

DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM

FUEL SECURITY CODE

Guidance Note

OCTOBER 2007

Purpose

1. The purpose of this Guidance Note is to assist the reader in understanding the reasons for and background to the Fuel Security Code (the “Code”).
2. The aim of the Code is to assist with the effective management of a security period. A security period begins when the Secretary of State gives a direction under section 34(4)(b) of the Electricity Act 1989 that a generating station is to be operated in a certain way or with a view to achieving specified objectives. The Code enables Government to direct the electricity industry to provide information on power supplies and to take specific actions to manage the security period.
3. In revising the Code the opportunity has been taken to simplify the arrangements for managing a security period and to reflect the current industry structure and arrangements as well as the role of key players. Specifically, the roles of Department for Business, Enterprise and Regulatory Reform (“the Department”), the Joint Response Team of the Energy Emergencies Executive, National Grid, Distribution Network Operators (“DNOs”) and Generators are summarised.
4. In the event that complying with the Secretary of State’s directions results in exceptional costs being incurred, then the Code allows for the recovery of such costs. This Guidance Note describes in greater detail the arrangements for exceptional cost recovery

Structures

5. In this section the roles of key players with regard to the operation of the Code are described.
6. Role of Government

The role of the Government is, where circumstances permit, to take such steps under sections 34 (see above) and 35 (power to require the provision of information) of the Electricity Act 1989 as are required to manage a security period and prevent it from developing into a full blown supply emergency.

The Department would act as the lead Government Department during a security period. The Department would issue the necessary directions to industry under sections 34 and 35 of the Electricity Act 1989. The Department chairs the Joint Response Team.

7. Role of Joint Response Team

The Joint Response Team (“JRT”) is the operational arm of the government/industry emergency planning body, the Energy Emergencies Executive. The JRT would be established prior to or upon commencement of a security period

The JRT is chaired by the Department and includes representation from National Grid, Ofgem, the electricity industry and devolved administrations as appropriate,

depending on the incident. It would coordinate the application of the Code together with the collection and dissemination of information, as appropriate.

8. Role of National Grid

Given its function as the GB System Operator, National Grid has a key role in the management of a security period. If the Secretary of State exercises powers under section 34 of the Electricity Act 1989 to direct that power station(s) be operated in a particular way, thereby triggering the commencement of a security period and the application of the Code, (paragraph 12 below refers) then National Grid, under the direction of the Secretary of State, advised by the JRT, would provide information on the current and expected electricity generation and demand situation as well as the condition of the electricity network. National Grid would also act as the channel for all communication and direction from the Department to industry in respect of the FSC.

9. Role of industry

Industry is best placed to provide information to the JRT such as on the availability of electricity generation and on the condition of the electrical network. The role of both Generators and Distribution Network Operators would be to provide information on electricity generation and network conditions to National Grid and to implement any directions issued under the Code. It is intended that any direction issued under the Code would be based on information which industry is under an obligation to provide and should not, therefore, result in any breach of other legal requirements.

For the avoidance of doubt, no direction issued under the Code shall require the breaching by the Generator, National Grid or DNO of environmental or health & safety regulations. If the party in receipt of a direction considers that compliance with the direction would result in such a breach then that party must immediately inform the Department via National Grid of that fact. This will allow the Direction to be appropriately amended. This guidance should not be understood as in any way diluting the Generator's, National Grid's or the DNO's obligation under the Code to provide to the Department accurate data concerning generation availability and capability.

Compliance with any direction issued under section 34 or 35 of the Electricity Act 1989 takes precedence over any provision in the Balancing and Settlement Code ("BSC"), the Connection and Use of System Code ("CUSC"), the Distribution Code ("DC"), the Distribution Connection and Use of System Agreement ("DCUSA"), the Grid Code ("GC"), the System Operator Transmission Owner Code ("STC") or the Uniform Network Code (UNC). Complying with a Direction issued under the Code will not therefore be taken as involving a breach of any of these industry codes.

10. Role of Ofgem

Ofgem has a role as a part of the Joint Response Team. It also has a role post-emergency providing guidance to the BSC Panel with regard to the consideration of claims from Generators for exceptional costs recovery under the Code. It also has a role with regard to the consideration and determination of claims for exceptional cost recovery by National Grid and DNOs.

