The Connection & Use of System Code under BETTA

Ofgem/DTI Consultation on a CUSC to apply throughout GB

December 2002

Summary

The development and implementation of a Connection and Use of System Code (CUSC) to apply under the British Electricity Trading & Transmission Arrangements (BETTA) (the "GB CUSC") is an important element of the BETTA reforms. The introduction of a GB CUSC is considered a fundamental step towards introducing a single set of arrangements for access to the GB transmission system.

This consultation document first reviews the need for a GB CUSC as part of the BETTA reforms and discusses the role of the GB system operator under it as the party responsible for contracting with users of the transmission system for connection to, and use of the system. It then discusses, and seeks views upon, the process for the development and the proposed contents of a GB CUSC.

The document:

- describes the rationale and the timetable for the development of the GB CUSC
- describes the background of this consultation in the wider context of BETTA
- describes the BETTA legal framework and the place of the GB CUSC in it
- examines previous Ofgem/DTI conclusions on GB CUSC issues in the context of representations that have been made to Ofgem/DTI questioning the need for a GB CUSC as part of the BETTA reforms
- discusses areas where the existing CUSC might need to change in order to apply it across GB and puts forward specific proposals for change
- discusses some of the transitional issues that will need to be addressed in the move from the current sets of separate arrangements for connection to, and use of, system in GB to a GB CUSC, which will be consulted upon in due course, and
- seeks views on all of the above.

The GB CUSC will be the document that sets out the contractual obligations for those connecting to or using the transmission system to pay transmission charges. This document does not consult upon issues associated with the development of a GB

transmission charging methodology. A paper describing the process for the development of a GB transmission charging regime will be published shortly.

This document is one of a series of consultations which will be undertaken over the period up to the planned implementation of the BETTA reforms in April 2004[1].

[1] which is subject to the E(TT) Bill being introduced in the current Parliamentary session and Royal Assent to the E(TT) Bill by September 2003.

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1. Rationale

1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in an Ofgem consultation paper of December 2001[2] (the 'December 2001 consultation') and a joint Ofgem/Department of Trade and Industry (DTI) report of May 2002[3] (the 'May 2002 report'). Further, the DTI has published a draft Regulatory Impact Assessment (RIA), which explains the purpose and impact of the proposed primary legislation to enable the BETTA reforms. The final RIA will be published with the Electricity (Trading & Transmission) Bill (E(TT) Bill) and will explain the expected costs and benefits of BETTA.

1.2. The December 2001 consultation considered the introduction of a single Connection and Use of System Code (CUSC) as an important part of the BETTA reforms, seeking views on whether under BETTA it was appropriate to adopt a single CUSC using the arrangements applying in England and Wales as a basis for consultation.

1.3. The May 2002 report noted that responses to the December 2001 consultation indicated that there was widespread support for extending the CUSC to Great Britain (GB) with the attendant benefit of a single set of charging and access arrangements for connection to and use of the transmission system in GB, although it was noted that further consultation would be needed on the detailed form of the GB arrangements. Respondents to the December 2001 consultation considered that the form of the CUSC may be dependent on the detailed allocation of activities between the GB system operator and transmission owners. Ofgem/DTI noted the support for a single CUSC to apply across GB and concluded that this should set the basis for further work, noting that proposals for the arrangements that should be embodied in the CUSC to apply across GB (referred to in this document as 'the GB CUSC') would be brought forward for full consultation in due course.

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[2] The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper, Ofgem, December 2001, Ofgem 74/01.

[3] The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps. Ofgem/DTI, May 2002, Ofgem 38/02.

1.4. In considering further the context of, and requirements for, a single GB CUSC, the following issues have been identified. The rationale for each of these issues is set out below and the issues are dealt with in more depth in the rest of the document.

The need for a GB CUSC under BETTA

1.5. Since the publication of the May 2002 report, further representations have been made in a number of fora suggesting, among other things, that it is not necessary to introduce a GB CUSC at the same time as the implementation of BETTA.

1.6. The GB CUSC will provide the framework through which common, independent arrangements for connection to and use of the transmission system are provided across GB. Without such common arrangements, the introduction of BETTA could be accompanied by a complicated web of diverse contracts and relationships, which would not be transparent, giving the prospect of discriminatory treatment of users, and could even be unmanageable.

1.7. Ofgem/DTI are therefore resolute in their view that the implementation of a GB CUSC is a key element of the BETTA reforms.

Contracting with users of the Transmission System

1.8. The May 2002 report set down Ofgem/DTI's conclusion that it is appropriate for the GB system operator to be the party responsible for contracting with users of the transmission system for connection to, and use of, the system. It also noted that transmission users will continue to own transmission assets and that will mean that the contractual provision of service will differ from the physical provision of service. Once the legal framework and the associated responsibilities is known, it may prove necessary to have some limited form of contractual relationship between transmission owners and users.

1.9. Ofgem/DTI have reviewed this conclusion in the light of further representations.

1.10. As stated in the May 2002 report, Ofgem/DTI continue to believe that promoting competition in generation and supply requires that there is access to the transmission system which is, and which is perceived to be, independent and non-discriminatory.

1.11. In August 2002 DTI/Ofgem published a conclusions document on the process for identifying the GB system operator[4] and invited applications for this role. The document concluded that one of the assessment criteria for the identification of the party to be the GB system operator should be its freedom from generation and supply interests[5] ensuring that it will undertake the activities of the GB system operator in an independent and non-discriminatory manner.

1.12. Ofgem/DTI concluded in the May 2002 report that the GB system operator should be the party responsible for contracting with users of the transmission system for connection to and use of the system for a number of reasons:

- the party contracting with users should be independent[6] and non-discriminatory
- from the point of view of users it is simpler if there is only one contracting party
- having a single contracting party helps promote flexibility to accommodate future change
- it provides clear accountability which is desirable from a regulatory enforcement perspective, and
- it is consistent with the current arrangements in England and Wales and thus represents a minimum change approach.

The basis of a GB CUSC

1.13. The text of a GB CUSC has to be developed. In contrast to England and Wales, which has a single CUSC, there is no such common framework for the arrangements for connection to and use of the transmission system in Scotland. Ofgem/DTI therefore propose that the CUSC currently operational in England

[4] "The Process for identifying the GB system operator, Key conclusions and invitation for applications", DTI/Ofgem Conclusions Document, August 2002.
[5] See criterion ii: "Other than for balancing services under BETTA, the party should not itself, nor should it have affiliates who will, be undertaking the activity of generation or supply in GB, or be trading GB electricity, or be carrying out any other relevant activity which may conflict with the party carrying out the activities of the GB system operator in an independent and non-discriminatory manner."
[6] See footnote 4 above.

and Wales should be the basis for the GB CUSC, thus maintaining the benefits of transparency and flexible governance which followed the introduction of CUSC. Further, in order to keep disruption to a minimum it is proposed that changes to the existing England and Wales CUSC should only be introduced where required in order to accommodate GB wide considerations.

1.14. A number of potential areas for change have been identified and are discussed in detail in Chapter 5. They are:

- the governing law and jurisdiction of the GB CUSC
- governance of the GB CUSC
- principles of ownership boundaries between transmission system assets and third party assets
- mandatory ancillary services
- small generators
- security cover
- "Transfer Date", and
- bilateral connection and use of system agreements.

