

**The Connection & Use of System Code
under BETTA**

**Ofgem/DTI conclusions and second
consultation on the legal text of a CUSC to
apply throughout GB**

Volume 1

December 2003

Summary

This document is the third in a series of consultations to develop a Connection and Use of System Code (CUSC) to apply throughout Great Britain (GB) as part of the British Electricity Trading and Transmission Arrangements (BETTA) reforms, which are planned to be introduced in April 2005¹. It is proposed that under BETTA there will be a single Connection and Use of System Code for Great Britain ('the GB CUSC'). This document consists of two volumes. In the first volume:

- ◆ Ofgem/DTI conclude on the issues raised in the second consultation paper on a GB CUSC that was issued in June 2003 ('the second GB CUSC consultation')
- ◆ the timetable and process for the further development of the GB CUSC is set out
- ◆ the one amendment that has been approved by the Authority and introduced to the England and Wales CUSC since the version of the CUSC specified in the second GB CUSC consultation is identified, and views are requested on its inclusion in the GB CUSC, and
- ◆ the further changes to the CUSC that are considered necessary to develop the GB CUSC are explained and views are invited on a second draft of the legal text.

In the second volume, the second draft of the proposed legal text for a GB CUSC is set out. Ofgem/DTI anticipate that, following receipt of views in response to this third GB CUSC consultation, Ofgem/DTI's conclusions, together with revised legal text, will be published in March 2004.

In addition to restating the conclusions already set out in the second GB CUSC consultation, Ofgem/DTI's key conclusions from the second consultation paper on a GB CUSC under BETTA are that:

- ◆ the existing CUSC should be amended to have effect GB wide from BETTA go-live

¹ Subject to Royal Assent to the Energy Bill by July 2004.

- ◆ transmission owners should not be party to the GB CUSC Framework Agreement and should have no direct role in the amendment or modification processes under the GB CUSC
- ◆ there is no need to alter the role or constitution of the Amendments Panel in the GB CUSC but Ofgem/DTI recognise that there is an argument for further consideration of a process of re-election of elected Panel members to reflect the wider scope of the GB CUSC
- ◆ subject to the conclusions of the consultation on small generator issues under BETTA, there should be no change to the provisions of section 4 of the CUSC in relation to balancing services for the GB CUSC , and
- ◆ the CUSC provisions for security cover as amended by CAP024² should apply GB wide under the GB CUSC.

Further, Ofgem/DTI propose that:

- ◆ the GB CUSC should provide that all users whose connections were commissioned before midnight on 30 March 1990 should be exempted from the provision of security cover for “Termination Amounts” in respect of connection assets
- ◆ the requirement for pre-vesting plant to be subject to the Connection Modification process if it seeks to remove technical facilities that existed at the Transfer Date should not be automatically applied to plant in Scotland so that the provision of such facilities from such plant can be considered on its merits on a case-by-case basis during the transition to BETTA, and
- ◆ that the GB system operator should be a party to Nuclear Site Licence Provisions Agreements (NSPLAs) in relation to sites in Scotland, and that the GB system operator, the Scottish transmission licensees and Nuclear Site Licensees in Scotland should agree the form of these agreements.

A number of changes are also proposed to take account of Scots law issues under a GB CUSC.

² See paragraph 4.95 for a description of the CUSC provisions for security, as amended by CAP024.

This document recognises that the Ofgem/DTI consultation on the STC sets out further detail on the responsibilities of the GB system operator and of transmission owners. It is recognised that, as work on the STC is taken forward it is likely that it will be necessary to make further changes to the GB CUSC. It is also recognised that the progress of other consultations, particularly that on small generator issues under BETTA may also impact upon the drafting of the GB CUSC. The outcome of these other consultations, to the extent that they have an impact on the GB CUSC, will be addressed as described in chapter 2 of this document.

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1. Rationale

- 1.1. The rationale for the British electricity trading and transmission arrangements (BETTA) is set out in an Ofgem consultation paper of December 2001³ (the 'December 2001 consultation') and a joint Ofgem/Department of Trade and Industry (DTI) report of May 2002⁴ (the 'May 2002 report').
- 1.2. The December 2001 consultation proposed that the introduction of a single Connection and Use of System Code (CUSC) was an important part of the BETTA reforms, and sought 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 a CUSC to apply 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.
- 1.4. On 15 April 2002, the Government announced its intention to bring forward legislation to implement BETTA when Parliamentary time allows⁵.
- 1.5. In December 2002 Ofgem/DTI published a consultation document⁶ on the arrangements that should be embodied in the CUSC to apply across GB (referred to in this document as 'the GB CUSC'). That consultation is referred to in this document as the 'first GB CUSC consultation'.

³ "The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper", Ofgem, December 2001, Ofgem 74/01.

⁴ "The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps," Ofgem/DTI, May 2002, Ofgem 38/02.

⁵ See Hansard, 15th April 2002 Official Report Column 748W

⁶ "The Connection and Use of System Code under BETTA, Ofgem/DTI consultation on a CUSC to apply throughout GB", December 2002, Ofgem 79/02.

- 1.6. On 30 January 2003, the DTI published the draft Electricity (Trading and Transmission) Bill (the E(TT) Bill) and a Regulatory Impact Assessment (RIA), which explains both the purpose and impact of the proposed primary legislation to enable the BETTA reforms and the expected costs and benefits of BETTA. On 27 November 2003 an Energy Bill was introduced into the House of Lords. The provisions of the draft the E(TT) Bill ('the E(TT) Provisions') were incorporated into this Energy Bill and are contained in Chapter 1 of part 3 of the Energy Bill.
- 1.7. In June 2003 Ofgem/DTI published their conclusions on the issues raised in the first GB CUSC consultation and proposed a first draft for the legal text of a GB CUSC⁷. That document is referred to in this document as the 'second GB CUSC consultation'.
- 1.8. The rationale for this document is to consider the responses received to the second GB CUSC consultation, to reach conclusions on the issues raised, to consult upon the inclusion of recently approved CUSC amendment proposals in a GB CUSC and to put forward for further consultation a second draft of the legal text for a CUSC to apply throughout GB.

⁷ "The Connection and Use of System Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a CUSC to apply throughout GB", Ofgem/DTI, June 2003, 46/03

2. Timetable for development of the GB CUSC

- 2.1. As a part of the work to agree the BETTA programme baseline 1 plan at the BETTA Progress Group (BPG), Ofgem/DTI have reconsidered the plan for the development of a GB CUSC. As has been identified by a number of respondents, the consultation on the position of small generators under BETTA considers a number of issues of possible significance to the GB CUSC. The small generators consultation paper has been issued⁸ and it is expected that it will conclude in February 2004. Final proposals therefore in relation to a GB CUSC will not be available until the small generators consultation process has concluded.
- 2.2. Ofgem/DTI intend to progress as far as possible the further development of the GB CUSC in advance of February 2004, recognising that the complete proposed text of the GB CUSC will not be finalised until after this date. This approach will allow for the development of the GB CUSC to continue without awaiting the conclusions from the small generator consultation. Any changes to the then developed text of the GB CUSC that may result from the small generator consultation would be consulted upon as a change to that text.
- 2.3. It is recognised that changes to the draft GB CUSC and other codes will continue to arise for a variety of reasons, including the approval of modifications to England and Wales codes, and these changes will have to be accommodated in a continuing process of consultation and modification on the draft text of all the GB codes, until such time as the GB codes are introduced.
- 2.4. The proposed timetable for the development of the GB CUSC is now as follows:
 - ◆ this paper sets out Ofgem/DTI's conclusions on the issues raised in the second GB CUSC consultation and makes proposals in respect of other issues. It also considers the CUSC amendment that has been approved by the Authority since the issue of the second GB CUSC consultation

⁸ "Small generator issues under BETTA: An Ofgem/DTI consultation document", Ofgem/DTI, November 2003, 145/03.

and proposes that this amendment should be incorporated into the GB CUSC. This paper also proposes a revised draft of the legal text for the GB CUSC, together with an explanation of the derivation of that text

- ◆ Ofgem/DTI are seeking responses to this third GB CUSC consultation by Monday 9th February 2004 and, subject to those responses, conclusions and a revised legal text will be published in March 2004
- ◆ as mentioned above any changes to the legal text that will be published in March 2004, which result from the consideration of small generator issues, will be consulted upon separately as part of the consultation on small generator issues
- ◆ in addition, the recently published consultation on the GB Grid Code⁹ seeks views on the processes to be adopted for the co-ordination of changes between the System Operator - Transmission Owner Code (SO-TO Code, or STC) and user-facing codes. Once conclusions have been reached on the STC, it is possible that changes will be required to the draft GB CUSC. If this is the case, such changes will be incorporated into the draft GB CUSC
- ◆ further changes to the GB CUSC may be required during the period between production of the GB CUSC legal text and BETTA go-live. For example, modifications may have been made to the England and Wales CUSC subsequent to the production of legal text for the GB CUSC, and such changes may need to be reflected in the GB CUSC that exists at BETTA go-live. Should such changes arise, their inclusion in the GB CUSC will be consulted upon at that time, and
- ◆ it is anticipated that the GB CUSC will be given legal force by designating the changes to the then prevailing CUSC in England and

⁹ "The Grid Code under BETTA: Ofgem/DTI conclusions and consultation on the text a GB Grid Code and consultation on change co-ordination between the STC and user-facing industry codes", Ofgem/DTI, September 2003, 111/03.

Wales that are considered necessary for it to apply across GB through powers provided in the E(TT) provisions of the Act.

- 2.5. The National Grid Company (NGC) is undertaking the drafting of the GB CUSC in accordance with Ofgem/DTI policy instructions and under Ofgem/DTI oversight.

Views invited

- 2.6. Parties are free to raise comments on any of the matters covered in this document 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.
- 2.7. Responses marked 'Response to third GB CUSC consultation' should be sent by Monday 9th February 2004 to:

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

- 2.8. Please e-mail responses to BETTA.Consultationresponse@ofgem.gov.uk marked 'Response to third GB CUSC consultation'.
- 2.9. All responses will be forwarded to the DTI.
- 2.10. If you wish to discuss any aspect of this document, please contact Lesley Nugent at Ofgem (email: Lesley.Nugent@ofgem.gov.uk , telephone: 0141 331 2012) or

Owain Service at DTI, email owain.service@dti.gov.uk , telephone 020 7215 2779.

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 BETTA.
- 3.2. On 15 April 2002, the Government announced its intention to bring forward legislation to implement BETTA when Parliamentary time allows¹⁰. As noted in chapter 1, this legislation is included in the Energy Bill.
- 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 independent¹¹ 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 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.

¹⁰ See Hansard, 15th April 2002 Official Report Column 748W

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.

- 3.5. On 6th December 2002, Ofgem/DTI published the first GB CUSC consultation¹² which made proposals for the form and content of a CUSC to apply GB wide under BETTA.
- 3.6. Also in December 2002, Ofgem/DTI published consultation documents on the regulatory framework for transmission licensees¹³, on a Balancing and Settlement Code (BSC) to apply throughout GB¹⁴, on the development of a Grid Code under BETTA¹⁵ and on the Settlement Agreement for Scotland (SAS) under BETTA¹⁶.
- 3.7. On 30th January 2003, the DTI published the draft Electricity (Trading and Transmission) Bill¹⁷ together with the Regulatory Impact Assessment. The draft Bill and supporting documents have been the subject of pre-legislative scrutiny by the Select Committee on Trade and Industry, whose report¹⁸ was published on 8 April 2003.
- 3.8. On 15th April 2003, Ofgem/DTI published a consultation on the recovery of costs under BETTA¹⁹.
- 3.9. In May 2003, Ofgem/DTI published a conclusions paper on the impact of BETTA on the SAS²⁰.

¹² "The Connection and Use of System Code under BETTA, Ofgem/DTI Consultation on a CUSC to apply throughout GB", December 2002, Ofgem 79/02

¹³ "Regulatory framework for transmission licensees under BETTA, An Ofgem/DTI consultation", December 2002, Ofgem 88/02.

¹⁴ "The Balancing and Settlement Code under BETTA, Ofgem/DTI consultation on a BSC to apply throughout GB", December 2002, Ofgem 80/02

¹⁵ "The Grid Code under BETTA, Ofgem/DTI consultation on the development of a grid code to apply under BETTA", December 2002, Ofgem 78/02

¹⁶ "The Impact of BETTA on the Settlement Agreement for Scotland (SAS), An Ofgem/DTI Consultation", December 2002, Ofgem 81/02

¹⁷ see http://www.dti.gov.uk/energy/domestic_markets/electricity_trading/index.shtml

¹⁸ Select Committee on Trade and Industry Fifth Report, The British Electricity Trading and Transmission Arrangements, Pre-legislative scrutiny of the draft Electricity (Trading and Transmission) Bill (see <http://www.parliament.the-stationary-office.co.uk/pa/cm200203/cmselect/cmtrdind/468/46803.htm>)

¹⁹ "Recovery of costs under BETTA, Ofgem/DTI consultation", April 2003, Ofgem 23/03

²⁰ "The impact of BETTA on the Settlement Agreement for Scotland (SAS), An Ofgem/DTI conclusions The third GB CUSC consultation paper
Ofgem/DTI

- 3.10. On 6th June 2003, Ofgem/DTI published a second consultation²¹ on the GB BSC and a first consultation on the SO-TO Code (STC)²². On 13th June 2003, Ofgem/DTI published the second GB CUSC consultation²³.
- 3.11. On 30th June 2003, Ofgem/DTI published a second consultation on the regulatory framework for transmission licensees²⁴ and their conclusions on the process to be followed to determine the planning and operating standards under BETTA²⁵.
- 3.12. On 16th July 2003, Ofgem/DTI published their conclusions on the recovery of costs under BETTA²⁶ and on 18th August published a consultation on transmission charging under BETTA²⁷. On 30th September 2003, Ofgem/DTI published a second consultation on the Grid Code under BETTA²⁸.
- 3.13. On 20th November 2003, Ofgem/DTI published their consultation on small generator issues under BETTA²⁹.

paper", May 2003, Ofgem/DTI, 34/03

²¹ "The Balancing and Settlement Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a GB BSC", June 2003, Ofgem 40/03

²² "The SO-TO Code under BETTA, Summary of Responses and Conclusions on Volumes 3 and 4 of the December 2002 consultation on the regulatory framework for transmission licensees under BETTA, and further consultation on the content of the SO-TO Code", June 2003, Ofgem 41/03

²³ "The Connection and Use of System Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a CUSC to apply throughout GB", June 2003, Ofgem 46/03.

