

February 2001

**NGC's Connection and Use of
System Code and associated licence
changes**

**An Ofgem/DTI consultation
document**

Summary

This document sets out for consultation Ofgem/DTI's initial views on the draft Connection and Use of System Code (CUSC) provided to Ofgem/DTI by the National Grid Company (NGC) in December 2000 following extensive consultation on the draft by NGC with customers and the industry. The document also contains Ofgem/DTI's proposals to modify the licences of NGC and all Public Electricity Suppliers (PESs), second tier suppliers, generators and, at a later date, all distribution companies operating in England and Wales. The CUSC will provide a new contractual framework for connection to, and use of, NGC's high voltage transmission system in England and Wales. The CUSC will replace the existing contract, the Master Connecton and Use of System Agreement (MCUSA), its Supplemental Agreements and certain ancillary services agreements.

The rationale for the introduction of the CUSC was set out in an Ofgem/DTI consultation document on the scope and content of the CUSC published in March 2000. In particular, the CUSC will introduce more flexible governance arrangements which will facilitate the introduction of new transmission access arrangements to enable the full benefits of the New Electricity Trading Arrangements (NETA), due to be introduced in March 2001, to be realised. The CUSC will also allow NGC's transmission access arrangements to develop over time as the wider energy market develops and in the light of experience of operating under NETA.

Ofgem/DTI's final proposals document on the CUSC published in August 2000, set out Ofgem/DTI's proposals for the scope and content of the CUSC and invited NGC to draft the CUSC based on these proposals. It also set out Ofgem/DTI's revised views on the licence conditions required to implement the CUSC. A further consultation document published in December 2000 stated that there was a potential need to make a number of changes to the proposed licence conditions attached to the August 2000 document. These potential changes had been identified during the course of NGC's consultation on the draft CUSC.

In this document, Ofgem/DTI have responded to views expressed by interested parties on the proposals set out in the August and December 2000 documents, as well as views expressed during NGC's consultation on the draft CUSC. It considers the drafting of the

CUSC, sets out Ofgem/DTI's initial views on this drafting and invites further comments from respondents on the current draft.

The proposed licence conditions necessary to implement the CUSC have been developed further in the light of the views of respondents to the August 2000 document. The detailed drafting of the proposed conditions are attached to this document.

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1. Introduction

Purpose of this document

- 1.1 This document considers the draft Connection and Use of System Code (CUSC) which has been produced and consulted on by the National Grid Company (NGC).¹ It evaluates the content of the draft CUSC in the light of Ofgem/DTI's final proposals for the drafting of the CUSC published in August 2000 (the August 2000 document),² the views of respondents to that document and the views of respondents to NGC's consultation on the CUSC.
- 1.2 It also sets out Ofgem/DTI's latest views on the changes to electricity licences required to implement the CUSC in the light of responses to Ofgem/DTI's proposals published in August and December 2000.³ It invites the views of respondents on Ofgem/DTI's views set out in this document and on the draft CUSC which is included on NGC's website.
- 1.3 It is envisaged that the CUSC will constitute a new contractual framework for connection to, and use of, NGC's transmission system.

Process so far

- 1.4 In December 1999, Ofgem issued a document (the December 1999 document)⁴ which highlighted the need to review arrangements for use of NGC's transmission system under the New Electricity Trading Arrangements (NETA). Ofgem was concerned about the current Master Connection and Use of System Agreement (MCUSA) and its Supplemental Agreements which set out terms and conditions for connection to, and use of, NGC's transmission system. In particular, Ofgem was concerned that the procedures for modifying the MCUSA and its Supplemental Agreements were slow and cumbersome. There was

¹ For more details see the National Grid website at:

http://www.nationalgrid.com/uk/library/documents/mn_system_code.html

² NGC's connection and use of system code: scope, content and licence changes. An Ofgem/DTI final proposals document. August 2000.

³ NGC's connection and use of system code: further proposed licence changes. An Ofgem/DTI consultation document. December 2000.

⁴ NGC's system operator incentives, transmission access and losses under NETA. An Ofgem document. December 1999.

concern that this inflexibility could delay the introduction of a new regime for transmission access and prevent the full benefits of NETA from being realised. Ofgem was also concerned that there was a lack of clarity in the process for resolving disputes relating to the MCUSA and its Supplemental Agreements.

- 1.5 Ofgem proposed that the MCUSA and its Supplemental Agreements, together with the Ancillary Services Agreements (to the extent relating to Mandatory Ancillary Services) should be replaced by a CUSC which would have a governance structure similar to that envisaged for the Balancing and Settlement Code (BSC) and which would clarify the appropriate route for the resolution of disputes.
- 1.6 The majority of respondents to the December 1999 document supported change to the MCUSA and its Supplemental Agreements in order to introduce more flexible governance arrangements for the MCUSA. In the light of those responses, Ofgem/DTI decided to proceed with the introduction of the CUSC.
- 1.7 In February 2000, Ofgem/DTI published a consultation document setting out our proposals on the licence conditions required to introduce NETA (the February 2000 document).⁵ In that document, Ofgem/DTI stated that the interactions between the CUSC and the operation of NETA were such that it was appropriate to introduce the CUSC licence conditions by use of the NETA specific power that was expected to be conferred on the Secretary of State through the Utilities Act 2000 (the Utilities Act). This power allows the Secretary of State to modify licences as he considers to be necessary or expedient to implement or facilitate the operation of NETA.
- 1.8 In March 2000, Ofgem/DTI published a consultation document on the form and content of the CUSC (the March 2000 document).⁶ The March 2000 document also set out Ofgem/DTI's initial views regarding the necessary changes to NGC's licence for the implementation of the CUSC. These proposed modifications included the introduction of a new licence condition requiring NGC to develop, be party to and comply with a CUSC that must be designed to meet set

⁵ The New Electricity Trading Arrangements. Proposed licence conditions. An Ofgem/DTI consultation document. February 2000.

⁶ NGC's connection and use of system code. An Ofgem/DTI consultation on the scope and content of the connection and use of system code. March 2000.

objectives. In addition, a number of changes were proposed to the existing conditions 10, 10A, 10B and 10C of NGC's licence, which contain provisions relating to connection and use of system. The March 2000 document also proposed the inclusion of a new condition in the licences of generators, distributors and suppliers requiring them to be party to, and comply with the CUSC.

- 1.9 The March 2000 document was followed by a further Ofgem/DTI document published in June 2000 (the June 2000 document),⁷ which included the detailed drafting of the proposed new CUSC conditions.
- 1.10 The August 2000 document considered responses to the March and June 2000 documents as regards the scope and content of the CUSC and licence changes required to implement the CUSC. It set out Ofgem/DTI's proposals in relation to the key areas of the CUSC (governance, disputes and codification). The document contained revised drafting of the proposed CUSC licence conditions.
- 1.11 In the document, Ofgem/DTI asked NGC to draft a CUSC in accordance with the proposals set out in the August 2000 document and consult with the industry and other interested parties on this drafting. NGC produced an initial draft of the CUSC documentation in September 2000 and this was posted on its website with an accompanying consultation document. MCUSA signatories and other interested parties were informed and invited to participate in a number of working groups sessions which took place from October to December 2000. Ofgem attended all working group sessions and has received copies of all representations made during the course of NGC's consultation.
- 1.12 Following NGC's consultation, on 19 December 2000, NGC provided Ofgem/DTI with its revised draft CUSC which it also published on its web site. Copies of the draft CUSC, NGC consultation documents and policy papers on the CUSC, responses received during the course of NGC's consultation phase and other details of NGC's consultation process can be obtained from NGC's website: www.nationalgrid.com/uk/library/documents/mn_system_code.html.

⁷ Connection and use of system code. Proposed changes to the National Grid Company's licence. An Ofgem/DTI consultation document. June 2000.

- 1.13 During the course of NGC's consultation on the draft CUSC, the potential need to make a number of changes to the proposed licence conditions was identified. In response to this, Ofgem/DTI issued the December 2000 document, identifying these potential changes and invited comments from the industry and other interested parties as to the desirability and effectiveness of the proposed changes.

Outline of this document

- 1.14 Chapter two of this document summarises the current regulatory and legal framework governing connection to, and use of, NGC's transmission system. Chapter three looks at the scope and content, codification and objectives of the CUSC and issues regarding the codification of the MCUSA and its Supplemental Agreements into the CUSC. Chapter four considers the governance of the CUSC. Chapter five looks at the dispute resolution procedures contained within the CUSC. Chapter six looks at the necessary changes to licence conditions 10, 10A, 10B and 10C of NGC's transmission licence. Chapter seven looks at the necessary changes to the licences of generators, Public Electricity Suppliers (PESs) and second tier suppliers (which following the separation of supply and distribution licences will also apply to distribution licences). Chapter eight considers issues relating to the implementation of the CUSC.
- 1.15 Appendix 1 contains a list of respondents to Ofgem/DTI's August and December 2000 documents. Appendix 2 contains the revised drafting of the proposed licence conditions 1A, 10, 10A, 10B, 10C, 10D, 10E, 10F and 10G of NGC's licence with changes from the licence conditions attached to the August 2000 document flagged up. Appendix 3 contains drafting of the proposed condition for inclusion in the licences of generators, suppliers and distributors.

Related issues

Consultation on NGC's charging Methodologies

- 1.16 Under the proposed licence conditions as set out in Appendix 2 of this document, NGC is required to produce charging methodologies for use of system and connection which must meet set Relevant Objectives. These methodologies must be approved by Ofgem. NGC submitted its draft charging

methodologies to Ofgem in December 2000. On 9 January 2001, Ofgem issued a letter inviting the views of interested persons as to whether the charging methodologies meet the Relevant Objectives. These views will be considered by Ofgem when deciding whether to approve these methodologies. It is expected that Ofgem will issue a decision document in early March 2001.

New Electricity Trading Arrangements (NETA)

- 1.17 The NETA licence conditions were designated on 8 August 2000 and the BSC was signed by all licence holders and other persons wishing to participate in the Balancing Mechanism and settlement process on 14 August 2000. The target date for the implementation of NETA is 27 March 2001.

Transmission Access and Losses

- 1.18 In the December 1999 document, Ofgem argued that new transmission access and losses arrangements are required in England and Wales to ensure that the full benefits of NETA are realised. Ofgem suggested that new transmission access and losses arrangements should be based around markets in firm rights for access to the transmission system. Under such arrangements, participants would require entry rights in order to be able to put electricity into the transmission system and exit rights to withdraw electricity from it. They would face access imbalance charges for mismatches between their metered volumes and access rights. NGC would buy-back and/or sell additional transmission access rights in order to resolve transmission constraints.
- 1.19 Since December 1999, Ofgem has given further thought to the details of how a transmission access regime based on firm entry and exit rights might work in practice. These issues have also been discussed in seminars at the Charging Principles Forum of the Transmission Users Group (TUG) in February 2000 and June 2000 and were discussed further at the NETA Seminar in June 2000.
- 1.20 Ofgem held an industry workshop in August 2000 that focused on two key issues concerning the proposed transmission access arrangements: the core design issues related to choosing definitions for firm entry and exit rights and the trade-offs involved; and the IT system requirements for the proposed transmission access regime. Ofgem has considered responses received to the

August Workshop and NGC has undertaken further analysis in light of the issues raised.

- 1.21 Ofgem expects to publish a further consultation document on the new transmission access arrangements later this month. This document will set out, for consultation, developments in Ofgem's thinking relating to developments in transmission access and pricing arrangements and enduring arrangements for the treatment of transmission losses. Soon after this document is published an industry wide consultation will begin, to develop detailed proposals for new transmission access and pricing arrangements and the treatment of transmission losses.

British Electricity Trading Arrangements (BETTA)

- 1.22 Ofgem published in August 2000, a document outlining interim proposals for the reform of electricity trading arrangements in Scotland. Ofgem summarised the main factors inhibiting the development of competition in Scotland and proposed that:

- ◆ enduring energy trading arrangements for Scotland should be part of a Great Britain (GB) market;
- ◆ industry transmission access and charging arrangements for Scotland should be part of a GB set of arrangements;
- ◆ British transmission and trading arrangements could be developed by April 2002 subject to timing of changes in England and Wales; and
- ◆ there should be interim arrangements to achieve more competition in Scotland and provide a smooth transition to enduring arrangements.

- 1.23 Ofgem's proposals for harmonising arrangements in Scotland with England and Wales involve the development of a single BSC for GB, a single CUSC for GB, a single market for settlement purposes, common principles for setting transmission charges and changes to the role of the three transmission companies in GB.

- 1.24 Ofgem has set up a BETTA Steering Group to monitor the overall direction of, and progress on, the development of harmonised arrangements across GB. Three workstreams have also been formed to consider:
- ◆ the commercial and technical issues around a GB system operator with a GB Balancing Mechanism;
 - ◆ GB transmission access and charging arrangements; and
 - ◆ scoping the system changes for GB NETA, including GB and a GB BSC.
- 1.25 Ofgem will continue to consult widely on all significant policy matters.

Views invited

- 1.26 The views of respondents are invited on Ofgem/DTI's views set out in this document, on the proposed licence changes set out in Appendices 2 and 3 of this document and on the draft CUSC and accompanying documentation contained on NGC's web site. It would be helpful to receive responses by 5 March 2001.
- 1.27 Replies should be sent to:
- Dr Eileen Marshall CBE
- Managing Director
- Competition and Trading Arrangements
- The Office of Gas and Electricity Markets
- 9 Millbank
- London SW1P 3GE
- Electronic responses may be sent to lorraine.ladbrook@ofgem.gov.uk
- 1.28 Respondents are free to mark their replies as confidential although we would prefer, as far as possible, to be able to place responses to this document in the Ofgem library. Unless clearly marked 'confidential', responses will be published by placing them in the Ofgem library.

- 1.29 Copies of all responses (including those marked 'confidential') will be sent to the DTI.
- 1.30 If you wish to discuss any aspect of this document, Philippa Pickford (0207 901 7040) or Helen Knight (telephone 0207 901 7069) will be pleased to help.

Way forward

- 1.31 Ofgem/DTI have already identified the need to make some changes to the draft CUSC (for example, to amend typographical errors) and will shortly be writing to NGC requiring it to make these changes. Following receipt and consideration of responses to this document Ofgem/DTI may require NGC to make further changes to the draft CUSC and, if so, will write to NGC to notify it of the necessary changes. Any letters to NGC to this effect will be published on Ofgem's website. NGC will be asked to flag up any such changes on a draft of the CUSC on its website. These changes, along with a consideration of responses to this document will then be published in a document setting out Ofgem/DTI's decisions on the drafting of the CUSC and the associated licence changes. The licence changes and CUSC will be submitted to the Secretary of State with a view to him designating them.
- 1.32 Ofgem has requested that responses to the consultation on the detail of NGC's proposed charging methodologies are sent to Ofgem by 9 February 2001. Following the consideration of the responses Ofgem will make a decision on whether to approve the charging methodologies and if so, whether to impose any conditions on this approval. Ofgem will grant its approval on the charging methodologies before the CUSC is implemented.
- 1.33 Following the designation of the CUSC by the Secretary of State, parties who are connected to or using NGC's transmission system will be invited to sign onto the variation of the MCUSA which will transform it into the CUSC. It is envisaged that the CUSC will be introduced shortly after the implementation of NETA.

2. Regulatory and legal framework

Existing framework

Electricity Act 1989

- 2.1 The Electricity Act 1989 (the Electricity Act) provides the framework for the functions of the Authority⁸ and the Secretary of State, including licensing to enable the supply, generation and transmission of electricity.
- 2.2 The Act also places particular duties onto certain licence holders including a duty on public electricity suppliers to develop and maintain an efficient, co-ordinated and economical system of electricity supply and a duty on the Transmission Licensee in England and Wales to facilitate competition in the supply and generation of electricity.

The Utilities Act 2000

- 2.3 The Utilities Act 2000 (The Utilities Act) which received Royal Assent on 28 July 2000 introduces a number of reforms to the gas and electricity markets and the regulation of these markets, which are expected to be brought into effect over the next few months. The Utilities Act includes a section allowing the Secretary of State to modify existing licences granted under the Electricity Act, where he considers it to be necessary or expedient for the purpose of implementing or facilitating the operation of NETA. This power is only exercisable within two years from the date of enactment.

Transmission licence

- 2.4 NGC is the sole possessor of a transmission licence in England and Wales. It owns and operates the national grid, which transports electricity at high voltage from the generators to the PESs' local distribution networks (it is expected that PESs and distributors will soon be separate entities) and to customers connected directly to the transmission system. It has a duty to operate an efficient, co-ordinated and economical system of electricity transmission.

⁸ The Gas and Electricity Markets Authority established under Section 1 of the Utilities Act 2000.

- 2.5 Conditions 10, 10A, 10B and 10C of NGC's transmission licence contain a number of requirements on NGC regarding connection to and use of its transmission system. These include:
- ◆ a requirement to publish a statement in a form approved by Ofgem, setting out the basis upon which charges for connection and use of system will be made (licence condition 10(1));
 - ◆ a requirement not to discriminate in carrying out works for connection to, and use of the transmission system and interconnections with Scotland and France; and
 - ◆ a requirement to offer terms for connection and use of system (licence condition 10B).
- 2.6 Ofgem can settle any dispute where there has been a failure to enter into terms for connection and use of system, or at the request of NGC or any other party and where a dispute arises following a proposal by NGC to vary the existing terms for connection and use of system.

MCUSA and associated documentation

- 2.7 The MCUSA is a multi-party agreement between NGC, the PESSs, second tier suppliers, licensed generators and some non-licensed generators and a small number of customers who are directly connected to the transmission system. There are presently over 100 parties to the MCUSA. The MCUSA is the main means by which NGC fulfils its licence obligations not to discriminate in connection to and use of its transmission system.
- 2.8 The MCUSA, and its Supplemental Agreements, set out terms and conditions for connection to, and use of the transmission system. These include payment methods, metering, modifications to the transmission system, variations to the MCUSA, compliance with the Grid Code and dispute resolution. Ofgem is not a party to the MCUSA or the Supplemental Agreements. It has limited powers for resolving disputes relating to the MCUSA and its Supplemental Agreements and can only make such determinations in relation to specific types of disputes. In respect of variations of the MCUSA and its Supplemental Agreements, Ofgem has power to determine disputes in relation to variations proposed by NGC.

The MCUSA makes provision for an arbitrator to settle any disputes which relate to provisions contained within the MCUSA and its Supplemental Agreements, except where otherwise expressly provided.

Supplemental Agreements

- 2.9 Parties to the MCUSA are also required to sign appropriate Supplemental Agreements. A separate Supplemental Agreement is in place between NGC and each user of a site connected to the transmission network. There are presently more than 400 such agreements in place. The Supplemental Agreements specify the equipment at each connection site and the basis for connection and use of system charging for that equipment.

Ancillary Services Agreements

- 2.10 Generators are also party to Ancillary Services Agreements with NGC to govern payment for the mandatory ancillary services of reactive power and frequency response required to be provided pursuant to the Grid Code and licence obligations, and also commercial ancillary services which the generator may agree to provide. Ancillary Services Agreements take the form of either a single Ancillary Services Agreement or a Master Ancillary Services Agreement and two or more Supplemental Ancillary Services Agreements (for portfolio generators).
- 2.11 It is anticipated that, prior to the introduction of NETA, NGC and generators will enter into new Commercial Services Agreements to govern the provision of commercial ancillary services, so that existing Ancillary Services Agreements within the MCUSA will deal only with mandatory ancillary services.

The future framework

Use of the Secretary of State's NETA power

- 2.12 Ofgem/DTI are proposing that the CUSC and its licence conditions will be designated by the Secretary of State exercising his NETA specific power given to him by the Utilities Act to modify the licences of NGC, distributors, generators and suppliers.

Transmission licence

- 2.13 In respect of NGC's licence, Ofgem/DTI are proposing to introduce a new licence condition (proposed condition 10F) requiring NGC to prepare a CUSC and be party to the CUSC Framework Agreement and comply with the CUSC. In addition, Ofgem/DTI have proposed a number of changes to the existing conditions 10, 10A, 10B and 10C of NGC's licence to complement the proposed new procedures for the referral of disputes relating to the CUSC and other changes consequential from the implementation of the CUSC. The significant proposed changes would require NGC to:
- ◆ produce two methodologies, for use of system charges and for connection charges and to keep them constantly under review as to whether they meet defined objectives;
 - ◆ produce statements of the two methodologies, the form and content of the first of the statements to be approved by Ofgem;
 - ◆ consult on any changes to the methodologies and for Ofgem to have a power of veto over any such changes;
 - ◆ produce a statement of use of system charges which must conform to the use of system charging methodology which allows any person to make a reasonable estimate of what their charges are likely to be;
 - ◆ give notice to Ofgem of any changes in the charges contained in its statement of use of system charges; and
 - ◆ provide copies of documents provided for by the new licence condition to any interested person on request.
- 2.14 There is also a need to make consequential changes to condition 11C and Schedule 3 of NGC's licence to reflect the changes to the numbering of NGC's licence conditions.

Connection and Use of System Code

- 2.15 Under the current proposals the CUSC will constitute a new contractual framework governing connection to and use of NGC's system. Ofgem/DTI have

proposed that the CUSC will constitute codified provisions of the MCUSA and its Supplemental Agreements and the Ancillary Services Agreements (to the extent relating to Mandatory Ancillary Services) except where changes are required to implement new flexible governance and to clarify the dispute resolution procedures.

3. Scope and content, codification and objectives of the connection and use of system code

Scope of the CUSC

The August 2000 document

- 3.1 In the August 2000 document, Ofgem/DTI stated that we considered it to be appropriate for the CUSC to include terms relating to both connection to and use of NGC's transmission system to ensure that arrangements for both activities benefit from the new flexible governance and dispute resolution procedures proposed for the CUSC. Ofgem/DTI did not consider it appropriate for provisions relating to connection to be outside of the CUSC as the boundary between connection and use of system must be determined under the CUSC and as some connection assets may be shared between users. Furthermore, provisions relating to both connection and use of system are contained within the current MCUSA and it would not be appropriate to remove the provisions relating to use of system while leaving the MCUSA governing only connection. Ofgem/DTI also considered it appropriate for terms relating to the construction elements of connection to be set out in an agreement associated with the CUSC. However, Ofgem/DTI did not consider that construction terms would be subject to the CUSC governance arrangements.
- 3.2 Ofgem/DTI also considered it appropriate for the CUSC to contain provisions relating to mandatory balancing services (Part 1 System Ancillary Services) currently contained within the Ancillary Services Agreements. In respect of commercial balancing services, such as the market for Reactive Power, Ofgem/DTI considered that the scope of the CUSC is wide enough to include such provisions, but that equally the arrangements for such markets could be contained in commercial agreements separated from the CUSC. As the market for Reactive Power is currently contained within the MCUSA, Ofgem/DTI considered it appropriate for these provisions to be codified within the initial CUSC. Ofgem/DTI stated that if it was felt appropriate to move the provisions relating to the Reactive Power Market from the CUSC at a later date this could be achieved through the CUSC amendment process.

- 3.3 Ofgem/DTI considered that although all details of NGC's system operator incentive scheme will initially be set out in NGC's licence to enable the incentive scheme to take effect from the introduction of NETA, it may be appropriate at a later date to move some elements of the incentive scheme (for example, its parameters for the transmission losses elements) into the CUSC. This would allow for greater flexibility of the scheme as eligible parties could propose amendments to the scheme through the CUSC amendment procedures. Ofgem/DTI believed that the proposed scope of the CUSC is wide enough to accommodate this possible development.

Respondents' views

- 3.4 A few respondents continued to argue that it was inappropriate for terms relating to both connection and use of system to be contained within the CUSC, as they believed that connection arrangements are bilateral commercial contracts that should be governed by contract law. One respondent argued that if these agreements were to fall under the CUSC it would introduce unnecessary regulatory uncertainty into what is a commercial matter. That respondent supported the need for a use of system code. One respondent was concerned that the inclusion of terms relating to connection should not be able to have a detrimental effect on the development of competition in connections.
- 3.5 Three respondents did not consider it to be appropriate for provisions relating to Part 1 System Ancillary Services to be contained within the CUSC. One of these respondents was concerned that energy and system balancing services can affect imbalance charges particularly if NGC is allowed to buy and sell energy for balancing purposes whilst a party to confidential information of other market players. They considered that these services would fit better within the BSC framework. Another of the respondents stated that it was inappropriate for energy related services to be placed within the CUSC. The third respondent disagreed with the proposal on the basis that it would be difficult to see how the arrangements could be extended to Scotland with the two additional transmission licensees.
- 3.6 One respondent considered that it was inappropriate to include the provisions relating to the Reactive Power market within the CUSC. Another agreed that the

initial market rules could be in the CUSC and then moved out when revised market arrangements are implemented.

- 3.7 In relation to the correct location of the system operator incentive scheme, one respondent considered that the scheme should be placed within the BSC. Another respondent considered that it should be within the CUSC and a third suggested that Ofgem should wait to see how the scheme works in practice before moving it from the licence into the CUSC.

NGC's draft CUSC

- 3.8 The draft CUSC as put forward by NGC has codified all elements contained within the MCUSA and its Supplemental Agreements relating to connection and use of system. It incorporates the provisions relating to the Reactive Power Market currently contained within the MCUSA. It also codifies the elements of the Ancillary Services Agreements which relate to Part 1 System Ancillary Services, which are currently contained within the MCUSA and its Supplemental Agreements and some elements of the MCUSA and Supplemental Agreements which relate to Agreed Ancillary Services. However, some elements of the MCUSA which relate to the provision of Agreed Ancillary Services are not contained within the CUSC. This is discussed in more detail in the section on codification below.