1.15. There are two broad domains to be addressed in moving to a GB CUSC. Firstly, the enduring arrangements that will apply to all those connecting to and using the GB transmission system under BETTA and secondly the transitional arrangements necessary to make the legal transition to the new arrangements for existing users of the three existing transmission networks. This document makes proposals only in respect of the enduring arrangements. Transitional issues are presently scheduled to be consulted upon in the Spring of 2003. However, this document does touch upon some specific issues with regard to the transitional arrangements and Ofgem/DTI welcome any comments on, or the raising of specific issues about, any aspect of the transition.

1.16. In considering the contents of the GB CUSC, Ofgem/DTI have taken as their starting point the version of the CUSC specified in Appendix 1 and have considered areas where that version of the CUSC might require changes were it

to be applied across GB. An outline of the contents of the CUSC is shown in Appendix 2.

2. Timetable for development of the GB CUSC

2.1. As described in the May 2002 report, this paper is the first in a set of three consultation papers designed to develop a GB CUSC under BETTA.

2.2. The proposed process and timetable going forward is as follows:

- this paper is the first consultation paper on the CUSC under BETTA. Its aim is to seek views on the proposal that the GB system operator should be the party obliged to have in force a single GB CUSC and that the existing CUSC in operation in England and Wales should be used as a basis for developing the GB CUSC

- subject to the responses received to the first consultation paper, it is anticipated that a report on the conclusions will be published in March 2003

- the conclusions will be used to inform the preparation of a first draft of the legal text for the GB CUSC. In addition, any relevant conclusions from other BETTA consultations will be taken account of in the legal drafting. All such issues will be highlighted, and their relevance and appropriateness for GB application, will be addressed in the consultation document that will accompany the proposed legal text[7]. Further, any approved[8] amendments to the CUSC that have occurred since the version specified in Appendix 1, will be identified in the consultation document and proposals for whether and how they should be incorporated into the GB CUSC put forward for comment. This consultation document is planned to be published in April 2003 with responses requested in May 2003.

- the third consultation will be on a second draft of the text of the GB CUSC, taking account of comments received on the first draft of legal text. It is anticipated that this will be published in July 2003 with

[7] It is possible that such issues will arise in such a way or at such a time that they cannot be incorporated into these consultation cycles. Should that be the case they will be consulted upon, where practicable, separately.

[8] Shortly, a document will be published describing the process for the consideration by the Authority of

responses requested August 2003. Again the proposed legal text of the GB CUSC will be accompanied by a consultation document which will review any further approved modifications to CUSC that have not previously been consulted upon in terms of their inclusion within a GB CUSC and any other relevant issues that have arisen

- it is planned that conclusions and final legal text for the GB CUSC will be published in September 2003.

2.3. The process for progressively bringing into force various aspects of the GB CUSC will be addressed and consulted upon in the context of a consultation on implementation and transitional issues.

Views invited

2.4. Parties are free to raise comments on any of the matters covered in this paper and in particular on those matters where views have been requested. All responses, except those marked confidential will be published on the Ofgem website and held electronically in the Ofgem Research and Information Centre. Respondents should try to confine any confidential material in their responses to appendices. Ofgem prefers to receive responses in an electronic form so they can easily be placed on the Ofgem website.

2.5. Responses marked 'Response to first GB CUSC consultation' should be sent by Monday 27 January 2003 to:

David Halldearn
Director, Scotland and Europe
Office of Gas and Electricity Markets (Ofgem)
9 Millbank
London
SW1P 3GE
Fax: 020 7901 7479

2.6. Please e-mail responses to BETTA.Consultationresponse@ofgem.gov.uk marked 'Response to first GB CUSC consultation'.

2.7. All responses will be forwarded to the DTI.

2.8. If you wish to discuss any aspect of this document, please contact Simon Street at Ofgem (email: Simon.Street@ofgem.gov.uk , telephone: 020 7901 7057 or 07885 059630) or Catherine McWalter at the DTI (email: catherine.mcwalter@dti.gsi.gov.uk , telephone 020 7215 0442).

3. Background

3.1. In the December 2001 consultation Ofgem set out its vision of a model that would enable all consumers in Great Britain to benefit from more competitive wholesale markets. The set of proposed reforms outlined in that paper is termed British Electricity Trading and Transmission Arrangements (BETTA).

3.2. On 15 April 2002, the Government announced its intention to bring forward legislation to implement BETTA when Parliamentary time allows[9]. Such legislation is referred to in this document as the Electricity (Trading and Transmission) Bill ("the E(TT) Bill") or, based on an assumption of Royal Assent to such a Bill, as the "E(TT) Act". Ofgem/DTI are taking forward the further development and implementation of BETTA in the light of the aforementioned Government announcement, and are working to an implementation date for BETTA of April 2004[10].

3.3. In the May 2002 report Ofgem/DTI published their conclusions in the light of responses to the issues raised in the December 2001 consultation and provided additional information on key matters associated with progressing BETTA. In that paper Ofgem/DTI concluded that the development of effective competition across GB is contingent upon the creation of a GB system operator that is independent[11] of generation and supply interests and that it is appropriate to allocate certain transmission related functions (including, at a minimum, GB system balancing) to the GB system operator. Ofgem/DTI also concluded that it is appropriate to introduce GB balancing and settlement rules and a single set of contractual and charging arrangements across GB for access to and use of the transmission system.

3.4. In the May 2002 report Ofgem/DTI also noted the support for a single CUSC to apply across GB and agreed that this should be the basis for further work on a single set of contractual arrangements for access to and use of the transmission

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[9] See Hansard, 15th April 2002 Official Report Column 748W

[10] which is subject to the E(TT) Bill being introduced in the current Parliamentary session and Royal Assent to the E(TT) Bill by September 2003.

[11] Other than for balancing services under BETTA, the party should not undertake itself, nor should it have affiliates who will, be undertaking the activity of generation or supply in GB, or be trading GB electricity, or be carrying out any other relevant activity which may conflict with the party carrying out the activities of the GB system operator in an independent and non-discriminatory manner.

system in GB, noting that proposals for the arrangements that should be embodied in such a CUSC would be brought forward for full consultation in due course. This consultation is the first stage in that process for consultation and development as described in Chapter 2 above.

3.5. At present, the requirement to offer terms to parties wishing to connect to or to use the licensee's transmission system is a standard condition of a transmission licence[12]. For England and Wales, supplementary standard condition C7F also obliges the licensee (NGC[13]) to prepare a connection and use of system code (CUSC) setting out the terms of the arrangements for connection to, and use of its system and to establish and operate procedures for the modification of the CUSC. The CUSC is a code setting out the arrangements for connection to and use of the transmission system in England and Wales and is incorporated into a framework agreement which gives the CUSC contractual force between the parties to it. All generation[14], supply[15] and distribution[16] licensees operating in England and Wales are obliged through licence conditions to become parties to the CUSC framework agreement and to comply with the CUSC.