²⁴ "Regulatory framework for transmission licensees under BETTA, Second consultation on electricity transmission licences under BETTA, An Ofgem/DTI consultation", June 2003, Ofgem 59/03

²⁵ "Planning and operating standards under BETTA, An Ofgem/DTI Conclusions document", June 2003, Ofgem 61/03

²⁶ "Recovery of costs under BETTA, An Ofgem/DTI conclusions document", July 2003, Ofgem 66/03

²⁷ "Transmission charging and the GB Wholesale Electricity Market, Part 1 An Ofgem/DTI consultation on changes to transmission licences to implement transmission charging under BETTA, Part 2 A DTI consultation on transmission charging, in the context of the Government's policy objectives for growth in renewables", August 2003, Ofgem 86/03

²⁸ "The Grid Code under BETTA, Ofgem/DTI conclusions and consultation on the text of a GB Grid Code and consultation on change co-ordination between the STC and user-facing industry codes", September 2003, Ofgem 111/03

²⁹ "Small generator issues under BETTA: An Ofgem/DTI consultation document", Ofgem/DTI, November 2003, 145/03.

- 3.14. On 28th November 2003, Ofgem/DTI published a third consultation on a GB BSC³⁰.
- 3.15. On 2nd December 2003, Ofgem/DTI published their conclusions on transmission charging under BETTA³¹.
- 3.16. Work is ongoing in these and other areas of the BETTA project and it is possible that such work will lead to the need for changes to the GB CUSC. Should this occur such changes will be consulted upon separately as described in chapter 2.
- 3.17. This paper reports on the responses received to the second GB CUSC consultation and sets out Ofgem/DTI's conclusions. The paper also considers the amendment to the CUSC currently operational in England and Wales which have been approved by the Authority and implemented since the version of the CUSC specified in appendix 2 of the second GB CUSC consultation, and considers whether it should be incorporated into the legal text for the GB CUSC. This paper also proposes a second draft version of legal text for the GB CUSC based upon Ofgem/DTI's conclusions both on the second GB CUSC consultation and on the proposals for incorporation of England and Wales approved amendments. In addition, the paper proposes legal text in the GB CUSC to take account of other issues that have arisen since the second GB CUSC consultation.
- 3.18. This document does not consider the arrangements necessary to make the legal transition to a CUSC to apply across GB. This document makes proposals only in respect of the enduring arrangements. The legal transition to a CUSC to apply across GB and other practical transitional issues (for example, the mechanism for re-electing and reappointing the GB CUSC Amendments Panel) will be consulted upon at a later date. Nor does this document include a consideration of the treatment of small generators under BETTA. As noted above, the

³⁰ "The Balancing and Settlement code under BETTA: Ofgem/DTI conclusions and second consultation on the legal text of a GB BSC", Ofgem/DTI, November 2003, 152/03

³¹ "Transmission charging and the GB Wholesale Electricity Market. Ofgem/DTI conclusions on Part 1: Changes to transmission licences to implement GB transmission charging under BETTA", Ofgem/DTI, December 2003, 159/03

Ofgem/DTI consultation on small generator issues under BETTA was published on 20th November 2003.

4. Summary of responses and Ofgem/DTI views

- 4.1. Fourteen responses were received to the second GB CUSC consultation. A list of the respondents is shown in Appendix 1. The responses are available on the Ofgem website at www.ofgem.gov.uk.
- 4.2. This chapter sets out Ofgem/DTI's views on the matters raised in the second GB CUSC consultation, in the order that those matters were addressed in the second GB CUSC consultation. Matters raised on other issues by respondents are also addressed in this chapter.

GB system operator contracting with users

- 4.3. In the second GB CUSC consultation Ofgem/DTI stated that they remain of the view that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system. Ofgem/DTI stated that placing this responsibility with the GB system operator is the clearest and simplest approach for users of, and those connected to, the transmission system, since their contractual interface is with a single party, the GB system operator, for all aspects of connection to and use of the transmission system except for those limited areas associated with access to land and to plant and equipment.
- 4.4. Ofgem/DTI noted that some limited form of direct contractual relationship between transmission owners and users will be desirable under BETTA (for example, in relation to site access at connection sites). In the June 2003 consultation on the SO-TO Code under BETTA³², Ofgem/DTI proposed that it may be appropriate for the matters covered in the CUSC Interface Agreement to be dealt with in a bilateral agreement between a transmission owner and a user.
- 4.5. Six respondents commented on the GB system operator contracting with users for connection to and use of the transmission system, and on the proposal that it

³² 'The SO-TO Code under BETTA: Summary of responses and conclusions on volumes 3 and 4 of the December 2002 consultation on the regulatory framework for transmission licensees under BETTA and further consultation on the content of the SO-TO code', Ofgem/DTI, June 2003, 41/03
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may be appropriate for some limited form of direct contractual relationship between transmission owners and users under BETTA.

- 4.6. Four respondents agreed with the proposal that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system, three of which also agreed with the proposal that some form of contractual relationship between users and transmission owners will be required. Respondents also noted that, in any event, the contractual relationships need to be backed off appropriately with the Scottish transmission owners, both in the STC and more generically, and one respondent believed that there is considerable further work to be done to achieve this.
- 4.7. One respondent in support of Ofgem/DTI's proposals considered that it is important that an obligation for entering into an agreement related to the physical connections between the systems of a user and those of the transmission owner to which it is connected is placed in the transmission owner's licence together with a reference to a standard form of contract. Otherwise it may prove difficult for users to conclude the negotiation of such agreements.
- 4.8. The June 2003 consultation on the STC under BETTA noted that Ofgem/DTI are considering the possibility of placing an obligation upon transmission owners in the STC to enter into a bilateral interface agreement with directly connected users, and of placing a similar obligation upon directly connected users to enter into such an agreement with the relevant transmission owner in the GB CUSC. Ofgem/DTI consider that the standard form upon which the bilateral interface agreements should be based under BETTA may be set out as exhibits in both the STC and the GB CUSC. Volume 2 of this document contains legal drafting to reflect this obligation on users in the GB CUSC. Ofgem/DTI recognise that the practicalities and appropriateness of this proposal will need to be kept under review as the detailed legal drafting of the STC and the GB CUSC in relation to these matters is progressed.
- 4.9. This respondent also considered that it should be a declared principle of any new contractual arrangements between the user and the system operator that there is "commercial continuity" between the existing arrangements and the new

agreements. The respondent was of the view that parties connected to, or making use of the transmission system must not be disadvantaged by the change in counter-party brought about by the creation of a GB CUSC, and felt that it would be helpful if Ofgem/DTI could express this principle in the conclusions document following the second GB CUSC consultation.

- 4.10. Ofgem/DTI note this respondent's views on the need for "commercial continuity", but cannot accept that such a proposition can form a principle for the implementation of BETTA. Were such a principle to be adopted, it would be necessary to embed all existing provisions of the Scottish private bilateral agreements in the new arrangements. This would result in unjustified, differential arrangements for participants in Scotland compared to those in England and Wales and would limit the introduction of the benefits of BETTA to only new participants entering the GB market in Scotland. Such new entrants would also be subject to different terms from the existing participants in Scotland.
- 4.11. Two respondents did not agree with Ofgem/DTI that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system. One stated that it felt it was discriminatory and difficult in terms of liability and may not be workable in practice. This respondent commented that the GB system operator as the only contracting party with users results in a "tortuous liability path", and it cited Construction Agreements as an example where NGC, as the GB system operator designate, would be the contracting party and would have to take on all the responsibilities in the GB CUSC even though in many instances NGC will be unable to directly deliver the service. The respondent noted that wherever NGC has an obligation under the GB CUSC which needs the assistance of a Scottish transmission owner to deliver it, there needs to be absolute clarity as to where the obligations lie.
- 4.12. This respondent also considered that Ofgem/DTI's proposed approach institutionalises a discriminatory framework into the GB CUSC, as developers are likely to prefer to connect in NGC's transmission area, since any failure to plan, develop, maintain or construct a connection or infrastructure asset would clearly be attributable to NGC either in its role of system operator or

transmission owner. In contrast, if a user suffered a loss in Scotland, the user would still have to seek redress from NGC, who would then have to involve the relevant transmission owner.

- 4.13. The respondent went on to note that in drafting the GB CUSC, Ofgem/DTI have recognised that the Interface Agreement needs to be between the customer and the transmission owner. It felt that the same principles apply in relation to the Construction Agreement, as the Construction Agreement involves liquidated damages for failure to construct a connection to the agreed timescale and the respondent believed that only the transmission owner can take a view on the timescale that it is prepared to agree to, and the appropriate liquidated damages.
- 4.14. The second respondent that did not agree with Ofgem/DTI's proposal that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system considered Ofgem/DTI's approach to be "deeply flawed" in the context of a GB CUSC. This respondent was of the view that the simplification achieved in the split transmission model, in which the transmission owner is "stripped out" of user facing codes, is an illusion as the underlying responsibilities between the transmission licensees must be robustly specified in the STC and cross referenced to the GB CUSC and other codes. The respondent considered that the GB CUSC should be based on there being a direct relationship for connections between a transmission owner and grid-connected customers, alongside the customer/GB system operator relationship to ensure that the respective rights, obligations and liabilities of customers, the GB system operator and transmission owners are dealt with adequately.
- 4.15. This respondent considered that it is necessary to address the potential for the GB system operator to discriminate between affiliated and non-affiliated transmission owners and their respective users. It further noted that the limitations of liability that it is proposed will apply to NGC under the GB CUSC, should also apply to Scottish transmission owners.
- 4.16. Ofgem/DTI note these respondents' views on the need for robust back off provisions and clarity in relation to the obligations that need to be placed on transmission owners in the STC such that the GB system operator can discharge

its obligations to users under the GB CUSC. It is one of the functions of the STC to ensure that, when the GB system operator is subject to obligations under the GB CUSC, the STC obliges the transmission owners to do that which is necessary (if anything) in each particular case to enable the GB system operator to fulfil such obligations. Similarly, the GB system operator will place obligations on users, though the GB CUSC to do things that will enable it to fulfil its STC obligations to transmission owners. The work on the development of the STC continues to pursue these objectives.

- 4.17. Ofgem/DTI note the comments of one of these respondents about Construction Agreements, but believe these agreements are substantially different from Interface Agreements. Interface Agreements relate to narrow issues regarding the property of the user and of the transmission asset owner and the land it stands upon. As stated in the June 2003 consultation on the STC, Ofgem/DTI consider that the potential for discriminatory treatment in relation to the matters covered in the Interface Agreement would appear limited and should be easily identifiable. Ofgem/DTI therefore proposed that, from a practical perspective, it would appear sensible for such matters to be detailed in a connection point specific agreement between the user and the transmission owner. The Construction Agreement in contrast is an essential element of the process of gaining access to the transmission system and must therefore be provided by the independent GB system operator.
- 4.18. Ofgem/DTI are also conscious of the liability issues that the split between system operator and transmission owners gives rise to. These issues are being progressed by Ofgem/DTI in its ongoing development of the STC. However it should be noted that under the model proposed, the contractual route for liability from a user's perspective will be clear. The user would have the contractual relationship with the GB system operator and in the event that the GB system operator's obligations under the contract to the user were not performed, the user would be entitled to pursue the GB system operator for redress, as is the case today. Clearly there is a need for the GB system operator to 'back-off' any liability that it is exposed to as a consequence of a failure of a transmission owner to perform its obligations under the STC. This work is being taken forward as part of the development of the STC. It should be noted that the

contractual model being adopted here will not preclude users from having contact with transmission owners 'on the ground'.

- 4.19. Ofgem/DTI note that the issue of whether or not it is appropriate for the GB system operator to be the contractual counterparty to the CUSC for purposes of both connection and use of system is a matter that has been raised previously by respondents to Ofgem/DTI BETTA consultations. Ofgem/DTI have considered respondents' arguments in the course of the development of BETTA, and remain of the view that it is appropriate for the GB system operator to be the contractual counterparty for such matters.
- 4.20. There are a number of reasons why Ofgem/DTI remain of this view. First that Ofgem/DTI consider that a fundamental part of the delivery of BETTA is that generators and suppliers can gain contractual access to the GB transmission system from an entity that is itself independent from generation and supply interests. To place connection agreements with transmission owners would significantly undermine the delivery of this objective. Ofgem/DTI note that this is consistent with international best practice in this area³³.
- 4.21. Second, whilst separation of system operation and transmission ownership activities in Scotland means that the arrangements being put forward are inevitably somewhat more complex than the arrangements currently in place in England and Wales (or separately in Scotland), Ofgem/DTI are firmly of the view that the solution in which the GB system operator is the single contractual counterparty for such matters is simpler than the arrangements that would be required were the services of connection and use of system split between the GB system operator and relevant transmission owner in Scotland. Not only do Ofgem/DTI believe that the single contractual counterparty model is simpler from the user's perspective, Ofgem/DTI also believe that it is simpler from the perspective of the relationship between the GB system operator and transmission owners. Insofar as the user is concerned, Ofgem/DTI's proposals provide the simplicity of "one-stop-shopping". Furthermore, they do not require the user to

³³ For example, it is noted that in the United States the Open Access Transmission Tariff (which is broadly equivalent to the CUSC) is entered into between the user and the Independent System Operator, not the transmission owner.

have to take account of the detail of the split in responsibilities in the transmission sector in order to determine from whom which element of connection/use of system service is being provided. In addition, it allows the contractual relationship between the user and the transmission sector to be based substantially upon a document that is already familiar to many existing Scottish users (suppliers, large generators and certain directly connected customers), that is the existing England and Wales CUSC, and does not require extensive demarcation of different transmission responsibilities in user-facing contracts in Scotland. Finally, from the user's perspective it does not require a change in contractual service provider any time that the boundary between connection and use of system is changed.