Ofgem/DTI's views

- 3.9 Ofgem/DTI continue to believe that the CUSC should contain terms relating to the provision of connection to and use of NGC's transmission system. Ofgem/DTI consider that as the definition of connection and use of system are interdependent, it would not be appropriate at this stage to separate them into separate codes. It is possible that connection provisions may be relevant to the development of the new transmission access arrangements and hence it is necessary for these provisions to be subject to the new flexible governance arrangements provided for under the CUSC. Ofgem/DTI also recognise that connection terms relating to a user can affect the position of other users. Furthermore, there are certain elements of the connection process which are by nature monopolistic as, for example, all parties wishing to connect to the transmission system require information from NGC. As a dominant provider of

connection, NGC has non-discrimination obligations and the inclusion of terms within the CUSC grants transparency to all parties requesting connections to the national transmission system. Ofgem/DTI are satisfied that the inclusion of terms for connection within the CUSC does not detrimentally affect the development of competition in connections. Ofgem/DTI recognise contractual concerns of connected parties and Ofgem will need to have regard to these concerns in considering proposed amendments to the CUSC within the overall objectives of the CUSC and Ofgem's statutory duties.

3.10 Ofgem/DTI consider that for completeness and transparency it is appropriate for agreements containing provisions relating to the construction element of connections to be associated with the CUSC (as previously such provisions were contained in the Supplemental Agreements to the MCUSA). However, Ofgem/DTI do not consider that such provisions should be subject to the CUSC governance arrangements.

3.11 In addition, Ofgem/DTI consider that the CUSC should contain generic provisions relating to the provision of Part 1 System Ancillary Services currently contained within the Ancillary Services Agreements. Ideally, a distinction would be drawn between energy balancing (the matching of supply and demand on an half-hourly basis) and system balancing (the match between supply and demand on a second by second basis). Provisions relating to the former could then sit within the BSC and the latter within the CUSC. However, Ofgem/DTI recognise that it is not possible to clearly distinguish between the two and hence the post NETA System Operator incentive scheme (which has just been accepted by NGC for the period from NETA go-live to March 2002), provides for incentives to be placed on the use of all balancing tools as a whole. Ofgem/DTI therefore believe that it is necessary at this stage for all of these activities to be contained in the same document. The BSC will not be used for the recovery of within half-hour energy balancing costs. These costs will be recovered through Balancing Services Use of System (BSUoS) Charges, and hence contractually through the CUSC. Ofgem/DTI therefore consider it appropriate for terms relating to Part 1 System Ancillary Services to sit within the CUSC.

3.12 In respect of the market for Reactive Power, Ofgem/DTI recognise that the provisions relating to this market could sit outside of the CUSC. However, as

the market currently sits within the MCUSA it is not considered appropriate to initially place this outside of the CUSC. It would be possible for parties to propose an amendment to move these provisions outside of the CUSC if this was considered desirable at a later date.

- 3.13 In respect of the parameters relating to the system operator incentive scheme, Ofgem/DTI continue to consider that the scope of the CUSC is wide enough to encompass such terms if it was considered appropriate at a later date. The parameters will initially be contained within NGC's transmission licence. In line with the suggestion put forward by one respondent, Ofgem will wait to see how the scheme works in practice before deciding whether to move it from the licence into the CUSC.

Structure of the CUSC

The August 2000 document

- 3.14 In the August 2000 document, Ofgem/DTI proposed that all generic aspects of the MCUSA and its Supplemental Agreements and the Ancillary Services Agreements, so far as they relate to mandatory balancing services, should be codified and placed in the main body of the CUSC. It was considered appropriate for site specific information to be contained in bilateral agreements associated with the CUSC.
- 3.15 Ofgem/DTI proposed that provisions relating to connection and use of system should be contained within separate sections of the code to promote clarity. This would enable parties to be clear by which provisions they were bound. (For example, non-embedded customers who arrange with a supplier to contract with NGC regarding their use of system, do not need to be bound by the provisions relating to use of system and suppliers who do not have any connections to NGC's system do not need to be bound by provisions relating to connection).

Respondents' views

- 3.16 Subject to views of respondents on the content of the CUSC discussed above, the codification of the MCUSA, its Supplemental Agreements and the Ancillary

Services Agreement was generally seen as sensible approach to drafting the CUSC.

NGC's draft CUSC

3.17 NGC's draft CUSC includes the following documentation:

- ◆ The Connection and Use of System Code (incorporating generic aspects of the MCUSA and its Supplemental Agreements and the Ancillary Services Agreement (so far as it relates to mandatory balancing services), as well as new sections on governance and dispute resolution to reflect Ofgem/DTI's proposals as contained in the August 2000 document. The draft CUSC includes sections on connection, use of system, balancing services and interconnectors, as well as general sections (including general provisions, governance, dispute resolution etc.). The CUSC includes an applicability section so that parties can be clear as to which sections apply to them.
- ◆ The CUSC Framework Agreement which gives contractual effect to the CUSC. It is envisaged that under licences, or if applicable, the BSC, NGC and parties connecting to and/or using the transmission system will be required to enter into the CUSC Framework Agreement. New parties would sign onto the CUSC Framework Agreement by signing an Accession Agreement.
- ◆ Bilateral Agreements which contain site specific provisions relating to connection and embedded generation. NGC's consultation document assumed that changes to the bilateral agreements will take place automatically following changes to either the CUSC or the proposed licence condition 10 charging statements, where circumstance dictate. There is also a reciprocal right for NGC and contracting parties to propose variations to Bilateral Agreements under licence condition 10 of the transmission licence.
- ◆ Mandatory Services Agreements which will contain the site specific data, prices and related clauses for the two Part 1 System Ancillary Services (the generic provisions will be codified in the CUSC). Changes to the

Mandatory Services Agreements will take place automatically following changes to the CUSC where circumstances dictate.

- ◆ Construction Agreements which contain construction elements associated with a new or modified connection. It is expected that this agreement will fall away on completion of the works. Changes to Construction Agreements will be outside the change control mechanisms contained in the CUSC.

Ofgem/DTI's views

- 3.18 Ofgem/DTI is pleased that NGC has been able to structure the CUSC such that persons can be clear as to which provisions they are bound by. In particular the separation of generic provisions relating to connection, use of system and balancing services is welcomed by Ofgem/DTI.
- 3.19 Ofgem/DTI is also pleased that it has been possible to codify the majority of terms in the MCUSA and its Supplemental Agreements into the main body of the CUSC leaving the contents of the Bilateral Agreements solely site specific.
- 3.20 Ofgem/DTI would welcome comments from respondents regarding the balance between the sections of the CUSC which relate to connection, balancing services and use of system and as to whether any provisions currently contained within the General Section would better be placed in these sections.
- 3.21 Ofgem/DTI is also interested in the views of respondents as to the balance between provisions contained in the CUSC and those contained in the Bilateral Agreements. In particular, Ofgem/DTI would welcome any views as to whether any provisions currently contained within Bilateral Agreements could move into the CUSC.

Codification of Supplemental Agreements

The March and August 2000 documents

- 3.22 In the March 2000 document it was proposed that the CUSC should consist of generic aspects of the MCUSA, its Supplemental Agreements and Ancillary Services Agreements (in relation to the Part 1 System Ancillary Services) other

than in areas identified by Ofgem/DTI as requiring change such as governance. The majority of respondents to the March 2000 document supported this view. In the August 2000 document Ofgem/DTI stated that we continued to consider that the codification of MCUSA, its Supplemental Agreements and the Ancillary Services Agreements (so far as they relate to mandatory balancing services) into the CUSC was the appropriate mechanism for drafting the CUSC. The August 2000 document set out Ofgem/DTI's final proposals as to how codification should take place.

- 3.23 Ofgem/DTI recognised that not all provisions of the Supplemental Agreements and Ancillary Services Agreements could be codified into the CUSC and that there would still be a need for Bilateral Agreements to be supplemental to the CUSC. Ofgem/DTI proposed that these bilateral contracts would contain any site specific information relating to use of system, connection and balancing services. The form of these contracts would be included as exhibits to, and associated with, the CUSC.

Respondents' views

- 3.24 Subject to their comments on the scope of the CUSC (discussed above), a number of respondents agreed with the proposal to place generic parts of the MCUSA, its Supplemental Agreements and Ancillary Services Agreements into the CUSC. It was felt that this would provide clarity and limit the range of agreements required. One respondent considered that this framework may also be appropriate for the development of a GB CUSC.
- 3.25 During the consultation on NGC's drafting of the CUSC, views were expressed on the impact of codification and NGC's interpretation of codifying the generic provisions of the existing documentation. Views were expressed as to whether:
- ◆ commercial services were being brought into the CUSC;
 - ◆ the codification of specified terms from the Supplemental Agreements into section 5 (for example security in event of default) would affect the existing finance agreements of some users;
 - ◆ the confidentiality clause in section 6 should be updated to include confidentiality between company groups/affiliates/common control, to

reflect the definition contained in NGC's (future) standard transmission licence; and

- ◆ other issues raised included the codification of provisions in most (but not all) Ancillary Services Agreements requiring the generator to agree to NGC providing bills for the provision of ancillary services and the merits of codifying the indexation provisions which currently appear in Ancillary Services Agreements.

NGC's draft CUSC

3.26 NGC has codified the generic provisions of connection, use of system, Part 1 System Ancillary Services that appear in the MCUSA, its Supplemental Agreements and Ancillary Services Agreements into the following sections of the CUSC:

- ◆ **Connection:** The generic provisions relating to connection to NGC's transmission system and certain related issues from the MCUSA and Supplemental Agreements have been codified into section 2 of the CUSC. This section sets out the connection aspects of the Supplemental Agreements, including connection charges and credit requirements. The site specific connection information will be set out in a Bilateral Connection Agreement. The Bilateral Connection Agreement will be supplemental to and capable of being changed by way of amendment to the CUSC. A Bilateral Connection Agreement is designed for parties who are directly connected to NGC's transmission system such as the owner or operator of directly connected power stations or distribution systems. The form of this agreement is set out in Schedule 2 as Exhibit 1 of the CUSC. The connection charging principles that were in Appendix E in the Supplemental Agreement have been moved and now appear in the Statement of the Connection Charging Methodology which NGC will be required to produce under the proposed CUSC licence conditions discussed further in chapter 6 of this document. Site specific charging information for each connection site will appear in the Bilateral Connection Agreement;

- ◆ **Connection Construction:** The construction aspects of connection agreements have been separated from connection agreements and appear as individual construction agreements as exhibited in Schedule 2 Exhibit 3 of the CUSC. These agreements will be associated with the CUSC but will not be capable of modification as a result of changes to the CUSC. Any dispute in respect of the signed construction agreement would be determined in accordance with its provisions;
- ◆ **Use of System:** The generic provisions relating to use of NGC's transmission system and certain related issues have been codified from the existing Supplemental Agreements into section 3 of the CUSC. This section sets out all the use of system aspects of the Supplemental Agreements for all customers, including use of system charges and credit requirements. NGC has considered it necessary to have a use of system bilateral agreement only to record site-specific information in respect of embedded generators who are signatories to the CUSC. NGC has suggested that these agreements should be called Bilateral Embedded Generation Agreements. The proposed form of this agreement is set out in Schedule 2, Exhibit 2 of the CUSC. As with connection, the charging principles set out in Appendix E of the Supplemental Agreements in respect of use of system are now found in the Statement of the Use of System Charging Methodology and the Statement of Use of Charges that NGC will be required to produce under the proposed CUSC licence conditions. Section 3 states that Transmission Network Use of System (TNUoS) and Balancing Services Use of System (BSUoS) charges will be calculated and charged in accordance with the Use of System Charging Methodology and associated Statement;
- ◆ **Balancing Services:** Balancing Services Agreements are comprised of Mandatory Services Agreements and Commercial Services Agreements. The generic provisions relating to Part 1 System Ancillary Services (Reactive Power and Frequency Response) currently set out in the Ancillary Services Agreements have been codified into section 4 of the CUSC and are termed Mandatory Ancillary Services. The CUSC only refers to Part 2 System Ancillary Services and Commercial Services such that they are required to be provided as agreed between NGC and the

user. NGC has called these agreements Agreed Ancillary Service Agreements and all rights and obligations of both NGC and the user will be set out in a Commercial Services Agreement which will not form part of the CUSC. Section 4 also includes payments for Balancing Services, the Charging Principles for frequency response and indexation. The provisions relating to Balancing Services market mechanisms of Reactive Power contained in Schedule 5 of MCUSA have been placed in Schedule 3 of the CUSC. The form of the Mandatory Services Agreement is exhibited to the CUSC in Schedule 2 Exhibit 4;

- ◆ Section 5 of the CUSC deals with the generic provisions that appear in the MCUSA and Supplemental Agreements relating to default, deenergisation, disconnection and decommissioning;
- ◆ Section 6 of the CUSC relates to the general generic provisions that appear in the MCUSA and its Supplemental Agreements;
- ◆ Section 9 of the CUSC sets out the rules of interpretation and definitions that appear in the CUSC and its associated agreements. Most of the definitions have been transferred from the MCUSA and its Supplemental Agreements. There are however a number of new definitions added that relate to an area where Ofgem/DTI proposed a change (such as terms relating to the new Amendment Procedure) or new definitions as a result of codification of MCUSA and its Supplemental Agreements into the CUSC and associated agreements;
- ◆ Section 10 of the CUSC sets out provisions which apply to interconnected parties.

3.27 It has become apparent during NGC's codification process that there are a number of Supplemental Agreements that have different terms that cannot be codified as it would alter existing rights to the detriment of the relevant user. NGC has called such terms variations. NGC has proposed to deal with these variations in section 11, the transitional section. The variations will be included as an additional clause in the relevant user's bilateral agreement (or where there is no bilateral agreement, in a letter).

- 3.28 These variations only reflect the position under an existing supplemental agreement to the MCUSA at the CUSC implementation date and are not expected to be reflected in any future agreements after CUSC is implemented.
- 3.29 These variations would be capable of being overridden by future amendments to the CUSC if the amendment itself specifically provides for the variation to be overridden.
- 3.30 Section 11 also deals with continuity of security. It provides that any security provisions which exist within current agreements will continue to apply under the CUSC.
- 3.31 NGC has brought to our attention site specific transmission related clauses within some Supplemental Agreements that have not been codified into the draft CUSC. These provisions are effectively transmission related and apply only to sites which have sub-standard connections. The Transmission Related Agreements (TRA) are still under negotiation and one agreement has recently been referred to Ofgem for determination under the NETA Implementation Scheme. There are eight such agreements.

Ofgem/DTI's views

- 3.32 Ofgem/DTI are generally satisfied that NGC has codified the MCUSA, its Supplemental Agreements and the relevant aspects of the Ancillary Services Agreements in line with the final proposals set out in the August 2000 document. Generic provisions relating to connection and use of system have been separated into separate sections of the CUSC and the applicability section of the CUSC defines the sections of the CUSC which apply to particular parties. Ofgem/DTI are pleased that a large proportion of the terms currently set out in Supplemental Agreements to the MCUSA have been codified into the CUSC and that the only site specific agreements are relatively small.
- 3.33 Ofgem/DTI considers that the distinction between the bilateral agreements that are supplemental to the CUSC governance arrangements from those which are not by the inclusion of the word Bilateral to describe the former (namely the Bilateral Connection Agreement and the Bilateral Embedded Generation agreement) but not for the latter (the Construction Agreement) to be helpful.

Specific codification points

3.34 Ofgem/DTI has identified some areas in which provisions currently contained within the MCUSA have been removed or changed rather than codified. For example:

- ◆ **Five minute reserve:** NGC has not codified the provisions of the service of five minute reserve from the Ancillary Services Agreements into the CUSC. NGC explained that this decision was taken as the provisions relate to an Agreed Ancillary Service rather than a Part 1 System Ancillary Service. NGC also stated that it no longer envisages requiring the service of five minute reserve as a mandatory balancing service. The provisions relating to five minute reserve are currently found in the provisions for mandatory frequency response within the MCUSA. NGC propose to place the provisions for five minute reserve into a new Commercial Services Agreement. When this was raised at the working group sessions, participants seemed comfortable with this proposal. Ofgem/DTI would welcome any views as to whether these provisions should be contained within the CUSC;
- ◆ **Triennial Review:** The Ancillary Services Agreements provided for a triennial review in relation to prices, indexation, methods of calculation and changes to the monitoring system for frequency response . NGC has proposed to keep a provision for triennial review so far as it relates to prices. NGC has stated that it is not necessary to continue to provide for a triennial review for indexation, methods of calculation and changes to the monitoring system as these provision have been codified into section 4 of the CUSC and therefore will be subject to the CUSC amendment process. Ofgem/DTI initial view is that the removal of these requirements for a triennial review from within the CUSC is sensible. The new framework will require NGC to continuously keep the CUSC under review as to whether it facilitates the relevant objectives and therefore the need for a scheduled review of certain provisions seems unnecessary. Ofgem/DTI consider that provisions for fixed reviews should be removed for the implementation of the CUSC since following the implementation of a CUSC if a need for a review becomes necessary,

an amendment proposal can be put forward. In respect of the retention of the provisions relating to triennial review of frequency response prices, Ofgem/DTI question the inclusion of triennial review only in relation to prices since the review by its nature would be dependent on a number of interrelated factors including indexation. Ofgem/DTI would be interested in the views of respondents on this issue;

- ◆ **Indexation:** The codified provisions for indexation from the Ancillary Services Agreements which now appear in section 4 have been changed. The specific dates which were included within the indexation provisions in the Ancillary Services Agreements have been removed and replaced with a written formula. NGC has argued that this was necessary as the specific dates varied between the individual Ancillary Services Agreements and therefore the change was a necessary result of codification. Ofgem/DTI's initial view is that this approach seems both sensible and appropriate. However, we would be interested in the views of respondents as to whether the removal of these dates has any impact on the workings of these provisions;
- ◆ **Redundant Provisions:** NGC has placed certain provisions currently contained in the MCUSA, its Supplemental Agreements or the Ancillary Services Agreement within an Appendix to Schedule 3 of the CUSC, entitled Redundant Provisions. This Appendix includes provisions formerly contained in the Ancillary Services Agreements relating to the capability payments for Balancing Mechanism Units. NGC has argued that there is no requirement for these payments to continue under NETA. However, these provisions were not removed as part of the changes made to documents under the NETA implementation scheme. Ofgem/DTI's initial view is therefore that these provisions should be included in the initial CUSC and should only be removed if considered appropriate following full consultation on a proposed amendment. The Appendix also contains provisions from MCUSA Schedule 5 which it considers to be time expired or otherwise redundant. For example, a variation clause and a disputes clause (which will be replaced by the CUSC amendment process and disputes process) and review items (which have taken place). Ofgem/DTI would be interested in the views

of respondents as to the implications and desirability of placing these provisions into the Appendix.

- 3.35 Ofgem/DTI are of the view that the connection elements of these site specific transmission related clauses should be part of the CUSC since they are currently found in some Supplemental Agreements. The site specific information should be included in the Bilateral Connection Agreement. Ofgem/DTI considers that the terms of the TRAs should, if finalised, be referred to as an additional term within the relevant Bilateral Connection Agreements. Views from industry are invited on the desirability of the inclusion of these clauses in the CUSC.

General comments

- 3.36 In the course of Ofgem/DTI's consideration of the draft CUSC a number of general points have been identified. A careful scrutiny of the MCUSA has revealed some infelicities of drafting. It has not been considered appropriate to amend these infelicities during the CUSC process but it would seem sensible for some early amendment proposals to be put forward to put these right.
- 3.37 During the course of codifying the MCUSA, its Supplemental Agreements and the Ancillary Services Agreements, NGC has added, changed or removed a number of definitions. Ofgem/DTI have identified some duplications, errors or missing definitions or some new definitions that may need further consideration. Ofgem/DTI have also noticed a number of typographical or cross-referencing errors in the CUSC. Ofgem/DTI intend to write to NGC pointing out these errors and asking NGC to amend the draft CUSC accordingly. This letter will be published on NGC's website. Ofgem/DTI invite respondents to consider the draft CUSC carefully and to address any additional areas/discrepancies that should be taken into consideration.
- 3.38 The section relating to Interconnectors was added at a relatively late stage in NGC's consultation stage and there is a need for NGC to consult further on this.
- 3.39 Ofgem/DTI consider that it would be expedient for NGC to identify and consult on any changes to the draft CUSC that would be necessary to accommodate the separation of supply and distribution licences. Ofgem/DTI therefore invite NGC to conduct a consultation on any such changes necessary.

- 3.40 NGC has added a number of new, or partially new, paragraphs into the CUSC, in each case NGC has stated that the paragraph is new. In some cases these new paragraphs are needed for the purposes of codification or for the inclusion of new arrangements for governance or disputes. Some paragraphs however, seem to have been included for convenience. Ofgem/DTI invite respondents to look carefully at these paragraphs and to comment on whether such paragraphs should so be included and can be justified as necessary to facilitate the introduction of the CUSC.

Applicable CUSC Objectives

The August 2000 document

- 3.41 In the August 2000 document Ofgem/DTI suggested that the proposed CUSC licence condition to be inserted into NGC's licence (Condition 10F) should identify the following objectives (the Applicable CUSC Objectives) which the CUSC should be calculated to facilitate the achievement of:
- ◆ the efficient discharge by the NGC of the obligations imposed upon it by the Electricity Act and by its transmission licence; and
 - ◆ facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

Respondents' views

- 3.42 No respondents commented on this issue.

Ofgem/DTI's views

- 3.43 Ofgem/DTI continue to believe that the Applicable CUSC Objectives as attached to the August 2000 document are the appropriate objectives to follow.

CUSC Parties

The August 2000 document

- 3.44 In the August 2000 document Ofgem/DTI stated that it considered that all persons connected to or using NGC's transmission system should be parties to the CUSC, including distributors, generators, suppliers, interconnected parties, directly connected customers and possibly also licence exempt parties.

Respondents' views

- 3.45 Of those who responded to Ofgem's proposal that all persons connected to or using NGC's transmission system should be parties to the CUSC, five respondents were in agreement and four were against this proposal.
- 3.46 Three respondents were concerned that the definition of parties using the transmission system was ill-defined and open to broad interpretation. There was concern that this should not include generators embedded in the distribution networks. It was argued that such embedded generators do not draw upon the resources of the transmission network and should not bear the costs for the system in the form of TNUoS.
- 3.47 One participant believed that licence exempt parties should sign the CUSC.
- 3.48 In respect of non-embedded customers, one stated that they would only want to sign the CUSC if it were in their interest to do so. Another company questioned how non-embedded customers could be compelled to sign the CUSC.
- 3.49 In respect of externally interconnected parties, one company agreed that all parties should sign the CUSC and suggested that the BSC should be changed to require such parties to sign the CUSC. One interconnector user disagreed with the proposal and said that the current arrangements worked well and that requiring such parties to sign the CUSC would serve no useful purpose and possibly hamper trade. The party was concerned that by placing a requirement in the BSC requiring such parties to sign the CUSC would impose indirect regulation on the interconnector user.

- 3.50 Another respondent stated that there were still issues to resolve as interconnector users will have to pay charges. They suggest that as the interconnector users will be using the transmission network they should sign the CUSC.

NGC's CUSC

- 3.51 NGC has drafted the CUSC such that it allows all parties who are connected to and using its transmission system to sign the CUSC. The CUSC covers terms relating to the use of and connection to its transmission system by generators, suppliers, distributors, non-embedded customers and interconnector users. NGC has pointed out in the letter it issued to Ofgem accompanying the draft CUSC that the section relating to interconnectors had not been the subject of the same level of consultation as the remainder of the CUSC.

Ofgem/DTI's views

- 3.52 It is Ofgem/DTI's continued belief that all parties connected to and using NGC's transmission system should ideally be party to the CUSC. This would ensure that all parties are treated equally and will increase transparency in the use of, and connection to, NGC's transmission system.
- 3.53 Ofgem/DTI do, however, recognise that there may be some exceptions to this. In particular, in respect of non-embedded customers, Ofgem/DTI consider that it is appropriate for such customers to sign onto the CUSC. The migration proposal, discussed in detail in chapter 8 will help ensure that this is the case as all such customers who are currently signatories to the MCUSA will automatically have their Supplemental Agreements converted into the CUSC documentation. In respect of future connections to such parties, the proposed licence condition requires NGC to only enter into arrangements for use of system and connection which conform to the CUSC, unless otherwise agreed by Ofgem. However, there are currently a very small number of non-embedded customers who are not signatories to the MCUSA and its Supplemental Agreements. Ofgem/DTI is not intending, at this time, to take action to compel such customers in respect of existing connections to sign the CUSC. There are however substantial benefits from becoming party to the CUSC. It will allow all parties and customer representatives to propose amendments to the contract (i.e. full industry participation) and will be the means by which parties can

participate in the development of any new transmission access arrangements. Ofgem/DTI therefore believe that the benefits of the CUSC over time will encourage such customers to become party to the CUSC.

3.54 In respect of interconnected parties, Ofgem/DTI are persuaded that in respect of connection the parts of the interconnector that are directly connected to NGC's transmission system at the moment are owned by NGC's interconnection business. As such, it is appropriate for arrangements to be put in place between NGC and its interconnector arm which mirror the CUSC arrangements. (It is not legally possible for the interconnector arm of NGC to sign the CUSC as it is not a separate legal entity from the remainder of NGC). This provision would also apply to any future interconnectors. In respect of use of interconnector, Ofgem/DTI consider it desirable for all interconnector users to be signatories to the CUSC in respect of their use of NGC's transmission system to ensure that everybody using NGC's system is doing so on the same basis and with the same flexibility of governance.

3.55 Ofgem/DTI are therefore pleased that the draft CUSC as provided by NGC envisages all parties who are connected to and/or using its transmission system to be parties to the CUSC. Ofgem/DTI note that the section relating to interconnectors has undergone less consultation than the remainder of the CUSC. Ofgem/DTI therefore invite NGC to hold a working group session with all interested persons as soon as possible to discuss the wording and expect NGC to publish details of this session on its website. Ofgem will attend this session and views expressed will be considered before Ofgem/DTI publish their conclusions. Ofgem/DTI consider it important that those who may be affected by these provisions should consider them carefully and respond to this consultation with their views so as to ensure that these can be properly considered.