3.6. The CUSC deals with the commercial arrangements for the use of the transmission system, and some aspects of connection to it, in England and Wales. Those who are connected to the transmission system also enter into site-specific agreements for connection (and possibly other matters[17]) with the transmission licensee.

3.7. There is no direct equivalent to the CUSC for Scotland. All arrangements for connection to, and use of the transmission system are set down in individual bilateral agreements between users or connectees and the relevant transmission licence holder. There are understood to be no bilateral connection agreements for distribution network operators, whose systems are connected to the transmission system in Scotland.

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[12] Transmission Licence Supplementary Standard Condition C7D for England and Wales and D8B for Scotland.
[13] The National Grid Company plc
[14] Generation standard licence condition 19.
[15] Supply standard licence condition 9.
[16] Distribution standard licence condition 26.
[17] For example, construction agreement; mandatory ancillary services agreement; interface agreements, etc.

3.8. Work is ongoing in other areas of the BETTA project, such as the allocation of roles between the system operator and transmission owners, which may affect aspects of the proposed GB CUSC. Should issues which affect the GB CUSC emerge from other consultation processes, those issues also will be included in a subsequent GB CUSC consultation and the implications consulted upon in that context as described in Chapter 2.

4. Legal framework and development of the GB CUSC

4.1. In the May 2002 report Ofgem/DTI stated the intention that the provisions of the E(TT) Bill would be directed narrowly at providing the necessary powers to make those changes to the existing legal framework which are required to implement and deliver BETTA.

4.2. Ahead of the introduction of the E(TT) Bill it is not possible to be precise about the detailed provisions likely to be contained in the Bill. However in the May 2002 report, it was anticipated that provisions would have to address the following issues in order to give effect to BETTA:

- amendment to the Electricity Act 1989 so that the activities of system operation and transmission ownership are both licensable and any consequential changes that may be necessary
- the power to license a GB system operator and the owners of transmission assets
- the need to change existing industry documents and where necessary the introduction of new documents, including a GB BSC, GB CUSC and GB Grid Code
- the transfer of certain necessary assets, where appropriate, to the system operator, and
- transitional arrangements required to implement BETTA.

4.3. It is currently anticipated that to implement BETTA, the licences of existing transmission licensees will require amendment and a body will be licensed to undertake the role of the GB system operator. All electricity licences will also require amendment to introduce the other changes required to give effect to BETTA, for example the introduction of a GB BSC, GB CUSC and GB Grid Code.

4.4. The key legal documents associated with the delivery of BETTA include the new transmission licences, the GB BSC, the GB CUSC, the GB Grid Code, any document governing the interface between the system operator and transmission owners and any document governing the interfaces between transmission owners themselves. Ofgem/DTI anticipate that the legal steps required to put in place these GB documents will be taken by the Secretary of State using powers provided through an E(TT) Act to insert new or modify existing conditions of electricity licences.

The enduring legal framework under BETTA

4.5. It is envisaged that under BETTA transmission licensees will be licensed to undertake transmission owner related activities or system operator related activities (or possibly both). It is anticipated that the transmission licensee that is licensed to undertake system operator activities across GB will have conditions in its licence that give effect to a GB BSC, GB CUSC and GB Grid Code. Separate consultation papers are being issued on a GB Grid Code and on a GB BSC. Those papers will include a more detailed discussion of the legal framework as it relates to the particular codes concerned. A more detailed discussion of the legal framework for a GB CUSC is included in the next section of this chapter.

4.6. The current CUSC, applicable in England and Wales, primarily addresses matters between the relevant transmission licensee and users of the transmission system. Any matters arising between transmission licensees are dealt with in a number of other documents (for example, the British Grid Systems Agreement, the Grid Code and Interconnection Agreements) and such documents primarily relate to managing interactions between, and connections between, the various transmission systems.

4.7. Under BETTA a new series of interfaces will arise between transmission licensees, specifically those interfaces between the GB system operator and transmission owners, that will need to be addressed in the legal framework. There are a number of options for the way in which such interfaces can be addressed under BETTA:

- one possibility is the creation of a new code that is designed to set down detailed rights, obligations and duties between the GB system operator and transmission owners

- another possibility is to include in documents, such as the CUSC, BSC and Grid Code rights, obligations and duties arising between the GB system operator and transmission owners that relate to connection and use of system activities, the provision of technical services and information and to any services that transmission owners have to provide to the system operator to support its balancing activities.

4.8. Ofgem/DTI plan to issue shortly a consultation paper on the regulatory framework for transmission licensees under BETTA. This paper will consider in more detail the interfaces between the GB system operator and transmission owners and the appropriate legal framework to support them. For the purposes of this consultation, it is assumed that the arrangements applying between the GB system operator and transmission owners will not be set down in the GB CUSC, GB BSC and GB Grid Code, and that they will instead be dealt with separately. This approach will be consulted upon shortly, and to the extent that it is determined that such matters should be dealt with within the GB BSC, GB CUSC or GB Grid Code, further consultation on the resultant changes to the GB BSC, GB CUSC and GB Grid Code will be necessary.

4.9. It is further noted that in the May 2002 report, Ofgem/DTI concluded that it was appropriate for the GB system operator to be the party responsible for contracting with users of the transmission system for connection to and use of the system. It was recognised however that given that transmission owners would continue to own transmission assets, this would mean that the contractual provision of services differed from the physical provision of services. It was indicated that once the detail of the legal framework and associated responsibilities was known, then it may prove necessary to have some limited form of contractual relationship between the transmission owners and users. Again further consideration of the issue of whether it is necessary to have some limited form of contractual relationship between the transmission owners and users under BETTA will be included in the consultation to be published shortly.

The GB CUSC under BETTA

4.10. The May 2002 report concluded that one of the principal building blocks of BETTA was the introduction of a single code covering contractual arrangements for connection to and use of the transmission system, using arrangements applying in England and Wales as a basis for consultation. Moreover, Ofgem/DTI believe that establishing arrangements for connection to and use of the transmission system that are managed by a party that is independent from generation and supply affiliates[18] is fundamental to the delivery of BETTA. Furthermore, in order to provide a level playing field for those carrying out competitive electricity-related activities, Ofgem/DTI believe that it is desirable that common arrangements for access to the transmission system are introduced. As outlined previously, Ofgem/DTI consider that the most appropriate way to achieve these objectives is to apply one CUSC across Great Britain so that the CUSC contains the contractual terms for connection to and use of the transmission system anywhere in GB, and furthermore that the contracting counter-party for users under the GB CUSC is the GB system operator. Currently the requirement to have in place the CUSC applies only to the company licensed to transmit in England & Wales (that is, NGC[19]), therefore the CUSC currently only applies in relation to connection to or use of the transmission system in England and Wales. To apply the CUSC across GB would require that the licence condition to have in place the CUSC be contained in a transmission licence which allows for activities to be undertaken in GB.