- 4.22. This model is also simpler from the perspective of the interaction between the GB system operator and the transmission owners, as it makes clear who is responsible for discharging the contractual duties to the user as far as the transmission sector is concerned. Furthermore, in general, it means that the STC can be drafted as a document which principally sets down the services that the transmission owners provide to the GB system operator, and the obligations of the GB system operator in relation to transmission owners, and obviates the need for the additional complexity of having to include provision for extensive services to be provided from the GB system operator to the transmission owners such that the latter may discharge their obligations to users in relation to connection.
- 4.23. Ofgem/DTI accept that there are some details of the BETTA arrangements that still require to be worked out, in particular the detailed arrangements between the GB system operator and transmission owners, and that these issues require careful consideration. However, Ofgem/DTI believe that for the most part, the issues are ones which would arise in any event given the split in transmission functions in Scotland under BETTA and that it is not clear that they would be more simply solved under a model in which transmission owners contracted for connection with users. Ofgem/DTI have received a number of arguments from those respondents that do not support the GB system operator contracting with users for connection to and use of the transmission system. However,

Ofgem/DTI do not consider that these arguments support the assertion that the alternative contracting model would be simpler.

- 4.24. Ofgem/DTI are conscious of the concerns of some parties regarding the potential for discrimination by the GB system operator between users connected to its own transmission network and those connected to the other transmission owners' networks, as well as possible discrimination in favour of its own network at the expense of transmission owners' networks. Ofgem/DTI have given this topic careful consideration and their conclusions and proposed licence conditions in support of those conclusions are shown in the soon to be published third consultation on the framework for transmission licensees under BETTA.
- 4.25. Ofgem/DTI remain of the view that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system.

GB system operator as the owner of the GB CUSC

- 4.26. In the second GB CUSC consultation, Ofgem/DTI concluded that the licence of the GB system operator should contain the obligation to prepare the GB CUSC.
- 4.27. Four respondents provided comments on this proposal and all of those respondents agreed with it. Ofgem/DTI welcome this support for their conclusions.

Implementing the GB CUSC at the same time as other elements of BETTA

- 4.28. In the second GB CUSC consultation, Ofgem/DTI concluded that the GB CUSC should be introduced at the same time as the other elements of the BETTA reforms that give effect to the BETTA legal framework.
- 4.29. Five respondents commented, with four agreeing with this proposal.

- 4.30. One respondent stated that it sees the GB CUSC as an important, but not necessarily essential, “cornerstone” of moving to a GB market. It stated that although it considers that Scottish users will lose the flexibility afforded by the Scottish companies, it agrees that a GB CUSC is desirable for BETTA and that the best approach is to develop the existing England and Wales CUSC. It also commented that there is no need to have full transition to the GB CUSC in place by BETTA Go-Live and that a pragmatic approach should be taken on transition. In its view the work required to properly implement these changes remains considerable, although the six month extension of Go-live to April 2005 goes some way to enable a timely transition. However, it reiterated its previous concerns that the magnitude of the task should not be underestimated, particularly in terms of addressing issues arising from the split of transmission functions and establishing the accompanying provisions in the STC, and migrating existing contracts to the CUSC framework. It also highlighted that additional complexities arise through the inclusion of 132kV within the transmission system, and specification of the technical and commercial environment for users connected to that network.
- 4.31. Ofgem/DTI note this respondent’s comments. However, Ofgem/DTI believe that implementing the GB CUSC is an essential cornerstone of BETTA, and that it would be inappropriate to introduce a GB energy market without ensuring that an appropriate level playing field is established for gaining access to that market in the first place. Ofgem/DTI believe that the timetable is achievable, so long as Royal Assent to the Energy Bill is granted by July 2004.

Basis of the GB CUSC

- 4.32. In the second GB CUSC consultation Ofgem/DTI concluded that the GB CUSC drafting should be based upon the existing CUSC, introducing changes only where necessary for the CUSC to apply GB-wide. Ofgem/DTI further proposed that, rather than introducing a new GB CUSC, the existing CUSC should be amended using powers provided by the E(TT) provisions of the Energy Act to create the GB CUSC.

- 4.33. Eight respondents provided comments on the issue of the basis of the GB CUSC. Seven commented on, and agreed with the proposal that the current England and Wales CUSC should be amended to form the basis of the GB CUSC. One respondent provided further comments on Ofgem/DTI's conclusion that the GB CUSC drafting should be based on the existing England and Wales CUSC.
- 4.34. One of the seven respondents who agreed with the proposal that the existing CUSC should be amended rather than a new CUSC introduced noted that this is a pragmatic approach that will provide the most seamless transition to a single GB market. Others supported the proposal on the grounds of efficiency and simplicity, and one respondent noted that this approach will avoid the need to run-off the England and Wales CUSC under BETTA.
- 4.35. Another respondent that supported this proposal noted that amending the CUSC to form the GB CUSC would retain the existing contractual relationship with the extant England and Wales CUSC signatories, in the same way that the Master Connection and Use of System Agreement (MCUSA) was amended to become CUSC to ensure that the contractual relationship with MCUSA signatories remained unbroken. However, this respondent considered that, given the flexible CUSC governance arrangements and the amount of time that will exist between designation of the GB CUSC and BETTA go-live, it is important to ensure that the GB CUSC can be further amended as necessary to reflect any changes that occur after designation but prior to go-live.
- 4.36. As noted above, one of the eight respondents commented on Ofgem/DTI's conclusion that the GB CUSC drafting should be based on the England and Wales CUSC. This respondent agreed with Ofgem/DTI's conclusion but wished to emphasise that in its view successful delivery of BETTA requires a stable baseline for moving forward. This respondent therefore believed that major changes should not be attempted to the existing England and Wales CUSC until it is possible to consider them in a GB context, neither should they be implemented in England and Wales until and unless approved for GB implementation. In particular it was concerned that the transmission access and charging arrangements in England and Wales are currently under review and may, either individually or collectively, result in fundamental changes to the GB

CUSC and NGC charging methodologies, through change processes which are currently unable to recognise BETTA. This respondent regarded implementation of these parallel initiatives as unhelpful and of high risk, and considered that they divert industry resource, increase regulatory uncertainty and introduce inefficiency. As it had recommended in its response to the first GB CUSC consultation, this respondent again asserted that it is essential that careful consideration is given to these initiatives to ensure that they do not impact on BETTA delivery, nor that they are included in the BETTA arrangements without sufficiently detailed consideration of the impact of and issues arising from their application to GB.

- 4.37. The respondent was also concerned that the proposed processes for considering whether specific CUSC amendments should be included in the GB CUSC may be too narrow to allow for the recognition of BETTA by the industry and the Authority when considering live CUSC amendments prior to the second reading of the E(TT) Bill. Nor did it consider that the proposed processes necessarily give full consideration to all the issues which may potentially arise when applying a given change to GB under BETTA as compared to applying it to England and Wales under the current arrangements.
- 4.38. Ofgem/DTI are aware of the concerns expressed and Ofgem published a letter to the CUSC Panel Chairman explaining its position³⁴. In that letter Ofgem explained its general approach which is that it will consult on a GB basis on modification proposals to the England and Wales CUSC from the time when the Energy Bill receives its second reading in either House of Parliament. Therefore until the time that GB consultation is undertaken on such modification proposals, Ofgem is obliged to continue with developments which will benefit both current and future consumers within both England and Wales and Scotland respectively and separately.

³⁴ On 17 January 2003, Ofgem wrote to the Chairman of the CUSC Panel setting out Ofgem's proposed approach in relation to consulting on the inclusion in the GB CUSC of changes to the England and Wales CUSC. This letter is available on the Ofgem website (http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1355_betta_cusc_letter.pdf). The third GB CUSC consultation paper
Ofgem/DTI

- 4.39. Ofgem/DTI welcome the support for their proposal that the GB CUSC should be brought into effect through amendment to the England and Wales CUSC using the powers provided by the E(TT) provisions of the Energy Bill, and note the comments about the processes. Ofgem/DTI agree that processes to enable changes to the developed BETTA legal documentation will be necessary both before and after designation by the Secretary of State. Ofgem/DTI are giving careful consideration to these topics and will develop their proposals as part of the work being taken forward on transitional issues and the implementation of BETTA.

Governing law and jurisdiction of the GB CUSC

- 4.40. In the second GB CUSC consultation Ofgem/DTI concluded that the governing law of the GB CUSC should be that of England and Wales and that jurisdiction should be conferred exclusively on the courts of England and Wales.
- 4.41. Five respondents commented with four agreeing with Ofgem/DTI's conclusion.
- 4.42. One respondent was disappointed that Ofgem/DTI has concluded that the governing law for the GB CUSC should be English Law and that jurisdiction should be exclusive to the courts of England & Wales. It remained of the view that this is unnecessary and discriminates against Scottish users, and it did not believe that the arguments put forward by Ofgem/DTI provide justifiable reason why the GB CUSC and any ancillary documents should not be interpreted by either Scots or English Law in either Scottish or English courts, in accordance with the rules governing the allocation of jurisdiction and choice of law within the UK. It noted that in particular, while not wishing to accept the arguments put forward in the Ofgem/DTI paper in respect of the question of governing law, which arguments it considered to be flawed and largely aimed at the conclusion that the CUSC Framework Agreement can remain unchanged, it noted that Ofgem/DTI make the point that jurisdiction and governing law are "separate concepts" and it believed their position set out regarding jurisdiction is wholly untenable. The respondent considered that these conclusions on the GB CUSC will be discriminatory against Scottish participants who will be required to raise and defend actions in courts many hundreds of miles away. The respondent was

of the opinion that this denial of a locally available forum is inconsistent with the concepts of natural justice as well as imposing additional and unnecessary costs on Scottish litigants. This respondent also considered that it is particularly disappointing that the BETTA arrangements, which are intended to assist the development of renewable generation in Scotland, will disadvantage the developers in this way.

- 4.43. Ofgem/DTI do not believe that their proposals discriminate against Scottish participants. The circumstances where a party to the CUSC finds it necessary to take an issue to the courts are likely to be very rare given the dispute resolution processes built into the CUSC. Ofgem/DTI also believe that the proposal for the GB CUSC is consistent with the Network Code, which also has a GB scope and provides for the exclusive jurisdiction of English courts.
- 4.44. As explained in the second GB CUSC consultation, Ofgem/DTI do not accept the legal arguments put forward to permit interpretation of the GB CUSC under both Scottish and English law, because there may have to be legal argument about which law applies should a dispute arise. Further, in order for parties to resolve any dispute without litigation they must be certain of their respective rights and obligations and thus must be aware of the governing law, rather than potentially having to go to seek a determination upon which law applies.
- 4.45. Ofgem/DTI therefore continue to support the conclusion contained in the second GB CUSC consultation, that the governing law of the GB CUSC should be English law and that jurisdiction should be conferred exclusively on the courts of England and Wales.

Governance of the GB CUSC

- 4.46. The second GB CUSC consultation stated that Ofgem/DTI do not see any need for, or consider it appropriate for transmission owners to be subject to obligations in the CUSC and Ofgem/DTI therefore proposed that transmission owners should not be party to the CUSC Framework Agreement and should have no role in the amendment or modification processes under the GB CUSC.

However, Ofgem/DTI recognised that it is necessary to ensure that the STC and the CUSC are maintained in line with one-another.

- 4.47. Five respondents commented on the proposal that transmission owners should not be party to the CUSC Framework Agreement.
- 4.48. Two respondents agreed with Ofgem/DTI's proposal. One of these two maintained that although transmission owners should not be party to the CUSC Framework Agreement, it is necessary for the transmission owners to be aware of the development of CUSC as the arrangements may impact the way in which their assets are used and developed. It considered that for these arrangements to be effective the right back to back agreements need to be in place, particularly within the STC. The other respondent in support of Ofgem/DTI's proposal also stressed the need for appropriate back-off arrangements to be put in place, noting that its support was limited to agreement in principle only, until such time as the back-off arrangements are developed. This respondent considered that the fact that there is not yet a full STC legal text makes it difficult to reach any definitive conclusions in this area, as it considers that issues such as disputes, limitation of liability and governance are yet to be fully explored.
- 4.49. Another respondent was concerned that transmission owners will not be party to the CUSC Framework Agreement and thus have no role in the amendment or modification processes and while the respondent assumed the STC covers this issue, it noted that its concern remains until the detail of the STC is available.
- 4.50. Two respondents did not agree with Ofgem/DTI's conclusion and asserted that transmission owners should be party to the CUSC Framework Agreement. One noted that the rationale given by Ofgem/DTI for their conclusion that transmission owners should neither have a role in the amendment process nor be party to the GB CUSC and the GB CUSC Framework Agreement is that "a fundamental requirement for the delivery of BETTA reforms is that arrangements for connection to, and use of, the transmission system should be managed by a party that is independent from generation and supply affiliates". The respondent did not consider that this warrants a structure that results in two of the three transmission licensees having no representation under the GB CUSC. It felt that the alternative solution where transmission owners are parties to the GB CUSC,

in no way dilutes the Ofgem/DTI aim to have connection to, and use of, the transmission system managed by the GB system operator. It felt that the level of complexity involved in any attempt to have some obligations within the GB CUSC and some reflected in separate contractual relationships would only serve to add layers of cost and complexity in an ongoing BETTA market.

- 4.51. This respondent further considered that if transmission owners are not to be party to the GB CUSC Framework Agreement, then as well as having no obligations and liabilities under the GB CUSC, any relationship between the transmission owner and the user cannot be contractually linked to the GB CUSC. It considered that this undermines the aim of a single set of contractual arrangements for access to and use of the transmission system.
- 4.52. This respondent welcomed the proposed provisions for interactions between the CUSC and the STC governance. However, the respondent considered that it is unclear whether the STC or the CUSC takes hierarchical precedence. It believed it would be appropriate to include a stage within the CUSC amendment process for consultation with the STC panel, and vice versa for STC changes.
- 4.53. The other respondent that did not agree with Ofgem/DTI's proposal that transmission owners should not be party to the CUSC Framework Agreement believed that Ofgem/DTI should reconsider and incorporate all transmission licensees into the GB CUSC Framework Agreement. It considered that its alternative proposal would ensure that there is a simple contractual liability path, and that there is no potential for discrimination between a transmission licensee that is party to the GB CUSC and a licensee not party to it. The respondent proposed that transmission licensees other than the GB system operator would not have a status equal to that of the GB system operator, but would be incorporated into the framework as parties participating in providing the transmission network. The respondent also considered that if each transmission licensee were party to the CUSC Framework Agreement, there would clearly be a role for them in the amendments panel. However, the respondent commented that if the transmission owners are not party to the GB CUSC, it believes that they should be formally consulted as part of the amendment process on any GB CUSC changes, since the transmission owners play a key role in making

available the transmission assets that enable the GB CUSC framework to function.