Views invited

3.56 Ofgem/DTI welcome comments on our views contained in this section and on the aspects of the draft CUSC which relate to these views. In particular Ofgem/DTI invite views on:

- ◆ the balance between sections of the CUSC which relate to connection, balancing services and use of system and whether any provisions currently contained within the General Section would better be placed in another section;
- ◆ the balance between provisions contained in the CUSC and those contained in Bilateral Agreements and whether any provisions currently contained within Bilateral Agreements could move into the CUSC;
- ◆ the balance between provisions contained in the Bilateral Connection Agreement and the Connection Construction Agreement;
- ◆ whether it is appropriate for provisions relating to 5 minute reserve to be contained within the CUSC;
- ◆ whether there is value in retaining the provisions relating to triennial review of frequency response prices;
- ◆ whether the removal of specific dates formally included within indexation provisions has any impact on the working of these provisions;
- ◆ whether there is a need for an Appendix to the CUSC to contain "Redundant Provisions" and whether the provisions currently set out within this appendix are, in fact, redundant;
- ◆ the drafting of the section of the CUSC relating to Interconnectors and the proposed way forward for ensuring further consultation on this section; and
- ◆ general comments on the drafting of the CUSC (e.g. the appropriateness of including new paragraphs, the identification of typographical errors, views on the drafting of new definitions etc.).

4. Governance

Introduction

- 4.1 One of the main objectives of implementing the CUSC was to enable flexibility of the arrangements for connection to, and use of, NGC's transmission system.
- 4.2 Ofgem/DTI proposed in the March 2000 document to include a new condition in NGC's licence to place obligations on NGC regarding the establishment of the CUSC and minimum requirements for the amendment procedures for the CUSC. This condition was considered further in the August 2000 document alongside the main elements of the governance model as a whole in the light of the views of respondents to the March 2000 document.
- 4.3 The August 2000 document set out Ofgem/DTI's proposals in relation to the main areas of governance, which were to form the basis of the governance of the CUSC for the purposes of NGC's drafting and subsequent consultation process.
- 4.4 This chapter considers the main proposals of Ofgem/DTI as set out in the August 2000 document and the proposed drafting of the CUSC by NGC based on that document. It considers the views of respondents both to the proposals laid down by Ofgem/DTI in the August 2000 document as well as comments made during the working group sessions and those received by NGC and Ofgem/DTI relating to the drafting of the CUSC and the subsequent consultation headed by NGC. It sets out Ofgem/DTI's views on the drafting of the CUSC following consideration of these responses and invites respondents to comment on these views.
- 4.5 It is worth noting that during the course of NGC's drafting of the CUSC and the subsequent consultation it became clear that it was desirable for the equivalent of modifications in the BSC and the Network Code to be known as amendments in the CUSC. This is because the term modification has had a different meaning associated with it during the life of the MCUSA, namely to represent a change to physical assets at a User's site. In order to prevent confusion, this document refers to the term amendment in the same way as the term modification was used in the March and August 2000 documents.

Role of NGC

March and August 2000 documents

- 4.6 In the March 2000 document Ofgem/DTI proposed to introduce a new condition into the licence of NGC containing obligations regarding the establishment of the CUSC and minimum requirements for the amendment procedures for the CUSC. Ofgem/DTI considered it appropriate for NGC to own and operate the amendment procedures for the CUSC to reflect NGC's direct interest in the CUSC as the main vehicle by which it recovers charges for connection and use of its system (i.e. its core business activities).
- 4.7 The majority of respondents to the March 2000 document who commented on this issue agreed that NGC should own and be responsible for the development and amendment of the CUSC. However some respondents considered it to be more appropriate for this role to be undertaken by users of the transmission system. Most respondents were concerned that this role of NGC must not afford it opportunities to exploit its position, for example by blocking or delaying amendments.
- 4.8 In the August 2000 document Ofgem/DTI stated that we continued to believe (along with most respondents to the March 2000 document) that it was appropriate for NGC to own and operate the CUSC as this is in keeping with its obligations to maintain, develop and, under the new NETA licence conditions, operate its transmission system in an economic, efficient and co-ordinated manner.
- 4.9 However, Ofgem/DTI recognised respondents' concerns regarding the need to ensure that NGC is not given opportunities to exert undue influence over the amendment process. Ofgem/DTI therefore considered that it was necessary to include sufficient checks and balances on NGC's influence within the amendment procedures. In particular, Ofgem/DTI considered that the conditions regarding the efficiency of BSC modifications could be usefully replicated in the CUSC in relation to NGC's role. Ofgem/DTI therefore proposed that it was appropriate for the CUSC to contain obligations on NGC regarding its efficiency in operating the amendment procedures and in implementing amendments. Similar obligations are contained in sections B and

F of the BSC in relation to the activities undertaken by the BSC Panel and the BSC Company (Elexon) respectively. The fall back position in the BSC if it is concluded by Ofgem that Elexon or the BSC Panel are not operating the modification procedure effectively, is for NGC to take over the progression of a particular modification proposal, on a case by case basis. If NGC does not operate the CUSC amendment procedures effectively, it could be found to be in breach of its licence. For example, it could be in breach of the obligation in the proposed condition 10F to operate the amendment procedures so as to better facilitate achievement of the Applicable CUSC Objectives, or its licence obligation to operate its transmission system in an efficient, economic and co-ordinated manner.

- 4.10 In addition, Ofgem/DTI considered that it would be desirable to include similar provisions in the CUSC to those in the BSC regarding default timetables for the progression and implementation of amendments. We considered that such provisions would help to ensure that the amendment procedures run as effectively as possible.

Respondents' views

- 4.11 Few respondents to the August 2000 document commented on this issue. One respondent supported NGC as owner and manager of the CUSC, another suggested that the governance of the CUSC should be placed under the TUG. A third agreed that it was appropriate for NGC to own the CUSC and operate the amendment procedures initially but stated that further consideration would need to be given to this issue should the CUSC be extended to cover Scotland.
- 4.12 During the course of NGC's consultation a number of comments were received on the need for a users' forum to help balance the role of NGC. This is considered in more detail below. A number of comments were raised relating to the need to place checks and balances on the influence of NGC in the drafting of the CUSC governance section, in particular in relation to the role of the Chairman of the Amendments Panel. Again this is discussed below.

NGC's draft CUSC

- 4.13 The draft CUSC as provided by NGC contains a number of checks and balances on NGC's influence as owner of the CUSC and operator of the CUSC amendment procedures. In line with Ofgem/DTI's proposals the CUSC contains obligations on NGC and the CUSC Amendments Panel similar to those in the BSC. For example, the Amendments Panel (chaired by NGC) has an obligation to endeavour at all times to operate in an efficient, economical and expeditious manner, taking account of the complexity, importance and urgency of particular amendment proposals; and with a view to ensuring that the CUSC facilitates achievement of the Applicable CUSC Objectives.
- 4.14 Under the draft CUSC, NGC is responsible for implementing or supervising the implementation of approved amendments and has an obligation to do so in an efficient, economical and expeditious manner and (subject to any extension granted by Ofgem) in accordance with the date specified by Ofgem in its approval.
- 4.15 In addition, the draft CUSC contains default timetables for the progression of amendment proposals and a number of clauses have been included to ensure that NGC does not incur unfair advantage as a result of the Chairman of the Amendments Panel being appointed by NGC. These aspects are considered in more detail below.

Ofgem/DTI's views

- 4.16 Ofgem/DTI continue to believe that it is appropriate for the licence condition containing requirements relating to the ownership and operation of the amendment procedures of the CUSC, and the accompanying duties to sit with NGC. Ofgem/DTI continue to consider that there are differences between NGC's interest in the BSC and the CUSC to justify a difference in approach. Ofgem/DTI welcome the inclusion of efficiency obligations in respect of the activities undertaken by the Amendments Panel and on NGC as regards the progression of amendment proposals and the implementation of approved amendments.

Role of the Amendments Panel

March and August 2000 documents

- 4.17 In the March 2000 document Ofgem/DTI proposed that there should be a CUSC Amendments Panel based on the constitution of the BSC Panel but with the chairman appointed by NGC. It was envisaged that this Panel would have a similar role to the modification panel in place in respect of BG Transco's Network Code and the role of the BSC Panel in so far as it relates to modifications. The Panel would therefore be a vehicle for securing that the appropriate process of consultation is carried out in respect of individual amendment proposals.
- 4.18 Following consideration of respondents' views to the March 2000 document, Ofgem/DTI proposed in the August 2000 document that there should be a small Amendments Panel responsible for deciding the appropriate route for the progression of particular amendment proposals. Ofgem/DTI were keen for checks and balances to be placed on NGC's role as owner and operator of the CUSC amendment procedures and for there to be full consultation on all amendment procedures, via working groups or written consultation depending on the complexity, importance and controversy of the proposal in question.

Respondents' views

- 4.19 The views of respondents to the August 2000 document and those expressed during NGC's consultation on the CUSC which relate to the overall structure of the governance model are discussed here.
- 4.20 A few respondents did not consider it appropriate to base the model on the BSC or the Network Code in gas. These respondents felt that there were sufficient differences between the transmission business and the aspects of the energy market covered by other codes to justify a difference in the governance. Some respondents considered that the ongoing review of the Network Code governance model was evidence that this model did not work and therefore should not be the basis of the model for the CUSC.
- 4.21 However, the majority of respondents considered that an open and transparent process with a right of all CUSC parties (and some additional persons) to

propose amendments (as proposed by Ofgem/DTI) was necessary in the present climate. Some respondents favoured the inclusion of a small Amendments Panel as proposed by Ofgem/DTI to run the amendments procedures.

- 4.22 There was, however, considerable support from the overwhelming majority of participants at NGC's working sessions, some of which was followed up by written submissions, for the continuance of a users' group of some kind. Many respondents considered that this forum was needed in order to ensure that amendments were discussed in general hence giving the opportunity for a consensus to be reached. There was also a strong feeling that this type of group would be able to monitor the progression of amendments on a wholesale basis to help ensure that developments were consistent and sensible. Finally, there was a feeling that such a group would help to balance the power of NGC as operator and owner of the CUSC and its amendment procedures to the benefit of NGC's customers. Two respondents considered that it was inappropriate for a users' group to continue under the CUSC and that an Amendments Panel based on the BSC and Network Code models was an appropriate substitute.
- 4.23 There were considerable variations between respondents as to the form and role that should be taken by any users group. Some considered that this group, which would be representative of the industry (on a similar basis to TUG) should replace the Amendments Panel proposed by Ofgem/DTI. Others considered that it was inappropriate for this group to fulfil the role of the Amendments Panel as it may delay the efficiency of the amendment process, these respondents suggested that the group could carry out a role in parallel to the Amendments Panel. This would either be as a formal part of the consideration of amendment proposals or for the consideration of amendment proposals before they reached the formal procedure (or a combination of both of these roles). Some respondents considered the role of the group to be compulsory while others considered that it should be discretionary, either on the part of the amendment proposer, the Amendments Panel or the working groups constituted under the Panel. A number of participants requested the opportunity to debate this further.

NGC's draft CUSC

- 4.24 NGC made clear in its submission to Ofgem/DTI that it had followed the proposals set out in the August 2000 document, which did not envisage the inclusion of a Users' Forum. It had therefore not included such a forum within the draft CUSC and had retained a small Amendments Panel involved in the progression of amendment proposals based on Ofgem/DTI's August 2000 document. A number of comments relating to the detail of these procedures (in particular in relation to the checks and balances on NGC's influence) had been included by NGC. These aspects are considered in more detail in the later parts of this chapter.
- 4.25 Under the proposals set out by NGC in the draft CUSC the Amendments Panel has a role in deciding the most appropriate method of consultation for a particular amendment, the composition and terms of reference of working groups, the allocation of time scales for particular aspects of the amendment consultation process and in having its views formally included within the amendment report.

Ofgem/DTI's views

- 4.26 Ofgem/DTI continue to believe that it is appropriate to base the CUSC governance procedures on those procedures proposed for the BSC and those in place in respect of Transco's Network Code. Ofgem/DTI recognise that there are some differences between the coverage of the CUSC and the BSC, in particular in respect of NGC's interest in such arrangements and therefore consider it appropriate for NGC to have a more direct role in the CUSC arrangements to that which it has in respect of the BSC. However, in respect of consultation on amendment proposals, Ofgem/DTI do not consider that there is justification for substantially different procedures to be in place in respect of the BSC to those in place for the CUSC.
- 4.27 In respect of the Network Code, Ofgem/DTI do not agree with those respondents who considered that the current procedures were not effective. The current procedures have been in place since the implementation of the Network Code in 1996. They have proved to be efficient and effective in allowing the

progression of a number of significant modifications which have revolutionised the workings of the markets for trading of both energy and capacity in gas.

- 4.28 A significant advantage of the proposed CUSC amendment procedures over the Network Code modification rules is that they will be included within the CUSC. This will allow them to evolve more easily and for changes to be made as identified to improve the efficiency, effectiveness and transparency of the rules.
- 4.29 Ofgem/DTI has carefully considered the views of respondents in respect of the continuance of a users' group. It is our view, however, that it is not desirable to include such a group within the CUSC. There is a concern that however the users' group is constituted it would have a tendency to assume much of the tasks that would ideally be carried out within the formal amendment procedure. For example, if the users' group had a role in looking at amendments before they were formally proposed it would be difficult to identify the point at which the amendment should enter the formal procedure. It would be possible for the group to bring the amendment to a very advanced state before it is formally proposed. There are considerable advantages to such a proposal entering the formal process as quickly as possible as every CUSC party and other interested parties are sent the amendment proposal as soon as it is received by the Amendments Panel and then have the opportunity to be nominated to attend working groups (if such groups are set up) or respond to the written consultation. If the majority of the process was conducted before reaching the formal stage it is our view that transparency could be compromised and the influence of the users' group could be too high.
- 4.30 An alternative role of the users' group could be to evaluate and comment on proposed amendment proposals. Although, there may be benefit to some respondents pooling resources to respond to proposals Ofgem/DTI considers that this type of role could be as easily fulfilled by a group sitting outside of the CUSC as one sitting within the CUSC. It is clear that such a group does not have 100% support from the industry and therefore the costs of such a group should not be recovered from all CUSC parties (and ultimately all electricity customers). If such a group(s) was to be constituted outside of the CUSC NGC would be obliged to consider any responses received from the group(s) when drafting its report and Ofgem/DTI would be obliged to give its response consideration in

making a decision. The inclusion of the group within the CUSC would not give any such response greater weight.

- 4.31 The final category for a potential role for a users' group is in respect of prioritisation and overview of amendment procedures. However, it is not clear to Ofgem /DTI that such a group is required. Should it appear subsequently that a group (whether drawn only from users or more widely) could be useful in supplementing the role of the Panel, then it could be proposed as an amendment to the CUSC.
- 4.32 It is Ofgem/DTI's clear intention that the industry and other interested parties should be given full opportunity to comment on all amendment proposals both in writing and in discussion forums. It is our belief that the proposed governance model allows this in the fairest and most equitable way possible and therefore that it is the most appropriate model to follow.

Constitution of the CUSC Amendments Panel

The August 2000 document

- 4.33 In the August 2000 document Ofgem/DTI proposed that the constitution of the CUSC Amendments Panel should be similar to that of the BSC. Ofgem/DTI considered that the Panel should reflect the composition of CUSC parties. It considered it appropriate to leave the question of whether there should be independent members of the Panel to the CUSC parties who will be able to propose changes to the Panel through the amendment procedures.
- 4.34 Ofgem/DTI considered that the Chairman and Secretary of the Panel should be appointed by NGC and would be non-voting members of the Panel. In addition, Ofgem/DTI considered that NGC should hold one voting, and one non-voting seat on the Panel. Ofgem/DTI considered that there should be five voting industry representatives (including two suppliers, a generator, a distributor, a directly connected customer) and a voting customer representative. Ofgem/DTI proposed that Ofgem should attend CUSC Amendments Panel meetings as an observer. Finally, Ofgem/DTI considered that there should be provision for Ofgem to appoint other representatives to the Amendments Panel if it was felt

that the interests of a particular class of persons were not being adequately represented.

Respondents' views

- 4.35 In response to Ofgem/DTI's August 2000 document on this issue the following points were raised. Some respondents considered that the Panel should be based on the constitution of the TUG. However, another respondent said that it would prefer the Panel not to follow the constitution of TUG. It stated that the TUG has been useful to raise issues and discuss market developments but that it had not been successful in effecting necessary changes to the transmission sector.
- 4.36 One respondent considered it inappropriate to have non-CUSC parties included on the Panel and another suggested that an embedded generation representative should be appointed to the Amendments Panel (following the decision by the BSC to appoint such a representative to its panel). This respondent also suggested that Ofgem should take note of the lack of resources of the embedded generation community and make arrangements to fund Panel members.
- 4.37 One respondent agreed that the Chairman and Secretary appointed by NGC should be non-voting and that the Panel should be kept small to prevent procedures becoming cumbersome. The respondent also stated that the make-up of the Panel should be balanced and supported Ofgem/DTI's proposal that Ofgem should be able to nominate other representatives to the Panel if it was felt that a particular group was under-represented. One respondent considered that the Chairman of the Panel should not be appointed by NGC as the CUSC has a major effect on NGC's revenue.
- 4.38 Other comments were raised on these issues during the working group sessions held by NGC on the governance aspects of the CUSC. In particular, respondents at these sessions did not consider that it was possible for an Amendments Panel, the size of the one proposed by Ofgem/DTI to be directly representative of the different industry groups. Many persons attending these meetings considered that TUG was reflective of the industry and that it would not be possible for a group much smaller than TUG to be fully representative.

This was one of the main reasons for support of the continuance of TUG within the new governance structure.

- 4.39 There was overwhelming agreement during these sessions that if the Amendments Panel was to be small, it would be necessary for the industry members of the Panel to act in a non-representative capacity, in the same way as is proposed for the BSC Panel. It was also considered necessary to have seven industry members rather than five because of the wider constitution of CUSC parties to the BSC parties (i.e. distributors will be CUSC signatories). Some participants supported the inclusion of customer representatives on the Panel and for Ofgem to retain a power to appoint an additional person to the Panel if it was felt that expertise in respect of a particular class or category of persons was not reflected on the CUSC Panel. One respondent considered that it was important for additional provision to be made to ensure that distributors were directly represented on the Amendments Panel.
- 4.40 Four participants in NGC's consultation submitted responses saying that the Panel Chairman should not be an NGC appointee. One of the four went onto say that if the Chairman was an appointee, he/she must give an undertaking to act independently. Other participants were more comfortable with the concept of a NGC Chairman, so long as he/she was independent. An alternative view expressed was that Ofgem should appoint the Chairman. A participant suggested that it should be made clear that NGC could only appoint a Senior Company member to the post.
- 4.41 Some participants in the NGC consultation stage suggested that the Panel members should be entitled to receive expenses for attending Panel meetings.

NGC's CUSC

- 4.42 In the draft CUSC provided by NGC to Ofgem, the Panel has been drafted as an Panel with independent industry representatives, NGC members, a customer representative and an independent NGC chairman. In addition, under the proposals Ofgem has the ability to appoint another representative if we consider that a particular group or class of persons is under-represented in terms of expertise on the Panel. NGC has stated that this has considerable benefits in terms of ease of electing the Panel and ensures that the Panel can act in a non-

partisan fashion whilst still being clearly informed as to how NGC believes a proposed amendment might impact on the transmission system.

- 4.43 NGC responded to many of the comments raised by respondents regarding the Chairman by not only requiring him/her to act independently but also that he/she must be an executive director (or other senior member) of NGC.

Ofgem/DTI's views

- 4.44 Following consideration of views expressed at the working group sessions, Ofgem/DTI consider that it is appropriate for the industry appointed members of the Amendments Panel and the Chairman of the Panel to be independent. As the electricity industry develops it is becoming increasingly difficult to compartmentalise companies into specific groups. By having independent industry members of the Panel, Ofgem/DTI consider that a wide range of views and expertise can be provided without forcing these divides. Ofgem/DTI note the views put forward by embedded generators and a distributor that these particular groups should be assigned places on the Panel. Ofgem/DTI consider that the power given to Ofgem allowing us to appoint an additional member of the Panel with specific expertise acts a sufficient safeguard for these parties.
- 4.45 With regard to the comments raised regarding the Chairman of the Amendments Panel, Ofgem/DTI continue to believe that in view of the licence obligations on NGC in relation to the CUSC and NGC's interest in the CUSC for recovering its revenue for its core business activities, it is appropriate for NGC to appoint the Chairman of the Amendments Panel. Ofgem/DTI welcome the steps proposed by NGC in response to comments raised by the industry with regard to the independence and status of the Chairman of the Panel. NGC has also proposed a number of checks and balances on the use of the Chairman's powers and these are discussed in more detail later in this chapter.

Workings and election of the Amendments Panel

The August 2000 document

- 4.46 The August 2000 document remained silent on much of the detail of the working and election of the Amendments Panel as it was expected that this

would be consulted on during the course of NGC's consultation. Ofgem/DTI did however give the following guidance:

- ◆ meetings of the Amendment Panel should be open. Non-members would only be able to speak at the discretion of the Chairman;
- ◆ Ofgem should attend Panel meetings as an observer;
- ◆ Panel members should be able to vote on particular issues (if voting members). The rule should be one member, one vote; and
- ◆ BSC and Network Code workings should be looked to as examples.

Respondents' views

- 4.47 Few comments were raised directly in response to the August 2000 document. One respondent agreed that meetings of the Amendments Panel should be open but argued that only parties represented or who have prior permission, should be able to speak and raise issues.
- 4.48 More comments were raised during the consultation by NGC on the drafting of the CUSC. In respect of provisions relating to the election of Panel members, length of tenure and commitment levels most respondents were supportive of the proposals put forward by NGC, which were based on the BSC provisions. In respect of the requirements relating to voting and quorum, participants were concerned that arrangements were developed in such a way that NGC would not have any undue influence.
- 4.49 Views were also expressed regarding the use of Alternates. It was considered by some participants that as the Panel members were to be elected it was inappropriate for them to be able to appoint non-elected Alternates who could attend Panel meetings and vote on their behalf.
- 4.50 In terms of the role of the Chairman and the proceedings at meetings, participants were concerned to ensure that NGC would not gain additional influence by virtue of its appointment of the Chairman of the Panel.

NGC's CUSC

Election of the Amendments Panel members

- 4.51 NGC proposed that the Panel Chairman and NGC's two members would be appointed by NGC where NGC has given notice to the Panel Secretary of such appointment, with effect from the date specified in such notice. NGC has also proposed that energywatch⁹ may appoint its Panel member by giving notice of such appointment to the Panel Secretary and may remove and reappoint such member by notice.
- 4.52 Under NGC's proposals the industry Panel members would be appointed by election in accordance with provisions set out in Annex 8A of the CUSC which are similar to the procedures for the election of the industry members of the BSC Panel. In summary, under the proposals, each CUSC party will be given an invitation by NGC to nominate a candidate for election and will be given a period in which to so nominate. Following the receipt of nominations, NGC will circulate a list of candidates and voting papers that must be returned by a specified date.
- 4.53 Each CUSC party will be able to submit one voting paper and will have the opportunity to indicate a first, second and third preference. There are detailed procedures as to how the votes will be counted set out in Annex 8A of the CUSC.

Alternates

- 4.54 NGC also proposed that up to five Alternate Panel members would be appointed at the same time as the Panel members by election in accordance with the procedures set out in Annex 8A of the draft CUSC. The Alternates would then form a group from which industry Panel members may select a person to act as their Alternate. NGC considered that this best reflected the concerns of respondents set out above. NGC has proposed that any person nominated to the Panel by Ofgem would also be required to elect an Alternate from the pool of Alternates.

⁹ energywatch is the name given to the Gas and Electricity Consumers' Council which represents the interests of all electricity and gas customers.

- 4.55 In respect of all non-industry Panel members, NGC has proposed that they should be able to appoint their own Alternate. NGC has proposed that the Panel Chairman should be able to appoint an Alternate (who shall be a senior employee of NGC) to act as the Panel Chairman.

Length of tenure/commitment levels

- 4.56 NGC has proposed that the Chairman of the Panel should hold his seat for three years. All other Panel members would hold seats for two years.
- 4.57 NGC has proposed that the industry elected Panel members and any Alternates, any Panel member appointed by Ofgem and the Panel Chairman will be required to act impartially and in accordance with the requirements of the CUSC and shall not be representative of and shall act without undue regard to the particular interests of the body of person or persons by whom he/she was appointed as Panel member or any other persons. Similar requirements are included in the BSC.

Voting

- 4.58 NGC has proposed that any matter to be decided at an Amendments Panel meeting shall be put to a vote of Panel members upon the request of the Chairman, or any Panel member. In the BSC issues can be put to a vote only at the request of the Chairman, the difference here is due to concerns raised by respondents regarding the influence of the NGC Chairman.
- 4.59 NGC has proposed that all Panel members other than the Chairman should have one vote and that matters shall be decided by simple majority of the votes cast. The Panel Chairman shall have a casting vote on any matter where votes are otherwise cast equally in favour of and against the relevant motion, but where any person other than the actual Chairman or his Alternate is acting as Chairman he/she shall not have a casting vote.

Quorum

- 4.60 NGC has proposed that for a quorum to be present at a Panel meeting there must be six Panel members or their Alternates present, at least one of which

shall be appointed by NGC. It is possible for a Panel member to be present via a telephone link.

- 4.61 NGC has proposed that if a quorum is not present at a meeting, it shall be adjourned to the same day in the following week. If there is no quorum at the following meeting all business shall be delayed until the next meeting of the Amendments Panel.

Proceedings at meetings

- 4.62 NGC has proposed that the Amendments Panel meetings shall be open to attendance by a representative of any CUSC party, any BSC Party or energywatch and any persons invited by the Panel Chairman and/or any Panel member. The Panel Chairman and Panel members can invite any person invited by them to the meeting and any attending representative of a CUSC party to speak at that meeting.
- 4.63 An Amendments Panel meeting may consist of a conference between Panel members who are not all in one place (although at least one must be at the venue in the notice of meeting) but who are able (by telephone or otherwise) to speak to each of the others and to be heard by each of the others simultaneously.
- 4.64 NGC has proposed that Panel members will be sent minutes as soon as possible after the meeting and when approved the minutes will be placed on the NGC website.