4.11. Ofgem/DTI consider that the transmission licence of the GB system operator should contain the licence condition requiring the licensee to have in place a CUSC, and furthermore that this licence should include obligations on the GB system operator to enter into terms for connection to and use of the GB transmission system. This will ensure that the GB system operator is required to provide the necessary access to the GB transmission system and that transparent, independent, non-discriminatory contractual arrangements are in place to

[18] That is, a party that, other than for balancing services under BETTA, does not itself undertake, nor have affiliates who are undertaking, the activity of generation or supply in GB, or be trading GB electricity, or be carrying out any other relevant activity which may conflict with the party carrying out the activities of the GB system operator in an independent and non-discriminatory manner.

support such access. Essentially this means that the GB system operator will be responsible for the GB CUSC as it will have a transmission licence condition which requires it to have in place the document which sets out the scope of matters to be covered in the code and which sets out procedures by which the code can be amended.

Further representations

4.12. Since the publication of the May 2002 report, further representations have been made in a number of fora, which suggest the need to review some of the conclusions mentioned in paragraphs 4.10 and 4.11 above.

4.13. These representations suggested that the "transmission" element of BETTA can be achieved independently of BETTA go-live and that the concurrent go-live of a GB CUSC and GB trading is not necessary and will undoubtedly divert resources thus putting at risk the target date of April 2004. It was further noted that the New Electricity Trading Arrangements (NETA) were successfully introduced in England and Wales six months ahead of the introduction of CUSC and asserted that a GB CUSC is not necessary for the implementation of a GB wholesale electricity market.

4.14. The representations also raised issues relating to the need for contractual relationships between users of the transmission system and transmission owners, in particular, to ensure the protection of transmission owners' rights in their transmission assets. Further comments were made about the structural form of a GB CUSC, suggesting a common GB section and other sections specific to each transmission owner. In addition it was suggested that the governance of the GB CUSC should be such that as a very minimum transmission owners should be parties to the GB CUSC and should be represented on the amendments panel with voting rights.

4.15. Finally, the representations described the current common management and common contractual interface for both distribution and transmission use of system in Scotland which was considered to be simpler than arrangements that were being contemplated for BETTA. It also described how the present one stop

[19] The National Grid Company plc

wires business shop arrangement benefits small generators (including windfarms), many of which are on the cusp of the 132kV/33kV boundary (in Scotland this is the boundary between transmission and distribution).

4.16. In light of these comments, Ofgem/DTI have reviewed the basis of their conclusions in the May 2002 report that it is appropriate for the GB system operator to be the party responsible for contracting with users of the transmission system for connection to and use of the system and that a single CUSC to apply across GB should be the basis for further work .

4.17. As outlined in the May 2002 report, Ofgem/DTI continue to believe that promoting competition in generation and supply requires that there is access to the transmission system which is, and which is perceived to be, transparent, independent and non-discriminatory.

4.18. It is recognised that the physical provision of connection will normally be a matter for the transmission owner and in some cases possibly a matter for more than one transmission owner. All those assets forming the physical connection, if not the property of the party being connected (the user or user's agent), will be the property of a transmission owner, even though some of them may have been provided by, or on behalf of, the user. This means that there will be interactions between the users and the transmission owner (or owners) during the process of putting a connection in place. In addition, it is intended that the transmission owner will be involved in the design of the connection and in the identification of what equipment is needed to deliver a connection of the required quality as well as what consequential reinforcement may be necessary to its own infrastructure. It is also anticipated that other transmission owners will need to be involved in identifying the infrastructure effects on their transmission systems.

4.19. It is also envisaged that the GB system operator will be involved in this process as the party in the position to identify the wider implications of any application for connection and to take a GB perspective of the connection offer and process.

4.20. The question of which party should be responsible for contracting with the user for connection is thus not a question of how and which transmission licensee is involved in the connection process since it is currently envisaged that both the transmission owner and the GB system operator will be (it may also be necessary for other transmission owners to be involved in certain

circumstances). However, Ofgem/DTI believe it is vital, particularly in the light of the Government's commitment to increase renewables generation and the potential for new renewable generation (particularly in Scotland), that access to the transmission system throughout GB should be provided on a consistent and independent basis. It is also noted that under the current arrangements there are certain barriers to independent generation ownership. The requirement for independence and non-discrimination can only be met by a party which neither undertakes, nor has affiliates which undertake, the activities of generation or supply in GB, or be carrying out other relevant activities which may conflict with such independence or non-discrimination[20].

4.21. It is for these reasons that Ofgem/DTI concluded in the May 2002 report that it is appropriate that the GB system operator should be the party responsible for contracting with users of the transmission system for connection to, and use of, the system. Although, as mentioned above, it was noted that more detailed consideration of the responsibilities of the GB system operator and transmission owners could require some limited form of contractual relationship between transmission owners and users. This more detailed consideration is addressed in the Ofgem/DTI consultation on the regulatory framework for transmission licensees under BETTA, mentioned above. Ofgem/DTI also note that having a single body responsible for contracting for connection to and use of system represents a significantly simpler solution for those connecting to the transmission system than one in which the contractual provisions for access to the transmission system are divided between a number of different licensees. From this perspective, Ofgem/DTI believe that there are additional benefits of simplicity from the perspective of users under this model.

4.22. Ofgem/DTI note the suggestion that the existing arrangements in Scotland are simpler for a user considering connecting to the transmission or distribution system in Scotland or with a combined contract for access to both transmission and distribution. The involvement of the relevant distribution network operator in the assessment of a connection will always be necessary where the capacity of the connection gives a choice of connection voltage between transmission

[20] It is the responsibility of the Secretary of State to decide who is to fulfil the role of the GB system operator. An assessment panel has been appointed to advise the Secretary of State. The objective of the panel members will be to assess the information provided in the application against the agreed criteria and any

and distribution. This is as true for England and Wales as for Scotland (although the voltages concerned are different). The lack of a combined approach in England and Wales does not appear to result in difficulties for potential users. Ofgem/DTI take the view that the benefit for users of a combined approach is outweighed by the involvement of a GB system operator free of any activities which may conflict with carrying out its role in an independent and non-discriminatory manner[21].

4.23. An implementation approach in which the introduction of a GB CUSC followed the implementation of GB trading would, in Ofgem/DTI's view, fundamentally undermine the ability of BETTA to meet its objectives. The introduction of common non-discriminatory arrangements for access to the GB transmission system, administered by an independent party are not, in Ofgem/DTI's view, a consequential and unimportant part of introducing BETTA. Instead, such arrangements are an essential cornerstone of introducing a competitive GB wholesale electricity market.

4.24. The phased introduction of CUSC after the implementation of NETA was possible in England and Wales as all parties trading in England and Wales faced common terms for connection to and use of the system (under the master connection and use of system agreement).

4.25. In addition to the fact that establishment of common, independent arrangements for connection to and use of the transmission system are considered to be fundamental to the introduction of BETTA, Ofgem/DTI are also of the view that failure to introduce a GB CUSC would serve to substantially complicate, rather than simplify the introduction of BETTA.

4.26. Without reform of the existing contractual arrangements for connection to and use of system in Scotland, the introduction of BETTA could be accompanied by a complicated web of contracts and relationships which would not be transparent, and could even be unmanageable. Whilst it is not clear what

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statutory obligations and to advise the Secretary of State on who should be licensed for the role.

