

## SO-TO Expert Group 20 Meeting Notes Wednesday 5 March, Millbank

### Present:

Richard Haigh	Ofgem Betta Project (Chairman)	RH
Dave Nicol	SPT	DN
Dave Thornton	SPT	DT
Nigel Brooks	NGC	NB
Stuart Easterbrook	NGC	SE
Mike Lee	NGC	ML
David Densley	SHTL	DD
Mike Barlow	SHTL	MB
Alec Morrison	SHTL	AIM
Anthony Mungall	Ofgem Betta Project	AM
Bridget Morgan	Ofgem Technical	BM
Patrick Smart	Ofgem BETTA Project	PS

### Introduction and minutes of Last Meeting

1. RH introduced the meeting. RH stated that DT had submitted some comments on the notes from STEG 19 and asked if there were any further comments. NB requested that the spelling of Patrick Hynes' name be corrected.

### Update on Progress

2. RH informed the group that, since the last STEG meeting, Ofgem had given evidence to the TISC. MB asked what the output from the TISC process would be. RH explained that he was far from being an expert on such matters but that his very basic understanding was that TISC would submit a report to Parliament and that Parliament could, in theory, choose whether or not to take on board the recommendations of the committee when considering the legislation before them. NB sought clarification on when the next BPG meeting would take place – RH stated that it will be the 19 March, which created a clash with the next STEG meeting. RH suggested rescheduling of the next two STEG meetings for the 26 March (Glasgow) and 14 April (London) and to revert to fortnightly meetings thereafter. The Group agreed to this proposal.
3. DT asked as to the state of play with the next round of the NGC deep SO incentives consultation. RH stated that he was not in a position to comment on that particular consultation. On a separate but similar issue, RH acknowledged that the Ofgem BETTA project were behind time on production of Planning Standards consultation paper and expressed his intention to have the paper published very shortly. BM explained that an information note about the forthcoming Planning Standards paper had been circulated to the Grid Code and Distribution Code Review Panels and this had generated some discussion.
4. DT asked if Ofgem/DTI propose to issue a consultation paper relating to transmission charging shortly. RH explained that, according to JB's newly updated list of publications, this paper is due to be published some time this month, although he apologised for not knowing the exact state of play on this CP. MB requested that the updated list of publications be discussed at the STEG Design Forum (STEGDF) meeting

in the afternoon. RH agreed that this seemed reasonable but emphasised that Ofgem/DTI considered that system development would not be contingent upon the publication of consultation documents.

5. RH explained that the BETTA project team had now started to focus upon their next deliverable, ie the May consultation paper. RH envisaged that this document would include examples of draft STC legal text and that the overall intent of the document would be to go into more detail on the content of the STC as currently envisaged and in particular to provide a flavour of the relationships between the transmission licensees that was being envisaged under BETTA. This draft text would be accompanied by appropriate disclaimers which would make clear that it did not constitute a firm proposal of STC contents. RH suggested that the basic form of the May document would summarise responses to the December paper, explain Ofgem/DTI policy in the light of those responses, and then go on to set out Ofgem/DTI further thinking in certain areas. RH stated that in order to develop some of that further thinking, he proposed to ask STEG members to provide advice on the legal drafting that Ofgem / DTI have developed for some of the technical interfaces at the next STEG meeting and that relevant papers would be circulated in advance.
6. MB asked if there was anything that Ofgem/DTI would not be prepared to share with STEG members and stated that it would be helpful if such areas could be identified. RH stated that he could not think of any such areas at this stage, but added that Ofgem/DTI will need to go through their own drafting reviews before any documents are circulated. BM reminded STEG that Ofgem/DTI would be mindful of the STEG terms of reference when assessing if draft text should be tabled for discussion. RH added that the focus would be to provide STC members with drafts of the more technical areas of the STC for consideration and that he could not promise that all STC drafting would be reviewed by STEG prior to publication of the consultation.
7. RH stated that he expected the May document to look at the “big ticket” areas and that, where Ofgem/DTI do not have any legal text to offer in particular areas then they would seek to provide details of progress with policy development.
8. DN asked when the next cut of progress will be published beyond the May document. RH expected the next document to be published in October 2003, but noted that completion of this work is partly dependent upon work carried out by the development groups and the nature and extent of the responses to the forthcoming May consultation. RH suggested that there are still likely to be gaps in the STC draft text provided in the October paper and indeed there may be some areas that need further development of legal text between designation and go-live. However, it was proposed that systems will be developed upon agreed assumptions and the detail of the processes may have to be set down at a later date, and consequently that system development was not contingent upon the development of the STC.