Ofgem/DTI's views

- 4.65 Ofgem/DTI consider that the majority of these proposals put forward by NGC are sensible. They are based largely on similar provisions contained in the BSC. Ofgem/DTI's initial view is that the requirements regarding the appointment of Panel members are sensible. The proposals regarding the election of Alternates differ from the procedures in the BSC and Ofgem/DTI would be particularly interested in the views of respondents on the practical implications of these proposals. Ofgem/DTI consider that it is inappropriate for any Panel member appointed by Ofgem to appoint an Alternate from the elected pool. Instead, Ofgem/DTI believe it is appropriate for any such member to be able to appoint

his/her own Alternate. Ofgem/DTI expect NGC to write out to interested parties soon, requesting nominations for Panel members, based on the proposals set out in the draft CUSC. This would ensure that the Amendments Panel would be in place for CUSC implementation if the current proposals are followed.

- 4.66 Ofgem/DTI's initial view is that the requirements regarding the length of tenure and commitment levels of the Panel members seem reasonable in the light of no comments being raised by participants to suggest otherwise.
- 4.67 In respect of voting, Ofgem/DTI consider that it is appropriate for Panel members to have one vote each. However, there is some confusion by virtue of the fact that one of the NGC Panel members does not have a right to vote. Ofgem/DTI consider that there may be a need to revise some of the drafting of the sections on voting to clarify this issue further.
- 4.68 Ofgem/DTI consider that the requirements regarding quorum are flawed. Ofgem/DTI accept that it is appropriate for six Panel members to be present in order for there to be a quorum. However, Ofgem/DTI consider that if a quorum is still not present at the second meeting (scheduled due to there not being a quorum at the first meeting), the persons present at the meeting should be considered to be a quorum. This is consistent with the quorum provisions in the BSC. Ofgem/DTI consider that the provisions in the CUSC which allow a Panel member to be considered present at the meeting via a telephone link and the ability of Panel members to appoint Alternates are sufficient protection for Panel members. Ofgem/DTI is concerned that unless these provisions are changed it would be possible for Panel meetings to be indefinitely delayed at the costs of efficiency.
- 4.69 The requirements relating to proceedings at Panel meetings are strongly based on the BSC provisions. It seems reasonable to Ofgem/DTI for similar provisions to be included here.

Amendment proposals

The August 2000 document

- 4.70 The proposed licence condition attached to the March 2000 document required the CUSC amendment procedures to provide for proposals to be made by either

NGC or a CUSC party. Ofgem/DTI put forward our initial view that the CUSC should provide for customer representatives to be able to make amendment proposals.

- 4.71 Most respondents to that document generally agreed that customers should be able to propose amendments through a nominated representative. Another respondent suggested that traders should also be given the right to propose amendments to the CUSC as arrangements contained within the CUSC would have an impact on traders.
- 4.72 Following consideration of these responses, in the August 2000 document Ofgem/DTI stated that we considered that there should be similar provisions regarding who can make amendment proposals to those envisaged for the BSC. In particular, customers should be able to propose amendments through a designated customer group. Ofgem/DTI recognised that traders could be affected by arrangements contained within the CUSC. As such Ofgem/DTI considered that consideration should be given to the best way of enabling participation of such parties within the CUSC amendment procedures during the NGC phase of consultation. In order to facilitate this, the August 2000 document proposed a change to the proposed condition 10F to state that the amendment procedures must include provisions by which amendment proposals can be made by NGC, CUSC Parties and such other persons or bodies as the CUSC may provide.

Respondents' views

- 4.73 Two respondents to the August 2000 document considered that it was inappropriate for parties who are not signatories to the CUSC to be able to propose changes. One respondent said that non-CUSC parties could approach CUSC signatories or raise the matter with Ofgem. One respondent felt that small generators will be excluded from being able to propose an amendment and suggested that certain small generator representative bodies (such as CHPA) should be able to propose changes. One respondent stated that traders with no physical assets should not have any locus in CUSC amendment procedures.
- 4.74 During the discussions at the NGC led working group sessions on governance there was recognition that it was necessary for some other parties (in particular

customers) to propose amendments to the CUSC. There was also recognition that persons who were signatories to the BSC and not to the CUSC could be affected by the CUSC procedures. It was therefore suggested that amendment proposals should be capable of being made by CUSC Parties, BSC Parties and energywatch.

NGC's draft CUSC

- 4.75 NGC's draft CUSC provides for the making of amendment proposals by CUSC Parties, BSC Parties and energywatch.

Ofgem/DTI's views

- 4.76 Ofgem/DTI consider that the proposals put forward by NGC are appropriate and allow persons directly interested or affected by the procedures provided for in the CUSC to propose amendments to the CUSC.

Amendment consultation

The March and August 2000 documents

- 4.77 The March 2000 document contained the proposed licence condition 10F which lays down certain requirements regarding the consultation on modification procedures. It requires:
- ◆ that amendment proposals are brought to the attention of the CUSC parties and any other persons who have an interest in them;
 - ◆ that proper consideration is given to any representations on the proposals; and
 - ◆ proper evaluation to be given to whether the proposed amendment would better facilitate the achievement of the Applicable CUSC Objectives.
- 4.78 In the March 2000 document Ofgem/DTI stated that we expected that the CUSC Amendments Panel would secure that the appropriate route of consultation is carried out in respect of individual amendment proposals. Ofgem/DTI considered that the CUSC procedures should closely follow the procedures for

consulting on amendment proposals for the BSC and the time scales in which it is envisaged that such consultation will take place. Ofgem/DTI considered that there should be the opportunity to refer proposals to work streams or working groups if necessary.

- 4.79 Respondents to the March 2000 document generally supported the view that the provisions for consultation on amendments should be similar to those contained within the BSC. Some respondents were concerned that NGC should not have the ability to delay amendment proposals and therefore the inclusion of time scales for consultation was welcomed.
- 4.80 Following consideration of these responses Ofgem/DTI stated in the August 2000 document that the BSC was the appropriate model to follow for the consultation on amendment proposals. Ofgem/DTI continued to be keen that default timetables should be included and that the Amendments Panel should have a role in deciding whether a particular amendment should deviate from these timetables. As proposed for the BSC, Ofgem should have the opportunity to override any decision to deviate from the time scales contained within the CUSC.
- 4.81 Ofgem/DTI stated in the August 2000 document that they were keen for the CUSC amendment procedures to contain provisions for:
- ◆ the amendment proposals to be consulted on fully;
 - ◆ alternative proposals to be developed and assessed as necessary; and
 - ◆ the inclusion of time scales for the consultation of amendments, the preparation of the report and the implementation of the amendments.

Respondents' views

- 4.82 Of the respondents to the August 2000 document that commented on these issues one respondent did not consider that it was necessary to include time scales for the work of the Amendments Panel and working groups as it did not consider that there had been evidence of undue delay in the TUG expert groups. This respondent also suggested that Ofgem should make decisions as to whether to direct an amendment proposal to be made in the same time scales as had

been designated for the referral. Another respondent agreed with the inclusion of default time scales to ensure the progression and implementation of amendment proposals runs as efficiently as possible.

- 4.83 During the course of NGC's consultation on the governance section of the CUSC a number of other comments were raised regarding the consultation on amendment proposals. There was a strong feeling among participants that proposed amendments should be copied to all parties (and other interested persons) on receipt by the Amendments Panel. It was generally felt appropriate for the Amendments Panel to take a key role in setting the timetable in which amendment proposals would be discussed. NGC's initial view at the meetings was that NGC should set the timetable in consultation with the Panel. This was felt to be inappropriate by many participants.
- 4.84 In respect of the working groups that will be set up to consider amendment proposals, a number of comments were received stating that these working groups should be set up and constituted by the Amendments Panel. A number of respondents disagreed with NGC's proposal that the Chairman of the working groups should be an NGC appointee.
- 4.85 In respect of alternative amendment proposals customers were generally concerned that any alternative amendment proposals that were derived during the consultation on a particular amendment would be given equal weight and consideration by the industry, in the amendment report and subsequently by Ofgem.

NGC's CUSC

- 4.86 The governance section of NGC's draft CUSC has taken on board a number of comments raised by the industry in respect of the consultation on amendments.
- 4.87 In summary, the draft CUSC governance section allows the following elements of consultation on amendments proposals:
- ◆ details of amendment proposals to be sent to all CUSC parties, BSC parties and Panel members before discussion at Panel meeting;

- ◆ discussion of the proposal at the next Panel meeting following receipt of the proposal (subject to such receipt being at least 5 working days before the next Panel meeting);
- ◆ time scales for the discussion of the amendment proposal to be set by NGC and the Amendments Panel;
- ◆ the Panel to have the option of amalgamating a proposal with one or more other amendment proposals where the subject matter justifies such amalgamation;
- ◆ the Panel to constitute a working group if considered necessary to develop or consider a particular proposal and to consider any Alternative Amendments that might better facilitate achieving the Applicable CUSC Objectives. The working group must produce a report on its findings; and
- ◆ for formal consultation on the proposal by NGC with CUSC parties and such other persons who may properly be considered to have an appropriate interest in it.

4.88 On receipt of an amendment proposal by the Panel Secretary, NGC has proposed that provided the proposal is not rejected on the grounds of not including the minimum information, details of the proposal will be entered into the Amendment Register. It is then placed on the agenda of the next Amendments Panel meeting. Before the Panel meeting takes place copies of all papers are sent to the Amendments Panel members, all CUSC parties and all BSC parties. The Proposer's representative shall attend the next Amendments Panel meeting and may be invited by the Panel to present his/her proposal.

4.89 NGC has proposed that the Amendments Panel and NGC shall together establish a timetable to apply for the amendments process. It has proposed that the Amendments Panel shall establish the part of the timetable for consideration by the Panel and by a working group, if any. NGC has proposed that this part of the consultation should not take more than three months unless the particular circumstances of the proposal justify an extension of such timetable and Ofgem does not object. NGC has proposed that NGC should establish the part of the

timetable which relates to its consultation and the provision of the amendments report and has suggested that the relevant default timetable for this stage of the process should be two months for the consultation and a further 14 days for the provision of the report. This gives an overall default consultation time period of 5 months and 14 days which is consistent with the similar requirements of the BSC.

- 4.90 If the Panel considers it to be appropriate to set up a working group in respect of a particular proposal NGC has proposed that the Panel should determine the terms of reference of the working group and have power to change those terms of reference from time to time as it sees fit. The purpose of the working group would be to assist the Amendments Panel and NGC in evaluating whether an amendment proposal better facilitates achieving the Applicable CUSC Objectives and whether an Alternative Amendment would, as compared with the amendment proposal, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified in the amendment proposal.
- 4.91 NGC has proposed that the working group should comprise at least five persons selected by the Amendments Panel from those nominated by CUSC parties as having experience and expertise in the areas forming the subject-matter of the relevant proposal. It is envisaged that there would be a standing list of persons available to sit on working groups held by the Panel. A representative from Ofgem may sit on all working groups. NGC has also proposed that the Chairman of the working groups should be appointed by NGC and act impartially. It is expected that other members of working groups would represent the interests of the person (or group of persons) by whom they have been nominated.
- 4.92 Each working group Chairman shall prepare a report to the Panel in accordance with the timetable set out in the terms of reference. The report must reflect the views of the members of the working group and should be circulated in draft form to members for comment thereon. Any unresolved comments made shall be reflected in the final report.

- 4.93 The working group report will be discussed at the next meeting of the Amendments Panel and will therefore be issued to all Panel members, CUSC parties and BSC parties in preparation for that meeting.
- 4.94 Following consideration of any working group report and a determination by the Amendments Panel to proceed to wider consultation by NGC, NGC will issue a consultation paper on the amendment proposal on its website and send it by electronic mail to CUSC parties and other persons who have supplied relevant details for this purpose.
- 4.95 NGC has proposed that the consultation paper will contain the proposed drafting of the amendment proposal, if it is proposed to include such drafting in the amendments report (see section on amendment report below) and will indicate the issues which arose in the working group discussions where there has been a working group and will incorporate NGC's and the Panel's initial views on the way forward.

Ofgem/DTI's views

- 4.96 Ofgem/DTI believe that the proposed procedures for consultation on amendment procedures as put forward by NGC following consultation with the industry substantially meet the requirements put forward in the August 2000 document. They are largely based on the BSC proposals except where a difference is required to reflect the difference in NGC's role. There is also a difference in the provisions relating to the working groups as there is no distinction between the assessment and definition procedures as found in the BSC. This was as a result of NGC's desire to simplify the procedures. However, the important safeguards of default timetables and full consultation are included.
- 4.97 Ofgem/DTI note respondents' comments regarding the proposal that NGC should chair the working groups set up by the Panel. Ofgem/DTI's initial view is, however, that it is appropriate for NGC to appoint the Chairman of these groups as this is in line with the licence obligations which NGC will be subject to.
- 4.98 Ofgem/DTI consider that the proposals allow for significant consideration of the amendment proposal and accompanying documentation by CUSC Parties, BSC

parties and other interested parties. Ofgem/DTI, however, are concerned that other interested persons will not see the proposed amendment until the NGC consultation stage (although they will be able to see a summary of it on the amendment register). They also do not appear to have the opportunity to see the report of the working group. For purposes of transparency Ofgem/DTI consider that interested persons should be able to see both these documents at the earliest possible opportunities.

Amendment Report

The March and August 2000 documents

- 4.99 In the March 2000 document, Ofgem/DTI proposed that licence condition 10F should provide for the preparation of an amendment report by NGC which would be provided to Ofgem containing specified information including details of the proposed amendment (and any alternatives) and an evaluation of the proposed amendment (and any alternatives) against the Applicable CUSC Objectives. Ofgem/DTI also stated that the amendment report should contain a summary of any representations received in respect of the proposed amendments.
- 4.100 A few respondents to the March 2000 document commented on the proposals regarding the amendment report. Of those who did there was agreement that the report should include an impact assessment on contingent change to any Core Industry Documents. One respondent suggested that the report should be approved by the Amendments Panel. There was general support for the inclusion of a summary of representations made in respect of the proposal and for these to be taken into account by Ofgem.
- 4.101 Following consideration of these responses Ofgem/DTI continued to believe in the August 2000 document that it was appropriate to place an obligation in the proposed licence condition 10F of NGC regarding the provision of an amendment report. We continued to believe that the report should be drafted by NGC and contain a recommendation from NGC as to whether the amendment proposal should be accepted by Ofgem. Ofgem/DTI also proposed that the views of the CUSC Amendments Panel should be summarised in the report and that this aspect of the report should be agreed by the Panel.

Respondents' views

- 4.102 No comments were received directly in response to the August 2000 document regarding the content of the amendments report other than a continued support for the inclusion of a summary of representations made during the consultation on the proposed amendment. One respondent agreed that NGC should draft the report and added that the final report should be made available to all interested parties. One respondent agreed that the views expressed by the CUSC Amendments Panel would need to be agreed by its members. It suggested that the Panel's views should be the recommendation in the report.
- 4.103 During the course of NGC's consultation on the CUSC further comments were raised. In particular, some participants considered it appropriate for the Panel to make the recommendation in the report. If the recommendation was to come from NGC there was support for the views of the Panel to follow this recommendation in the report. NGC considered it appropriate for it to make the recommendation as changes to the CUSC impact directly on the operation of NGC's transmission system. Most participants also considered it to be necessary for them to have a chance to see and comment on the draft report before it was submitted to Ofgem in order to ensure that their views had been correctly represented.
- 4.104 There was also general support for written submissions received by NGC during the consultation on a proposed amendment to be attached to the report as well as the summary of respondents' views to be included in the report. One respondent was keen for the report to include, where possible, an assessment of the effect of a proposed amendment in respect of costs incurred by CUSC parties in line with a similar requirement in relation to the BSC modification report.
- 4.105 There was considerable debate regarding the provision of legal drafting in the report. Some participants considered that each report should provide legal drafting in respect of the proposed amendment and any alternative amendments contained in the report. However, there was a recognition that this could have an impact on the efficiency of the amendment procedures. Where a number of alternate amendment proposals are included which are all different and complex

considerable legal resource could be committed to drafting several different alternatives, only one of which will be adopted.

NGC's draft CUSC

4.106 NGC has drafted the CUSC on the basis that the amendment report is written by NGC and the recommendation included in the report is that of NGC. It has however responded to many of the other comments raised at the working group sessions regarding other information that the CUSC should contain. The draft CUSC provided by NGC therefore requires the amendment report to include:

- ◆ the proposed amendment;
- ◆ the recommendation of NGC as to whether or not the proposed amendment (or any Alternative Amendment) should be made;
- ◆ an analysis of whether (and if so to what extent) the proposed amendment would better facilitate achievement of the Applicable CUSC Objectives;
- ◆ a full description and analysis of any alternative proposed amendment developed during the consultation which, as compared with the proposed amendment may better facilitate achievement of the Applicable CUSC Objective(s) and the views and rationale in respect thereof;
- ◆ the proposed date for the implementation of the amendment proposal or Alternative Amendment;
- ◆ a summary (agreed by the Amendments Panel) of the views (including any recommendations) from Panel members and/or the working group as the case may be made during the consultation in respect of the proposed amendment and of any Alternative Amendment;
- ◆ an assessment of (and a summary of representations) in respect of such matters):
 - the impact of the proposed amendment and any alternative amendment on the Core Industry Documents;

- the changes which would be required to the Core Industry Documents in order to give effect to the proposed amendment and any alternative amendment
 - the mechanism and likely time scales for the making of the changes referred to above;
 - the changes and/or developments which would be required to central computer systems;
 - the mechanisms and likely time scales for the making of the changes to central computer systems and processes;
 - an estimate of the costs associated with making and delivering the changes to the Core Industry Documents and to central computer systems and processes;
- ◆ copies of (and a summary of) all written representations or objections made by consultees during the consultation in respect of the proposed amendment and any alternative amendment and subsequently maintained; and
 - ◆ a copy of any impact assessment prepared by Core Industry Document Owners and the views and comments of NGC in respect thereof.

4.107 In response to comments raised at working group sessions NGC is proposing to circulate a draft of the amendment report to CUSC parties and Panel members and place it in draft form on its website. A period of five business days will be given for comments.

4.108 With regard to the provision of legal drafting NGC has followed the precedent set within the BSC namely that if it is proposing not to recommend that a particular amendment is adopted it may approach Ofgem to seek our view as to whether legal drafting should be provided.

4.109 Following submission of the report to Ofgem, the report will be placed on NGC's website and copied to each CUSC party, each Panel member and any persons who may request a copy.

Ofgem/DTI's views

- 4.110 Ofgem/DTI consider that NGC has taken on board many of the comments raised during the course of its consultation on the CUSC. However, some comments have not been incorporated by NGC and no convincing reasons have been put forward to support NGC's stance.
- 4.111 In particular, Ofgem/DTI have sympathy for the view that where possible some indication of the costs that will be faced by CUSC parties following the introduction of a proposed amendment should be given. If this information is not available it need not be incorporated. This would be consistent with the provisions of the BSC.
- 4.112 Further, Ofgem/DTI acknowledge the view that the section of the report detailing the views of the Panel should immediately follow NGC's recommendation. As such, Ofgem/DTI would see the current paragraph 8.19.2(f) moving to 8.19.2(c). Ofgem/DTI also consider it appropriate for the views of the working group to be given where appropriate, in addition to the views of the Panel and therefore would prefer the current 8.19.2(f) being divided into two distinct paragraphs.
- 4.113 With respect to legal drafting, Ofgem/DTI consider that it is appropriate to follow the example of the BSC as this will result in the best balance between transparency and efficiency.
- 4.114 With these suggested changes Ofgem/DTI consider that the procedures regarding the provision of the report proposed by NGC reflect a balance between the responsibility of NGC and the interests of CUSC parties and other interested persons. Ofgem/DTI are particularly keen for the draft report to be circulated to all CUSC parties before it is received by Ofgem and are pleased that this point has been incorporated by NGC.

Urgent amendment procedures

The August 2000 document

- 4.115 In the August 2000 document, Ofgem/DTI proposed that the amendment procedures should be based on those contained in the BSC. As such it was

envisaged that there should be urgent amendment procedures based on those contained in the BSC.

Respondents' views

- 4.116 During the course of NGC's consultation on the CUSC one written response was received stating that there was no need for an urgent amendment procedure within the CUSC as this could allow amendment to be passed without adequate consultation. During the course of the working group sessions led by NGC, some participants accepted the need for urgent procedures but stated that where an urgent amendment was made it should then follow the formal amendment procedure post-implementation.
- 4.117 NGC's original draft CUSC was based on the BSC and therefore stated that if NGC recommended to the Panel Chairman that a proposal should be treated as urgent, the Chairman would then be required to seek the views of the Amendments Panel as to whether the proposal was urgent. Participants expressed the view that the difference from the BSC namely that the Chairman of the CUSC Panel was appointed by NGC justified a difference in approach from the BSC, as otherwise it would only be NGC that could propose that a particular amendment was urgent. It was generally accepted that Ofgem should have a role in agreeing whether a particular amendment should be treated as urgent.

NGC's draft CUSC

- 4.118 NGC has taken on board many of the comments raised by respondents when producing its draft CUSC. NGC has proposed that any CUSC party should be able to recommend to the Panel Secretary that a proposal should be treated as urgent. The Panel Secretary is then required to contact the Chairman who shall endeavour to obtain the views of the Amendments Panel as to whether the proposal should be treated as urgent. Where the Chairman contacts the Amendments Panel and they agree (or any members contacted so agree) or where he/she was unable to contact any members, the Chairman shall consult Ofgem as to whether an amendment proposal is urgent.

- 4.119 As in the BSC, NGC has proposed that where an amendment proposal is treated as urgent, the procedures and timetables for consultation on that proposal will be agreed with Ofgem.
- 4.120 If an amendment proposal is implemented after following the urgent procedures, NGC has proposed that the amendment procedures will be initiated in order to consider whether any Alternative Amendment would better facilitate the Applicable CUSC Objectives in respect of the subject matter.

Ofgem/DTI's views

- 4.121 Ofgem/DTI consider that the procedures suggested by NGC achieve a good balance between providing a control on NGC's power and efficiency. It is possible for any CUSC party to propose that an amendment should be treated as urgent and it is then up to the Chairman to contact the members of the Amendments Panel to gain their views. However, a failure to contact such members will not delay referral to Ofgem of an urgent amendment.
- 4.122 Ofgem/DTI also consider it appropriate for any amendments that have been implemented via the urgent amendment route to then go through the full amendment procedure, to consider whether any Alternative Amendment would be better.

Amendment Register and Progress Reports

The March and August 2000 documents

- 4.123 Ofgem/DTI considered that the CUSC should contain similar provisions relating to the reporting on the progression of amendments to those contained within the BSC. In particular, Ofgem/DTI were keen for an amendment register (showing the current status of each modification proposals to enable Ofgem, CUSC parties and others to track developments at any given time) and a Progress Report (including details of amendment business conducted by NGC or the CUSC Amendments Panel in the previous month such as the number of rejected or invalid proposals; priority, schedule and timetable and revised implementation dates) to be produced.

Respondents' views

- 4.124 In relation to the Progress Report a number of parties were concerned as to whether the CUSC Amendments Panel would see the Progress Report or be able to exert any control over it.
- 4.125 Generally, the production of the Progress Report and amendment register was seen as beneficial.

NGC's CUSC

- 4.126 NGC's draft CUSC contains obligations on NGC regarding the production of both an amendments register and a Progress Report.
- 4.127 The amendments register must be established and maintained by NGC and should record:
- ◆ details of each amendment proposal;
 - ◆ whether a proposal is being treated as urgent;
 - ◆ the current status and progress of each amendment proposal and the anticipated date for reporting to Ofgem in respect thereof and whether it has been withdrawn, rejected or implemented for a period of three months after such withdrawal, rejection or implementation;
 - ◆ the current status and progress of amendments which have received approval by Ofgem; and
 - ◆ any other matters as the Amendments Panel may consider appropriate from time to time.
- 4.128 The Progress Report must be prepared and submitted to Ofgem each month setting out:
- ◆ details of any proposal which has been refused by the Panel Secretary for not providing sufficient information;
 - ◆ the current version of the amendment register;

- ◆ details of the priority given to amendment proposals in the register; the scheduling and timetable for consideration of amendment proposals and completion of the report; the impact of the priority accorded to each amendment proposal by reference to other amendment proposals;
- ◆ details of any decision to amalgamate amendment proposals;
- ◆ details of any circumstances which lead NGC and/or the Amendments Panel to believe that the implementation date for an approved amendment is unlikely to be met;
- ◆ such other matters as Ofgem may request to be included from time to time; and
- ◆ the basis for each of the decisions referred to above.

4.129 Under NGC's proposals, following consideration of the progress report Ofgem may issue a notice to the Panel Secretary requesting NGC and the Amendments Panel not to reject an amendment proposal; not to amalgamate amendment proposals as set out in the monthly Progress Report; to accord a different priority to particular amendment proposals from that set out in the monthly Progress Report; and/or to amend the timetable for an amendment proposal. The Panel and NGC must comply with such notice.

4.130 Following the provision of the Progress Report to Ofgem, NGC has proposed that it will be published on the NGC website. Ofgem will be able to ask NGC to exclude information if it considers necessary.

Ofgem/DTI's views

4.131 NGC's proposals regarding the amendment register and Progress Report are very closely modelled on similar provisions within the BSC. Ofgem/DTI consider that both documents will be useful and important in promoting transparency of the actions of the Amendments Panel and NGC.

Views invited

4.132 Views are invited on the content on this chapter and on the detailed drafting of the governance section (section 8) of the draft CUSC. In particular, Ofgem/DTI

would welcome views on the constitution of the Amendments Panel; the detail of the amendment procedures proposed by NGC; the appropriateness of the details of the workings of the Amendments Panel; the proposals regarding urgent amendment procedures; the contents of the amendment report and the proposals regarding the production of the amendment register and Progress Report.