- 4.54. Ofgem/DTI have given careful consideration to the concerns of respondents that believe that transmission owners should be parties to the GB CUSC Framework Agreement. Ofgem/DTI are conscious that there are no obligations proposed for transmission owners in the GB CUSC and have set out their views in paragraphs 4.19 to 4.25 of why it would be inappropriate to introduce such obligations and therefore require transmission owners to be a party to the GB CUSC Framework Agreement. Ofgem/DTI continue to be of the view that it is not appropriate for there to be a direct role for transmission owners in the modification or amendment processes under the GB CUSC given that they will not be subject to obligations under the GB CUSC, and that there is therefore no reason for transmission owners to be party to the GB CUSC Framework Agreement or to be obliged to comply with the GB CUSC.
- 4.55. Ofgem/DTI note respondents' comments that transmission owners should be aware of changes to the GB CUSC and consulted as part of the GB CUSC Amendment Process. The question of change co-ordination between the STC and user-facing industry codes, including the GB CUSC is a topic considered in the second consultation on the GB Grid Code³⁵. Once conclusions are reached on this topic, the necessary drafting changes for the GB CUSC (as well as for the GB BSC and GB Grid Code) will be proposed.
- 4.56. Ofgem/DTI note that detailed work continues by Ofgem/DTI in conjunction with all three transmission licensees on the obligations under the STC necessary to support the split of functions between transmission owners and the GB system operator.

Election of panel members and structure of Amendments Panel

³⁵ "The Grid Code under BETTA, Ofgem/DTI conclusions and consultation on the text of a GB Grid Code and consultation on change co-ordination between the STC and user-facing industry codes", September

- 4.57. In the second GB CUSC consultation, Ofgem/DTI expressed the view that the Amendments Panel members should be subject to a fresh election or appointment process to reflect the wider group of CUSC parties that would exist as a consequence of the evolution from an England and Wales CUSC to a GB CUSC and sought views on how this might be enabled.
- 4.58. Nine respondents provided comments on Ofgem/DTI's proposal.
- 4.59. One respondent stated that it supports a new election process for the CUSC Panel under the GB arrangements if there are new signatories to CUSC. However, it felt that should there be no new signatories to CUSC it would be more efficient to re-appoint the existing Panel.
- 4.60. Another respondent noted that in widening the scope of the CUSC to GB it may also be appropriate to re-address the manner in which the CUSC Amendments Panel is constituted. In particular the respondent believed that consideration should be given to making the chairmanship of the CUSC Amendments Panel independent, especially since transmission owners are not to be parties to the GB CUSC, and formally recognising an elected users group as a forum to consider issues before they are presented to the Amendments Panel.
- 4.61. Another respondent supported the election of a new Amendments Panel for the GB CUSC, but did not believe that there should be changes to its current structure. It believed that, whether or not transmission owners will be party to the GB CUSC, it is appropriate that they should be represented on the GB CUSC Amendments Panel, be able to propose amendments, and also play a role in the governance of the transmission charging methodologies. It considered that this will reduce the risk of discrimination by the GB system operator between transmission owner networks, and their respective users, when developing GB connection, access and charging arrangements, and also to provide the transmission owners with direct exposure to the practical effects on users of these arrangements in order to inform their network planning and investment decisions. The respondent also considered that representation from the Scottish

transmission owners would be appropriate to provide expertise on, and ensure full consideration of, issues relating to the 132kV transmission network, given that its inclusion will require new provision within the GB CUSC.

- 4.62. One respondent stated that it will be important to ensure that Scottish interests are properly represented in any governing bodies relating to CUSC.
- 4.63. Another respondent stated that if Ofgem/DTI remain convinced that the single GB system operator contractual interface is appropriate and that the liability and discrimination issues can be resolved, then it would be appropriate for the Amendments Panel to have the same structure and function as the existing England and Wales panel. However, it firmly believed that the CUSC governance process should provide for a right of appeal to a third party (probably the Competition Commission) of any decision by Ofgem to approve or reject modifications.
- 4.64. One respondent felt that the membership of the revised CUSC panel needs to reflect all of the businesses connected to the transmission system. To this end it considered that it is essential to recognise the transmission status of the 132kV system in Scotland. It suggested that one seat should be earmarked for someone who can represent the electricity supply industry interests in 132kV transmission systems (noting that this need not be his or her exclusive function) and someone who can represent 132kV transmission users.
- 4.65. Ofgem/DTI note that Section 8 of the CUSC specifies that there shall be up to seven members of the CUSC Amendments Panel elected by Users³⁶. Such members are required to act impartially and not to represent those that elected them. The function of the panel is to consider Amendment Proposals and to determine whether in its view a particular proposal better facilitates achieving the applicable CUSC objectives³⁷. Under these circumstances the expansion of the scope of the CUSC to include Scotland appears to have no effect on the

³⁶ CUSC defines a User as a party to the CUSC Framework Agreement other than NGC.

³⁷ The applicable CUSC objectives are set out in electricity transmission standard licence condition C7F.

function or operation of the panel. Ofgem/DTI also note the comment of one respondent regarding the requirement for an independent chair for the CUSC Panel, as transmission owners will not be party to the CUSC Framework Agreement. Ofgem/DTI consider that transmission owners' interests in changes to the CUSC, due to the potential for such changes to require consequential changes to the STC, will be addressed in the arrangements that will be established for change co-ordination between codes. As noted in paragraph 4.55 above, the question of change co-ordination between the STC and user-facing industry codes is a topic considered in the second consultation on the GB Grid Code.

- 4.66. Ofgem/DTI conclude that there is no need to alter the role or constitution of the CUSC Amendment Panel but recognise that there is an argument for further consideration of a process of re-election of elected Panel members to recognise the wider scope of the GB CUSC. If it is concluded that a re-election should take place, the mechanism will be addressed in a consultation on transitional and implementation issues.
- 4.67. One respondent commented on the processes for putting a GB panel in place, noting that in order to have the GB CUSC Panel in place for GB CUSC "go-active", it would be necessary for the GB CUSC elections to take place prior to this. It envisaged that the arrangements could be based on the existing England and Wales CUSC election provisions (as set out in Annex 8A of the CUSC) and given force at "go-live" via the "implementation scheme" or some other transitional issues document. The respondent noted that this is broadly the way in which the elections for the England and Wales CUSC were conducted during the transition from the MCUSA to the CUSC, in order to ensure that a CUSC Panel was in place on the "Go live" date. However, it would welcome Ofgem/DTI consideration as to how this exercise will be conducted.
- 4.68. The respondent went on to say that it is possible that many England and Wales CUSC Panel members will choose to stand for election to the GB CUSC Panel and that there could therefore be a considerable membership overlap between the two Panels. It noted that in practice this should not be a difficult issue. However, it stated that given the existing licence obligations in relation to the

England and Wales CUSC and those that the GB system operator will subsequently take on in a GB context, it is important that no ambiguity or confusion arises from the likely similar membership of the England and Wales and subsequent GB CUSC Panels. The respondent suggested that the current England and Wales CUSC Panel members could continue operating (only in an England and Wales capacity) up until the GB CUSC “go-active” date, at which point the GB CUSC Panel could begin to operate (and only in a GB as distinct from an England and Wales capacity). It believed it would be helpful for Ofgem/DTI to explicitly confirm this point. It also felt that the proposal to hold GB CUSC Panel elections at a time when the England and Wales CUSC Panel is still in force, needs to be shown to be consistent with the fact that Ofgem/DTI are formally proposing to amend the England and Wales CUSC to form the GB CUSC.

- 4.69. Ofgem/DTI are grateful for these comments which will be used to inform further work on transitional matters including the process for new elections for user panel members.

Principles of ownership

- 4.70. Section 2.12 of the CUSC sets out the principles defining default arrangements for the ownership boundary between the connection assets owned by the connectee and the connection assets comprising part of the transmission system. In the second GB CUSC consultation Ofgem/DTI noted the support for the proposal to apply the principles of Section 2.12.1 (c) to all 132kV connections to the transmission system, and not just those from the distribution network, and proposed relevant drafting changes for the GB CUSC in volume 2 of that consultation.
- 4.71. Three respondents provided comments relating to principles of ownership.
- 4.72. One respondent noted that Ofgem/DTI have proposed an amendment to Section 2.12 of the CUSC, with the intention of ensuring that Section 2.12.1(c) of the CUSC is generalised to apply to all types of 132kV connections to the transmission system, and not just those from the distribution network. It stated

that it was their view that the existing, original wording of 2.12.1 (c) is broad enough to apply to all types of 132 kV connections, and that on this basis, the proposed additional Ofgem/ DTI wording is simply a duplication of the existing wording. The respondent therefore believed that Ofgem/ DTI should revert to the existing wording in producing the next draft legal text of the GB CUSC.

- 4.73. Another respondent noted that while the proposed changes set out reasonable principles to reflect the status of the Scottish 132kV network, it is usual for boundaries to be negotiated on a case by case basis and the respondent considered that this would appear to be covered adequately by the exception at section 2.12.1.
- 4.74. The other respondent believed that ownership of assets is a key issue. It noted that contracts that do not include the asset owners, and in this case the transmission owners, cannot affect ownership. Accordingly it considered that any purported “grant” of rights by the GB system operator over Scottish transmission owner assets will be ineffective. It stated that the differences in Scots property law have not been addressed, and may have particular relevance to Interface Agreements. The respondent noted that notwithstanding any statement in the GB CUSC to the contrary:
1. Scottish transmission owner assets fixed to user’s land may become the property of the User, and
 2. User’s assets fixed to a Scottish transmission owner’s land may become the property of the transmission owner.
- 4.75. The respondent was of the view that considerably more effort will be required to address these issues within the framework of a GB CUSC which excludes the Scottish transmission owners.
- 4.76. Ofgem/DTI note the comment that the original wording of paragraph 2.12.1 (c) was broad enough to cover all cases in Scotland and agrees with this view. The proposed amendment has therefore been removed from the draft legal text in volume 2 of this document. A further amendment is proposed to reflect that this

will apply in relation to plant designed for a voltage of 132kV or below in England and Wales, and below 132kV in Scotland.

- 4.77. Ofgem/DTI note the comment of the respondent regarding the implications of Scots property law in relation to the CUSC and in particular Interface Agreements. Ofgem/DTI note that under Scots law it is possible for the assets of one party to transfer to the ownership of another by virtue of being physically attached to the latter's land and thus having become fixtures. However, the inference that assets that are physically attached have become fixtures can be excluded by contract between the parties concerned. Clause 13 of the existing Interface Agreement makes such a provision. Therefore, in relation to connection sites in Scotland, the Interface Agreement, which it is proposed will be between the user and the relevant Scottish transmission owner, will address this issue.
- 4.78. Ofgem/DTI are conscious that the full implications of the effect of Scottish law on the GB CUSC had not been taken account of in the first draft of the legal text. A legal review of the GB CUSC drafting from a Scots law perspective has now been undertaken and changes introduced in a number of places, including to the Interface Agreement, as a result of this review. These changes are identified in chapter 6. Should any further changes be required as a result of Scots law issues that are not yet identified, these will be consulted upon as required. Ofgem/DTI would welcome the views of respondents on whether they consider that any further changes are required in this regard.

Mandatory ancillary services

- 4.79. In the second GB CUSC consultation Ofgem/DTI concluded that the provisions of the current CUSC in relation to the arrangements governing the provision of mandatory ancillary services should apply in the GB CUSC and proposed no change to the other provisions of section 4 of the CUSC in relation to balancing services.
- 4.80. Five respondents provided comments on the application of provisions in relation to ancillary services.

- 4.81. One respondent agreed with the proposal but noted that further changes from the current baseline may cause it to revise its decision.
- 4.82. Another respondent noted that section 4 of the proposed GB CUSC places an obligation on all CUSC signatories to provide mandatory ancillary services, in accordance with the Grid Code. This will therefore “capture” small Scottish users. As a point of principle, it believes that all CUSC signatories should comply with section 4 of the CUSC, and should therefore provide mandatory ancillary services. However, the respondent noted that it is presently unclear as to which transmission connected small Scottish generators can provide such services, or from which small generators such services are needed in order to manage the operation of the System. The respondent considered that it would be helpful if the small generator consultation would ask these questions. The respondent also felt that it is currently unclear as to how (and when) the GB system operator should proceed with testing and ascertaining the data ultimately required for the MSA’s. It considered that this is a significant issue due to the potentially large number of MSA’s that may be required, depending on the ultimate BETTA contractual framework. The respondent noted that this is an area of particular concern to it.
- 4.83. One respondent stated that it remains in agreement that the commercial terms relating to the provision of balancing services should apply in the GB CUSC, and looks forward to the forthcoming consultations to consider transitional arrangements and the requirements for small generators in relation to this. Another respondent stated that it believed that there will need to be considerable changes to section 4 to reflect the arrangements for small generators in Scotland, but agreed that this should be considered in the light of the consultation on small generator issues.
- 4.84. One respondent noted the comments made in the second GB CUSC consultation concerning the ability to change the present arrangements for ancillary services. However, it felt that it would be helpful (especially to parties new to CUSC) for it to be made clear that this ability exists. It considered that it should be stated clearly within the GB CUSC that alternative arrangements to those normally in place (for example, the provision of reactive support remotely

from a generator connection, at a place where the system operator actually needs it) can be agreed between the relevant parties. It went on to say that provision of ancillary services in Scotland is almost solely the duty of the generation arms of Scottish Power and Scottish and Southern Energy. The respondent considered that means need to be put in place to prevent the existing providers of ancillary services from remaining the sole providers, or to ensure that their dominance in the market in Scotland cannot hinder the development of a properly competitive market in ancillary services.

- 4.85. Ofgem/DTI note the comments of respondents about the possible effect on the requirements in section 4 of the GB CUSC of the outcome of the consultation on small generators issues. Any such changes required to the draft GB CUSC will be progressed as described in chapter 2. Ofgem/DTI are also conscious of the need for the GB system operator to put in place the necessary mandatory services agreements with generators in time for BETTA go-live and are giving consideration to this issue.
- 4.86. With regard to the comments set out in paragraph 4.84 above, in relation to the ability to change the present arrangements for ancillary services and the lack of a competitive market for ancillary services in Scotland at present, Ofgem/DTI note that the process for making changes to the CUSC, the amendment process, is described in detail in section 8 of the CUSC. Ofgem/DTI also note that, in England and Wales at present, the CUSC provides for a tender process to set prices for mandatory reactive services for a 12 month period. This tender process is also the mechanism that allows users to set out their capability to offer enhanced reactive service, and the terms on which they wish to offer this service. Ofgem/DTI would expect a similar process to be provided for across GB. Ofgem/DTI conclude that, subject to the outcome of the consultation on small generator issues, there is no need to make any changes to the arrangements for mandatory ancillary services in the CUSC for the CUSC to apply throughout GB.