### **STEG Procedures Update**

9. DN introduced a report drafted by Leslie Burns (LB) from the meeting between the transmission licensees on “safety rules”. RH thanked DN/LB for the report noted that the report clearly flagged up certain areas of disagreement, querying whether such matters would be best addressed now, or best addressed under a sub-group of the STEGDF (to be discussed later that day). The general consensus was for the latter. BM stated that the HSE had offered to provide advice to this sub-group and offered to seek input from the

DTI's Engineering Inspectorate if this was required by the sub-group. DN asked for confirmation from the attendees of the safety rules meeting as to whether LB's report represented an accurate account of the meeting. NB stated that he had not yet fully reviewed the report and would respond directly to LB with any comments.

### **Draft STC Text on Outage Planning**

10. RH proposed that the meeting should consider the draft legal text on Outage Planning that was circulated at the last STEG meeting and in particular focus upon the drafting from an STC content perspective. RH explained that, broadly speaking, if a matter is considered to be of particular regulatory interest then it should be covered within the licences and therefore enforceable directly by the Authority. Other matters could be enforced contractually either through the STC or the STCPs. RH explained that in assessing the appropriate content for the licences and the STC, Ofgem/DTI were mindful of the precedents relating to other existing models (e.g. licence-BSC-BSC sub documents).
11. RH stated that from a governance perspective, the only proposed difference between the STC and the STCPs is that STC will only be changed further to approval from the Authority, whereas the STCPs could be changed subject only to the mutual agreement of the parties. (It is proposed that in cases where the STC parties fail to reach agreement on a proposed change to an STCP then the matter could be referred to the Authority for determination). RH recognised that it may be extremely difficult to develop hard and fast guiding principles but generally speaking Ofgem/DTI will wish to ensure that certain matters are in place by setting them out in the STC and that the supporting detailed day to day arrangements will be set out in the STCPs. RH suggested that in establishing exactly where the line should be drawn, it may be appropriate to draw parallels with the BSC and the CUSC.
12. RH explained that Ofgem / DTI have been considering major STC deliverables and a general approach to disputes in respect of those deliverables. In each case, Ofgem/DTI will propose that either the SO or the TO will have the responsibility for taking the initial decision in respect of certain deliverables, eg the SO will decide when a certain outage should be taken and the TOs will decide that they need to invest in a certain area of their network. However, Ofgem/DTI will also propose that the other STC parties should have the right to dispute those decisions.
13. DN asked if Ofgem were continuing to draft these areas of the STC. RH confirmed that they were but their focus was on characterising the broad relationships for further consideration and that the detail would need to be advised by work of the STEGDF sub groups. BM added that this drafting built upon the work that had already been done by STEG and the STEG sub-groups.
14. DD expressed surprise at the level of detailed process set out in the Outage Planning draft text. DN echoed that sentiment and also observed an absence of valid and reasonable grounds for taking decisions. RH responded that he believed that this was a very important STC design issue and worthy of particular note and attention. Ofgem / DTI's thinking was that in taking decisions, the licensees should have regard for their licence and collective statutory obligations and that it was not proposed to go into any more detail as to how decisions were taken in the STC. RH gave the following example to demonstrate the point. The GBSO will need to decide whether to accommodate an outage at a time requested by a TO. In deciding whether it is reasonable to

accommodate that request the GBSO will need to have regard for, amongst other things, constraint costs, possible asset failure, balancing costs, impact upon users and co-ordination with user outages etc. Such a decision will require the GBSO to undertake subjective judgement in many different area and it would appear very questionable whether it's possible to capture all of those areas. Furthermore, if Ofgem/DTI drew up such a list of areas for consideration then it seems unlikely that it would be correct. RH proposed that if it's not feasible to capture a complete and wholly appropriate list of reasons why transmission licensees will do things; that any attempt would be destined to failure and that consequently there seemed little point in attempting to put together such a list in the first place.

15. DN stated that the approach of referring back to licence and statutory obligations would mean that the basis for decisions to be taken by the transmission licensees would be unclear until a body of case law had been built up over a period of time. This would leave a period of uncertainty which would be likely to result in a very high number of disputes. RH suggested that it would not be in anyone's interest to flood the STC interactions with disputes and given that it is unlikely that an appropriate list of guidelines could ever be drawn up, there would appear to be little reasonable alternative, but that if anyone had an alternative, Ofgem/DTI would be more than happy to discuss this issue at STEG.
16. SE asked, in light of RH's suggestion that the framework for making decisions in relation to STC interactions should be licence and statutory obligation, would Authority decisions on disputes would effectively be licence enforcement actions. RH responded that his understanding of the current proposals was that the decision on the dispute would not constitute enforcement action although that may follow if the licensee in question ignored the Authority's decision.
17. NB highlighted the need to avoid possible circular references as it will be necessary to define whether an action is considered in breach of a licence or the STC. For example, there is a need to ensure that the licence doesn't refer to a part of the STC that requires the licensee to have consideration for its licence. RH responded that this would not be the case, as STC references within the licences would set out what needed to be done but not the level of effort that the licensee would need to make to achieve it. For example, the STC could fix the baseline in respect of Outage Planning as the agreed Outage Plan which would allow any deviations from that baseline to be measured and possibly used as basis for triggering money flows between the parties.
18. DT stated that it would be difficult for a licensee to understand how a dispute could be determined under the STC in the absence of criteria defining expected behaviour from the parties. RH replied that they could in theory be set out in the STC but they would have to start by replicating statutory obligations and then licence obligations. After that they would have to drill down into the next level of detail and at that point it becomes unclear where those criteria should stop. DT stated that it seemed unreasonable for licensees to be left in a position where they have no guidelines for taking decisions in specific areas.
19. MB raised an example relating to a change to an agreed outage plan where the TO and the GBSO would have different financial incentives which could result in the parties failing to agree a change. RH replied that licensees should not take a unilateral view of statutory obligations, and that they should be viewed as joint obligations to act in the interest of the "greater good" (as is the case currently at the interface points between the