In addition to this the BSC Panel (or other market participants) may wish to advise the JRT if they believe that the market has become, or could become, unstable. Given their wider statutory duties it is appropriate that Ofgem, as a member of the JRT, acts as this communication channel between the BSC Panel (or other market participants) and the JRT.

Operation

11. Fuel Security Period

National Grid continuously monitors the status and operational stability of the GB electricity transmission network in the short, medium and long term. In the event of a predicted deficit between demand and generation, for example as a result of exceptionally high demand or the loss of generation capacity or a loss/shortage of fuel, then National Grid would inform the Department and the Secretary of State would decide, on the basis of that information, whether his powers under sections 34 and 35 of the Electricity Act 1989 should be exercised. A security period commences when the Secretary of State gives a direction under section 34(4)(b) of the 1989 Act that a power station is to be operated in a particular way.

Unless requested by the Department to treat the information about a security period being declared in a confidential manner, National Grid will, without delay, takes steps to inform all DNOs, Generators and other stakeholders that a Fuel Security Period is in effect.

Directions may not be issued to all Generators or DNOs. For example, with respect to generation a direction might be issued to

- (i) a single generating station or a small group of generating stations in a specific area of GB or
- (ii) generating stations (such as CCGTs, or oil or coal fired stations) either in a certain part of GB or across GB or
- (iii) to most if not all generating stations.

In certain circumstances the Department may request the recipient(s) of such direction(s) to treat them in a confidential manner until such times as the Department states otherwise.

12. Call for Information

National Grid would request information on available generation capacity, generation capability and on the condition of the distribution networks (including constraints etc.).

During any Fuel Security Period where National Grid requests of Generators information on their available generation capacity, Generators should inform National Grid if they can provide any additional generation capacity and/or maintain generation output for a longer period (without breaching any other legal requirement) by not complying with any provision in, for example, the BSC, CUSC, DC, DCUSA, GC or STC. The Department, mindful of the wider consequences were the security period to develop into a supply emergency, might wish to consider with the JRT issuing a Direction under the Code to Generators which would lead to the non compliance of provision(s) in those industry codes if it would increase the available generation capacity and /or its duration. For the avoidance of doubt, complying with a Direction issued under the Code will not lead to any breach of these industry codes, over which the Code takes precedence.

13. Direction

Directions to Generators and Distribution Network Operators would be prepared by the Department based on the information provide by industry to National Grid. The directions will generally be communicated to industry by National Grid on behalf of the Department. A direction will clearly state, at the top of the direction, that it is a direction given under section 34 or 35 of the Electricity Act 1989 to differentiate it from any other instruction that might be issued by National Grid (such as a Grid Code 'Emergency Instruction').

14. Monitoring

The effectiveness of the directions would be monitored by National Grid and reported to the Department via the JRT. If necessary further calls for information and directions may be required.

15. End of a Fuel Security Period

At the end of the security period the Department would declare an end to the Fuel Security Period. This would be communicated to industry via National Grid who will, without delay, takes steps to inform all DNOs, Generators and other stakeholders that a Fuel Security Period is no longer in effect.

Cost Recovery

16. Definition of Exceptional Costs

The Code does not seek narrowly to specify what is and what is not an exceptional cost. Rather, "exceptional cost" is broadly defined to allow a Generator, National Grid or DNO to make a claim for any costs which they believe they have incurred in complying with the Direction issued that would not have been incurred but for

the Direction being issued where those costs that were incurred were incurred necessarily, properly, and in good faith, on a basis consistent with commercial practice and procedures that were normal and prudent and only after all reasonable efforts had been made to establish that no practicable alternative course of action was available at a lower cost.

It is recognised that in a Fuel Security Period quick action maybe required in order to comply with a Direction and, therefore, given the operational urgency of the matter at hand, it may be reasonable to incur a cost that given a less urgent timescale might not have been incurred. The Code does not identify what these costs might be. It is for each claimant to specify these in their claim. However, to ease the handling of claims Ofgem (for National Grid and DNO claims) or the BSC Panel (for Generator claims) may wish to ask that claims are broken down into ‘sub-headings’ which might, for illustrative purposes, include such things as fuel costs, overheads, maintenance, staff overtime, damage/wear & tear to plant or apparatus, emission costs.