Small generators under the GB CUSC

- 4.87. In the second GB CUSC consultation, Ofgem/DTI noted that it intended to consult separately on issues that will affect small generators under BETTA. A number of respondents, however, provided comments on these issues.
- 4.88. Several respondents were concerned about the financial and technical liabilities that will be placed on small generators who are connected at 132kV in Scotland. Respondents considered it important to ensure that licence exempt generators connected at 132kV in Scotland were put in the same position as similar generators in England and Wales. Two respondents proposed that licence exempt generators connecting at 132kV in Scotland should have the option to assign the responsibilities and risks entailed in the CUSC (and the BSC) to a nominated supplier/third party. These two respondents also felt it was crucial that in introducing BETTA, Ofgem/DTI minimise regulatory uncertainty so that the financial sector does not lose the confidence needed to invest in renewable energy projects throughout GB. Both respondents considered that in order to ensure this, there must be a carefully considered transition to the new charging system, and the charges must be reasonable, clear and equitable.
- 4.89. Another two respondents proposed treating all generators connected at 132kV in Scotland as distribution connected for the purposes of use of system charging. In addition, these two respondents noted that as a result of being considered distribution connected, such generators would not have to sign the GB CUSC if they were also licence exempt. This would enable them to pass through any risk to a supplier, as in England and Wales at present.
- 4.90. Another respondent noted that there are a number of issues raised by the connection of small and medium sized generators that need resolution before BETTA can proceed. It stated that it looked forward to Ofgem/DTI's promised consultation on small generators and hoped that the position of medium sized generators that may be subject to Licence Exemption would also be encompassed by this consultation. It added that the issues raised by treating 132 kV assets as transmission assets in Scotland might also be addressed at the same time, or alternatively be made the subject of a separate consultation.
- 4.91. Another respondent stated that it looks forward to the forthcoming consultation on small generators under BETTA, and agreed that it is appropriate to cover all

such issues within a single consultation document in order to ease the burden on small players participating in the BETTA consultation process. It believed that for the creation of a level playing field under BETTA it is essential that the commercial and technical environment facing users connected to the 132kV network should be common across GB. However, the respondent noted that the classification of the 132kV network as transmission in Scotland but distribution in England and Wales raises wider issues than the treatment of small generators connected to 132kV within each region, and is fundamental to other aspects of BETTA design and the development of industry codes, as it potentially impacts on the rules for transmission losses, transmission charges, the definition of Trading Units, and the ability to trade under a Grid Supply Point (GSP). As such it considered that it also potentially affects users connected at 275kV and above, who should also be treated equally across GB under BETTA. It therefore urged Ofgem/DTI to progress its consultation on small generators and to establish the treatment of the 132kV network as soon as possible, so as not to hold up the BETTA design process. The respondent suggested that, depending on the outcome of that consultation, it may be necessary to introduce provisions within the GB CUSC which facilitate a distinction between 132kV and higher voltages on the transmission network.

- 4.92. Another respondent stated that it has no particular argument with the principle that the 132kV system in Scotland remains part of the transmission system, provided that the arrangements made are such that persons or businesses connecting at 132kV in Scotland can do so on terms no less favourable than would be the case for a 132kV connection in England or Wales. The respondent noted that this comment refers both to the cost of a new connection, and to the ongoing costs of using the connection.
- 4.93. As noted in paragraphs 4.82 and 4.83 above, two respondents noted that section 4 of the CUSC may need to be amended, once the Ofgem/DTI consultation on small generator issues under BETTA has concluded.

- 4.94. Ofgem/DTI are grateful for these views which have been used to inform the consultation on small generator issues. That consultation was published on 20th November 2003³⁸.

Security cover

- 4.95. Under the CUSC, parties are required to provide security cover in respect of termination amounts (for connection assets), balancing services use of system (BSUoS) charges and transmission network use of system (TNUoS) demand reconciliation charges. In January 2003, Ofgem approved CAP024, which amended the definition of “NGC Credit Rating” in section 11 of the CUSC so that, where a licensed CUSC user is required by its licence to maintain a credit rating, the NGC Credit Rating would be the rating defined in the user’s licence. In the second GB CUSC consultation Ofgem/DTI proposed that the provisions for security cover under the CUSC, as amended by CAP024, should apply GB-wide, and invited views on this proposal.
- 4.96. Four respondents replied with three agreeing with this proposal.
- 4.97. Of those who agreed with the Ofgem/DTI proposal, one noted that there was still an outstanding issue here as to how the equivalent of England and Wales post vesting assets will be defined in a Scottish context.
- 4.98. Another noted that in the context of a split transmission arrangement over GB, it believes that if there are infrastructure works over two transmission owner areas then the final sum in the security to be provided by customers must cover both transmission owner elements.
- 4.99. Another respondent noted that the CUSC security cover provisions may need further amendment to reflect the conclusion of the small generators consultation.
- 4.100. One respondent considered the present CUSC security cover provisions to be excessively onerous and would wish to see these reviewed on a GB basis prior to implementation as part of the BETTA consultation process.

³⁸ “Small Generator Issues Under BETTA: An Ofgem/DTI consultation”, Ofgem/DTI, November 2003, The third GB CUSC consultation paper
Ofgem/DTI

4.101. Ofgem/DTI believe that it is not appropriate to address broad questions about the general security cover arrangements in the CUSC specifically as part of the BETTA reforms and note that current CUSC parties may propose changes to the security cover provisions which, if approved by the Authority, would be considered for adoption in the GB CUSC. It should be noted that the security cover in the CUSC is for connection assets only and not for infrastructure assets, but only for reconciliation amounts in relation to demand TNUoS charges. Ofgem/DTI also note that there are transitional issues to be resolved but conclude that the provisions for security cover under the CUSC, as amended by CAP024, should apply GB-wide.

“Transfer Date” under the CUSC

4.102. In the second GB CUSC consultation Ofgem/DTI stated that they could not come to a conclusion on the application of the existing CUSC “Transfer Date” provisions in respect of the provision of security cover for connection assets in Scotland without more information about the likely commercial impact of any proposal with respect to any failure to pay termination amounts. Further, Ofgem/DTI stated that they wished to investigate the technical implications of any application of the Transfer Date requirement on Scottish generators (both those which are connected to the transmission system and those embedded in a distribution network) to maintain technical facilities beyond those required by the Grid Code.

4.103. Three respondents provided comments on these issues.

4.104. One respondent noted that the exclusion of pre-vesting plant from holding security in respect of the termination amounts for connection assets provided before vesting was part of the original rights conferred under the MCUSA at Vesting, and that these rights have subsequently been reflected in the financial valuation that has been attached to the plant connected by such assets. It felt that to remove this right in the creation of a GB CUSC would be prejudicial to the financial position of these assets and also breach the principle of

“commercial continuity” it considers should apply under BETTA (see paragraph 4.9 above). In accordance with the principle of non-discrimination it believes that the rights should extend to the same class of plant in Scotland.

4.105. The same respondent also commented on the issue of maintaining technical facilities that go beyond those required under the Grid Code, that are required as a result of the CUSC Transfer Date provisions. It noted that, although not included in the list in section 2.9.4 of the CUSC, a related issue is the provision of generator to system intertrip schemes. It noted that in some cases these have been provided as part of an agreement to install a less secure connection arrangement. However, it further noted that many of these schemes date from before Vesting and are part of a connection that is fully compliant with the security standards. In this latter case the CUSC should designate these schemes as “commercial” schemes and include them in the appropriate Appendix to the bilateral agreement as a commercial ancillary service. The conditions surrounding their operation would then be dependent upon commercial negotiation. It stated that under NETA, and thus BETTA, such schemes assume a commercial significance that did not exist under the Pool or the existing arrangements in Scotland. It felt that it would be wrong to simply transfer these schemes into a bilateral connection arrangement without recognising the change in value that BETTA places on their use. Furthermore, it considered that if properly documented procedures are not in place for these schemes (since they may be largely dormant pre-NETA or BETTA) then their inclusion in a bilateral agreement may also create safety issues if the conditions for their use are not properly recorded in a contractual framework.

4.106. Another respondent noted Ofgem/ DTI’s intention to investigate further the impact of extending the CUSC transfer date provisions to GB and stated that it would welcome further details as to what form this Ofgem/DTI investigation is going to take. However, it agreed with Ofgem/ DTI’s basic premise that this issue is not yet clear cut, and looked forward to seeing Ofgem/ DTI’s proposals in their next GB CUSC consultation. It highlighted that it believes the main issue here is the treatment of post vesting assets in Scotland.

- 4.107. The third respondent stated that it continues to support the extension of the current CUSC arrangements in respect of Transfer Date to all generators commissioned before 31 March 1990 in Scotland as well as in England and Wales under the GB CUSC. In particular, the requirements for security cover for such generators in Scotland should be the same as for those in England and Wales. It felt that the concept of Transfer Date should therefore be retained in the GB CUSC. It also welcomed Ofgem/DTI's plans to investigate the technical implications of any application of the requirement on Scottish generators to maintain technical facilities beyond those required by the Grid Code.
- 4.108. It further noted that for the GB CUSC it may be appropriate to introduce a concept of a BETTA transfer date, to facilitate differential treatment where necessary to deal with data, technical, commercial or contractual issues arising from differences between the BETTA arrangements and the current arrangements over each network. Associated with this, it noted that it will also be important to record a baseline of CUSC parties, agreements and transmission assets in place within England and Wales immediately prior to the BETTA transfer date, separately from those transferring to the GB CUSC arrangements on this date having been previously covered by the separate Scottish arrangements. In the latter case, it will also be important to distinguish between assets and commissions in place before Vesting, compared to those installed after Vesting. However, it recognised that this may be more an issue for the transition and implementation arrangements.
- 4.109. Ofgem/DTI have given this issue further consideration since the publication of the second GB CUSC consultation. The provisions related to Transfer Date in the CUSC in England and Wales have two effects:
- ◆ Users whose connections to the transmission system were commissioned before the Transfer Date³⁹ are exempted from the obligation to provide security cover for "Termination Amounts" in respect of connection assets, and

³⁹ The CUSC defines "Transfer Date" as :'"24.00" hours on 30th March 1990', the so-called Vesting date in both England and Wales and Scotland.

- ◆ Generators, whose connections to the transmission system were commissioned before the Transfer Date are obliged to make use of the CUSC Connection Modification Process before removing a number of technical facilities, which they may have and which are not required under the Grid Code.

- 4.110. Both of these provisions were originally included in the Master Connection and Use of System Agreement (MCUSA) at the time of privatisation during the development of the Electricity Pool and the Pooling and Settlement Agreement, which were replaced on 27 March 2001 by the new electricity trading arrangements in England and Wales. It is not clear why either provision was included, however it is thought likely that the obligation in respect of technical facilities was included to ensure that the system operator, at least initially, had available to it all the facilities that had previously been available to the Central Electricity Generating Board to operate the transmission system.
- 4.111. On the question of the exemption from the obligation to provide security cover for “Termination Amounts” in respect of connection assets, Ofgem/DTI take the view that it could be unduly discriminatory to permit such a benefit to such users in England and Wales, but to exclude such a benefit to equivalent users in Scotland. Ofgem/DTI therefore propose that the GB CUSC should provide such an exemption to all users whose connections were commissioned before the Transfer Date of midnight on 30th March 1990.
- 4.112. On the question of the additional technical facilities, although Ofgem/DTI are concerned to ensure that the GB system operator has available to it all the facilities that it needs to operate the transmission systems in Scotland, they are not convinced that placing such an obligation on Scottish transmission connectees (users) is the right way to achieve that objective. Ofgem/DTI do not know what facilities exist in Scotland at present but are conscious that there will need to be a process of negotiation between the GB system operator and the users for the development of the necessary bilateral agreements to support the provision of technical facilities that the GB system operator requires. Ofgem/DTI are concerned that Scottish users should not be placed in a weak negotiating position when they can provide services which may be of value to the GB

system operator. However, Ofgem/DTI are also conscious that there may be cases where the technical facilities provided by users have been provided in effect as a condition of connection in a similar way to those who are subject to the CUSC obligation in England and Wales. In such cases payment for the facilities may not be appropriate. Ofgem/DTI believe that each case will need to be considered on its merits. In order to ensure that this can happen it is necessary to ensure that the Scottish users are not obliged by the GB CUSC to make such facilities available. Ofgem/DTI are therefore of the view that the “Transfer Date” provisions in respect of the technical facilities should not be extended to Scottish users.

- 4.113. The draft of the GB CUSC in volume 2 of this document includes legal drafting to give effect to these two proposals.

Transitional Issues

- 4.114. Five respondents provided comments on transitional issues.
- 4.115. Two respondents urged Ofgem to propose a clear, gradual, equitable and considered transition to the new charging mechanism that does not destroy the viability of existing schemes, noting the importance of this for maintaining the relationship between generators and the financial sector.
- 4.116. Another respondent felt that the effort and cost required to move from the existing arrangements to the GB CUSC, for both the Scottish transmission owners, the GB system operator and Scottish users, must not be underestimated. It noted Ofgem/DTI’s intention to issue a general consultation on implementation and transitional issues, and also to consult upon the approach to specific issues relating to novation of the bilateral connection and use of system contracts. It considered that the transitional arrangements will have to distinguish between different assets, parties and agreements, according to their status as of Vesting, CUSC Go-live and BETTA Go-live. It also noted that there must be provisions to deal with current connection applications to Scottish transmission owners which are pending at the time of transfer, and the establishment of the GB CUSC Amendments Panel and the GB transmission

charging methodologies and resulting charges. It recommended that to minimise user effort and potential confusion in developing and implementing the GB CUSC, it will be important to maintain a stable baseline as far as possible by avoiding major changes to the CUSC in the meantime, and to coordinate the novation of contracts to ensure the smooth termination of the existing arrangements and the introduction of GB CUSC arrangements. It also recommended that before NGC talks to parties in Scotland who have connections to the transmission system that some consideration is given to coordinating contact with users.

