

Access

[Q1] Do you agree that the principles applied to customer request design variations (as represented in the current arrangements or in the CUSC amendment CAP149) should extend

to offshore connections which, whilst compliant with the offshore standards in the SQSS, do not have the same levels of circuit redundancy as compliant onshore connections?

[A1] Yes.

[Q2] Currently, if a restricted capacity had to be shared between parties, entitlements would be set by pro-rating the different parties' capacities. Are more sophisticated arrangements required at this stage for offshore networks or is sufficient flexibility delivered through pro-rating and short term access products?

[A2] The principle of pro-rating should be applied. However, a mechanism should also be included, right at the outset of offshore transmission, to allow parties to trade their share to other parties on the same offshore network.

Compensation

[Q3] Should Offshore Transmission users be compensated for a loss of access due to a problem on the onshore component of the transmission system on the same basis as onshore users?

[A3] Yes.

[Q4] Do you agree that the most appropriate source for compensation to offshore users in the event of an offshore access restriction is the Offshore Transmission Owner under and OFTO Incentive framework?

[A4] The contractual relationship will be between the offshore generator and GBSO; hence compensation arrangements should be defined in the bilateral agreement and under the CUSC. If an OFTO incentive framework is put in place, then it may be appropriate to translate these arrangements into the STC and then equivalent arrangements brought under the CUSC. We do not support a direct bilateral agreement between offshore generator and OFTO. For the avoidance of doubt, given the situation where the offshore user(s) is paying 100% of the OFTO charges then 100% of any OFTO incentive must be paid back to the offshore user(s) - if there is any sharing of that incentive then, to avoid discrimination, this must be on the basis that the party receiving the incentive pays an equivalent % of any ongoing (day-to-day) charges.

[Q5] Should 'CAP048' style compensation payments only be available to offshore users who have a connection standard equivalent to the minimum standard specified in the SQSS for onshore users?

[A5] Broadly speaking Yes. For those offshore users who have the 'higher' onshore standard (for which they directly pay) applied to their offshore connection then the full CAP048 style compensation should be applied.

However, in addition, the principle of a 'TNUoS' style rebate (but NOT a Market Index Data price for the first 24 hours) should be applied where an offshore user (who have the 'lower', none onshore, offshore standard) lose their connection to the transmission system.

In other words if the (none onshore standard) offshore user pays £100 per day to connect to the transmission system then they should receive £100 per day (or part their-of) where that connect to the transmission system is denied to them (irrespective of whether the failure, by the network provider(s), is onshore or offshore). Users should not have to pay 'TNUoS' style charges for those periods when they are denied access to the transmission system as this penalises the User (who is the innocent party).

[Q6] Should any 'CAP048' compensation cover the onshore component of charges as well as the offshore component?

[A6] Yes.

Regards

Garth Graham
Scottish and Southern Energy plc