For the avoidance of doubt nothing in the Code will permit the double recovery of costs by Generators, National Grid or DNOs.

17. Presentation of Claim

With regard to claims made by National Grid and DNOs the arrangements for the presentation (and validation) of their claim will be determined by Ofgem.

All claims from Generators will be handled by the BSC Panel who may (to ease the handling of the claims) specify the format in which they wish the claim applications to be submitted etc. The BSC Panel may also require that the party making the claim provide such additional information or explanation (and provide such other assistance) as the BSC Panel deems necessary in order for them to assess the claim from the Generator. An Auditors’ statement may also be asked for from claimants by the BSC Panel.

Each claim application will be accompanied by a written statement (signed by a Director of the relevant Generator) of the circumstances in which they consider that they have incurred exceptional costs as a result of complying with a direction issued under the Code. A copy of each claim application should also be provided by the applicant to Ofgem.

Whilst ideally only a single claim should be made by each Generator the Department recognises that it may be appropriate for claims for interim payment(s) to be made.

18. Role of the BSC Panel

All claims from Generators will be handled by the BSC Panel who will determine if the sum claimed for exceptional costs by each Generator is valid. For the avoidance of doubt the BSC Panel may validate each element of each Generator’s claim as it sees fit.

The Department recognises that the issues at hand for each claim may be very technical or specialist in nature (depending on the circumstances). Therefore it wishes to make clear that under the Code the BSC Panel may, if it wishes and subject to Ofgem approval, establish a Fuel Security Code Claims Committee (“FSCCC”) (or such other sub-committees of the FSCCC as the BSC Panel considers appropriate and Ofgem approves) to handle certain (or all) aspects of the claims that fall upon the BSC Panel to determine (as the BSC Panel sees fit). For example, the BSC Panel might wish to allocate certain aspects of each claim, say plant damage, to a sub-committee made up of specialist engineers to consider whilst another aspect of the claim, such as fuel or emission costs, might go to a separate sub-committee of accountants etc., with the final (total) claim coming back to the BSC Panel to determine. If required to do so by Ofgem, the Panel will discuss with Ofgem any determinations to be made and, in making any such determinations, shall take account of any guidance given by Ofgem.

19. Mechanism for recovery.

Assuming that claims for exceptional costs are deemed to be valid (having been through the claims process outlined above) then the next stage is to recover the costs.

It should be noted that for National Grid and DNOs cost recovery mechanisms exist within their price control arrangements (subject to Ofgem approval) for them to recover their exceptional costs from Suppliers via, for example, their Transmission Network Use of System (“TNUoS”) or Distribution Network Use of System (“DNUoS”) charges.

However, the situation for exceptional costs for Generators is different as they do not have a mechanism themselves for charging all Suppliers for their exceptional costs. Noting that Generators will have incurred potentially significant amounts of cost it is appropriate that they receive payment of their valid claims as expeditiously as is practicable. All claims from Generators should be paid as quickly as is practicable after the claims have been validated by the BSC Panel and that proportion of the exceptional costs allowed by the Panel shall be settled by Supplier Trading Parties as determined by Ofgem. Wherever possible Ofgem will confirm the cost recovery process before Generators are ready to submit their claims. For the avoidance of doubt, it is expected that these payments will be funded by National Grid and that National Grid will be held cost neutral to the costs associated with handling/paying the valid Generator claims and recovering these costs from Suppliers. If appropriate, National Grid may seek approval from Ofgem to raise funds from Suppliers in anticipation of the requirement to make ultimate payment to Generators.

These costs (along with the associated costs for handling this, including the costs of financing the one-off payment to Generators – settling their claims - whilst receiving payments from Suppliers over a period of time along with any costs for any specialist support needed by the BSC Panel to determine the Generator claims) are then expected to be recovered by National Grid from suppliers based on a mechanism to be determined by Ofgem.