three transmission systems). DN asked if the licences will be drafted to reflect this view. RH responded that it was his understanding that they would and so would the incentives.

20. NB agreed with the “greater good” principle and that it was probably not appropriate for the STC to attempt to set down the detail of how decisions were made and that ideally the commercial incentives should be suitably aligned. However, it may be difficult to come to a common understanding of the greater good, as inevitably different licensees will take different views and this would lead to a high level of disputes. RH expressed the view that the parties to the STC would have a role to play in determining the nature of appropriate behaviour in different circumstances ie what would be reasonable given the information at the disposal of a particular licensee.
21. DT reiterated the view that, in the absence of firm guidelines relating to decision making, a high number of disputes in the early stages would appear inevitable. He gave the example of a TO who tells the GBSO that a tower is falling down and asked if by conveying that information the TO has absolved itself of its responsibilities irrespective of the action taken by the GBSO. RH replied that the GBSO would rely upon a range of information from the TO and to assess any risk when making its decisions. DN suggested that this did not reflect the position set out in the draft STC text on Outage Planning, which did not make any provision for exchange of additional information and discussion prior to scheduling of outages. RH suggested that the detail of the exchanges, for example in relation to Outage Planning this would include flexibility data, would be set out in a STCP.
22. NB asked if there would be an absolute duty on the TO to define the assets that were being made available to the GBSO. NB also asked if the STC would give a measure as to the level to which any party would need to go to satisfy itself that the views presented by the other party were reasonable. RH stated that there is likely to be definition of “Making Assets Available” in the licence and the STC and that the definition would be based on the TO’s judgement of the technical capability of its assets.
23. NB reiterated that some ground rules need to be established. He gave the example where a substation may need to be run split due to fault level constraints which would need to be taken into account by the GBSO when assessing outage requests from the TO. The decision about the placement of an outage may be the least efficient from the TO’s perspective but necessary due to the constrained running arrangement adopted due to fault level issues. It is not clear from the STC drafting the basis on which such a GBSO decision would be judged. DN added that there are likely to be many alternatives to various outage proposals and in many cases no single or obvious right answer. RH stated that ideally the actions that the licensees will take under BETTA should be no different from those that they take today, which are based upon statutory and licence obligations.
24. NB proposed that this approach leaves open the likelihood of a high degree of duplication of effort. DT agreed, noting that there will be strong, informed and often conflicting opinions held by each licensee in respect of individual actions. RH accepted that this may be the case but the alternative of writing guidelines represented an enormous challenge and that it may not be possible to develop an exhaustive list. BM stated that such criteria are not defined in the current grid codes in relation to the process for agreeing transmission outages with users.

25. MB stated that the obligations on the GBSO and TOs need to be clearly defined and that it is essential that trust is developed between the parties to avoid duplication of work becoming standard practice. DN agreed adding that there need to be sufficient measures in place to develop this trust.
26. RH acknowledged the point and added that aligning the financial incentives will be an important step in the establishment of such trust. However, he reiterated the point that transmission licensees are currently content to make decisions against the background of their statutory and licence obligations without requiring Ofgem defined criteria to form the basis of those decisions.
27. RH explained that it was exactly this type of generic issue relating to the underlying relationships that will be considered in the May consultation document. RH asked that if STEG members wished to set their thoughts in this area down on paper then they would be gladly received by Ofgem / DTI and could be discussed at the next STEG **Action STEG Members**. DN asked which areas of draft STC legal text would Ofgem be circulating prior to the next STEG. RH stated that it is intended to circulate a draft of the STC licence condition and STC draft text on investment planning and making assets available. RH also proposed that it would be helpful to discuss the draft STC text relating to outage planning further at the next STEG meeting.

### **Actions**

- STEG members to provide their thoughts on the framework for decision making in relation to SO-TO interactions prior to the next meeting.
- Ofgem to circulate draft STC licence condition and STC draft text on investment planning and making assets available.

### **Next meeting**

28. Wednesday 26 March in Glasgow. (Post meeting note, this will now be hosted by Scottish Power – exact venue to be confirmed).