[21] That is, a GB system operator that, other than for balancing services under BETTA, does not itself undertake, nor does it have affiliates who are undertaking, the activity of generation or supply in GB, or trading GB electricity, or carrying out any other relevant activity which may conflict with it carrying out the activities of the GB system operator in an independent and non-discriminatory manner.

detailed alternatives are envisaged, it is possible that they would result in one or more of the following:

- inconsistencies between provisions for connection to and use of system arrangements and arrangements for balancing and imbalance settlement
- inconsistent arrangements for provision of mandatory ancillary services
- the requirement to establish a complex contractual interface between the GB system operator and the transmission owners, the provisions of which would vary depending upon the detailed terms of individual bilateral and use of system contracts
- an inability to create a "level playing field" insofar as access to the transmission system is concerned
- confusion as to whom is responsible for offering terms for connection to and use of the transmission system
- retention of opaque arrangements for connection and use of system in Scotland
- stifling of the ability to progress future reform through common amendment processes, and
- significant additional complexity for connectees/users of the transmission system who would potentially have multiple contractual counter-parties in receiving such services.

4.27. Ofgem/DTI therefore confirm their view that the implementation of a GB CUSC, in which the GB system operator is the contracting counterparty, is a key element of the BETTA reforms.

4.28. It is clear that transmission owners will have an interest in how their assets are managed and in ensuring that they are properly protected. There is a wide variety of ways in which the necessary arrangements could be built into the legal framework to ensure that transmission owners views are heard on matters associated with the use of their assets. One of the ways in which this can be done is to build them into the GB CUSC. Alternatively it could be designed into

the legal framework that set down the arrangements relating to the use of transmission owner assets by the GB system operator. Clearly, if an amendment to the GB CUSC were proposed that would require a change to the way in which transmission owners' assets were used, transmission owners would wish an opportunity for their representations to be taken into account before such an amendment were approved. Therefore as part of the design of the overall legal framework for BETTA, a mechanism has to be found for such views to be represented.

4.29. Ofgem/DTI are of the view that the right way to progress this issue is to continue the detailed discussions in the context of the allocation of responsibilities between the system operator and the transmission owner, where the question of the relationship between transmission owners and those who are connected to the transmission system is also being discussed and, once these are resolved, to seek the most appropriate way of providing the right mechanism for representations of transmission owners to be taken into account so that their rights are properly considered. This may result in subsequent changes to the proposals for the GB CUSC and, if so, such changes will be included in later consultations as described in Chapter 2 above.

GB CUSC and electricity licences

4.30. Currently the holders of generation, supply and distribution licences are required to comply with the CUSC insofar as they undertake activities in England and Wales. It is anticipated that holders of generation, supply and distribution licences will be required to comply with the GB CUSC under BETTA wherever they are located in GB. It is also envisaged that, as is the case in England and Wales today, the GB BSC will have a provision requiring that BSC parties, responsible for imports and exports at a boundary point, have in place appropriate connection agreements in relation to those imports and exports at that boundary point.

Development of the GB CUSC

4.31. The timetable for development of the GB CUSC has been described in Chapter 2. Some early discussions have been held with the transmission licensees to make use of their expertise on transmission connection and use of system issues

to inform Ofgem/DTI's views on the key issues that would result from the introduction of a code, based upon CUSC, GB-wide. These issues, and others identified by Ofgem/DTI, are outlined in Chapters 5 of this document.

4.32. As outlined in Chapter 2, Ofgem/DTI intend to issue a report on the conclusions on the GB CUSC in March 2003. The intent is that the report on conclusions will set down changes to the existing CUSC that Ofgem/DTI consider necessary to apply it across GB, in sufficient detail such that legal drafting of those changes can commence.

4.33. DTI/Ofgem have been consulting on the process for identifying the GB system operator[22] ('the initial GB system operator'). The August 2002 conclusions document outlined that the party identified as the initial GB system operator will play an important part in the development and implementation of BETTA. DTI/Ofgem expect the initial GB system operator to lead, and to resource, any outstanding work on the development and drafting of a GB CUSC when it is identified. It is worth noting that it is anticipated that the legal steps required to put in place to the GB CUSC will be taken by the Secretary of State using powers provided by an E(TT) Act and therefore Ofgem/DTI would intend to consult on the development and drafting of these documents at key points in the process. Any of the initial GB system operator's work in this regard would be subject to oversight and direction by Ofgem/DTI. If for any reason the initial GB system operator has not been identified when drafting of the text of the GB CUSC is to commence, then this proposed approach to legal drafting will have to be reviewed.

Views invited

4.34. Views are invited on any of the matters raised in this chapter but, in particular, on the following:

- the confirmation of the Ofgem/DTI view that it is appropriate for the GB system operator to be responsible for contracting with users of the transmission system for connection to, and use of, the system

[22] 'The Process for identifying the GB system operator, June 2002'and 'Key conclusions and invitation for applications, August 2002' the 'August 2002 conclusions'.

- the proposal that the GB system operator has the transmission licence condition requiring the GB CUSC to be in place
- the confirmation of the Ofgem/DTI view that the GB CUSC is a key element of the BETTA reforms and should be implemented as an integrated part of that legal framework
- the proposal that the initial GB system operator progresses the legal drafting of changes to the CUSC required to apply it across GB, subject to the oversight of Ofgem/DTI and subject to consultation on the draft legal text, and
- the proposal that the existing CUSC should form the basis of the GB CUSC with changes only where needed for the existing CUSC to apply GB wide.

5. Possible changes to CUSC to apply it across GB

5.1. Ofgem, with the help of the three existing transmission licensees, has analysed the CUSC in order to identify those provisions of the code which might raise issues if applied GB-wide. Each of the issues identified is discussed in this chapter and views are invited. However, although a number of issues relating to the wording of the legal text itself were identified in this analysis, these are not raised here. It is proposed that drafting matters will be resolved through subsequent consultations, with the publication of a first draft of the proposed legal text for the GB CUSC in April 2003.

Governing law and jurisdiction of the GB CUSC

Discussion

5.2. At present, the standard form Scottish connection and use of system agreements provide for Scots law as their governing law and provide for the non-exclusive jurisdiction of the Scottish courts. It is not unreasonable to assume that the individual bilateral agreements for connection to and use of the system between users and Scottish transmission licence holders have also generally adopted these governing law and jurisdiction provisions. In contrast, for the CUSC and the framework agreement which gives the CUSC contractual force, the governing law is stated to be English law in the CUSC and the law of England and Wales in the framework agreement. The exclusive jurisdiction of the English courts is provided in the CUSC and the exclusive jurisdiction of the courts of England and Wales is provided in the framework agreement. The issue to be addressed in developing a GB CUSC is therefore which governing law and legal jurisdiction should apply to the GB CUSC and associated documents such as the GB CUSC framework agreement.

5.3. The context in which parties to the CUSC framework agreement may have recourse to the courts would relate to disputes between them arising out of the CUSC. CUSC identifies four types of disputes as follows:

- those relating to whether connection or use of system charges have been calculated in accordance with charging statements (known as "charging disputes")

- those relating to construction agreements

- those relating to other CUSC arrangements which are neither charging disputes nor disputes relating to construction agreements (known as "other disputes"), and

- those relating to legal proceedings made by a customer against a CUSC party and such party wishes to make a third party claim against another CUSC party (known as a "third party dispute").