- 4.117. Ofgem/DTI note this respondent's comment about Ofgem/DTI's statement in the second GB CUSC consultation that it would be helpful to consult separately upon the approach to the issues related to the renegotiation and/or the novation of the bilateral connection and use of system contracts to the GB system operator under BETTA. Ofgem/DTI have given this matter further consideration and believe that such a consultation in relation to a set of private bilateral agreements between Scottish transmission users and connectees and the transmission licensees would be of little benefit. Ofgem/DTI are considering the matter further and will provide further information in the consultation on transition and implementation matters.
- 4.118. Another respondent sought further clarity as to when the more generic GB CUSC transitional issues consultation document is likely to be published, what it is likely to contain, and its proposed linkage with other consultations.
- 4.119. Ofgem/DTI are grateful for these comments and are working on a plan for the co-ordination of communication with those parties who need to understand more about how BETTA will impact upon them. It is expected that such a plan will be discussed with the BETTA Progress Group in due course.
- 4.120. Another respondent stated that the matter of transitional arrangements becomes critical where connection charges and ongoing payments pre BETTA differ, as is the case between Scotland and England. It considered that:

- ◆ in bringing Scotland into the system, connectees in Scotland (whether generators or consumers or both) should be in no worse a financial position than their counterparts in England and Wales
- ◆ persons or companies connected at 132kV in Scotland should not face costs that would not apply to a similar 132kV connection in England or Wales, and
- ◆ a party who has paid a deep connection charge in Scotland should be exempted from any shallow connection related use of system charge under the GB CUSC, either for the duration of the connection agreement, or until an appropriate (time related) portion of the capital connection charge has been refunded.

4.121. This respondent noted that customers who have connected in Scotland may have contracted for guaranteed transmission capacity. It therefore considered that there will need to be provision under the transitional arrangements either for this to be continued, or for the loss of guaranteed access to be compensated.

4.122. Ofgem/DTI are grateful for these further comments on transitional issues which will be used to inform the development of proposals for transitional arrangements. Ofgem/DTI also note that the recent consultation on transmission charging⁴⁰ put forward proposals for an approach to develop charges to apply GB-wide. Ofgem/DTI also note the assertion that customers in Scotland may have contracted for guaranteed transmission capacity and are unable to comment with precision since the connection arrangements in Scotland are the province of private bilateral agreements with the Scottish transmission licensees. These and other issues are likely to emerge as the work on the transition to and implementation of BETTA progresses and can be considered and addressed as they arise.

Nuclear Site Licences

⁴⁰ "Transmission Charging and the GB Wholesale Electricity Market", August 2003, Ofgem 86/03

- 4.123. In the second GB CUSC consultation Ofgem/DTI outlined two options for dealing with the special arrangements needed by the holders of Nuclear Site Licences and sought the views of respondents. Three respondents commented on the alternatives described.
- 4.124. One respondent noted that for each of its Nuclear Power Stations in Scotland there exists a Nuclear Connection Agreement and a common Nuclear Use of System Agreement. It stated that these bilateral agreements have a similar effect to agreements under the CUSC in England and Wales. It further noted that there is also in place a Scottish Nuclear Site Licence Provisions Agreement (SNSLPA), which is very similar to the England and Wales NSLPA. It stated that the topic of modifications by either the transmission system operator or itself is covered in the Scottish connection agreements by clause 10. This clause places additional requirements on the Scottish transmission owner to comply with the SNSLPA where plant or apparatus subject to modification forms part of the Nuclear Security Plant and Equipment annexed to it. Thus, it noted that these existing agreements in place between itself and the Scottish transmission owner provide a similar level of documented assurances as exists in England and Wales. It stated that this ensures that proposed modifications are properly assessed to ensure nuclear safety is not compromised. It went on to say that in terms of including the existing provisions in Scotland in a GB CUSC, then as far as it is concerned this would be satisfied by including a reference to the existing SNSLPA in clause 6.9.4. The respondent considered that this approach would require minimal change to existing arrangements initially. In the interests of making a common set of clauses, the respondent considered that it may be desirable to move to a single NSLPA, but did not consider this a pre-requisite for BETTA go-live. It further noted that if it is proposed that the GB system operator becomes the party to the NSLPA/SNSLPA, then it is important that the requirements are cascaded down to the transmission owners through the STC as transmission plant modifications can be initiated by the transmission owners.
- 4.125. Another respondent stated that it would welcome further clarification from Ofgem/DTI about how it is intended to bring about arrangements that ensure that the terms of the CUSC do not conflict with the requirement of a Nuclear Site Licence. This respondent did not agree with placing the onus (or even the

obligation) on the GB system operator to resolve this issue, with no reciprocal obligations being placed on the relevant Scottish parties (including transmission owners). It noted that Ofgem/ DTI stated that the key to this exercise is to ensure that any Scottish site holding a Nuclear Site Licence has the relevant exemption provision inserted into their bilateral agreement, consistent with 6.9.4 of the CUSC and that this is something that needs to be in place, ready for BETTA Go live. It highlighted that this is not the existing approach in England and Wales, as currently separate Nuclear Site Licence Agreements are in place, rather than specific exemptions within bilaterals. It would prima facie envisage this form of separate agreement as being more appropriate than the insertion of specific exemptions within bilateral agreements. It also noted that Nuclear Site Licence Agreements are about transmission owner as well as system operator activities and on that basis considered that further thought needs to be given to ensuring that the appropriate, complimentary arrangements are put in place between the transmission owner and these parties.

- 4.126. The third respondent felt that provisions similar to those contained in the existing England and Wales CUSC are required under BETTA to cover any Scottish site holding a Nuclear Site Licence and believed that the most pragmatic way forward is for the existing Scottish NSLPA to continue. It considered that there would then be tripartite discussions amongst the transmission owner, system operator and Nuclear Site Licensee to determine any consequential effects on the planning of the transmission system.
- 4.127. Ofgem/DTI are grateful for the comments of respondents. Ofgem/DTI consider that BETTA should not require any change to any Nuclear Site Licence and that BETTA should seek to put in place arrangements which have exactly the same effect on such licences as the current arrangements. Ofgem/DTI note from the responses provided that agreements equivalent to the two NSPLAs currently referred to in the CUSC, exist in relation to nuclear sites in Scotland. It will therefore be necessary to ensure that the provisions of these agreements take precedence over the provisions of the GB CUSC in relation to modifications, as currently provided for by clause 6.9.4. of the CUSC. In order for these agreements to take precedence over the GB CUSC, NGC as the GB system

operator will have to be a party to these agreements, as NGC will be the contractual counter party under the GB CUSC.

- 4.128. Ofgem/DTI are content for the parties to these agreements and NGC to agree a form for the Scottish NSLPAs which suits their respective responsibilities under BETTA and which is consistent with the Ofgem/DTI policy stated above.
- 4.129. Ofgem/DTI therefore propose that the CUSC should be amended in order that the GB CUSC refers to any NSPLA that is in place with a nuclear site licensee. This will ensure that the provisions of the existing NSPLAs and any equivalent agreements in relation to nuclear sites in Scotland, will take precedence over the provisions of the GB CUSC in relation to modifications.
- 4.130. Ofgem/DTI would welcome respondents' views on this proposal and on the proposed amendment to clause 6.9.4 and the proposed inclusion of a definition of "Nuclear Site Licence Provisions Agreement" in Section 11 of the draft GB CUSC in volume 2 of this document.
- 4.131. Ofgem/DTI note that the GB system operator and transmission owners have a role to play in the satisfaction of provisions under these agreements. Ofgem/DTI are in discussion with the Health and Safety Executive on this topic and will hold discussions with the parties affected to determine the best way to transition to the enduring position.

Approved CUSC amendments

- 4.132. In the second GB CUSC consultation, Ofgem/DTI analysed 23 approved CUSC amendments and proposed that all of them should be included in the GB CUSC. All 23 were incorporated into the legal text that was presented.
- 4.133. Four respondents commented on those amendments approved for the England and Wales CUSC being included in the GB CUSC.
- 4.134. Three respondents agreed that at this time they could see no reason why these amendments cannot be included in the GB CUSC.

- 4.135. One respondent agreed that, with the exception of CAP012 and CAP043, the approved amendments listed in chapter 5 of the second GB CUSC consultation should be included in the next draft of the GB CUSC, for further review against the latest BETTA design proposals. It believed that the provisions within CAP012, given that it relates to asset replacement, should be given more careful consideration in the context of the split transmission arrangements, particularly in terms of specifying the transmission owner role within the process. For the inclusion of CAP043 in the GB CUSC, the respondent noted that it will be important to establish a process for agreeing the initial Transmission Entry Capacity (TEC) and Connection Entry Capacity (CEC) for Scottish stations, through the transitional arrangements.
- 4.136. Ofgem/DTI welcome the support for their proposal that all the amendments identified should be included in the GB CUSC, noting that the amendments were included in version 1 of the GB CUSC, which was published in volume 2 of the second GB CUSC consultation. In relation to CAP012, Ofgem/DTI recognise that it will be considered in the STEG as part of the development of the STC and could result in the need for provisions in the STC. In relation to CAP043, Ofgem/DTI are conscious of the need for transitional arrangements to ensure that appropriate values of TEC and CEC are agreed for each Scottish generator connection.
- 4.137. Ofgem/DTI conclude that it is appropriate for the 23 approved CUSC amendments identified in the second GB CUSC consultation to be included in the GB CUSC.

Comments on legal drafting

- 4.138. Three respondents provided comments on the legal drafting included in the second GB CUSC consultation.
- 4.139. One respondent considered that there are a significant number of areas of the legal drafting that Ofgem/DTI are proposing to re-visit in the light of further work. It noted that these include:

- ◆ Interface Agreements (Section 2 and various.)

- ◆ Security Cover for Termination Amounts (Section 2.)
- ◆ Transfer Date (numerous Sections.)
- ◆ Balancing Services Provisions (Section 4.)
- ◆ Limitation of liability (Section 6 and 7.)
- ◆ Confidentiality (Section 6.)
- ◆ Obligations to be a Party to the BSC (Section 6.)
- ◆ The Provision of Communication Equipment (Section 6.)
- ◆ Disputes (and how they are joined between the Codes) (Section 7.)
- ◆ Governance (Section 8.)
- ◆ The appropriate interconnector arrangements (Section 9.)
- ◆ The appropriate shape of the BCA, BEGA.
- ◆ Construction Agreements.

4.140. It stated that the need to re-visit these areas of work strengthens its view that it will be difficult satisfactorily to reflect all these points in the third GB CUSC consultation. It believed that it is important that interested parties do not simply find themselves presented with a definitive solution in the January 2004 legal text (assuming that it is possible to have reached such a solution on all of these issues by that point).

4.141. Another respondent provided comment on the legal drafting and supported the proposed approach for the presentation of draft legal text for subsequent consultations, namely to mark changes against the latest existing CUSC, provided this is backed up with a list of changes to the CUSC since the baseline used in the previous consultation. It noted that Ofgem/DTI has reviewed changes drafted by NGC but has not yet undertaken a full review of areas of the GB CUSC where no drafting changes have been proposed and that this work will be undertaken by Ofgem/DTI later in the “development cycle” when the

implications of the detailed drafting for the licence conditions and the STC can also be taken into account. It considered that further, potentially wide-ranging changes, may be required in relation to the treatment of the 132kV network and its connected users, according to the outcome of the forthcoming consultation on these matters. As such, it considered that the first draft legal text for the GB CUSC had minimal changes relative to the CUSC baseline, and therefore noted that its comments at this stage are necessarily provisional and at a high level, pending developments in these other areas.

4.142. It further stated that “Issues arising from the split transmission arrangements will be particularly complex, and important, to address within the GB CUSC”. It agreed that the detailed form of the relationship between the GB system operator and the transmission owners will have to be reflected in the legal language in the STC, and considered that once this relationship is accurately defined there are likely to be detailed drafting changes required in the GB CUSC. It also agreed that interactions between the detailed drafting of provisions in the STC, BSC and GB Grid Code may result in further drafting changes to the GB CUSC. However, this respondent restated its concerns about transmission owners not being party to the GB CUSC and noted that back-off provisions will require considerable time to develop. It stated that in addition to changes necessary to address issues arising in relation to split transmission, the draft text may also require amending according to the conclusions on various other specific issues, such as in relation to governance, 132kV treatment, transitional arrangements and baseline specification.

4.143. Ofgem/DTI recognise that not all of the issues mentioned by respondents are yet fully resolved. However, as noted earlier in this document, once issues which are the subject of other consultations are resolved, Ofgem/DTI will consult on their potential impact on the GB CUSC. As has been stated previously, the approach being taken with the GB CUSC is to put in place, broadly speaking, the arrangements which have been shown to work in England and Wales, subject to necessary changes to apply them across GB. It is the job of the STC to put in place the arrangements to ensure that the discharge of obligations on users and on the GB system operator under the GB CUSC can, where necessary, be

supported by the discharge of obligations on transmission owners and on the GB system operator under the STC.

- 4.144. Ofgem/DTI are also conscious that the need to make changes to the GB CUSC will continue. In addition to the possibility of change arising from any of the BETTA issues which may not be fully resolved, changes to the England and Wales CUSC will continue and may result in changes to the GB CUSC. Ofgem/DTI expect changes to continue to the GB CUSC text, after designation and up to BETTA go-live. Ofgem/DTI are considering the best process for addressing such changes.
- 4.145. Another respondent noted that in drafting amendments to the CUSC, the text incorporates the simplest changes to support the position of the GB system operator as the contracting party. The respondent noted that its comments on the drafting are therefore without prejudice to its view that all transmission licensees should be party to the CUSC Framework Agreement. It further noted that its comments are submitted on the basis of developing a workable contract consistent with the high level licence obligations and without undermining the transmission owners' rights to develop and maintain the system as they see fit, consistent with the proposed licence obligations. The respondent's comments on the draft legal text of the GB CUSC are set out in the following paragraphs.
- 4.146. The respondent noted that although Ofgem/DTI have not proposed any specific changes to section 1, (Applicability), section 3 (Use of System) and section 4 (Balancing Services), it considers that these sections will have to be reviewed in the light of the consultation on small generators issues.
- 4.147. The respondent provided the following comments on section 2 (Connection):
- ◆ 2.5 Maintenance of assets. It considered that the GB system operator's obligation to use all reasonable endeavours to maintain the connection assets fit for the purpose of passing power up to the value of the Connection Entry Capacity needs careful consideration in Scotland, where the responsibility will be with the transmission owner. The respondent considered that in practice this could result in what it felt was an unacceptable degree of interference with the day to day business of

the transmission owner, as it may result in the GB system operator requiring the transmission owner to provide details of its maintenance policy and detailed monitoring information on the condition of the connection plant. The respondent also noted that there is a mirror image obligation in that the transmission owners will submit annual outage plans to carry out such maintenance, and the GB system operator will be obliged to schedule these plans to meet its CUSC obligation. The respondent therefore believed that the GB CUSC will need to recognise that neither the transmission owners nor the GB system operator can be held responsible for enforcement of the obligations contained in the licences of the other transmission companies

- ◆ 2.7, 2.8 and 2.9 refer to site specific features such as protection settings and other technical conditions which will be specified in annexes to the bilateral connection agreement. The respondent considered that, to ensure its plant will be protected, it is important that the transmission owner has sight of these conditions, and
- ◆ 2.10 Safety Rules. The respondent noted that, as safety is the obligation of the transmission owner, the STC will need to have provisions to ensure that the relevant transmission owner is provided with a copy of any connected party's safety rules.