5. CUSC dispute resolution

Introduction

- 5.1 The present commercial and regulatory framework allows NGC and users to refer disputes on a range of matters either to Ofgem or, in certain circumstances, to an arbitrator. Disputes relating to the proposed terms of an agreement or proposed variations to an existing agreement can be referred to Ofgem. There are also provisions in the MCUSA to enable parties to refer disputes to Ofgem about whether NGC has charged in accordance with its charging statement. In addition the MCUSA provides that, except where specifically stated otherwise, disputes in relation to the terms of the MCUSA may be referred by either party to arbitration.
- 5.2 A Court of Appeal decision in 1998 concluded that under the current provisions contained within the MCUSA, disputes concerning the interpretation of NGC's charging principles for connection and/or use of system could be referred to either an arbitrator or Ofgem. This potential duplication of jurisdictions led Ofgem/DTI to propose that the current provisions for dispute resolution needed to be clarified.

CUSC dispute resolution procedures

The August 2000 document

- 5.3 In the August 2000 document, Ofgem/DTI stated that we continued to believe that there is a need to clarify the procedures for dealing with disputes which may arise under the CUSC and proposed a structure that we considered appropriate for the resolution of disputes.
- 5.4 To increase clarity as to the relevant jurisdiction for the hearing of a particular dispute, Ofgem/DTI made the following proposals for the resolution of disputes:
- ◆ to move the charging rules currently contained in the MCUSA to the charging statement under NGC's licence;
 - ◆ to place an obligation in NGC's licence requiring it to produce separate charging methodologies for connection and use of system. NGC must

consult on any proposed change to the methodologies and Ofgem should be able to veto such changes;

- ◆ to modify NGC's licence to enable disputes as to whether a charge is in accordance with the relevant methodology or charging statement to be referred to Ofgem;
- ◆ to include provisions within the CUSC stating that charges for use of system and connection should be in accordance with the relevant charging methodology/statement;
- ◆ for the CUSC to provide for disputes about whether a charge has been made in accordance with the charging statement to be referred to the Ofgem (and to not be capable of consideration by an arbitrator);
- ◆ for the CUSC to provide that any determinations made by Ofgem in relation to disputes about whether a charge is in accordance with the relevant methodology or statement should be binding on all parties and on subsequent referrals to an arbitrator to settle the amount following a determination;
- ◆ for the CUSC to provide that where there has been a determination by Ofgem as to whether a charge is in accordance with the relevant methodology or statement, any outstanding dispute regarding the calculation of the charge should be referred to arbitration. Any dispute regarding the interpretation of the determination must be referred to Ofgem; and
- ◆ for all other disputes relating to any provision contained in the CUSC to be referred to arbitration or the courts. The CUSC should also provide for any dispute arising during the course of a dispute that has already been referred to an arbitrator that relates to the interpretation of NGC's charging methodologies or statement to be referred to Ofgem.

Respondents' views

- 5.5 One respondent said the proposed dispute resolution process appeared robust and welcomed the clarity in distinguishing whether a dispute should be referred

to Ofgem or to an arbitrator. Another respondent stated that it was important to have well defined boundaries between the various dispute resolution processes.

- 5.6 One respondent stated that any dispute relating to charging methodologies and statements should be referred to an independent tribunal.
- 5.7 Another respondent believed that the proposed changes would increase regulatory uncertainty and thereby increase risk and ultimately prices. This respondent also felt that a dispute about the interpretation of an agreement or code should be dealt with by arbitration or the courts and was not a function that Ofgem should be burdened with.
- 5.8 During NGC's working group sessions, comments were raised on various areas of the current drafting of the dispute resolution process. In particular participants were concerned about the difficulty of defining disputes that would be referred to Ofgem and those that would go to arbitration. Participants stated that any definition would have to be carefully drafted to ensure that it was clear as to which disputes should be (and which should not be) referred to Ofgem.
- 5.9 During the working group sessions, one respondent made a submission to Ofgem in relation to the CUSC proposals regarding dispute resolution. The submission is based on the view that Ofgem's reasons for justifying clarification of the dispute resolution procedures were flawed.
- 5.10 The respondent argued that the proposed changes to the dispute resolution mechanism were not necessary or expedient for the implementation of NETA.
- 5.11 The other points raised in the submission are:
- ◆ there is no readily ascertainable demarcation between issues which have a regulatory impact and issues which are contractual;
 - ◆ Ofgem must decide the disputes in accordance with the law and any decisions made must be capable of appeal. As such the Authority itself must hear evidence relating to the dispute and make a decision expeditiously and the Authority must have the necessary legal expertise and resources and time to perform this role;

- ◆ Ofgem must not refuse to make a determination; and
- ◆ the redrawn boundaries between the jurisdictions of Ofgem and the arbitrator will lead to confusion and uncertainty.

NGC's draft CUSC

- 5.12 NGC has set out in the draft CUSC the obligation for NGC to calculate and charge in accordance with the charging methodologies/statement and the new disputes resolution structure proposed by Ofgem/DTI.
- 5.13 Section 2 of the CUSC sets out the obligation for NGC to calculate and apply the connection charges in accordance with the statement of the connection charging methodology and as set out in the relevant bilateral agreement. Section 3 of the CUSC sets out the obligation for NGC to calculate and apply charges for use of system in accordance with the statement of use of system charges and the statement for use of system charging methodology.
- 5.14 The CUSC sets out how disputes under the CUSC are to be dealt with. In section 7 of the CUSC, NGC has proposed the following:
- ◆ a definition of disputes that should be referred to Ofgem. Such a dispute is termed a Charging Dispute and defined as whether connection and/or use of system charges have been applied and/or calculated in accordance with the Charging Statements (including in all cases whether the dispute or difference arises under, out of, or in connection with such issues) utilising Ofgem's role under section 7 of the Electricity Act;
 - ◆ Charging Disputes will be referred to Ofgem and will not be capable of being referred to arbitration;
 - ◆ the decision of Ofgem will be final and binding on the parties to the dispute (without prejudice to any ability to apply for Judicial Review) and will be enforceable in the courts;
 - ◆ where a determination has not set out the amounts of the charges in dispute, then if there is a dispute as to the quantification of the amounts

to be calculated in accordance with the determination then this dispute may be referred to arbitration;

- ◆ any dispute as to the principles in the determination will be referred back to Ofgem;
- ◆ all disputes that are not Charging Disputes will be resolved by arbitration; and
- ◆ this section also provides that when an arbitrator finds himself/herself considering a dispute about the application and/or calculation of the charging statements, he/she shall have no jurisdiction to determine that or those part(s) of the dispute and those parts of the dispute should be referred to Ofgem.

Ofgem/DTI's views

- 5.15 Ofgem/DTI are still minded that it is right to change the dispute resolution procedures to clarify the respective jurisdictions of Ofgem and an arbitrator. NGC will be obliged by a condition in its licence to produce a CUSC and only to enter into arrangements with others for use of its system in accordance with the CUSC. Therefore, it is a regulated contractual agreement and a multi-party agreement. NGC is required under its licence to charge in accordance with its Charging Statements. Therefore any dispute as to whether it has done so must involve consideration of whether it has contravened its licence obligation and therefore whether enforcement action under section 25 of the Act is needed. Ofgem has sole jurisdiction in relation to enforcement.
- 5.16 Ofgem/DTI are pleased that NGC has narrowed the definition of Charging Dispute in order to capture only disputes that should be referred to Ofgem and that it has clarified within the CUSC areas that will not be capable of reference to Ofgem (but will be capable of reference to arbitration). Views are invited from industry as to whether the definition of Charging Dispute is robust.
- 5.17 In respect of the specific points raised by the respondent in its submission to Ofgem during NGC's working groups on the CUSC, Ofgem/DTI have the following views. The Court of Appeal decision referred to above, recognised the

areas of jurisdiction of Ofgem and the possibility that Ofgem could reach a decision on a matter which conflicted with the view of an arbitrator. The Court of Appeal made clear that compliance with a direction or order made by Ofgem would, for example, provide a defence for a party for non-compliance with a decision of the arbitrator.

5.18 The intention of the new dispute provisions in the CUSC is to establish more clearly the areas of respective jurisdiction of Ofgem and an arbitrator in order to avoid the risks identified by the court, to provide a more effective and efficient route for settling such disputes and thereby further to facilitate the operation of NETA.

5.19 The present licence condition 10 does not provide any regulatory control over the content of the charging statement or changes to it or enable Ofgem to ensure sufficient transparency in its content. In order for NETA to operate properly, it was considered that greater control and transparency needed to be ensured, and for this reason it was proposed to introduce, using the NETA powers, the new licence conditions 10 – 10B to provide this (particularly with the prospect of the introduction of transmission access rights). In particular, this provides for NGC to produce a charging methodology in relation to use of system and connection, and for a process for changing the methodology. The introduction of, and changes to, the BSC will be mandated or controlled through licence conditions. For these to operate properly and effectively, it was considered necessary for Ofgem to be able to exercise appropriate regulatory control over the associated charging under the new licence conditions.

5.20 It was also considered necessary for other elements of the connection and use of system arrangements to be able to change and develop to facilitate development of NETA and for a system of governance, comparable to that for the BSC, to enable such changes. This led to the proposal to implement the new CUSC licence condition 10F into NGC's licence. As part of the overall arrangements, and to facilitate the introduction and operation of NETA, it was considered appropriate to make explicit arrangements for the resolution of disputes over charging. In particular, disputes as to whether charges for use of system or connection were in accordance with the relevant charging methodology were to be treated as a matter solely within the jurisdiction of Ofgem. This would

enable Ofgem to ensure overall consistency in all elements relevant to the proper operation of NETA.

- 5.21 Ofgem therefore has the role of monitoring compliance and taking appropriate enforcement action where necessary in relation to all matters associated with charging. Any dispute in relation to charging is also potentially an enforcement matter, and could be investigated as such. However, following the concept previously developed in the existing licence condition 10C, it has been instead treated as a question to be determined by Ofgem pursuant to specific provisions in a separate condition. In determining that question, Ofgem is performing a function by virtue of the provisions of the Electricity Act and can delegate the performance of that function in accordance with the provisions of Schedule 1 to the Electricity Act, as amended by the Utilities Act. In performing that function, the provisions of sections 3A – C will apply to Ofgem in the same manner as they would apply to the exercise of enforcement functions under Section 25. While the matter is referred to as the determination of a dispute, it is, as indicated above, in fact the determining of a question and is not a matter of arbitration for the purposes of the Arbitration Act 1996. However, Ofgem recognises that it will need to have appropriate procedures in place in relation to the exercise of these functions and it will be appropriate to develop and publish such procedures for the benefit of those who may need to invoke them.

Outstanding MCUSA disputes

The August 2000 document

- 5.22 Ofgem/DTI stated that they considered that there may be merit in attempting to co-ordinate procedures regarding outstanding disputes under the MCUSA and those arising under the proposed CUSC, where they relate to the same subject matter. Ofgem/DTI considered that the co ordination procedures would be discussed further during NGC's consultation with industry.

NGC's initial proposals

- 5.23 NGC issued a paper¹⁰ that outlined the treatment of disputes in the light of the proposal to migrate the MCUSA into the CUSC. It proposed that disputes raised

¹⁰ National Grid Proposal Paper 2.

under the MCUSA, before it becomes the CUSC, which relate to the period before the CUSC is implemented should be resolved in accordance with the appropriate MCUSA procedure. Disputes raised under the CUSC but which relate to a period before and/or after CUSC is implemented, should be dealt with in accordance with the dispute resolution procedure in the CUSC.

Respondents' views

- 5.24 This issue was discussed during the working sessions held by NGC during October 2000 and in light of the opposition to this proposal NGC has decided not to take this forward.

NGC's draft CUSC

- 5.25 NGC has instead proposed that disputes relating to the period that MCUSA is in place should be dealt with under MCUSA procedures and disputes relating to the period from which the CUSC is in place should be dealt with under the CUSC procedures.
- 5.26 These disputes are dealt with in section 11 of the draft CUSC. NGC has defined a dispute which covers a period prior to the introduction of CUSC as a MCUSA dispute and a dispute which covers a period after the introduction of CUSC as a CUSC dispute.
- 5.27 MCUSA disputes will be dealt with in accordance with the current provisions of the MCUSA (clause 14.7 and clause 26 of MCUSA and the equivalent provisions in the Supplemental Agreements). CUSC disputes will be dealt with in accordance with the provisions of section 7 of the CUSC.
- 5.28 A dispute that involves issues relating to both the MCUSA and post CUSC periods will be resolved by the pre CUSC issues being dealt with as a MCUSA dispute and the post CUSC issues being dealt with as a CUSC dispute.

Ofgem/DTI's views

- 5.29 Ofgem/DTI's initial view is that the proposals put forward by NGC are appropriate and sensible. Ofgem/DTI welcome views from respondents on these points.

Views invited

- 5.30 Views are invited on the drafting of the dispute resolution section of the CUSC and Ofgem/DTI's views as set out in this chapter. In particular, Ofgem/DTI would welcome views on the proposed drafting of the definition of charging disputes and whether the proposals will work effectively as a package.

6. Changes to licence conditions 10, 10A, 10B and 10C of NGC's transmission licence

Introduction

- 6.1 The existing licence conditions 10, 10A, 10B and 10C of NGC's transmission licence contain a number of provisions relating to connection to, and use of, NGC's transmission system. Ofgem/DTI has proposed a number of changes to these conditions that would increase the clarity of NGC's connection and use of system charges and help to ensure that the procedures contained in the CUSC for the resolution of disputes are clear.
- 6.2 In particular, Ofgem/DTI proposed that the current aspects of NGC's charging principles contained within the Supplemental Agreements of the MCUSA should be moved to the charging statements that NGC is obliged to publish under condition 10 of its licence. To complement this, Ofgem/DTI proposed a number of changes to the requirements on NGC regarding the information on charges that it is obliged to publish under condition 10 of its licence.
- 6.3 During the course of NGC's consultation on the draft CUSC, the potential need for further changes to these conditions from those suggested in the August 2000 document was identified. In the December 2000 document, Ofgem/DTI detailed these potential changes and requested respondents' views.

The proposed new condition 10

The existing licence condition 10

- 6.4 The existing licence condition 10 requires NGC to prepare statements, in a form approved by Ofgem, setting out the basis upon which charges for use of system and charges for connection to the licensee's transmission system will be made. The form and content of the statements must enable any person to make a reasonable estimate of the charges (other than for the Transmission Services

Activity¹¹) that will be payable for connection to, and use of, NGC's transmission system.

- 6.5 Ofgem/DTI are proposing to replace the existing condition 10 with four new licence conditions 10, 10A, 10B and 10G. Two diagrams were attached to the August 2000 document the first depicted Ofgem/DTI's proposal to replace the existing condition 10 with four new conditions 10, 10A, 10B and 10G. The second showed the main requirements which should be fulfilled before the charging methodologies and related statements could be changed. These diagrams have been updated to reflect changes in Ofgem/DTI's proposals regarding these conditions to those set out in the August 2000 document and are shown below.

The proposed new licence condition 10

The June and August 2000 documents

The use of system methodology

- 6.6 In the June 2000 document, Ofgem/DTI proposed that the first of these new conditions, the proposed licence condition 10 would place an obligation on NGC to determine a Use of System Charging Methodology, that defines the principles on which, and the methods by which, use of system charges are to be determined. Thus, Ofgem/DTI proposed that the Use of System Charging Methodology should outline a set of principles which ensure that a particular charge is in accordance with the Relevant Objectives which are set out in the new licence condition 10A (and are discussed in more detail below) and how these principles are then used to derive a method of charging.

Statement of the Use of System Charging Methodology and Statement of Use of System Charges

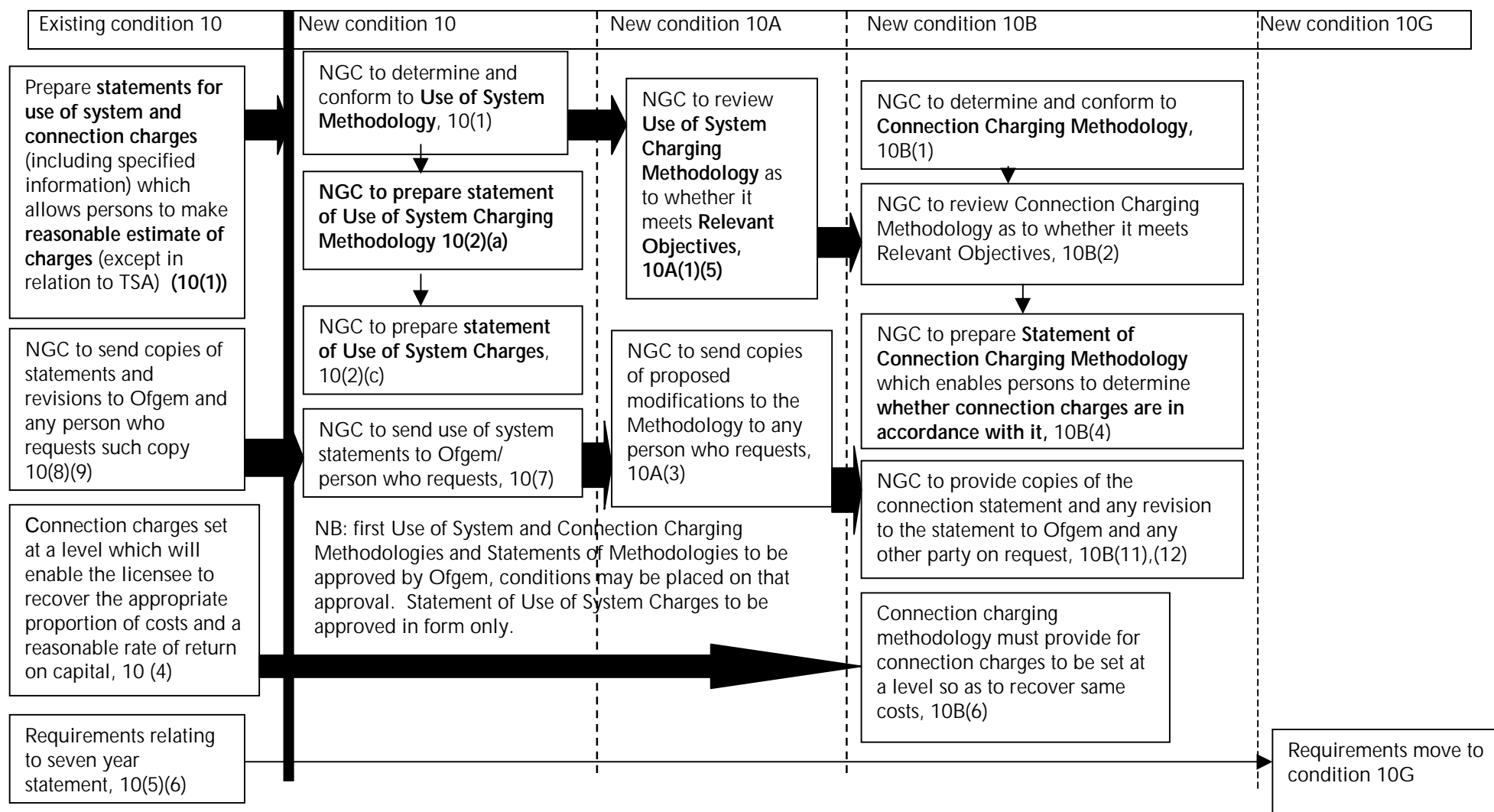
- 6.7 In the June 2000 document Ofgem/DTI proposed that NGC would also be required, by the new licence condition 10, to furnish Ofgem with a Statement of

¹¹ Transmission Services Activity is defined in NGC's existing licence as the activity undertaken by NGC in the development and operation of the licensee's transmission system for the purpose of optimising the costs arising from the operation of that system.

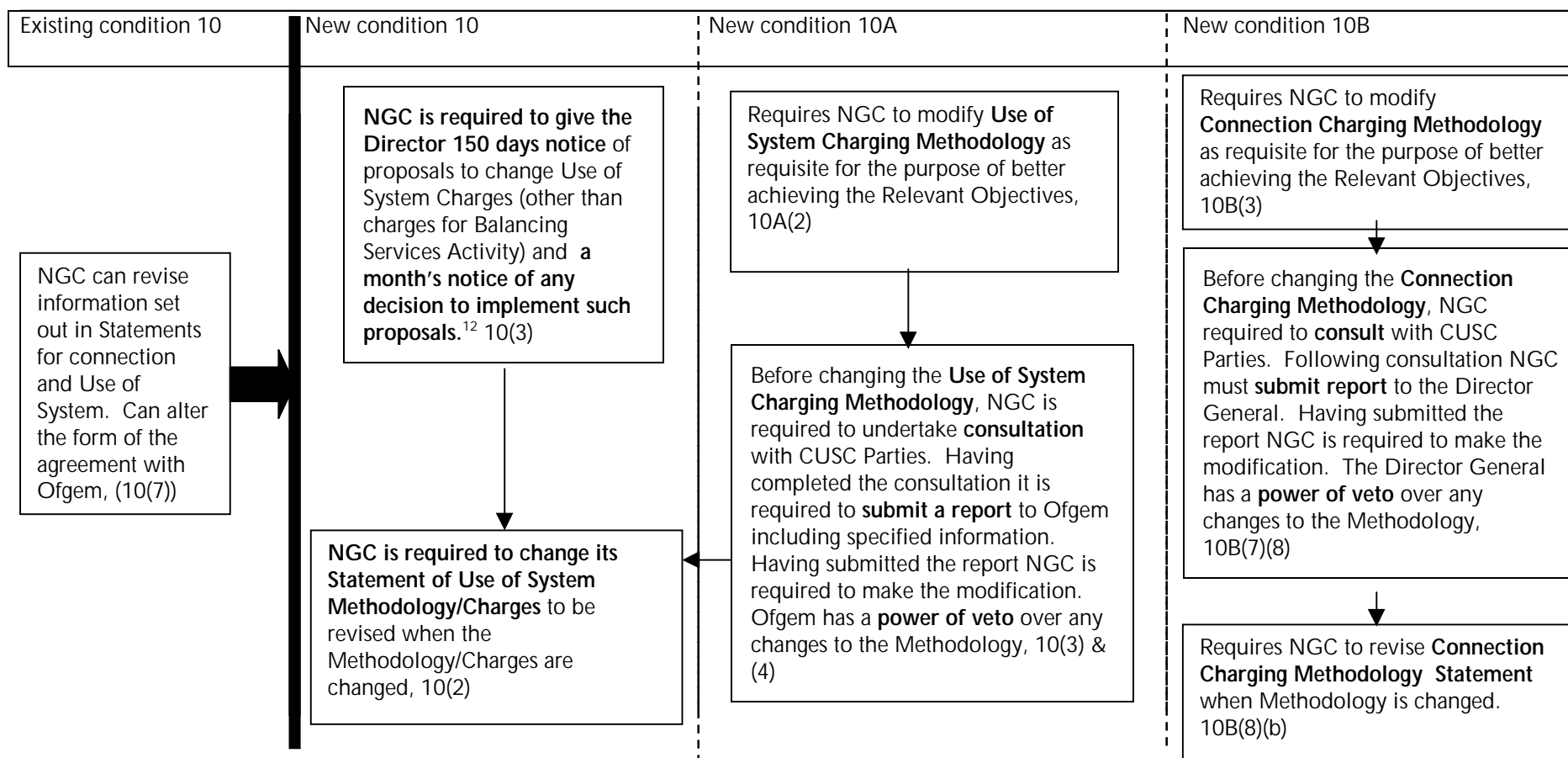
the Use of System Charging Methodology. Ofgem would approve the first Statement in content and form.

- 6.8 In addition, Ofgem/DTI proposed that NGC should be required to furnish Ofgem with a Statement of Use of System Charges the form of which would be approved by Ofgem. This would translate the methods and principles set out in the Statement of the Methodology into actual charges for generation and demand.

Preparation of charging methodologies and statements: A comparison between existing condition 10 and proposed licence conditions 10, 10A, 10B and 10C



Requirements relating to changes to Charging Methodologies and Statements. A comparison between existing condition 10 and proposed conditions 10, 10A and 10B



¹² Unless Ofgem consents to a shorter period.

- 6.9 Ofgem/DTI proposed that NGC should be required to enter only into use of system arrangements that conform to the Statement of Use of System Charges last published, either before it enters into the arrangements or before the charges in question fall to be made, unless Ofgem agrees otherwise.
- 6.10 It was also proposed that NGC should be required to send copies of both statements to any person who so requests them.

Changing the charges contained in the Statement of Use of System Charges

- 6.11 In the June 2000 document, Ofgem/DTI proposed that NGC should give Ofgem notice of any proposals to change the charges set out in the Statement of Use of System Charges, along with a reasonable estimate of the effect of the proposed changes, at least 150 days before the proposed date of implementation (except where Ofgem agreed to a shorter period). In addition, Ofgem/DTI considered that NGC, having decided to implement such a change should be required to give Ofgem at least one month's notice of its decision before the changes take effect (unless Ofgem agrees otherwise).
- 6.12 Respondents to the June 2000 document were generally supportive of the proposals made by Ofgem/DTI and considered that the changes would increase the transparency of NGC's use of system charges. A number of comments were made regarding the detailed provision of the proposed licence condition and these comments were given consideration in the August 2000 document.
- 6.13 Following consideration of these views, Ofgem/DTI continued to propose that the new condition 10 should be based on the proposals set out in the June 2000 document, with the following changes:
- ◆ the identification in the licence condition of a date upon which the first statement of both the Use of System Methodology and Use of System Charges would take effect. Ofgem/DTI considered that it was appropriate for this to be the date that the licence condition takes effect. Hence, the statement would need to be received by Ofgem, in an approved form, and with approved content (in respect of the statement of use of system methodology) by the date that the licence condition comes into effect;

- ◆ that there should be a requirement for the Use of System Charging Methodology itself to be approved by Ofgem; and
- ◆ the requirement for NGC to include a reasonable estimate of the effect of a proposal to change its use of system charges with notification of such proposals, to be changed to a requirement to include a reasonable assessment of such effect.