5.4. The CUSC requires that any dispute relating to a construction agreement should be determined in accordance with the provisions of the relevant agreement. The CUSC also requires that charging disputes should be referred to the Authority for determination and that other disputes should be referred to arbitration if discussions between NGC and each user concerned have not been able to resolve the dispute. As regards third party disputes the CUSC allows the court in which proceedings have been commenced to adjudicate as long as the dispute has not already been referred to arbitration.

5.5. Notwithstanding any provision in the GB CUSC to the contrary, the governing law, in relation to rights pertaining to heritable assets (that is, real property) located in Scotland, will be Scots law. Equally, the governing law in relation to rights pertaining to real assets located in England and Wales will be English law. This position follows from the legal principle of *lex situs*[23] and the overriding nature of this legal principle means that there is no need for it to be further specified in the GB CUSC. Furthermore, the governing law in the GB CUSC framework agreement does not have to be the same as the governing law applying to the rights created by the framework agreement. Thus, the fact that the GB CUSC will create some rights (in relation to heritable assets in Scotland) where Scots law will apply does not mean that the governing law for the GB CUSC itself cannot be English law.

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[23] *Lex Situs* means that for immovable property, the law of the place applies.

5.6. As regards jurisdiction, in principle, Scottish courts can adjudicate on matters governed by English law. Where English courts have exclusive jurisdiction, there is a potential problem in relation to heritable assets in Scotland, particularly if interim remedies were to be sought. The procedure involved in obtaining an order from an English court and then registering it with the Scottish court can be difficult and time-consuming. However, Ofgem/DTI consider this is unlikely to be a frequent occurrence, since the seeking of remedies through the courts would be preceded by other dispute resolution processes under the GB CUSC.

5.7. Ofgem surveyed a number of other GB-wide agreements[24] in both the electricity and the gas industry. All of these are governed under English law. However, they are inconsistent on the question of jurisdiction. Two of them, the Master Registration Agreement and the Radio Teleswitch Agreement, do not specify jurisdiction, whereas the Network Code provides for the exclusive jurisdiction to the English courts.

5.8. In order that the courts can properly interpret the GB CUSC and the GB CUSC framework agreement, it is important that the governing law is specified and clearly must be either Scots or English law. Inconsistent interpretation would result from any attempt to allow more than one governing law to be used. It has been argued that, for those parties to the GB CUSC located in Scotland who may be regarded as small businesses, the practical need to access and fund expertise in English law in order to understand and enforce their rights is an unreasonable burden to impose upon them. However, it is not unreasonable to assume that all such parties may need to resource access to such expertise in respect of other legal issues (such as insurance or supply of goods) where agreements are frequently governed by English law.

5.9. In the light of the greater number of parties in England and Wales and in the interest of consistency with other GB-wide agreements, Ofgem/DTI take the view that the governing law of the GB CUSC should be English law.

5.10. In relation to jurisdiction, the issue is whether it is necessary to extend the CUSC jurisdiction to include Scottish courts. In the light of the approach in the

[24] The Master Registration Agreement, the Radio Teleswitch Agreement and Transco's Network Code.

Network Code, Ofgem/DTI are minded to take the view that the jurisdiction for the GB CUSC should be left as it is in the CUSC, that is, jurisdiction being provided for exclusively to the courts of England & Wales.

Views invited

5.11. Views are invited on any of the matters raised in this section but, in particular, on the following:

- the proposal that the governing law for the GB CUSC should be English law, and
- the proposal that the jurisdiction provided for in the GB CUSC should be exclusively England and Wales courts.

Governance of the GB CUSC

5.12. In the May 2002 report Ofgem/DTI stated their view that it was appropriate for the GB system operator to be the party responsible for contracting with users of the transmission system for connection to and use of the system. It was recognised however that given that transmission owners will continue to own transmission assets, this will mean that the contractual provision of services differs from the physical provision of services. It was further noted that once the detail of the legal framework and associated responsibilities is known, it may prove necessary to have some limited form of contractual relationship between the transmission owners and users.

5.13. In order for the GB system operator properly to discharge all duties and obligations that it would face under the GB CUSC it is likely to be necessary to pass on certain of those duties, and obligations to transmission owners. For example, the requirement on the GB system operator to offer terms for connection to the transmission system may need to be supported by an obligation on transmission owners to develop and ensure the construction of connection assets.

5.14. Ofgem/DTI recognise that transmission owners have a legitimate interest in the treatment of their assets under BETTA. However, the best way to ensure such interests are taken into account will depend upon the detail of the allocation of

responsibilities between the system operator and the transmission owners and the legal structure that will encompass those functions. The intention therefore is to consult upon the most effective way of providing the right mechanism for representations of transmission owners to be taken into account so that their rights are adequately protected in that context. This issue is planned to be addressed in the consultation on the regulatory framework for transmission licensees to be published shortly.

5.15. The conclusions of the consultation on the allocation of responsibilities between the system operator and the transmission owners, and the legal framework to support it, will be incorporated into later consultations on the GB CUSC, as described in Chapter 2 above.

Views invited

5.16. The CUSC has been in operation for over a year and Ofgem/DTI invite views on any changes to the existing governance arrangements of the CUSC that should be made to take account of the operation of the CUSC across GB.

Principles of ownership

Discussion

5.17. The principles of ownership of assets at connection sites laid out in Section 2.12 of the CUSC, describe the approach to be taken in determining the precise technical interface between the user's equipment and the transmission licensee's equipment at a connection site. The principles allow for contrary agreement to be reached in the bilateral connection agreement between the user and NGC.

5.18. The ownership arrangements in Scotland are laid out in the individual bilateral connection agreements between the connected parties and the transmission licence holder. Such arrangements are concluded on a case-by-case basis.

5.19. Under BETTA the issue to be considered is whether the England and Wales approach should be incorporated into a GB CUSC unchanged or whether any changes will be necessary to take account of differences in Scotland. One reason why amendment to the provisions currently applying in England and Wales might be considered necessary is because the transmission system in

Scotland is based on high voltage lines of 132kV and above, whereas in England and Wales 132kV lines are not included within the definition of high voltage lines[25] and are therefore considered to be distribution. It is possible that the detailed technical arrangements for connection at 132kV are sufficiently different from those at 275/400kV that the description in the CUSC needs some amendment.

5.20. In this regard, it is important to note that these principles of ownership are in effect guidelines for users and the GB system operator. It is open to them to come to a different agreement for the ownership boundary. It is worth noting that, as described in Chapter 4, the transmission owner will be involved in the process of the design of the connection and therefore of the exact ownership boundary.

5.21. It is also worth noting that section 2.12.1 (c)[26] of the CUSC recognises the possibility of transmission equipment designed for a voltage of 132kV or below but only in the context of a connection between the transmission system and a distribution system. In these circumstances, the CUSC provides a technical description of the electrical boundary.

5.22. Given that any principles of ownership incorporated into the GB CUSC would not over-ride the bilateral connection agreement and given that Section 2.12.1 (c) already recognises the possibility of connections at 132kV (or even lower voltages), Ofgem/DTI are of the view that the only change necessary to enable the principles of ownership to have GB–wide application (apart from the drafting issues mentioned above) is to generalise the wording of that section so that it can include generation and demand sites as well as distribution connections.