4.148. Ofgem/DTI are grateful for these comments, noting that consideration of them will be taken forward in the drafting of the STC. With regard to the respondent's comment on clause 2.5, Ofgem/DTI agree that it is not the responsibility of any transmission licensee to ensure the compliance of another transmission licensee with its licence obligations. However, Ofgem/DTI consider that the assurance to the user in relation to maintenance of assets can only come from the GB system operator, and in order that the GB system operator can give this assurance to users, it must ensure that in cases where it is not directly responsible for fulfilling this obligation, the obligation must be placed on transmission owners via the STC or in some cases the transmission licence.

- 4.149. The respondent also commented on 2.11 (Interface Agreement). It noted that section 2.11 will need to be amended to reflect Ofgem/DTI's proposal that the Interface Agreement is between the transmission owner and the connected party. The respondent believed that it will be necessary to consider if and how the transmission owners' obligation to enter into an Interface Agreement is to be covered in the CUSC, since transmission owners will not be party to the CUSC framework agreement.
- 4.150. Ofgem/DTI described their proposed approach to Interface Agreements in paragraph 4.8 above, and volume 2 of this document contains legal drafting to reflect in the GB CUSC Ofgem/DTI's proposal that Interface Agreements should be between the transmission owner and the connected party.
- 4.151. The respondent also commented on 2.12 (Principles of Ownership) and these comments are set out in paragraph 4.73 above.
- 4.152. The respondent stated that consideration needs to be given to how a transmission owners' right to de-energise in emergency can be reflected in the drafting of section 5 (Events of Default, De-energisation etc).
- 4.153. Ofgem/DTI have given consideration to the transmission owners' right to de-energise connections under specific circumstances (particularly safety). Ofgem/DTI note that, in the GB CUSC, the user will give the GB system operator a right to de-energise its connection. In addition, transmission owners under BETTA will be entitled to withdraw their assets from service. The STC will set out the circumstances in which transmission owners will be entitled to undertake configuration of assets without reference to the GB system operator. Ofgem/DTI recognise that a consequence of this might be deenergisation of a user. Ofgem/DTI do not consider at this stage that this issue will require a change to the existing CUSC drafting as the GB system operator will have the contractual right to de-energise the user under certain circumstances. However, this is being given further consideration by the STEG.
- 4.154. The respondent suggested that section 6.2, under which the GB system operator will undertake to "make available, plan, develop, operate and maintain the transmission system", may need to be reworded to require the GB system

operator to “use all reasonable endeavours to plan” etc, as in practice these functions will be undertaken by the transmission owners in Scotland. The respondent considered that since the transmission owners are subject to licence obligations, and the STC will have supporting processes to co-ordinate many of these activities, this should be sufficient for the GB system operator to accept the responsibility.

- 4.155. Ofgem/DTI, in discussion with STEG, are considering the appropriate means to back-off in the STC clause 6.2 of the CUSC. Thus far, there has been no identified need to amend the wording of 6.2 as it is Ofgem/DTI’s view that suitable back-off arrangements can be drafted.
- 4.156. The respondent considered that clause 6.7.3 should be reworded to reflect the fact the operational metering will be owned by a transmission owner, and that the transmission owner will need access to it.
- 4.157. Ofgem/DTI do not consider that operational metering equipment should be treated differently to any other transmission owner’s asset on a user’s site. It will therefore be covered in the interface agreement which Ofgem/DTI have proposed should be between the transmission owner and the user.
- 4.158. The respondent noted that amendments have been made to the Connection Application to allow the GB system operator to consult with transmission licensees in preparing the connection offer. It regards this as a further example of inherent discrimination in treating the Scottish transmission licensees in the same way as distribution network operators, as third parties connected to NGC’s system. The respondent considered that it is difficult to see how this ‘bias’ can be addressed without incorporating all transmission licensees into the CUSC framework agreement.
- 4.159. Ofgem/DTI do not believe that this wording change is discriminatory or makes any but a coincidental connection between transmission licensees and distribution network operators. Transmission owners will not be providing contractual connection to users under the GB CUSC, and will not be party to the CUSC Framework Agreement. The different functions to be undertaken under BETTA by transmission owners and the GB system operator necessitates differing

treatment of the two types of transmission licensee. Ofgem/DTI note that differential treatment does not per se amount to undue discrimination. Ofgem/DTI remain of the view that the Connection Application should be amended to allow the GB system operator to consult with transmission licensees in preparing the connection offer, as transmission owners may be required to construct connection assets.

- 4.160. In relation to the Bilateral Connection Agreement under the GB CUSC, the respondent noted that transmission owners will have an interest in a number of the technical conditions, and will have a key role in providing information to the GB system operator so that connection charges can be calculated. The respondent noted, however, that this agreement could be between the user and the GB system operator.
- 4.161. The respondent also commented on the Construction Agreement. It noted that this is a key contractual document, which guarantees to new parties when their connection will be made. Apart from competitive connections, the local transmission owner is the only party that will be permitted to carry out the necessary transmission work local to the connection. The respondent considered that it is therefore only the local transmission owner who has the knowledge of contract placement, of land acquisition and of consent requirements to be able to give an indication of an acceptable contractual completion date. The respondent also considered that the level of potential liquidated damages should be for the customer and the transmission owner to negotiate. Given the extent of the transmission owner involvement in discussing all the details of the agreement, the respondent felt it irrational to place this agreement between the customer and the GB system operator. The respondent noted Ofgem/DTI's statement regarding the requirement for the GB system operator to back off its liabilities but stated that it did not believe that it would be appropriate for the GB system operator to conclude the terms of a construction agreement with a customer, and then simply pass on its liabilities to the relevant transmission owner. The respondent firmly believed that the construction agreement, like the interface agreement, should be between the transmission owner and the user.

4.162. Ofgem/DTI have set out their views on Construction Agreements in paragraph 4.17 above. Ofgem/DTI are in the process of developing draft STC provisions that cover the interactions between the GB system operator and the relevant transmission owner in relation to new connections in Scotland and the points raised above in relation to liabilities, completion dates and liquidated damages are being considered in the context of this work.

Communications requirements in section 6

4.163. In the second GB CUSC consultation, Ofgem/DTI sought views from respondents on whether the communications requirements specified in appendix 1 of section 6 of the CUSC should be applied GB-wide.

4.164. One respondent commented on this issue. It noted that under the currently agreed model, transmission owners will have responsibilities for safety switching. As such, there must be suitable communications installed between the transmission owners and users to provide for this essential task. The respondent noted, however, that the communication requirements detailed in appendix 1 of section 6 are designed for parties to the GB CUSC, and considered that this would cause a difficulty as Ofgem/DTI do not intend for the transmission owners to be party to the GB CUSC.

4.165. Ofgem/DTI note this respondent's comments and consider that the potential difficulty identified should be addressed by backing off the GB CUSC communication requirements in the STC. Ofgem/DTI consider that the communications requirements specified in appendix 1 of section 6 of the CUSC should be applied GB wide and consider that and that no changes are necessary to the CUSC to effect this.

Interconnectors

4.166. In the second GB CUSC consultation, Ofgem/DTI proposed to make no change to the interconnector arrangements under the CUSC noting that satisfactory, workable arrangements are already incorporated into the BSC and the CUSC for England and Wales which are to form the basis for the GB arrangements.

- 4.167. Two respondents provided comments on this topic. One respondent noted that Ofgem/DTI are not proposing any change to the CUSC arrangements for interconnectors to apply GB wide, and commented that, on this basis, the interconnector owner and users of the interconnector would be captured as part of the bilateral negotiation between the GB system operator and users. This respondent felt that it was worth highlighting that currently the Scottish and French interconnector owners are exempt from the CUSC (although their agreements are substantially in the form of a CUSC based agreement). It looked forward to seeing how Ofgem/DTI take this issue forward in subsequent consultations.
- 4.168. Another respondent noted that BETTA will require the termination of the existing contractual framework surrounding the Anglo-Scottish interconnector. It noted that the arrangements for such termination must be satisfactory to all counterparties and recognise that the termination is driven by the change to industry arrangements rather than the desires of any individual counterparty. It also noted that amendments to the existing contractual framework surrounding the Moyle interconnector will have to be agreed for BETTA.
- 4.169. Ofgem/DTI are aware that special arrangements exist for the French interconnector and are proposing no change to them. Ofgem/DTI are also conscious of the need to make changes to the Moyle arrangements and are in dialogue with the Office for the regulation of electricity and gas in Northern Ireland (Ofreg), with the system operator for Northern Ireland (SONI) and the owner of the Moyle Interconnector (Moyle Interconnector Limited) on this topic.

Safety

- 4.170. One respondent felt that it should be noted that the stated view of the DTI Engineering Inspectorate is that the safety of electrical equipment together with the quality and continuity of electrical supply are best controlled and managed by the owner and operator of the equipment. It noted that the Regulations define “owners” as the parties who own the assets and “operators” as parties who have direct and continuous control of the equipment. Under Ofgem/DTI’s BETTA proposals it is suggested that the “owner” and “operator” of the

transmission assets will be the transmission owner and GB system operator respectively. This respondent considered that this will give rise to an unwelcome parallel set of duties and obligations which will require to be carefully assessed. It noted that the Regulations need to be critically assessed, and if necessary revised, to recognise the two different roles carried out by transmission licensees under BETTA. Without such an assessment, the respondent anticipated that there will be significant ongoing costs incurred in parallel by both the GB system operator and the transmission owners. It felt that as a general principle it is important that BETTA arrangements do not compromise the transmission owners' obligations under the Electricity Act and also other relevant legislation including health and safety legislation and the 'Electricity, safety, quality and continuity regulations 2002', which impose duties on the transmission owners in respect of both connections and disconnections. This respondent felt that these duties have to be adequately addressed within a GB CUSC to which transmission owners should be parties.

- 4.171. Ofgem/DTI are considering if BETTA has any impact on the obligations set out in the 'Electricity, Safety, Quality and Continuity Regulations 2002'. However, Ofgem/DTI do not consider that any issues that may arise as a result of their consideration of these regulations will require transmission owners to be party to the GB CUSC.

Transmission access & charging

- 4.172. The second GB CUSC consultation noted that any changes to transmission access arrangements will appear either in the form of a proposed amendment to the CUSC or as a proposal from NGC for a change in its charging methodology. It also noted that further detail on the issues of transmission charging are contained in the Ofgem/DTI consultation on that topic⁴¹. Two respondents commented on transmission access and charging.

⁴¹ "Transmission charging and the GB Wholesale Electricity Market, Part 1 An Ofgem/DTI consultation on changes to transmission licences to implement transmission charging under BETTA, Part 2 A DTI consultation on transmission charging, in the context of the Government's policy objectives for growth in renewables", August 2003, 86/03

4.173. One respondent felt that there is insufficient information in the public domain to support a rigorous assessment of the likely levels of transmission charging under BETTA, pending clarity on the GB charging methodology, the treatment of 132 kV lines, and finalisation of the cost recovery principles embodied in the licenses. However, it wished to comment on charging principles in the context of the CUSC, pending publication of further consultations. It stated that connection and use of system charging in Scotland has been subject to regulatory scrutiny and controls over a number of years, with the guiding principles of that regulation being cost-reflectiveness, non-discrimination, and efficiency. Against that back-drop, it noted that a body of experience has developed in Scotland as to the level of charges and their underlying drivers. The respondent was concerned that, whilst there is insufficient information to be certain of the levels of charging likely under BETTA, it would appear that if the existing set of principles, costs and methodologies currently applying under NETA were extended to Scotland under BETTA without material changes, this could result in a very significant change to the balance of system costs in Scotland (demand UoS sharply reduced, generation UoS increased by up to 5 times the current level). It felt that it is possible to envisage a sequence of events whereby a framework is put in place via the CUSC and licenses before the final cost implications have been made clear and exposed to consultation, with responsibility for implementing the framework passing quietly to the GB system operator at some point during the process. Given the potentially significant redistribution of costs which BETTA might bring about, it would wish to see an open consultation process which included consideration of the applicability of the transmission charging framework and methodology to the BETTA environment, given the significant difference between that and the transmission infrastructure currently covered by NETA. It noted NGC's ongoing review of transmission access arrangements and reiterated its comments made in response to the December 2002 consultation on System Operator Incentives: the introduction of substantially revised access arrangements at around the same time as the BETTA arrangements could cause considerable problems for transmission users based in Scotland because of the uncertainties and timing issues arising.

4.174. Another respondent believed that the transmission access and charging arrangements under BETTA are key to the creation of a level playing field for GB, and it welcomed the conclusion of the consultation on Planning and Operating Standards under BETTA that these arrangements should take account of regional differences in standards. However, it stated that it is particularly frustrating that the consultation on GB transmission charging has yet to be issued and that meanwhile major changes are being considered in England and Wales as a result of NGC's commitments under their current SO Incentive Scheme. It believed that a better process is required for dealing with the need for the current change processes within England and Wales to recognise BETTA, for example by formally allowing the existing change processes to recognise that changes may potentially have a finite lifetime, or by deferring the Authority's decisions on major changes until it is possible to consider them on a GB basis. It firmly believed that major changes to the contractual, access and charging arrangements should not be introduced in England and Wales until they have been considered over GB and approved for GB application. Further, in order to minimise regulatory uncertainty, particularly for Scottish users, the transitional arrangements for BETTA should provide sufficient advance notice to all GB users of the transmission charging methodologies to be used under BETTA, and charges resulting from their application to the GB network.