The December 2000 document

- 6.14 In the December 2000 document, Ofgem/DTI proposed that further changes should be made to the proposed condition 10 as attached to the August 2000 document. In particular, Ofgem/DTI considered that it was desirable for Ofgem to be given greater flexibility in its approval of the Use of System Methodology and the Statement of the Methodology.
- 6.15 Ofgem/DTI stated that it was necessary for the Methodology to achieve the relevant objectives set out in the proposed condition 10A of NGC's transmission licence (as discussed below) before Ofgem/DTI could give its approval. However, there may be areas in which the Methodology does meet its Relevant Objectives but where the related charging consultation (currently being undertaken by Ofgem) identifies areas in which it could better meet these Objectives. In this situation, Ofgem/DTI considered that it might be desirable for Ofgem to be able to attach conditions to its approval to ensure that appropriate action is taken by NGC.
- 6.16 Ofgem/DTI therefore proposed to insert provisions into the proposed condition 10. These would allow Ofgem to grant approval to the Charging Methodologies subject to certain conditions. These conditions would require further action to be undertaken by NGC so that the Methodology in question better meets its Relevant Objectives as defined in the transmission licence.
- 6.17 In the December 2000 document Ofgem/DTI also suggested some changes to the proposed licence conditions in consequence of the designation of the NETA licence conditions by the Secretary of State and the recognition that these licence conditions will be effective before the CUSC licence conditions. There

were also changes suggested to some of the definitions in order to ensure consistency with the draft CUSC.

Respondents' views

- 6.18 This section summarises the views of respondents to the August and December 2000 documents relating to the proposed condition 10. Respondents were again generally supportive of the proposed changes. In particular, the inclusion of a date by which the statements should take effect was welcome. One respondent stated that the licence should require NGC to send a copy of notice of a proposal to change its charges to CUSC parties at the same time it sends notice to Ofgem. Alternatively it suggested that this requirement should be contained within the CUSC.
- 6.19 A few respondents raised concern that the new condition 10 and 10A allows NGC to change charges more than once a year. They argued that this would affect their ability to contract ahead and reduce stability of the costs that they incur. One respondent argued that the introduction of such an ability to change charges mid-year was not necessary to facilitate the operation of NETA and therefore should not be implemented through these licence conditions.
- 6.20 NGC did not consider it to be appropriate that the Use of System Methodology must allow parties using the system to make a reasonable estimate of BSUoS charges.¹³ This is because BSUoS charges are calculated on a day to day basis depending on a number of external factors. Therefore, it is not possible to give parties a reasonable estimate of what their charge for BSUoS will be. The proposed licence condition 10 includes a carve out intended to ensure that BSUoS charges are not intended to be covered by this requirement. NGC has questioned the effectiveness of this carve out.
- 6.21 In addition, NGC has stated that the requirement to give 150 days notice to changes to charges for use of system should not apply in respect of BSUoS. This is because in practice it will not be possible to give 150 days notice of a change in BSUoS charges, as the BSUoS charges are a daily charge and are a function of

¹³ BSUoS charges will cover the costs of Balancing Services, excluding an allowance for Transmission losses and the costs of net energy imbalances, including internal costs of the System Operator. The total BSUoS Charges will incorporate an additional charge or payment reflecting NGC's performance under its incentive to manage the costs of transmission losses.

many parameters rather than a tariff. NGC therefore suggests that BSUoS charges should be excluded from this condition.

- 6.22 NGC also considered that the requirement to give 150 days notice for changes to use of system charges should be changed to a requirement to use reasonable endeavours to give such notice.
- 6.23 NGC also considered that the requirement contained in the draft licence condition 10, to revise the statements at least every year was inappropriate in respect of the Use of System Charging Methodology.
- 6.24 The majority of respondents to the December 2000 document supported the proposal regarding the manner in which Ofgem can give approval of the Charging Methodology for Use of System. One respondent suggested that the wording of the licence condition should be changed to make it clear that the conditions imposed by Ofgem would refer to specific actions to be taken by NGC. Only one respondent thought that the proposed change was unnecessary.
- 6.25 NGC also considered that the changes were unnecessary in light of its requirement to continuously keep the Methodology under review to ensure that it facilitates the Relevant Objectives. NGC stated that if the proposals regarding approval were implemented, there was a need to make explicit that nothing in the condition would prevent NGC from charging in accordance with its Use of System Charging Methodology, in addition to the Statement of the Use of System Charges.

Ofgem/DTI's views

- 6.26 Ofgem/DTI are pleased to have continued support of respondents as regards the proposed new condition 10 of NGC's licence. Ofgem/DTI agree that it is important for CUSC parties to be given notice of proposals by NGC to change charges set out in its Statement of Use of System Charges. However, Ofgem/DTI consider that this should be a contractual obligation rather than a regulatory one. As such, Ofgem/DTI are satisfied that the CUSC contains the appropriate requirements. Ofgem/DTI would welcome views from respondents as to whether the requirements in the CUSC regarding notification of changes to charges, or to the charging methodologies are adequate.

- 6.27 There were concerns raised regarding the ability of NGC to change its use of system charges mid-year. Ofgem/DTI recognise that a result of the proposed changes is that NGC will have the ability to do this. However, the main objective of implementing the CUSC was to allow for greater flexibility in arrangements for use of system and connection. Ofgem/DTI has recognised that there is a need to review arrangements for transmission access under NETA and that without such a review the medium to long term efficiency of NETA will be threatened. In order to be able to review such arrangements there will be a need not only to amend terms set out in the CUSC but also fundamentally the charging principles on which use of system charges are based. Ofgem/DTI therefore considers that it is necessary to facilitate the operation of NETA to allow flexibility not only of the terms set out in the CUSC but the charging principles and hence charges set out in the Charging Statements. Having regard to the effect that changes in charging more frequently than the normal one year interval could have on industry parties affected, NGC would have to be satisfied that a more frequent change would be compatible with its duty to facilitate competition in generation and supply.
- 6.28 Ofgem/DTI recognises the points raised by NGC regarding the BSUoS charges. Ofgem/DTI agree that it is inappropriate for NGC to be required to give a reasonable estimate of BSUoS charges. Ofgem/DTI also accept that the requirement regarding 150 days notice of changes to use of system charges cannot apply to BSUoS charges. Ofgem/DTI has revised the drafting of the licence condition set out in Appendix 2 to provide for these points.
- 6.29 Ofgem/DTI consider it to be inappropriate to change the requirement regarding the 150 days notice for changes to use of system charges to include a reference to reasonable endeavours. Ofgem/DTI consider that the ability of Ofgem to allow NGC to reduce this period gives NGC adequate protection.
- 6.30 In respect of the requirement on NGC to review the Statement of its Use of System Methodology at least once a year, Ofgem/DTI consider that this requirement should rightly apply only in respect of the Statement of Use of System Charges. NGC has an ongoing obligation to review and propose any changes to the Use of System Methodology necessary to ensure that it meets its Relevant Objectives. Following the implementation of any such changes NGC

has an obligation to review the Statement of the Methodology. Ofgem/DTI therefore consider that the provision should be changed to refer only to the Statement of Use of System Charges.

- 6.31 In respect of the proposal regarding the manner in which Ofgem can grant its approval of the use of system charging methodology and associated statements, Ofgem/DTI are pleased that the majority of respondents supported the proposals. Ofgem/DTI continue to consider that Ofgem should be given flexibility in the way it gives its approval. Ofgem/DTI consider it to be unnecessary to change the proposed drafting to make it clear that any conditions attached by Ofgem would provide for specific actions to be taken by NGC. The nature of the conditions will depend on the reasons for them, but could require specific action without the need for amendment of the draft licence condition.

The proposed condition 10A

The June and August 2000 documents

Relevant Objectives of the Use of System Charging Methodology

- 6.32 In the June 2000 document Ofgem/DTI proposed that the second licence condition to replace the existing licence condition 10, should be the new licence condition 10A. This sets out the Relevant Objectives for the development of the Use of System Charging Methodology. Ofgem/DTI considered that this condition should require NGC to keep the Use of System Methodology always under review to ensure that it best meets its Relevant Objectives and, where appropriate, to make such modifications as are requisite for the purpose of better achieving the Relevant Objectives.
- 6.33 In the June 2000 document, Ofgem/DTI proposed that the Relevant Objectives should be:
- ◆ that compliance with the Use of System Charging Methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) the facilitation of competition in the sale, distribution and purchase of electricity;

- ◆ that compliance with the Use of System Charging Methodology results in charges which reflect costs, so far as is reasonably practicable, incurred by the Licensee in its Transmission Business; and
- ◆ that, so far as is consistent with the two previous objectives, the Methodology properly takes into account the development in the Transmission System, so far as is reasonably practicable.

Changing the Use of System Charging Methodology

- 6.34 In the June 2000 document Ofgem/DTI proposed that a number of requirements should be placed into the proposed condition 10A regarding the way in which changes to the Use of System Charging Methodology could be achieved. Ofgem/DTI proposed that NGC should only be required to change the Methodology, if necessary to better meet the Relevant Objectives of the Methodology. Before making a change, Ofgem/DTI proposed that, unless Ofgem agrees otherwise, NGC should be required to consult with CUSC parties on the proposed change and allow them a period of not less than 28 days to make written representations.
- 6.35 Following the completion of the consultation, Ofgem/DTI proposed that NGC should be obliged to furnish Ofgem with a report. This would set out the change to the Methodology as originally proposed, representations made during the consultation, any alteration in the terms of the proposed change in consequence of such representations and a description of how the intended change to the Methodology achieves the Relevant Objectives.
- 6.36 Having furnished Ofgem with the report, Ofgem/DTI proposed that the change to the Methodology could be introduced, if Ofgem does not give a contrary direction within 28 days of being furnished with the report.
- 6.37 The respondents to the June 2000 document were generally in favour of the proposed relevant objectives of the Use of System Methodology, although some minor changes were suggested (as considered in the August 2000 document).
- 6.38 In respect of the requirements regarding the changes to the Use of System Charging Methodology, respondents were again generally supportive of the changes. Two respondents requested more information regarding the

circumstances in which Ofgem would exercise its discretion to allow NGC to bypass the consultation process.

6.39 Following consideration of these responses Ofgem/DTI proposed, in the August 2000 document, that the proposed condition 10A should remain as set out in the June 2000 document except in the following areas:

- ◆ the third relevant objective of the Use of System Charging Methodology was changed to an obligation to take account of developments in NGC's transmission business, rather than the transmission system. Ofgem/DTI considered that this better reflected the intention of the objective as the latter wording could be interpreted as just referring to physical changes in the transmission system;
- ◆ the report, which will be furnished to Ofgem, should include a proposed implementation date for the change to the Methodology, in addition to the information already stated above; and
- ◆ the inclusion of a requirement for NGC to send copies of the report to any person who so requests.

Respondents' views

6.40 Some respondents raised specific points on the proposals regarding the proposed condition 10A. One respondent specifically supported the requirement on NGC to demonstrate how a proposed change to the Use of System Charging Methodology better facilitates the Relevant Objectives of the Methodology. One respondent agreed that in certain circumstances it might be necessary to shorten the period for consultation on a change to the Use of System Charging Methodology. However, the respondent stated that in these circumstances the revised process must be defined. One respondent considered that the Relevant Objectives of the Charging Methodology were not sufficiently prescribed and was concerned that there was not a mechanism for parties to raise issues regarding the charging principles.

6.41 One respondent raised specific concerns relating to the changes put forward by NGC to the charging statements for 2001/2002.

Ofgem/DTI's views

- 6.42 Ofgem/DTI continue to consider that there are many benefits from introducing the proposed condition 10A as regards flexibility, transparency and accountability of NGC's charges. In respect of the specific points raised, Ofgem/DTI agree that where Ofgem takes a decision to allow NGC to bypass the normal requirements regarding consultation on a proposed modification to the Charging Methodology there is a need to agree a process for implementation of the proposed change. The proposed condition 10A specifically allows for this as it allows Ofgem to give a direction that the normal requirements regarding consultation need not be followed but to include other requirements (as appropriate) in that direction. This will allow Ofgem to decide in which circumstances full consultation is not possible or desirable, and on an alternative process.
- 6.43 In respect of the proposed Relevant Objectives of the Methodology, Ofgem/DTI consider that the proposed objectives give NGC the correct signals as regards its charging methodology. Ofgem/DTI consider it inappropriate to define these objectives further. Ofgem/DTI consider that the meaning of cost-reflectivity and facilitation of competition are well established. Developments in the transmission business, is more broadly termed for two reasons. First, Ofgem/DTI consider it is necessary to have this broad condition in order to address issues which may not be covered by cost reflectivity or facilitation of competition but which may be very important to the efficient running of the network or how competition in related markets is operating. Second, use of such an objective brings NGC's Relevant Objectives into line with those of Transco, which would appear essential given the convergence of the gas and electricity markets.
- 6.44 In respect of the issues raised regarding the Use of System Charging Methodology, Ofgem/DTI notes that NGC is intending to continue the Charging Principles Forum, which is currently a sub-group of the TUG. This group, which will be constituted outside of the CUSC, will have a role in reviewing the Use of System and Connection Charging Methodologies as against their Relevant Objectives and will give parties the ability to raise issues of concern. Furthermore, under the proposals NGC will have a licence obligation to keep the Methodology in line with its Relevant Objectives. If any person believes that

an element of the Methodology does not meet these objectives he/she can approach Ofgem to invite us to investigate whether NGC is in breach of this obligation.

- 6.45 Ofgem/DTI notes the specific comments raised in relation to the detail of the proposed charging methodology for 2001/2002. These comments along with the views of respondents to Ofgem's current consultation on the detail of the proposed Charging Methodologies will be used to inform Ofgem's decision as to whether to approve the Methodologies (and accompanying Statements).

Proposed condition 10B

The June and August 2000 documents

- 6.46 The third new condition that Ofgem/DTI proposed in the June 2000 document which should replace the existing condition 10, was the proposed new licence condition 10B. Under the proposals set out in the June 2000 document, NGC would be obliged, by this condition, to determine and conform to a Connection Charging Methodology. Ofgem/DTI proposed that the Connection Charging Methodology would be defined as the principles on which, and the methods by which, connection charges (which relate to both pre and post vesting connections) are determined.
- 6.47 Ofgem/DTI proposed that the condition would require NGC to construct the Connection Charging Methodology so that its connection charges would enable it to recover
- ◆ the appropriate proportion of the costs directly or indirectly incurred in the carrying out of any works, the extension or reinforcement of NGC's transmission system, or the provision and installation, maintenance and repair or removal following disconnection of any electric lines, electric plant or meters; and
 - ◆ a reasonable rate of return on the capital represented by such costs.
- 6.48 In respect of connections made before 30 March 1990, Ofgem/DTI proposed that the new licence condition should require the Methodology to reflect the above principles as far as is reasonably practicable.

- 6.49 Ofgem/DTI proposed that the licence condition should require NGC to furnish Ofgem with a Statement of the Connection Charging Methodology including, where practicable, examples of the charges likely to be made in different cases, as determined in accordance with the methods and principles shown in the statement. We proposed that Ofgem should approve the content and form of the first statement of the Connection Charging Methodology.
- 6.50 Ofgem/DTI proposed that the licence condition should oblige NGC to enter only into agreements for connection where the relevant charges conform to the statement last published, either before it enters into the arrangements, or before the charges in question from time to time fall to be made.
- 6.51 We proposed that NGC should be obliged to keep the Connection Charging Methodology under review to ensure that it achieves its Relevant Objectives, and to make any changes requisite for the purpose of better achieving the Relevant Objectives.
- 6.52 Ofgem/DTI proposed in the June 2000 document that the Relevant Objectives as set out in the proposed new licence condition 10B should include:
- ◆ the Relevant Objectives of the Use of System Charging Methodology (as set out above); and
 - ◆ the facilitation of competition in the carrying out of works for connection to NGC's transmission system.

Changing the Connection Charging Methodology

- 6.53 Ofgem/DTI proposed that there should be similar requirements on NGC regarding the making of changes to its Connection Charging Methodology, to those proposed for the new licence condition 10A, relating to changes to the Use of System Charging Methodology. In summary, Ofgem/DTI proposed that NGC would be required to consult the CUSC parties (and any other persons who request to be consulted) on the proposed change and furnish Ofgem with a report. The report should set out the terms of the change to the Methodology originally proposed, the representations made to NGC, any changes to the original proposal which stem from the representations and how the intended change to the Methodology better achieves the Relevant Objectives. Ofgem/DTI

proposed that Ofgem should again have a power to veto any proposed change by directing that the change to the Methodology should not be made within 28 days of having been sent the report.

- 6.54 Respondents to the June 2000 document were broadly supportive of the proposals to move to a Connection Charging Methodology, which must meet Relevant Objectives. A number of specific points were made many of which were similar to those relating to the Use of System Charging Methodology.
- 6.55 Following consideration of these views, Ofgem/DTI proposed in the August 2000 document that the proposed new licence condition 10B should be based on that set out in the June 2000 document but with the following changes:
- ◆ the inclusion of a date by which the Connection Charging Methodology and Statement would take effect;
 - ◆ the inclusion of a requirement on NGC to send all Statements, revisions or notices regarding proposed modifications relating to the Connection Charging Methodology to all persons who request such information;
 - ◆ a requirement to include a proposed timetable for the implementation of change to the Methodology in the report submitted to Ofgem;
 - ◆ a requirement for CUSC parties and other persons to be given the report on request; and
 - ◆ the inclusion of a requirement for the Statement of the Connection Charging Methodology to be drafted such that persons requiring new connections would be able to determine whether the charge they are offered by NGC is in accordance with the Statement.

December 2000 document

- 6.56 The point raised in the December 2000 document regarding the nature of Ofgem's approval of the Use of System Charging Methodology and Statement of the Methodology also applies in respect of the approval of the Connection Charging Methodology and the accompanying Statement. As such, Ofgem/DTI proposed in the December 2000 document that similar wording allowing Ofgem

discretion in the manner in which it grants its approval should be included in the proposed condition 10B.

Respondents' views

6.57 A number of comments made by respondents in respect of the Use of System Charging Methodology also apply to the Connection Charging Methodology. In general, respondents were supportive of the proposed changes. The following specific points related to the requirements relating to Connection Charging Methodology and associated statement, as well as to that for Use of System:

- ◆ where Ofgem agrees with NGC to waive the normal requirements regarding consultation on changes to the Connection Charging Methodology, a revised process must be defined; and
- ◆ the Relevant Objectives of the Charging Methodology were not sufficiently prescribed and there was not a mechanism for parties to raise issues regarding the charging principles.

6.58 In respect of the respondents' views regarding the manner in which Ofgem can give approval of the Connection Charging Methodology, the majority of respondents supported the proposal. As for the similar requirement regarding approval of the Use of System Charging Methodology some specific points were raised:

- ◆ one respondent suggested that the wording of the licence condition should be changed to make it clear that the conditions imposed by Ofgem would refer to specific actions to be taken by NGC. One respondent considered the proposed change to be unnecessary; and
- ◆ NGC also considered that the changes were unnecessary in light of its requirement to continuously keep the Methodology under review to ensure that it facilitates the Relevant Objectives.

Ofgem/DTI's views

6.59 Ofgem/DTI continue to consider that it is appropriate to introduce the proposed Condition 10B as attached to the December 2000 document. Our views on the

specific points raised by respondents are the same as our corresponding views to the points raised by respondents in respect of the Use of System Charging Methodology. In summary:

- ◆ Ofgem/DTI agree that where the normal procedures for consultation are considered by Ofgem to be inappropriate, an alternative process needs to be set out. Ofgem/DTI consider that the current drafting of the proposed condition 10B enables this to be done;
- ◆ Ofgem/DTI consider that the Relevant Objectives as set out in the proposed condition are appropriate; and
- ◆ in respect of the views of respondents on the proposals regarding the ability of Ofgem to attach conditions to its approval of the Charging Methodologies, Ofgem/DTI welcome the support of respondents. Ofgem/DTI consider it to be unnecessary to change the drafting of the licence condition to make it clear that any conditions will include specific actions to be taken by NGC as the current drafting already enables this to be the case.

The proposed Condition 10G: Seven year statement

The June and August 2000 documents

- 6.60 In the June 2000 document, Ofgem/DTI proposed that the requirements relating to the preparation of a seven year statement setting out details of circuit capacity, forecast power flows and loading on each part of the Licensee's transmission system and fault levels for each transmission node, which are currently contained in the existing condition 10, should be contained in a separate condition (licence condition 10G) to avoid confusion with the requirements relating to the Charging Methodologies and Statements.
- 6.61 Few respondents to the June 2000 document commented on this proposal. Of those who did one suggested that the information that NGC is required to produce in its seven year statement should be expanded to include generation and loading capacity. The other requested an explanation as to why the assumptions underlying the seven year statement through a licence amendment

related to the CUSC were not being published through the CUSC licence amendment.

- 6.62 In the August 2000 document Ofgem/DTI considered these responses, however it was our view that it was not necessary or expedient to change the requirements relating to the information contained in the seven year statement for the purposes of implementing or facilitating the operation of NETA. Ofgem/DTI therefore considered it to be inappropriate to introduce additional requirements on NGC as part of the implementation of the CUSC.

Respondents' view

- 6.63 No respondents to the August 2000 document commented on this proposal.

Ofgem/DTI's views

- 6.64 Ofgem/DTI continue to consider it appropriate to separate the provisions relating to the provision of the seven year statement from those relating to the preparation of the Use of System and Connection Charging Methodologies. Ofgem/DTI continue to consider that it is not appropriate to change the detail of the requirements relating to the provision of this statement through the NETA power. Therefore Ofgem/DTI consider it appropriate for the proposed condition 10G as attached to the August 2000 document to remain unchanged.

The existing licence condition 10A (proposed new condition 10C): Non-discrimination

The June and August 2000 documents

- 6.65 The existing licence condition 10A requires NGC not to discriminate between any persons or class or classes of person in the provision of use of system or in the carrying out of works for the purpose of connection to the licensee's transmission system. It specifically requires NGC not to discriminate in the charges it levies for use of system as between class or classes of Authorised Electricity Operators.

- 6.66 It also requires NGC, in setting its charges for use of system, not to restrict, distort or prevent competition in the generation, transmission, supply or distribution of electricity.
- 6.67 In the June 2000 document, Ofgem/DTI proposed to retain, as currently drafted, the non-discrimination provisions contained in the existing licence condition 10A (which it was proposed should become the new licence condition 10C). Ofgem/DTI considered that this condition placed adequate obligations upon NGC to ensure that NGC is encouraged to operate a transmission and connection regime that will facilitate competition.
- 6.68 Only one respondent to the June 2000 document commented on this proposal. This respondent stated that the obligation not to discriminate in charges for use of system should be extended to apply to connection charges.
- 6.69 In the August 2000 document, Ofgem/DTI considered this response and decided that the extension of the non-discrimination provision to connection charges was not necessary for the introduction of the CUSC, as required under NETA and therefore such a request could not be within the scope of the NETA power afforded to the Secretary of State under the Utilities Act. Ofgem/DTI therefore continued to propose that the licence condition attached to the June 2000 document should be introduced.

Respondents' views

- 6.70 No respondents commented on this proposal.

Ofgem/DTI's views

- 6.71 Ofgem/DTI continue to consider it appropriate to introduce the proposed licence condition 10C as attached to the August 2000 document.

The existing licence condition 10B (Proposed new condition 10D)

The June and August 2000 documents

- 6.72 The existing licence condition 10B requires NGC to offer to enter into an agreement for the use of its system, to accept a specified level of electricity into its system at a specified entry point(s) or to deliver a specified volume of

electricity to a specified exit point(s) on application of an Authorised Electricity Operator. The agreement also has to specify the use of system charges to be paid by the electricity operator, which must be consistent with the charging statement and contain such further terms as are or may be appropriate for the purposes of the agreement.

6.73 The existing licence condition 10B also provides similar requirements in relation to connection. The remainder of the licence condition provides further detail on these requirements, such as the speed at which NGC should provide an offer to enter into an agreement, and the identification of circumstances where the obligations contained in the existing condition 10B, to offer to enter into agreements would not apply (e.g. where to do so would put NGC in breach of its duties under the Electricity Act 1989, licence conditions etc.)

6.74 Ofgem/DTI proposed in the June 2000 document that the existing licence condition 10B should be renumbered to the new licence condition 10D. We suggested that the new licence condition 10D should be identical to the present condition 10B in NGC's licence, except for the following points:

- ◆ the new condition will require NGC to offer to enter into the CUSC Framework Agreement (and where appropriate an associated bilateral agreement) for use of system, on an application by an Authorised Electricity Operator, and for connection, on an application by any party; and
- ◆ NGC will not be required to offer to enter into terms or to enter into any agreement if the person making the application does not undertake to be bound by relevant terms of the CUSC, as well as the Grid Code.

6.75 Only two respondents to the June 2000 document referred to this proposal. These respondents both raised queries regarding the need to have bilateral agreements in respect of use of system and connection.

6.76 In the August 2000 document Ofgem/DTI considered that there might be a need for bilateral agreements in respect of use of system for the purpose of recording site specific information such as generation capacity. It was envisaged that all other provisions relating to use of system will be contained within the CUSC.

- 6.77 As connections are by nature site specific, Ofgem/DTI considered that there would be a need for a site specific agreement in respect of connections (e.g. to record the charge for the connection).
- 6.78 Ofgem/DTI therefore considered that the proposed licence condition 10D as attached to the June (and August) 2000 document(s) should be implemented.

December 2000 document

- 6.79 In the December 2000 document, Ofgem/DTI recognised that there was a need to define separately the terms Bilateral Connection Agreement, Bilateral Embedded Generation Agreement and Construction Agreement. This was to reflect the proposals put forward during NGC's consultation on the CUSC that there was only a need for Bilateral Embedded Generation Agreements in respect of Use of System.
- 6.80 These proposed changes had knock on effects on condition 10D and these were set out in an appendix to the December 2000 document.