[25] See Section 64 of the Electricity Act 1989 (as amended).

[26] 2.12.1 (c) in relation to Plant and Apparatus located between the NGC Transmission System and a Distribution System, and owned by NGC but designed for a voltage of 132kV or below, the electrical boundary is at the busbar clamp on the busbar side of the busbar selector isolator on the Distribution System circuit or, if a conventional busbar does not exist, an equivalent isolator. If no isolator exists, an agreed bolted connection at or adjacent to the tee point shall be deemed to be an isolator for these purposes.

Views invited

5.23. Views are invited on any of the matters raised in this section but, in particular, on the proposal that Section 2.12.1 (c) of CUSC should be generalised to apply GB-wide for all sorts of connections to the GB transmission system at 132kV.

Mandatory ancillary services

Discussion

5.24. Licensed generators in England and Wales are required by their licences and by their connection agreement to comply with the Grid Code and with the CUSC. The Grid Code contains the technical definition of the ancillary services (frequency response and reactive power) that each generating unit, which has an obligation to comply with the Grid Code, is required to provide. The CUSC defines the commercial arrangements for the provision of those services. Both the Grid Code and the CUSC recognise that there are other ancillary services (both further provision of frequency response and reactive power and other services, such as reserve and black start) which some generators can choose to offer to the system operator. These further services are referred to as "other balancing services" in the CUSC.

5.25. In Scotland, licensed generators are similarly obliged by their licence to comply with the Scottish Grid Code, which places upon them similar technical requirements to the England and Wales Grid Code. The relationship between the requirements of the England and Wales and Scottish Grid Codes and the proposed arrangements for a GB Grid Code under BETTA are being consulted upon separately. Any commercial aspects of the provision of ancillary services in Scotland are covered in bilateral connection agreements (both distribution and transmission) which also require compliance with the Scottish Grid Code.

5.26. Both in Scotland and in England and Wales, the mandatory ancillary services are currently despatched by the relevant transmission licence holder.

5.27. For licence-exempt generators connected to the transmission system in Scotland, the only route for requiring their compliance with the Scottish Grid Code is through their connection agreement (as would be the case were any directly

connected licence-exempt generators to exist in England and Wales). The position of licence-exempt generators is discussed further below.

5.28. The arrangements for the payment for the provision of mandatory reactive power in England and Wales are described in Schedule 3 of the CUSC. This schedule refers to the provision of reactive power under these arrangements as the 'obligatory reactive power service' and provides that, unless the generator has entered into a separate agreement (referred to as a 'market agreement') with NGC for the payment for such services they should be paid under the default arrangements laid out in Appendix 1 to CUSC. This section of the CUSC describes a pricing arrangement per MVArh[27] provided based upon the total MVArh of reactive power provided and the total cost of its provision in England and Wales in 1997 but indexed in accordance with the Retail Price Index since then.

5.29. Payment for mandatory frequency response in England and Wales is based upon rates specified in the individual bilateral mandatory services agreements which also define the precise technical performance requirements for the site concerned.

5.30. Since technical requirements for the provision of ancillary services are similar in Scotland and in England and Wales (as described in the GB Grid Code consultation document) and the CUSC arrangements provide for increased transparency of payment for mandatory ancillary services, Ofgem/DTI are inclined to the view that all the current provisions of CUSC with respect to the commercial terms for the provision of balancing services[28] as a whole should be extended GB-wide through the GB CUSC, but would welcome views.

Views invited

5.31. Views are invited on any of the matters raised in this section but, in particular, on the proposal that the commercial terms relating to the provision of balancing services in the CUSC should apply in the GB CUSC.

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[27] Mega Volt Ampere reactive hour is the volumetric measure of reactive power (roughly equivalent to the MWh (Mega Watt hour) for electrical energy).

[28] Balancing services arrangements are specified in Section 4 of CUSC and include both mandatory ancillary services and other balancing services.

Small generators[29] under the GB CUSC

Discussion

5.32. Section 1 of the CUSC, recognises several different categories of users and specifies the applicability of key CUSC sections to them. These categories include embedded power stations (that is, those connected to the distribution system) who will not need to enter into a transmission connection agreement but, unless licence-exempt, are obliged to become a party to CUSC. Also included are non-embedded customer sites (that is, demand sites connected to the transmission system) where the person connected to the transmission system is unlicensed, but enters into a connection agreement. The use of system agreement in respect of the energy transferred to the customer site is entered into by the licensed supplier for that site.

5.33. However, the existing CUSC does not recognise the existence of a licence-exempt generator connected to the transmission system because there are none in England and Wales. Because of, amongst other factors, the lower transmission voltage in Scotland, generators down to 5MW, well below the licence-exemption limit, are connected to the Scottish transmission system. It is therefore for consideration whether any sort of provision should be made for such plant in the GB CUSC.

5.34. Because of the relatively large amount of transmission connected licence-exempt or exemptable[30] generation in Scotland and the potential for additional renewable generation, Ofgem/DTI intend to consult separately on all aspects of the treatment of such generation under BETTA. However, Ofgem/DTI would welcome any initial views to assist in informing that consultation.

Views invited

5.35. Views are invited on any of the matters raised in this section but, in particular, on the issues that should be addressed in a separate consultation on the position

[29] Small generators in this context are those below the licence-exemption limit (see SI 3270, 2001).
[30] "Exemptable" generation is that which, if it were the only generation under the control of the generator, would not require the holding of a generation licence.

under BETTA of licence-exempt and exemptable generation connected to the transmission system.

Security cover

5.36. In England and Wales, the CUSC requires that parties to the framework agreement provide security in respect of payments due to the transmission licence holder in respect of termination amounts (that is, the amounts that will become payable in the case of termination of the connection by the user), for each bilateral connection agreement and in respect of use of system charges. This security can be based upon the user's credit rating. Where a user's credit rating does not reach the required rating, security cover is required to be provided in the form of a performance bond (in the case of termination amounts) or qualifying guarantee (in the case of use of system charges) or letter of credit or cash deposit. The basis of the level of credit cover for use of system charges is, broadly speaking 30 days worth of such charges (or 10% for annual charges).

5.37. The basis of the determination of the credit cover for termination of a connection is specified in the Statement of Charges which is published annually pursuant to licence conditions C7A and B of the transmission licence for England and Wales.

5.38. In Scotland, security cover requirements are specified in the individual bilateral connection and use of system agreements. Because these are private agreements, the detailed arrangements for security cover are not known to Ofgem. It is also understood that, where combined transmission and distribution use of system agreements exist, the security cover required is not split between transmission and distribution charges.

5.39. At present discussions are underway on the security cover arrangements under CUSC in England and Wales. Ofgem/DTI will therefore consult on this matter once the England and Wales discussions are progressed.

"Transfer Date" under the CUSC

5.40. The CUSC contains different terms in relation to connection sites which were commissioned before the "Transfer Date", which is defined as midnight on 30th

March 1990, the Vesting date in GB. There are a number of differences for generators commissioned before the Transfer Date:

- reference to the Maximum Export Capability[31] rather than the Registered Capacity, for sites commissioned before that Transfer Date, as the measure of the right to export power
- removing the requirement for security cover[32] in respect of termination amounts for connection assets
- a requirement to maintain technical facilities[33] of the plant which were in existence before Vesting, and
- the deeming of some areas of data provision[34].

5.41. Arguably, the only one of these elements which is significant is the one that allows generators commissioned pre-Vesting to control their right to export by changing their declared Maximum Export Capability, whereas other generators cannot change their Registered Capacity which is in effect the name plate rating of the generator.

5.42. This facility existed in the CUSC's predecessor, the Master Connection and Use of System Agreement, and was not amended in the process of transferring to the CUSC as that process focused on codifying arrangements only, not on changing the underlying arrangements. Were these elements of the CUSC to be incorporated in the GB CUSC as they stand, the facility would be extended to all generators in Scotland which were commissioned before 31 March 1990. Alternatively, the concept of the Transfer Date and the resultant, changed arrangements for generators commissioned before it, could be excluded from the GB CUSC. Ofgem/DTI would welcome views on these alternatives.

Views invited

5.43. Views are invited on any of the matters raised in this section but, in particular, on the following:

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[31] See CUSC Sections 2.3, 2.5 and 3.3.4.
[32] See CUSC Sections 2.14.2, 2.19.1 and 9.9.2.

- the implication of the extension of the current CUSC arrangements in respect of the Transfer Date to all generators commissioned before 31 March 1990 in Scotland as well as in England and Wales under the GB CUSC, and

- the option of omitting the concept of Transfer Date from the GB CUSC.

[33] See CUSC 2.9.4, 3.3.3 and 9.13.4.
[34] See CUSC 2.9.1, 6.17, and 9.13.1.

6. Transitional issues

6.1. This chapter discusses a particular set of transitional issues that has arisen out of the analysis of CUSC and the consideration of the effect if CUSC were to be applied across GB. It does not consider any issues related to the legal transition from the existing arrangements either in Scotland or in England and Wales to the GB CUSC. These will be the subject of a separate consultation.

Existing bilateral agreements

6.2. In Scotland, bilateral agreements exist at present between each transmission licence holder and those connected to and/or using its transmission system, apart from distribution network operators (who are affiliated organisations of the relevant transmission licence holder). In England and Wales bilateral agreements exist in relation to connection and the CUSC provides the contractual obligations in relation to use of system (as well as some of the obligations in relation to connection). As mentioned above, the May 2002 report concluded that Ofgem/DTI believe that it is appropriate for the GB system operator to be the party responsible for contracting with users of the transmission system for connection to and use of the transmission system under BETTA.

6.3. This means that, when the initial GB system operator is identified it is likely to need to begin the process of renegotiating and/or arranging for the prospective novation of the existing contracts to itself. In the case of Scottish distribution network connections, new bilateral agreements will be needed. It is recognised that this is a significant task, which could require the novation of a combination of any or all the England and Wales bilateral connection agreements, the existing CUSC and Scottish connection agreements and use of system agreements, depending upon who is identified as the initial GB system operator. This process is made more complex by the fact that, in the case of suppliers in Scotland, the use of system agreements combine the provisions for transmission use of system with those for distribution use of system. Such provisions will have to be unbundled. One element of that unbundling will be the separation of the security cover provided in respect of transmission use of system charges from that provided in respect of distribution charges.

6.4. These migration and transitional issues will be consulted upon as part of the consideration of transitional issues planned in 2003. In the meantime Ofgem/DTI welcome comments on any matters associated with migration and transition which will have to be taken into account. Ofgem/DTI would welcome, in particular any information from the holders of bilateral connection and/or use of system agreements, on the issues that would arise if bilateral agreements had to be conformed to the CUSC form[35] and novated to the GB system operator.

Views invited

6.5. Views are invited on any of the matters raised in this chapter but, in particular, on the issues related to the renegotiation and/or novation of the bilateral connection and use of system contracts.

[35] See CUSC Section 3 and Schedule 2, Exhibits 1and 2.

Appendix 1 : Statement of CUSC version

The version of CUSC considered in respect of the views put forward in this consultation document complies with the definition in the table below.

The table shows, for each Section of the CUSC that has been subject to an amendment, the current version number of that Section and the reference number of the CUSC amendment proposal which resulted in the change. The effective date of that change is also shown. As can been seen, some CUSC amendments cause change to more than one section of the document.

Section	Section Title	Version	Related Amendment Proposal	Effective Date
Section 4	Balancing Services	v1.1	CAP001	21/9/01
Section 11	Interpretation and Definitions	v1.1	CAP001	21/9/01
Section 8	CUSC Amendment	v1.1	CAP003	12/2/02
Section 6	General Provisions	v1.1	CAP013	1/4/02
Section 3	Use of System	v1.1	CAP014	1/4/02
Section 11	Interpretation and Definitions	v1.2	CAP014	1/4/02
Section 9	Interconnectors	v1.1	CAP015	22/4/02
Section 11	Interpretation and Definitions	v1.3	CAP015	22/4/02
Schedule 3	Appendix 1	v1.1	CAP019	5/6/02
Section 4	Balancing Services	v1.2	CAP016	9/9/02
Section 8	CUSC Amendment	V1.2	CAP021	21/10/02
Section 8	CUSC Amendment	V1.2	CAP023	21/10/02

Appendix 2 Contents of CUSC

The following elements of CUSC are all available from the NGC web site[36].

Section 1	Applicability of Sections and Related Agreements Structure
Section 2	Connection
Section 3	Use of System
Section 4	Balancing Services
Section 5	Events of Default, Deenergisation, Disconnection and Decommissioning
Section 6	General Provisions
Section 7	CUSC Dispute Resolution
Section 8	CUSC Amendment
Section 9	Interconnectors
Section 10	Transitional Issues
Section 11	Interpretation and Definitions
Schedule 1	List of Users
Schedule 2	Exhibit 1: Bilateral Connection Agreement
	Exhibit 2: Bilateral Embedded Generation Agreement
	Exhibit 3: Construction Agreement
	Exhibit 4: Mandatory services Agreement
Schedule 3	Part 1 – Balancing Services Market Mechanisms – Reactive Power
Exhibit A	Accession Agreement
Exhibit B	Connection Application
Exhibit C	Connection Offer
Exhibit D	Use of System Application (for embedded generators, distribution interconnector owners and small power station trading parties)
Exhibit E	Use of System Offer (for embedded generators, distribution interconnector owners and small power station trading parties)
Exhibit F	Use of System Application (for suppliers, interconnector users or interconnector error administrators)
Exhibit G	Use of System Offer and Confirmation Notice

[36] http://www.nationalgrid.com/uk/indinfo/cusc/mn_cusc.html

	(for suppliers)
Exhibit H	Use of System Offer and Confirmation Notice
	(for interconnector users or interconnector error administrators)
Exhibit I	Modification Application
Exhibit J	Modification Offer
Exhibit K	Modification Notification
Exhibit L	Bi-Annual Estimate for Bilateral Agreement
Exhibit M	Secured Amount Statement
Exhibit N	Notice of Drawing
Exhibit O	Interface Agreements:
	Part I: NGC Assets on User Land
	Part II: User Assets on NGC Land

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