Respondents' views

- 6.81 No respondents commented on these proposals.

Ofgem/DTI's views

- 6.82 Ofgem/DTI continue to consider that it is appropriate to introduce the proposed licence condition 10D as attached to the August 2000 document along with the changes proposed in the December 2000 document.

The existing condition 10C (proposed new condition 10E)

The June and August 2000 documents

- 6.83 The existing licence condition 10C allows disputes over the terms of an approved agreement to be referred to Ofgem for determination on application of either party. The condition lays down a number of considerations that Ofgem may have regard to when deciding how best to settle a dispute. The condition also allows Ofgem to settle any dispute relating to a proposal by NGC to vary

the contractual terms of any agreement for an existing connection to NGC's transmission system or for use of system.

6.84 In the June 2000 document Ofgem/DTI proposed replacing the old licence condition 10C with a new condition 10E. The new condition would be broadly similar to the existing condition 10C but would be expanded to reflect the new requirements relating to the CUSC arrangements (including the new dispute resolution measures as set out in Chapter five) and therefore would allow matters relating to disputed terms of agreement or proposed agreements to be referred to Ofgem for settlement in the following situation:

- ◆ where NGC has failed to enter into an agreement for connection or use of system following a request under the new licence conditions;
 - ◆ where a proposal to vary the contractual terms of a bilateral agreement under the CUSC is disputed; and
 - ◆ where a proposal to vary the contractual terms of a connection agreement (other than a bilateral contract to the CUSC) is disputed.
- Ofgem/DTI proposed that in this situation Ofgem may settle the terms so as to bring them in line with the provisions of the CUSC, where it is reasonable to do so.

6.85 Ofgem/DTI also proposed that the licence condition should allow Ofgem to determine any disputes as to whether use of system charges were in conformity with the relevant Statement of Use of System Charges or whether use of system charges had been determined in accordance with the Use of System Charging Methodology, or whether connection charges had been determined in accordance with the Connection Charging Methodology.

6.86 The majority of the proposals in the June 2000 document relating to the proposed new licence condition 10E were accepted by respondents. However, two respondents did not consider it appropriate for disputes over connection agreements to be referable to Ofgem as they considered that any such disputes should be determined by arbitration.

6.87 In the August 2000 document, Ofgem/DTI stated that as a general principle, contractual disputes should be referable to arbitration. However, we recognised

that most connection agreements allow for an element of the charge to be modified in accordance with the charging principles that will be set out in the licence conditions under Ofgem/DTI's proposals. Ofgem/DTI stated that the current demarcation over the jurisdiction for disputes was unclear and therefore there was a need for clarity within the CUSC.

- 6.88 In the August 2000 document Ofgem/DTI proposed that where a connection agreement provides for a change of the charge in accordance with NGC's Connection Charging Methodology statement it was appropriate for disputes to be referred to Ofgem, as NGC could be in breach of licence if such a charge was not in accordance with the Statement.
- 6.89 Ofgem/DTI therefore proposed that the new condition 10E should not be changed from the version attached to the June 2000 document.

Respondents' views

- 6.90 Some respondents commented on Ofgem/DTI's proposals regarding dispute resolution. These responses are considered in detail in chapter 5 of this document.
- 6.91 In respect of the specific proposals regarding the proposed condition 10E, one respondent stated that connection agreements are commercial and not regulatory and therefore disputes should be referred to arbitration rather than to Ofgem.
- 6.92 NGC has suggested that the wording regarding the type of dispute that can be referred to Ofgem under condition 10E should be consistent with the parallel wording in the CUSC.

Ofgem/DTI's views

- 6.93 Ofgem/DTI continue to believe that there is a need to ensure that the CUSC establishes the correct framework for the resolution of disputes. A failure by NGC to charge in accordance with its Statement of Use of System Charges, or Statement of the Connection Charging Methodology could constitute a breach of licence. It could also constitute a breach of the contractual terms set out in the CUSC. Ofgem/DTI consider that in order to avoid double jeopardy and

inconsistency it is appropriate for Ofgem to determine disputes as to whether a charge is in accordance with the relevant statement.

- 6.94 Ofgem/DTI agree with NGC that there is value in ensuring consistency in wording between the definition of a charging dispute in the draft CUSC and the categories of dispute that are defined in the licence as capable of being referred to Ofgem. Ofgem/DTI have reviewed the drafting of this condition and consider that the wording should be changed to ensure that it is consistent with the requirements on NGC in the proposed licence condition 10(4) and 10B(5). As such the condition will be changed to allow disputes as to whether use of system or connection charges made conform with the relevant methodology statement (rather than whether they have been determined in accordance with the relevant statement). Ofgem/DTI also consider that these changes will ensure that the condition is consistent with the proposed definition of charging dispute.
- 6.95 The proposed condition 10E with these changes is contained in Appendix 2 of this document.

The proposed condition 1A

The June and August 2000 documents

- 6.96 In the June 2000 document, Ofgem/DTI stated that, in order to facilitate the proposed amendments to the existing conditions 10, 10A, 10B and 10C of NGC's licence, there was a need to amend the definitions currently contained in NGC's licence and to create some new definitions. The proposed condition 1A was included in an appendix to the June 2000 document.
- 6.97 Few respondents to the June 2000 document commented on the proposals relating to the new condition 1A. Although two points were raised suggesting additions to the proposed definitions.
- 6.98 Following consideration of the responses, Ofgem/DTI stated that the two specific suggestions put forward were not necessary for the implementation of the CUSC and, therefore, cannot be achieved through use of the NETA power.
- 6.99 Ofgem/DTI therefore proposed to retain the proposed condition 1A as set out in the June 2000 document.

December 2000 document

- 6.100 In the December 2000 document Ofgem/DTI recognised the need to change some of the definitions in the proposed condition 1A to ensure consistency with the CUSC. In particular, Ofgem/DTI proposed to replace the term CUSC Party with CUSC User to bring it in line with the draft CUSC. In addition, separate definitions for Bilateral Agreement, Bilateral Embedded Generation Agreement, Bilateral Connection Agreement and Construction Agreement were proposed to replace the previous definition of Bilateral Agreement, to reflect the drafting of the draft CUSC. These changes required some consequential changes to the proposed conditions 10 – 10G of NGC's licence.
- 6.101 Some other changes were made to reflect the fact that a number of changes to the condition will be introduced when the NETA licence conditions go live. Each change was flagged up and explained in the licence conditions attached to the December 2000 document.

Respondents' views

- 6.102 No respondents commented directly on the proposed condition 1A in respect of the August 2000 document.
- 6.103 Nearly all respondents to the December 2000 document were supportive of the proposed changes and stated that they promoted clarity and consistency. Some drafting errors were pointed out by respondents. NGC stated that there was a need for the licence condition to retain a definition of Transmission Services Activity as well as including a new definition for Balancing Services Activity (which has been included as part of the NETA licence conditions) as the definition of Transmission Services Activity in the draft CUSC referred to the definition in the licence. The first of these terms would relate to periods prior to NETA implementation with the second relating to post NETA periods.

Ofgem/DTI's views

- 6.104 Ofgem/DTI are pleased to have the support of respondents regarding the proposed changes to condition 1A suggested in the December 2000 document. Ofgem/DTI do not consider that it is necessary for the CUSC licence conditions to reintroduce the term Transmission Services Activity within the licence. If

such a term is necessary for the CUSC it should be defined within the CUSC itself.

Consequential changes to NGC's licence

The August 2000 document

- 6.105 In the August 2000 document, Ofgem/DTI identified the need to make consequential changes to conditions contained in NGC's licence which refer to the existing licence conditions 10, 10A, 10B and/or 10C. Ofgem/DTI stated that these changes would ensure that the conditions continue to refer to the correct licence condition after the changes take effect.
- 6.106 Ofgem/DTI identified the conditions that require change as condition 11C, paragraphs 2 and 5 and Schedule 3, Part A, paragraphs A2 and A3.

Respondents views

- 6.107 No respondents commented on this proposal.

Ofgem/DTI's views

- 6.108 Ofgem/DTI continue to believe that these changes are necessary to ensure that NGC's licence works effectively. Ofgem/DTI consider that, under the current proposals, these are the only consequential changes necessary to NGC's licence.

Views invited

- 6.109 Ofgem/DTI welcome views on the proposals regarding the changes to NGC's licence required to implement CUSC. In particular, comments are invited on the drafting of the proposed conditions 1A, 10, 10A, 10B, 10C, 10D, 10E, 10F and 10G set out in Appendix 2 of this document.

7. New condition for distributors/suppliers and generators

The February and August 2000 documents

- 7.1 In the February 2000 document, Ofgem/DTI proposed to include a licence condition within the licences of all licensed generators, PESs and second tier suppliers (and following the separation of the supply and distribution licences, the licences of all distributors) operating in England and Wales. The proposed condition requires the licensee to:
- ◆ be party to a CUSC Framework Agreement and comply with the CUSC; and
 - ◆ take all reasonable steps to secure and implement (consistent with the procedures applicable under or in relation to such documents) and not to take any steps to prevent or unduly delay, changes to other Core Industry Documents to which it is a party (or in relation to which it holds rights in respect of amendments), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
- 7.2 Only one respondent to the February 2000 document commented directly on the proposed licence condition. This respondent did not support the inclusion of a change co-ordination obligation in licences as it was felt that this would undermine the modification procedures in established agreements as this could be deemed to imply a hierarchy of the CUSC over other documents which is not appropriate.
- 7.3 Following consideration of this response, Ofgem/DTI stated that it continued to believe that it was appropriate for generators, suppliers and distributors to be required to be party to the CUSC Framework Agreement and comply with the CUSC.
- 7.4 Ofgem/DTI also stated that it was our belief that the characteristics of liberalised electricity systems imply that market and system operation can be vulnerable to opportunistic behaviour by participants close to real time. Ofgem had already

stated in the December 1999 NETA document¹⁴ that it was necessary to place a market abuse condition as a standard condition in the licences of generators and suppliers. This condition would seek to discourage damaging opportunism in those markets and activities where it is most likely to arise. Any such condition would therefore include opportunistic behaviour in respect of any transmission access arrangements contained within the CUSC.

- 7.5 However, in the light of the reference to the Competition Commission in relation to Ofgem's proposal to modify the licences of certain generators to prohibit abuse of a position of substantial market power, Ofgem/DTI did not consider it appropriate to consult on the detail of any similar standard condition at the same time as the other NETA licence conditions (including the CUSC conditions). Ofgem stated its intent to review the issue in the light of the Competition Commission's findings.
- 7.6 Ofgem/DTI also considered that as any changes required to industry agreements in order to implement the CUSC would be small, that it was appropriate for the changes to be brought about via the appropriate change mechanisms in place in respect of the particular documents requiring change rather than by way of an implementation scheme. To facilitate this Ofgem/DTI considered it appropriate to require licensees to do what they can to facilitate the process of change.
- 7.7 In addition, Ofgem/DTI proposed that the licences should contain an enduring change provision, which requires the licensee to facilitate change to other Core Industry Documents, where the changes are necessary and consequential on approved changes to the CUSC. This was intended to ensure that licensees do not seek deliberately to undermine the new governance arrangements of the CUSC.

Respondents' views

- 7.8 Two respondents supported the proposed licence condition to require licensees to be party to the CUSC Framework Agreement and to comply with the CUSC.

¹⁴ The New Electricity Trading Arrangements and Related Transmission Issues. Proposals on licence changes. A consultation document.

- 7.9 Two respondents thought it unnecessary to have a market abuse clause in the licence. One stated that they would want to see full industry consultation on this via the standard licence route to implement such a condition.
- 7.10 Three respondents supported the proposal not to have an implementation scheme for the CUSC to secure changes to associated agreements.
- 7.11 Two respondents felt it was unnecessary for an enduring change provision obligation to be put into the licences. One felt it would be impractical to implement and would not be effective. One respondent agreed with the need for a change co-ordination obligation.

Ofgem/DTI's views

- 7.12 Following consideration of the views of respondents, Ofgem/DTI continue to consider it appropriate to place an obligation on all licensees operating in England and Wales to be party to and comply with the CUSC. The CUSC will be a regulatory as well as a contractual document and therefore it is important that licensees have licence obligations in respect of compliance with the CUSC.
- 7.13 Ofgem/DTI are currently considering the way forward regarding the market abuse condition in the light of the Competition Commission decision not to support the inclusion of the condition in the licences of AES and British Energy. Ofgem/DTI will publish a consultation document on the way forward shortly. Any proposed licence changes will be subject to full consultation.
- 7.14 In respect of change co-ordination, Ofgem/DTI continue to consider that it is unnecessary to have an implementation scheme in respect of ensuring necessary changes to industry document which result from the implementation of the CUSC. The necessary changes appear to be small in number and straight forward to achieve and therefore Ofgem/DTI consider that the obligation on licensees to facilitate the process of change will be sufficient.
- 7.15 In respect of the enduring change provision, Ofgem/DTI consider that it would be inappropriate for licensees to be able to seek deliberately to undermine the new governance arrangements of the CUSC by holding up consequential changes to other documents. Ofgem/DTI therefore consider it appropriate for

licensees to be required by the condition to do what they can to facilitate the process of achieving change to other Core Industry Documents.

- 7.16 Ofgem/DTI therefore proposes that the proposed condition should remain unchanged from that attached to the December 2000 document.

Views invited

- 7.17 Ofgem/DTI welcome views on the proposals regarding the condition to be inserted in the licences of suppliers, generators and later distributors. In particular, Ofgem/DTI welcome comments on the detailed drafting of the proposed condition as set out in Appendix 3 to this document.

8. Implementation

Introduction

- 8.1 Ofgem/DTI considered that the CUSC (CUSC Framework Agreement, Bilateral Agreements, Construction Agreements and the Mandatory Services Agreements) would replace the MCUSA (Supplemental Agreements and Ancillary Services Agreements and any associated agreements) but requested NGC to give further consideration to how the MCUSA documentation could become the CUSC documentation. To implement the CUSC, Ofgem/DTI proposed to place a licence condition on all licensed generators, PESs, second tier suppliers and, in the future distributors, requiring them to sign up to the CUSC Framework Agreement and to comply and implement the CUSC. Ofgem/DTI stated that ideally all parties using and connected to NGC's transmission system would sign the CUSC.
- 8.2 NGC issued a paper in which it proposed that the CUSC documentation, (CUSC Framework Agreement, Bilateral Agreements, Construction Agreements and the Mandatory Services Agreements) should be implemented by amending the existing documentation (MCUSA, Supplemental Agreements and Ancillary Services Agreements and any associated agreements) by using Clause 25.1 of the MCUSA and the similar provisions in the Supplemental Agreements to become the new agreements.

NGC's proposals

- 8.3 NGC proposed to enter into a number of amending agreements with the various types of user. These amending documents would seek to:
- ◆ vary the MCUSA to become the CUSC Framework Agreement which will contractually bind a user to the relevant provisions in the CUSC;
 - ◆ vary the Supplemental Agreements (other than Type 5¹⁵) where not all the provisions (i.e. site specific information) have been codified into the

¹⁵ MCUSA Type 5 Supplemental Agreements contain provisions relating to second tier suppliers acting in that capacity taking Energy through any Grid Supply Point and through a Distribution System owned or operated by any other person).

CUSC so that any contractual terms which appear in the CUSC are terminated and the remaining terms become the appropriate Bilateral Agreement and if necessary the Construction Agreement;

- ◆ vary the Ancillary Services Agreements containing the provisions of the mandatory ancillary services so that the provisions relating to those services which appear in the CUSC are effectively terminated and the remainder become the Mandatory Services Agreement, and leaving the remaining non mandatory ancillary services to be dealt with in commercial services agreements; and
- ◆ in the case of a Type 5 Supplemental Agreement (where all the provisions have been codified and so are duplicated in the CUSC) to vary the Type 5 to reflect this.

8.4 NGC's proposal was raised during the consultation on the drafting of the CUSC and NGC submitted a letter to Ofgem stating the responses to this proposal were supportive. NGC requested that Ofgem/DTI considered making further changes to NGC's transmission licence to facilitate implementation of the CUSC.

The December 2000 document

8.5 The December 2000 document proposed further changes to the proposed new conditions that are required to facilitate the implementation of the CUSC in light of NGC's proposal to implement it by way of an amendment to MCUSA and its associated agreements.

8.6 Ofgem/DTI considered that there is merit in amending the existing documentation as it would prevent an unnecessary two-fold process of maintaining the MCUSA in line with the CUSC and void discriminatory contractual arrangements.

8.7 In order to effect this Ofgem/DTI proposed to modify the proposed licence condition 10F of NGC's licence to include a clause conferring a power on Ofgem to issue a direction to NGC to make an amendment to the MCUSA and its Supplemental Agreements as well as the Ancillary Services Agreements (to

the extent relating to Mandatory Services Agreements) to convert them into the CUSC documentation.

- 8.8 Ofgem/DTI also proposed to modify all other existing electricity licences (to add transparency into the amendment process) to make licensees who are MCUSA signatories execute documents to convert the MCUSA, its Supplemental Agreements, Ancillary Service Agreements and any associated agreements into the CUSC documentation.

Respondents' views

- 8.9 Six of the thirteen respondents to the December 2000 document were supportive of the proposed migration of MCUSA documentation into the CUSC documentation. Two of these respondents stated they would not wish to see the MCUSA exist alongside the CUSC.
- 8.10 One respondent thought that the process of migration from MCUSA to CUSC by using amending agreements is cumbersome and could lead to logistical difficulties. They believe the existing MCUSA clause 25.1 is a sufficient way of effecting the necessary licences changes. Another respondent who supported the migration proposal also felt that the existing MCUSA clause 25.1 could effect the necessary amendments without the need for additional licence changes on parties other than NGC. They preferred this approach as the additional licence requirements would be obsolete after the CUSC arrangements have been implemented. They also pointed out that clause 25.1 would have to be used so that unlicensed parties to the MCUSA would become signatories to the CUSC.
- 8.11 One respondent stated that they would like confirmation that contractual continuity would be maintained and that this would be construed from the new wording added to the Transmission and other licences. This respondent also requested confirmation that existing clauses that are unique to their agreements will be retained. (This issue is discussed in chapter 3)
- 8.12 One respondent suggested that the connection element of the CUSC should apply to all future entrants into this market.

Ofgem/DTI's views

- 8.13 Ofgem/DTI are pleased that the majority of respondents agreed that it was appropriate to implement the CUSC by way of migrating the MCUSA (and associated documentation). Following consideration of these responses Ofgem/DTI consider that this is the appropriate method of proceeding.
- 8.14 Ofgem/DTI believe it is important that, where some rights are to be retained, for example in Bilateral Agreements, CUSC users play an active role in the migration process to ensure, so far as possible, that they are correctly recorded. Ofgem/DTI believe that this process will be facilitated by providing the licence obligation on CUSC users rather than relying solely on clause 25.1 of MCUSA.

Views invited

- 8.15 Ofgem/DTI welcome views of respondents on the proposals regarding the mechanism by which the CUSC will be implemented as set out in this chapter.

Appendix 1 List of Respondents

Respondents to the August 2000 document: NGC's connection and use of system code: scope, content and licence changes

COMPANY
British Gas Trading
British Energy
Combined Heat & Power Association
Centrica
Consumers Association
Corus
East Midlands Electricity
Edison Mission Energy Ltd
Electricite de France
GPU Power Distribution
Innogy plc (2 responses. 1 confidential)
London Electricity
National Grid Company
Northern Electric Supply Business
Scottish Consumer Council
Scottish & Southern Energy plc
Seaboard plc
Slough Heat & Power
Yorkshire Electricity

Respondents to the December 2000 document: NGC's connection and use of system code: further proposed licence changes

COMPANY
British Gas Trading
British Energy
Corus
Edison Mission Energy
Innogy plc
National Grid Company
Scottish Power plc
Shoreham Power Station
Teeside Power Limited
TXU
Western Power
Yorkshire Electricity
United Utilities

Except for those responses which have been marked as "confidential" copies of the above respondents' views are available from the Ofgem library. Tel: 020 7901 7004.

Appendix 2 Proposed NGC licence conditions 1A, 10, 10A, 10B, 10C, 10D, 10E, 10F and 10G

- 2.1 This Appendix contains the proposed additions to Condition 1A and the new licence conditions 10, 10A, 10B, 10C, 10D, 10E and 10F of NGC's licence, with changes from those conditions attached to the August document shown. Inserted text is shown in bold. The numbering of paragraphs in the conditions is subject to change in the final version of the conditions.

Condition 1A: Interpretation (Additional Definitions)

"Authorised Electricity Operator"	means any person (other than the Licensee in its capacity as operator of the Licensee's Transmission System) who is Authorised to generate, transmit or supply electricity and for the purposes of Conditions 10C to 10E inclusive shall include any person who has made application to be so Authorised which application has not been refused and any person transferring electricity to or from England and Wales across an Interconnector or who has made an application for use of Interconnector which has not been refused.
"Bilateral Agreement"	means a Bilateral Connection Agreement and/or a Bilateral Embedded Generation Agreement.
"Bilateral Connection Agreement"	means an agreement between the Licensee and a CUSC User supplemental to the CUSC relating to a direct connection to the Licensee's Transmission System identifying the relevant connection site and setting out other site specific details in relation to that connection to the Licensee's Transmission System, including provisions relating to payment of Connection Charges;
"Bilateral Embedded Generation Agreement"	means an agreement entered into between the Licensee and a CUSC User supplemental to the CUSC, relating to a generating station connected to a Distribution System in England and Wales and the use of the Licensee's Transmission System in relation to that generating station identifying the relevant site of connection to the Distribution System and setting out other site specific details in relation to that use of the Licensee's Transmission System;

“Connection Charges”	means charges made or levied or to be made or levied for the carrying out (whether before or after the date on which the licence came into force) of works and provision and installation of electrical plant, electric lines and meters in constructing or modifying entry and exit points on the Licensee’s Transmission System together with charges in respect of maintenance and repair of such items in so far as not otherwise recoverable as Use of System Charges and in respect of disconnection and the removal of electrical plant, electric lines and meters following disconnection, all as more fully described in paragraphs 4, 5 and 6 of Condition 10B, whether or not such charges are annualised.
“Connection Charging Methodology”	means the principles on which, and the methods by which, for the purposes of achieving the objectives referred to in paragraph 9 of Condition 10B, Connection Charges are determined.
“Construction Agreement”	means an agreement between the Licensee and a CUSC User in respect of construction works required on the Licensee’s Transmission System and the associated construction works of the CUSC User in relation to a connection to the Licensee’s Transmission System or in relation to a generating station connected to a Distribution System in England and Wales, whether for the initial connection or a modification of the connection.
“CUSC”	means the Connection and Use of System Code provided for in paragraph 2 of Condition 10F, as from time to time modified in accordance with that Condition.

"CUSC Framework Agreement"	means the agreement of that title, in the form approved by the Secretary of State, by which the CUSC is made contractually binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State.
"CUSC Party"	means any person who is a party to the CUSC Framework Agreement.
"CUSC User"	means a CUSC Party other than the Licensee.
"Licensee's Transmission System"	means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by the Licensee and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to any Interconnector, and includes any electrical plant and meters owned or operated by the Licensee in connection with the transmission of electricity but shall not include any Remote Transmission Assets.
"Use of System Charges"	means charges made or levied or to be made or levied by the Licensee for the provision of Transmission Network Services and in respect of the Balancing Services Activity, in each case as part of the Transmission Business, to any Authorised Electricity Operator as more fully described at paragraph A2 of Part A of Schedule 3, but shall not include Connection Charges.
"Use of System Charging Methodology"	means the principles on which, and the methods by which, for the purposes of achieving the objectives referred to in paragraph 5 of Condition 10A, Use of System Charges are determined.

Condition 10: Charges for Use of System

1. The Licensee shall:
 - (a) by the date this Condition comes into effect determine a Use of System Charging Methodology approved by the Director; and
 - (b) conform to the Use of System Charging Methodology as modified in accordance with Condition 10A.
2. The Licensee shall by the date this Condition comes into effect:
 - (a) prepare a statement approved by the Director of the Use of System Charging Methodology, and
 - (b) prepare, other than in respect of a charge which the Director has consented need not so appear, a statement, in a form approved by the Director, of Use of System Charges determined in accordance with the Use of System Charging Methodology and in such form and in such detail as shall be necessary to enable any person to make (other than in relation to charges to be made or levied in respect of the Balancing Services Activity) a reasonable estimate of the charges to which he would become liable for the provision of such services,

and, without prejudice to paragraph 3 of this Condition or paragraph 3 of Condition 10A, if any change is made in the Use of System Charges to be so made **other than in relation to charges to be made in respect of the Balancing Services Activity¹⁶**, or the Use of System Charging Methodology, the Licensee shall, before the changes take effect, furnish the Director with a revision of the statement of Use of System Charges (or if he so accepts, with amendments to the previous such statement) and/or (as the case may be) with a revision of the statement of the Use of System Charging Methodology, which reflect the changes.

- 2A. Approvals by the Director pursuant to paragraphs 1(a) and 2(a) may be granted subject to such conditions relating to further action to be undertaken by the Licensee in relation to the Use of System Charging Methodology better meeting the relevant objectives including, but not limited to, matters identified in any initial consultation by the Director, as the Director deems appropriate. Such conditions may include (but are not limited to) elements relating to the time by which action under the conditions must be completed.
- 2B. Nothing in this Condition shall affect the ability of the licensee to charge according to the statement issued pursuant to paragraph 2(b).

¹⁶ This has been added to reflect that NGC are not able to give 150 days notice of change to BSUoS charges which are calculated as a daily charge. This also makes this paragraph consistent with paragraph 2 (b).

3. The Licensee:
 - (a) shall give, except where the Director consents to a shorter period, 150 days notice to the Director of any proposals to change Use of System Charges **other than in relation to charges to be made in respect of the Balancing Services Activity**¹⁷, together with a reasonable assessment of the effect of the proposals (if implemented) on those charges, and
 - (b) where it has decided to implement any proposals to change Use of System Charges **other than in relation to charges to be made in respect of the Balancing Services Activity**¹⁸, shall give the Director notice of its decision and the date on which the proposals will be implemented which shall not, without the consent of the Director, be less than a month after the date on which the notice required by this sub-paragraph was given.
4. Unless otherwise determined by the Director, the Licensee shall only enter arrangements for Use of System which secure that Use of System Charges will conform with the statement last furnished under paragraph 2(b) either:
 - (a) before it enters into the arrangements; or
 - (b) before the charges in question from time to time fall to be made,and, for the purposes of this paragraph, the reference to the statement last furnished under paragraph 2(b) shall be construed, where that statement is subject to amendments so furnished before the relevant time, as a reference to that statement as so amended.
5. References in paragraphs 1, 2, 3 and 4 to charges do not include references to:
 - (a) Connection Charges; or
 - (b) to the extent, if any, to which the Director has accepted they would, as respects certain matters, be so determined, charges determined by reference to the provisions of the CUSC.
6. The Licensee may periodically revise the information set out in and, with the approval of the Director, alter the form of the statements prepared in accordance with paragraph 2 and shall, at least once in every year that this licence is in force, **make such revisions as may be necessary to**¹⁹ such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
7. The Licensee shall send a copy of any such statement, revision, amendment or notice given under paragraphs 2 or 3 to any person who asks for any such statement, revision, amendment or notice.

¹⁷ This has been added to reflect that NGC is unable to give 150 days notice of change to BSUoS charges which are calculated as a daily charge. This also makes this paragraph consistent with paragraph 2.

¹⁸ This has been added to reflect that NGC is unable to give 150 days notice of change to BSUoS charges which are calculated as a daily charge. This also makes this paragraph consistent with paragraph 2.

¹⁹ This has been added to reflect that the Statement of the Use of System Charging Methodology may not change on a yearly basis.

8. The Licensee may make a charge for any statement, revision, or amendment of a statement, furnished, or notice sent pursuant to paragraph 7 of an amount reflecting the Licensee's reasonable costs of providing such statement, revision, amendment or notice which costs shall not exceed the maximum amount specified in directions issued by the Director for the purposes of this Condition.

Condition 10A: Use of System Charging Methodology

1. The Licensee shall, for the purpose of ensuring that the Use of System Charging Methodology achieves the relevant objectives, keep the Use of System Charging Methodology at all times under review.
2. The Licensee shall, subject to paragraph 3, make such modifications of the Use of System Charging Methodology as may be requisite for the purpose of better achieving the relevant objectives.
3. Except with the consent of the Director, before making a modification to the Use of System Charging Methodology, the Licensee shall:
 - (a) consult the CUSC Users on the proposed modification and allow them a period of not less than 28 days within which to make written representations;
 - (b) send a copy of the terms of the proposed modification to any person who asks for them;
 - (c) furnish the Director with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations (if any) made to the Licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant objectives; and
 - (v) a timetable for implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 4 expires; and
 - (d) where the Director has given a direction that sub-paragraphs (a), (b) and/or (c) should not apply, comply with such other requirements (if any) that the Director may specify in the direction.
4. Where the Licensee has complied with the requirements of paragraph 3, it shall, unless the Director has within 28 days of the report being furnished to him given a direction that the modification may not be made, make the modification to the Use of System Charging Methodology.
5. In paragraphs 1, 2 and 3 "the relevant objectives" shall mean the following objectives:

- (a) that compliance with the Use of System Charging Methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;
 - (b) that compliance with the Use of System Charging Methodology results in charges which reflect, as far as is reasonably practicable, the costs incurred by the Licensee in its Transmission Business; and
 - (c) that, so far as is consistent with sub-paragraphs (a) and (b), the Use of System Charging Methodology, as far as is reasonably practicable, properly takes account of the developments in the Licensee's Transmission Business.
- 6. The Licensee shall send a copy of any report furnished under paragraph 3 to any person who asks for any such report.
- 7. The Licensee may make a charge for any report sent pursuant to paragraph 6 of an amount reflecting the Licensee's reasonable costs of providing such report which costs shall not exceed the maximum amount specified in directions issued by the Director for the purposes of this Condition.
- 8. Nothing in this Condition shall impact on the application of Conditions 4A to 4E.

Condition 10B: Connection Charging Methodology

1. The Licensee shall:
 - (a) by the date this Condition comes into effect determine a Connection Charging Methodology approved by the Director; and
 - (b) conform to the Connection Charging Methodology as modified in accordance with paragraph 8.
2. The Licensee shall, for the purpose of ensuring that the Connection Charging Methodology achieves the relevant objectives, keep the Connection Charging Methodology at all times under review.
3. The Licensee shall, subject to paragraph 7, make such modifications of the Connection Charging Methodology as may be requisite for the purpose of better achieving the relevant objectives.
4. The Licensee shall by the date this Condition comes into effect prepare a statement approved by the Director of the Connection Charging Methodology in relation to charges, including charges:
 - (a) for the carrying out of works and the provision and installation of electrical lines or electrical plant or meters for the purposes of connection (at entry or exit points) to the Licensee's Transmission System;
 - (b) in respect of extension or reinforcement of the Licensee's Transmission System rendered (at the Licensee's discretion) necessary or appropriate by virtue of providing connection to or Use of System to any person seeking connection;
 - (c) in circumstances where the electrical lines or electrical plant to be installed are (at the Licensee's discretion) of greater size than that required for use of system by the person seeking connection;
 - (d) for maintenance and repair (including any capitalised charge) required of electrical lines or electrical plant or meters provided or installed for making a connection to the Licensee's Transmission System; and
 - (e) for disconnection from the Licensee's Transmission System and the removal of electrical plant, electrical lines and meters following disconnection,

and the statement referred to in this paragraph shall be in such form and in such detail as shall be necessary to enable any person to determine that the charges to which he would become liable for the provision of such services are in accordance with such statement.

- 4A. An approval by the Director pursuant to paragraphs 1(a) and 4 may be granted subject to such conditions relating to further action to be undertaken by the Licensee in relation to the Connection Charging Methodology better meeting the relevant objectives as identified in any initial consultation by the Director, as the Director deems appropriate. Such conditions may include (but are not limited

- to) elements relating to the time by which actions under the condition need to be completed.
- 4B. Nothing in this Condition shall affect the ability of the Licensee to charge according to the statement issued pursuant to paragraph 4.
5. Unless otherwise determined by the Director, the Licensee shall only enter into a Bilateral Agreement or a Construction Agreement which secures that the Connection Charges will conform with the statement of the Connection Charging Methodology last furnished under paragraphs 4 or 8 either:
- (a) before it enters into the arrangements; or
 - (b) before the charges in question from time to time fall to be made.
6. The Connection Charging Methodology shall make provision for Connection Charges for those items referred to in paragraph 4 to be set at a level for connections made after 30 March 1990 which will enable the Licensee to recover:
- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Licensee's Transmission System or the provision and installation, maintenance and repair or (as the case may be) removal following disconnection of any electric lines, electric plant or meters; and
 - (b) a reasonable rate of return on the capital represented by such costs,
- and for connections made before 30 March 1990 the Connection Charging Methodology for those items referred to in paragraph 4 shall as far as is reasonably practicable reflect the principles in sub-paragraphs (a) and (b).
7. Except with the consent of the Director, before making a modification to the Connection Charging Methodology the Licensee shall:
- (a) consult the CUSC ~~Parties-Users~~²⁰ on the proposed modification and allow them a period of not less than 28 days within which to make written representations;
 - (b) send a copy of the terms of the proposed modification to any person who asks for them;
 - (c) furnish the Director with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations (if any) made to the Licensee;

²⁰ Changed to reflect proposed new definition in Condition 1A.

- (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant objectives; and
 - (v) a timetable for implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 8 expires; and
- (d) where the Director has given a direction that sub-paragraphs (a), (b) and/or (c) should not apply, comply with such other requirements (if any) that the Director may specify in the direction.

8. Where the Licensee:

- (a) has complied with the requirements of paragraph 7, it shall, unless the Director has within 28 days of the report being furnished to him given a direction that the modification may not be made, make the modification to the Connection Charging Methodology;
- (b) makes a modification to the Connection Charging Methodology, furnish the Director with a revised statement showing the changed Connection Charging Methodology and such revised statement of the Connection Charging Methodology shall supersede previous statements of the Connection Charging Methodology furnished under paragraph 4 or this paragraph 8 from the date specified therein.

9. In paragraphs ~~1~~, 2, 3²¹ and 7 “the relevant objectives” shall mean:

- (a) the objectives referred to in paragraph 5 of Condition 10A, as if references therein to the Use of System Charging Methodology were to the Connection Charging Methodology; and
- (b) in addition, the objective, in so far as consistent with sub-paragraph (a), of facilitating competition in the carrying out of works for connection to the Licensee’s Transmission System.

10. A statement furnished under paragraphs 4 or 8 shall, where practicable, include examples of the Connection Charges likely to be made in different cases as determined in accordance with the methods and principles shown in the statement.

11. The Licensee shall send a copy of any statement or revision of a statement or report furnished under paragraphs 4, 7 or 8 to any person who asks for any such statement or revision thereof or report.

12. The Licensee may make a charge for any statement or revision of a statement or report, furnished or sent pursuant to paragraph 11 of an amount reflecting the Licensee's reasonable costs of providing such which costs shall not exceed the

²¹ Changed to correct a drafting error.

maximum amount specified in directions issued by the Director for the purposes of this Condition.

13. Nothing in this Condition shall impact on the application of Conditions 4A to 4E.

Condition 10C: Non-discrimination

1. In the provision of Use of System or in the carrying out of works for the purpose of connection to the Licensee's Transmission System, the Licensee shall not discriminate as between any persons or class or classes of persons.
2. Without prejudice to paragraph 1 and subject to paragraph 3, the Licensee shall not make charges for provision of Use of System to any Authorised Electricity Operator or class or classes of Authorised Electricity Operator which differ in respect of any item separately identified in the statement referred to at paragraph 2(b) of Condition 10 from those for provision of similar items under Use of System to any other Authorised Electricity Operator or class or classes of Authorised Electricity Operator except in so far as such differences reasonably reflect differences in the costs associated with such provision.
3. Notwithstanding paragraph 2, the Licensee shall not make Use of System Charges in respect of any item of charge separately identified in the statement referred to at paragraph 2(b) of Condition 10 on any Authorised Electricity Operator whose contract does not provide for him to receive the service to which such item of charge refers.
4. The Licensee shall not in setting Use of System Charges restrict, distort or prevent competition in the generation, transmission, supply or distribution of electricity.

Condition 10D: Requirement to offer terms

1. Unless otherwise determined by the Director under Condition 10E, on application made by:
 - (a) any Authorised Electricity Operator in the case of an application for Use of System; and
 - (b) any person in the case of an application for connection,the Licensee shall (subject to paragraph 6) offer to enter the CUSC Framework Agreement.
2. [paragraph deleted]²²
3. On application made by any person the Licensee shall (subject to paragraph 6) offer to enter into a Bilateral Agreement and/or a Construction Agreement relating to connection or modification to an existing connection and such offer shall make detailed provision regarding:
 - (a) the carrying out of work (if any) required to connect the Licensee's Transmission System to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purpose;
 - (b) the carrying out of works (if any) in connection with the extension or reinforcement of the Licensee's Transmission System rendered (in the Licensee's discretion) appropriate or necessary by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purpose;
 - (c) the installation of appropriate meters (if any) required to enable the Licensee to measure electricity being accepted into the Licensee's Transmission System at the specified entry point or points or leaving such system at the specified exit point or points;
 - (d) the date by which any works required to permit access to the Licensee's Transmission System (including for this purpose any works to reinforce or extend the Licensee's Transmission System) shall be completed (time being of the essence unless otherwise agreed by the person seeking connection);
 - (e) the Connection Charges to be paid to the Licensee, such charges:

²² see August 2000 document.

- (i) to be presented in such a way as to be referable to the Connection Charging Methodology or any revision thereof; and
 - (ii) to be set in conformity with the requirements of paragraph 6 of Condition 10B and (where relevant) paragraph 4; and
 - (f) such further terms as are or may be appropriate for the purpose of the agreement.
4. For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works under a Bilateral Agreement and/or a Construction Agreement, the Licensee will have regard to:
- (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of carrying out such works whether by reason of the reinforcement or extension of the Licensee's Transmission System or the provision of additional entry or exit points on such system or otherwise; and
 - (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.
5. The Licensee shall offer terms in accordance with paragraphs 1 and 3 above as soon as practicable and (except where the Director consents to a longer period) in any event not more than the period specified in paragraph 7 below after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.
6. The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement if:
- (a) to do so would be likely to involve the Licensee:
 - (i) in breach of its duties under Section 9 of the Act;
 - (ii) in breach of the Electricity Supply Regulations 1988 or of any regulations made under Section 29 of the Act or of any other enactment relating to safety or standards applicable in respect of the Transmission Business;
 - (iii) in breach of the Grid Code; or
 - (iv) in breach of the Conditions; or
 - (b) the person making the application does not undertake to be bound insofar as applicable by the terms of the Grid Code and/or the CUSC from time to time in force; or
 - (c) in the case of persons making application for Use of System under paragraph 1, such person ceases to be an Authorised Electricity Operator.
7. For the purpose of paragraph 5, the period specified shall be:

- (a) in the case of persons seeking Use of System only and seeking to become a party to the CUSC Framework Agreement if not already a party, in connection with such use, 28 days; **and**
 - (b) in the case of persons seeking a Bilateral Connection Agreement or a Construction Agreement (and seeking to become a party to the CUSC Framework Agreement if not already a party, in connection with such agreements), 3 months, and
 - (c) in any other case, 28 days.
8. The Licensee shall within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the Licensee as may be reasonably required by such person for the purpose of completing paragraph 8 of Part 1 and paragraphs 2(v) and (vi) of Part 2 of Schedule 2 of The Electricity (Application for Licences and Extensions of Licences) Regulations 1990 or such provisions of similar effect contained in any further regulations then in force made pursuant to Sections 6(3), 60 and 64(1) of the Act.

Condition 10E: Functions of the Director

1. If, after a period which appears to the Director to be reasonable for the purpose, the Licensee has failed to enter into an agreement with (as the case may be) any Authorised Electricity Operator or any person entitled or claiming to be entitled thereto pursuant to a request under Condition 10D, the Director may, pursuant to Section 7(3)(c) of the Act and on application of such Authorised Electricity Operator or such person or the Licensee, settle any terms in dispute of the agreement to be entered into between the Licensee and that Authorised Electricity Operator or that person in such manner as appears to the Director to be reasonable having (in so far as relevant) regard in particular to the following considerations:
 - (a) that such Authorised Electricity Operator or such person should pay to the Licensee:
 - (i) in the case of Use of System, Use of System Charges in accordance with paragraphs 1 and 4 of Condition 10; or
 - (ii) in the case of Connection Charges in accordance with paragraphs 1 and 5 of Condition 10B;
 - (b) that the performance by the Licensee of its obligations under the agreement should not cause it to be in breach of those provisions referred to at paragraph 6 of Condition 10D;
 - (c) that any methods by which the Licensee's Transmission System is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and
 - (d) that the terms and conditions of the agreement so settled by the Director and of any other agreements entered into by the Licensee pursuant to a request under Condition 10D should be, so far as circumstances allow, in as similar a form as is practicable.
2. Insofar as any person entitled or claiming to be entitled to an offer under Condition 10D wishes to proceed on the basis of the agreement as settled by the Director, the Licensee shall forthwith enter into such agreement.
3. If in respect of any Bilateral Agreement or Construction Agreement entered into pursuant to Condition 10D or this Condition either the Licensee or other party to such agreement proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Director may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Director to be reasonable.

4. Where the Licensee is party to a Relevant Agreement for connection and/or Use of System which is other than in conformity with the CUSC, if either the Licensee or other party to such agreement for connection and/or Use of System proposes to vary the contractual terms of such agreement in any manner provided for under such Relevant Agreement, the Director may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Director to be reasonable having (in so far as relevant) regard to the consideration that the terms so settled are, in so far as circumstances allow, similar to the equivalent terms in the CUSC.
5. If the Licensee and a CUSC User or other person party to a Relevant Agreement are in dispute as to whether:
 - (a) Use of System Charges made, or to be made, ~~have been determined in accordance~~ **conform** with the statement of the Use of System Charges furnished under paragraphs 2(b) or 6 of Condition 10 which applied or applies in relation to the period in respect of which the dispute arises;
 - (b) Connection Charges made, or to be made, ~~have been determined in accordance~~ **conform** with the statement of the Connection Charging Methodology furnished under paragraphs 4 or 8 of Condition 10B which applied or applies in relation to the period in respect of which the dispute arises,

such dispute may be referred to the Director for him to determine whether, in the case of sub-paragraph (a), the charges made, or to be made, ~~were in accordance~~ **conformed** with the relevant statement(s) furnished under Condition 10, or whether, in the case of sub-paragraph (b), the charges **conformed** ~~have been determined in accordance~~ with the relevant methodology²³.

6. For the purposes of this Condition:

“Relevant Agreement”	means an agreement in respect of which paragraph 3 of Condition 10C of this Licence, as such applied immediately prior to the taking effect of the modification giving effect to this Condition, had effect.
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²³ This wording has been amended to follow wording in licence condition (4) and licence condition 10B(5).

Condition 10F: Connection and Use of System Code

1. The Licensee shall establish arrangements for connection and Use of System in respect of matters other than those to which Conditions 7, 8 and 10A - E relate which are calculated to facilitate the achievement of the following objectives:
 - (a) the efficient discharge by the Licensee of the obligations imposed upon it under the Act and by this Licence; and
 - (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity,and the Licensee shall be taken to comply with this paragraph by having a document setting out the arrangements for connection and Use of System designated by the Secretary of State for the purposes of this Condition by the date this Condition comes into effect and by modifying such document from time to time in accordance with the provisions of paragraphs 6 and 7.
2. The Licensee shall prepare a Connection and Use of System Code setting out:
 - (a) the terms of the arrangements made in pursuance of paragraph 1;
 - (b) the procedures established in pursuance of paragraph 6; andsuch other terms as are or may be appropriate for the purposes of the CUSC.
3. The Licensee shall only enter into arrangements for connection and Use of System which are in conformity with any relevant provisions of the CUSC.
4. The CUSC shall provide for:
 - (a) the Licensee and each CUSC User to be contractually bound insofar as is applicable by the terms of the Grid Code from time to time in force;
 - (b) the Licensee and each CUSC User to enter into an agreement or agreements, supplemental to and in a form prescribed by the CUSC, setting out site specific details in respect of each site at which the CUSC User's electrical lines or electrical plant is connected to the Licensee's Transmission System;
 - (c) there to be referred to the Director for determination such matters arising under the CUSC as may be specified in the CUSC; and
 - (d) a copy of the CUSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy.

5. The provisions of paragraphs 4 and 10 shall not limit the matters which may be provided for in the CUSC.
6. The Licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the Applicable CUSC Objectives, which procedures shall provide:
 - (a) for proposals for modification of the CUSC to be made by the Licensee, CUSC Users and such other persons and bodies as the CUSC may provide;
 - (b) where such a proposal is made:
 - (i) for bringing the proposal to the attention of CUSC ~~Parties~~ **Users**²⁴ and such other persons as may properly be considered to have an appropriate interest in it;
 - (ii) for proper consideration of any representations on the proposal;
 - (iii) for properly evaluating whether the proposed modification would better facilitate achieving the Applicable CUSC Objectives, provided that so far as any such evaluation requires information which is not generally available concerning the Licensee or the Licensee's Transmission System, such evaluation shall be made on the basis of the Licensee's proper assessment (which the Licensee shall make available for these purposes) of the effect of the proposed modification on the matter referred to in paragraph 1(c);
 - (iv) for development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the Applicable CUSC Objectives;
 - (v) for the preparation of a report:
 - setting out the proposed modification and any alternative;
 - evaluating the proposed modification and any alternative;
 - assessing the extent to which the proposed modification or any alternative would better facilitate achieving the Applicable CUSC Objectives;

²⁴ Changed to reflect proposed new definition in Condition 1A.

- assessing the impact of the modification on the Core Industry Documents and the changes expected to be required to such documents as a consequence of such modification;
 - setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and
- (vi) for the submission of the report to the Director as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs (i) to (v); and
- (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Director has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Director.
7. (a) If a report has been submitted to the Director pursuant to procedures described in paragraph 6(b)(vi), and the Director is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the CUSC and any alternative modifications set out in such report, better facilitate achieving the Applicable CUSC Objectives the Director may direct the Licensee to make that modification.
- (b) The Licensee shall only modify the CUSC:
- (i) in order to comply with any direction of the Director pursuant to sub-paragraph (a); or
- (ii) with the consent of the Director,
- and it shall not have the power to modify the CUSC in any other circumstance; and the Licensee shall furnish the Director with a copy of any modification made.
- (c) Only the Licensee shall have the power to modify the CUSC.
8. The Licensee shall prepare and publish a summary of the CUSC as modified or changed from time to time in such form and manner as the Director may from time to time direct.

9. The Licensee shall be a party to the CUSC Framework Agreement and shall comply with the CUSC
10. The CUSC Framework Agreement shall contain provisions:
 - (a) for admitting as an additional party to the CUSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the CUSC) on which accession to the CUSC Framework Agreement is offered; and
 - (b) for referring for determination by the Director any dispute which shall arise as to whether a person seeking to be admitted as a party to the CUSC Framework Agreement has fulfilled any accession conditions; and if the Director determines that the person seeking accession had fulfilled all relevant conditions, for admitting such person to be a party to the CUSC Framework Agreement.
- 10A The Director may issue a direction to the Licensee to make such amendments to the agreement known as the Master Connection and Use of System Agreement ("MCUSA") and the Supplemental Agreements and Ancillary Services Agreements (as defined or referred to in MCUSA) and any associated agreements derived from MCUSA as shall be necessary to amend them appropriately into the CUSC Framework Agreement, CUSC, Bilateral Agreements, Construction Agreements and associated agreements derived from CUSC so as to maintain continuity of contractual relationships.
11. The Licensee shall take all reasonable steps to secure and implement (consistently with the procedures applicable under or in relation to such documents), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is a party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
12. For the avoidance of doubt, paragraph 11 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 11 which the Director may have.
13. The Licensee shall comply with any direction to the Licensee made pursuant to this Condition.
14. In this Condition:

"Applicable CUSC Objectives"

means:

- (a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1); and

(b) in relation to any other proposed modification, the objectives set out in paragraph 1.

15. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Condition 10G: Information about the Licensee's Transmission System

1. The Licensee shall by not later than 31 March in each Financial Year prepare a statement in a form approved by the Director showing in respect of each of the seven succeeding Financial Years circuit capacity, forecast power flows and loading on each part of the Licensee's Transmission System and fault levels for each transmission node, together with:
 - (a) such further information as shall be reasonably necessary to enable any person seeking Use of System to identify and evaluate the opportunities available when connecting to and making use of such system; and
 - (b) a commentary prepared by the Licensee indicating the Licensee's views as to those parts of the Licensee's Transmission System most suited to new connections and transport of further quantities of electricity.
2. The Licensee shall include in every statement prepared under paragraph 1 above the information required by that paragraph except that the Licensee may with the prior consent of the Director omit from such statement any details as to circuit capacity, power flows, loading or other information, disclosure of which would, in the view of the Director, seriously and prejudicially affect the commercial interests of the Licensee or any third party.
3. The Licensee may periodically revise the information set out in and, with the approval of the Director, alter the form of the statement prepared in accordance with paragraph 1 and shall, at least once every year that this Licence is in force, revise such statement in order that the information set out in the statement shall continue to be accurate in all material respects.
4. The Licensee shall send a copy of any such statement or revision given under paragraphs 1 or 3 to any person who asks for one.
5. The Licensee may make a charge for any statement or revision sent pursuant to paragraph 4 of an amount reflecting the Licensee's reasonable costs of providing such which costs shall not exceed the maximum amount specified in directions issued by the Director for the purposes of this Condition.

Appendix 3 Changes to Public Electricity Suppliers; second tier suppliers; generators and distribution licences

- 3.1 This Appendix contains the proposed new condition to be included in the licences of generators, suppliers and distributors with changes from the condition attached to the August document. Inserted text is shown in **bold**. Footnotes are included to explain changes.

Public Electricity Suppliers, Second Tier Suppliers, Generators and Distributors Licence Condition

1. The Licensee shall be a party to the CUSC Framework Agreement and shall comply with the CUSC and, if it is party to the agreement known as the Master Connection and Use of System Agreement ("MCUSA"), execute such other documents as shall be necessary to enable the MCUSA and its Supplemental Agreements and Ancillary Service Agreements (as defined or referred to in MCUSA) and any associated agreements derived from MCUSA to be ~~amended converted~~²⁵ appropriately into the CUSC Framework Agreement, CUSC, Bilateral Agreements, Construction Agreements and, so far as is appropriate, associated agreements derived from CUSC so as to maintain continuity of contractual relationships.
2. The Licensee shall take all reasonable steps to secure and implement (consistently with the procedures applicable under or in relation to those documents as modified or replaced from time to time), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is a party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
3. For the avoidance of doubt, paragraph 2 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the Core Industry Documents which the Director may have.
4. In this Condition:

"CUSC"

means the connection and use of system code required to be in place pursuant to the Transmission Licence granted to the Transmission Company, as from time to time modified.

"Core Industry Documents"

means those documents which:

- (a) in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the CUSC or connection and use of system arrangements; and
- (b) have been designated by the Secretary of State.

"CUSC Framework Agreement"

means the agreement of that title, in the form approved by the Secretary of State, by which the CUSC is made contractually

²⁵ Drafting change intended to be consistent with the wording used in Condition 10F (10A) .

binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State.

5. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.