4.175. Ofgem/DTI note that the consultation paper on transmission charging was published on 18th August 2003 and Ofgem/DTI published their conclusions in relation to this consultation on 2nd December 2003. Following the publication of that conclusions document, and in light of the recent publication of the paper of small generator issues, NGC as initial GB system operator will initiate a consultation on GB transmission charging methodologies. This will include the publication of indicative use of system charges.

Timetable

4.176. One respondent considered it unlikely that the second draft GB CUSC legal text will be able to reflect adequately the outcomes of all other relevant consultation documents that could impact on GB CUSC legal drafting. It therefore believed that it is unlikely that the second draft legal text, will actually have been able to

make much progress on the outstanding GB CUSC issues. It went on to say that the time gap between the theoretical definitive GB CUSC text in January 2004 and actual BETTA “Go-Active” in April 2005 is a significant one and that it is likely that there will be a number of approved England and Wales CUSC Amendments in this time period. It therefore considered that it is vital that a clear consultation route is put in place to ensure that such provisions can be consulted on a GB basis. It noted that a number of the England and Wales CUSC Amendments that might be approved in this time period are likely to be significant (and potentially include aspects of incremental access reform, credit and “plugs” based charging arrangements). It stated that it is crucial that there is a clear route in place to consult on the applicability of these England and Wales amendments on a GB basis, and would welcome further clarity from Ofgem/DTI as to the planned processes in this area.

4.177. Another respondent was concerned that three consultation rounds on the industry codes may be insufficient given the strong interaction with other consultations, both parallel and future, and lack of progress on complex issues which are fundamental to BETTA design, in particular in association with the proposed split-transmission arrangement, and the treatment of the Scottish 132kV network. It felt that these issues particularly impact on the GB CUSC, and will be important to address early in order to progress transitional arrangements sufficiently far in advance of the proposed implementation date for the necessary work to take place, recognising that some activities associated with ensuring readiness for BETTA go-live may be currently ultra vires of the existing governance arrangements. It stated that Ofgem has already recognised this by changing NGC’s transmission licence and approving BSC Modification Proposal P108 to allow Elexon to carry out preparatory work for BETTA. In the GB CUSC context this would apply to allowing the GB system operator to work on GB transmission charging methodologies, and to source data from the transmission owners and users to facilitate this.

4.178. Ofgem/DTI recognise that a process is needed for dealing with the necessary consultation on the inclusion in the GB CUSC of any amendments to the CUSC which are approved by the Authority and the planned process for dealing with these changes is discussed in chapter 2. In addition, Ofgem/DTI recognise that

there are a number of unresolved issues that may impact on the drafting of the GB CUSC and these will be consulted on in relation to the GB CUSC once they are resolved. However, as discussed earlier in this document, due to the existence of a live CUSC in England and Wales, it is inevitable that changes to the GB CUSC will continue to be required and the process developed will have to deal with consultation on changes throughout the transitional period and up to BETTA go-live.

Other issues raised by respondents

- 4.179. A number of respondents provided comments on other issues.
- 4.180. One respondent was concerned that a number of significant regulatory reforms (BETTA included) are being taken forward in what it regarded as an ad-hoc, piecemeal way. It considered that this makes it impossible for market participants to fully understand and assess the overall impact and effects of the proposed reforms. It believed that as a consequence, this increases market uncertainty and regulatory risk. It therefore considered that the pursuit of other significant reforms at this time, such as zonal transmission losses and significant changes to transmission charging arrangements, should be halted. This respondent also stated that it remained concerned over the apparent lack of progress in other areas, such as the treatment of 132kV in Scotland and the publication of key long overdue documents like the Ofgem/DTI central project plan and the GB charging principles paper. It urged Ofgem/DTI to make greater use of other key industry stakeholders in the BETTA development phase to ensure progress continues to be made.
- 4.181. Another respondent believed that developments to the trading and transmission arrangements in England and Wales are being progressed without adequate consideration of their suitability for Great Britain. It noted that such changes are clearly intended to form part of the long term trading and transmission arrangements and the long term arrangements are intended to be GB-wide. It felt that any changes should therefore be assessed against the long term BETTA baseline before they are approved for implementation in England and Wales; to

do otherwise, it considered, risks creating uncertainty and instability in the market arrangements.

- 4.182. As was explained in paragraph 4.38 above, Ofgem/DTI are aware of these concerns and Ofgem published a letter to the CUSC Panel Chairman explaining that it will consult on a GB basis on modification proposals to the England and Wales CUSC from the time when the Energy Bill receives its second reading in either House of Parliament. Therefore until the time that GB consultation is undertaken on such modification proposals, Ofgem is obliged to continue with developments which will benefit both current and future consumers within both England and Wales and Scotland respectively and separately.
- 4.183. One respondent stated that it would welcome early publication of any form of programme which sets out the way the BETTA project is anticipated to develop, to facilitate planning of resources and to provide context to the consultation process.
- 4.184. Ofgem/DTI note the recent agreement by the BETTA Progress Group (BPG) of baseline 1 for the programme plan and that a summary of the plan has been published on the Ofgem web-site.
- 4.185. One respondent felt that it was important to note that while the BETTA project is progressing in some areas, it considered that little progress has been made in other areas. The respondent stated that because of the range of consultations taking place (including related distribution charges being reformed) it is becoming increasingly hard for participants in this process to get a complete picture of what a GB electricity market will look like post BETTA go-live. It commented that, given the amount of work that has taken place on BETTA, Ofgem should clarify the situation by providing an update on the “big picture”, including showing the relationship between distribution and transmission reforms.
- 4.186. Another respondent was disappointed that little progress appeared to have been made since the first round of consultations on the industry codes, with many aspects of each document remaining dependent on progress on fundamental issues covered by interdependent, parallel or future consultations, in particular

the regulatory framework for split transmission and the treatment of the 132kV network in Scotland. It urged Ofgem/DTI to progress these issues so that their conclusions can be taken into account within the next round of consultations on the various industry codes, thereby allowing respondents to comment on a more complete picture of the BETTA design. It was concerned that continued deferral of these important issues is likely to compromise the robustness of the BETTA design and transition arrangements if the target implementation date is to be achieved. It believed that these issues are particularly important for the specification of the contractual arrangements between the GB system operator, transmission owners and users, and the arrangements for transmission access and charging. As such it considered that they will particularly impact on the design of the GB CUSC.

4.187. Ofgem/DTI note these concerns and agree that the consultation on the position of small generator issues under BETTA considers a number of issues of possible significance to the GB CUSC. As explained in chapter 2, it is now expected that the small generators consultation will conclude in February 2004 and any changes that may be required to the draft GB CUSC as a result of these conclusions will be consulted on following publication of these conclusions. Ofgem/DTI note respondents' comments regarding the complexity and the volume of the issues to be resolved for BETTA and appreciate the engagement of market participants in the BETTA consultation process. Ofgem/DTI note that a significant number of consultation papers have been issued since these responses were received, including those on transmission charging and small generators. Ofgem/DTI anticipate that this will help to resolve some of the outstanding issues respondents were referring to.

4.188. Another respondent stated that it felt that it is a critical element of the development of BETTA that the GB CUSC is consistent with other codes (in particular the STC) and that issues such as disputes, limitation of liability and cross governance are properly backed off between the codes. The respondent considered that this can only be done definitively by reviewing the final GB CUSC legal text against the final STC legal text. The respondent noted that Ofgem/DTI are not envisaging that a definitive STC legal text will be available until March 2004, and the respondent considered that there is a risk that this

date could be even later. On this basis, the respondent remained concerned that the current GB CUSC timetable is unrealistic, as it considered that it will not provide a proper opportunity to assess whether issues that go beyond one particular legal text have been treated appropriately and consistently in all places. The respondent further noted that Ofgem/ DTI have proposed that work on disputes and governance will be taken forward via the STC consultation process. It felt that the way in which section 7 of the GB CUSC (Disputes) and Section 8 (Governance) are ultimately drafted will be affected by these discussions. The respondent noted that whilst it is important that such work is addressed in an STC context, it believes it is also important that it is addressed directly in a GB CUSC context as well. The respondent's view was that this will only be possible if the STC discussions have reached an advanced position by September 2003, such that they can be reflected in the second draft GB CUSC legal text. It believed this was unlikely to be the case, and as such considered that the development of the GB CUSC will need to extend beyond January 2004.

4.189. Ofgem/DTI note that the question of change co-ordination between the STC and user-facing industry codes is a topic considered in the second consultation on the GB Grid Code⁴². Once conclusions are reached on this topic, the necessary drafting changes for the GB CUSC (as well as for the GB BSC and GB Grid Code) will be proposed. Ofgem/DTI also recognise that there will be interactions between the detailed drafting of provisions in the GB codes under BETTA. Ofgem/DTI intend that a full legal review of all the draft codes will be undertaken later in the development cycle of the GB CUSC.

4.190. Another respondent felt that both the BSC and the CUSC are complex and voluminous documents, which have relatively little relevance to DNOs. It noted that Ofgem/DTI do not believe it would be appropriate to strip out the necessary contractual relationships between NGC and DNOs into separate documents, and relieve DNOs of their current obligations to be parties to BSC and CUSC. It also noted that Ofgem/DTI stated that this could be facilitated through the

⁴² "The Grid Code under BETTA, Ofgem/DTI conclusions and consultation on the text of a GB Grid Code and consultation on change co-ordination between the STC and user-facing industry codes", September 2003, Ofgem 111/03

existing amendment process and the respondent hoped that this is something Ofgem/DTI will consider in the near future.

- 4.191. Ofgem/DTI note the final comment about consideration of a change to extract DNO obligations from the BSC and CUSC, and note that this is not a change that is required as a consequence of BETTA. Other than changes required for BETTA, neither Ofgem nor DTI are able to propose changes to the BSC or to the CUSC. Should any party believe such a change is worthy of consideration, it is open to them to propose such a change, which would then be considered by the Authority.

Views invited

- 4.192. Views are invited on any of the matters raised in this chapter but in particular on:

- ◆ Ofgem/DTI's proposal that the GB CUSC should provide that all users whose connections were commissioned before midnight on 30 March 1990 should be exempted from the provision of security cover for Termination Amounts in respect of connection assets
- ◆ Ofgem/DTI's proposal that the provisions in respect of additional technical facilities provided for in the CUSC at present, should not be extended to Scotland and that instead the provision of such facilities should be determined on a case-by-case basis in the transitional period up to BETTA go-live, and
- ◆ Ofgem/DTI's proposal that the GB system operator should be a party to NSLPAs in relation to nuclear sites in Scotland, and that the CUSC should be amended in order that the GB CUSC refers to all such agreements.

5. New issues for the GB CUSC

- 5.1. As a result of ongoing analysis of the legal drafting for the GB CUSC, further issues have emerged. Most of these have been discussed in chapter four but a few remain to be consulted upon. These issues are discussed in this chapter.

Approved CUSC amendments

- 5.2. The second GB CUSC consultation used as its starting point the version of the CUSC identified in appendix 2 of that consultation document. Since the issue of the second GB CUSC consultation one CUSC amendment has been approved by the Authority and implemented.

CAP044 – extension of election arrangements to panel alternates

- 5.3. This amends the election arrangements contained in Annex 8A.4 of the CUSC relating to “Resigning Panel Members”. These arrangements previously only catered for “Resigning Panel Members”, and the amendment extends these arrangements to include Resigning Alternate Members, which has also become a defined term in the CUSC. The Authority’s letter approving the amendment stated that Ofgem considers that, should an Alternate Member cease to hold office, it is important that an opportunity is provided to those users whose interests are reflected by the outgoing Alternate Member, to appoint /elect a similarly skilled individual. The letter stated that it is Ofgem’s view that in seeking to extend the existing provisions of the CUSC, the amendment will ensure that the necessary experience and expertise is present on the Amendments Panel.
- 5.4. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

Scots law issues

- 5.5. As set out in chapter 4, paragraphs 4.40 to 4.45 , Ofgem/DTI continue to support the conclusion set out in the second GB CUSC consultation, that the governing law of the GB CUSC should be that of England and Wales and that jurisdiction should be conferred exclusively on the courts of England and Wales. However, Ofgem/DTI also recognise that the full implications of the effect of Scots law on the GB CUSC had not been taken account of in the first draft of the legal text published in June 2003.
- 5.6. Ofgem/DTI have now reviewed the CUSC from a Scots law perspective, and identified a number of areas that Ofgem/DTI consider will require amendment in order for the CUSC to apply GB wide. These areas are identified in detail in chapter 6.
- 5.7. Ofgem/DTI propose that amendments are made to the draft GB CUSC as necessary in order to take account of Scots law issues that may arise within a GB CUSC.

Views invited

- 5.8. Views are invited on any of the matters raised in this chapter but in particular on
- ◆ the proposal that the approved amendment to the England and Wales CUSC set out above should be incorporated into the GB CUSC, and
 - ◆ that the GB CUSC is amended, in the areas identified in chapter 6, to take account of Scots law issues that may arise within a GB CUSC.

6. Proposed draft text for the GB CUSC

- 6.1. The proposed draft text for the GB CUSC, at this second stage in the development cycle, is provided in volume 2 of this consultation document. This text is based upon the version of the CUSC specified in appendix 3 and is change marked against it. The text is marked as version 2 of the GB CUSC. The changes between version 1 and version 2 of the GB CUSC are shown in appendix 2.
- 6.2. One CUSC amendment has been approved by the Authority and implemented since the version of the CUSC on which the second GB CUSC consultation was based (this version was specified in appendix 2 of the second GB CUSC consultation and in appendix 3 of this document). This amendment has been incorporated within the draft text of the GB CUSC in volume 2 of this document. Its effect discussed in chapter 5.
- 6.3. Thus, the differences between the version of the CUSC referred to in the second GB CUSC consultation and the version in volume 2 of this consultation document arise due to the incorporation of legal drafting to reflect the additional amendments to the CUSC that are required either as a result of the conclusions set out in chapter 4 of this document or as a result of the proposals set out in chapter 5 of this document.
- 6.4. It is further recognised that, particularly in relation to the STC but also potentially in relation to the GB BSC and the GB Grid Code, there will be interactions between the detailed drafting of provisions in those documents and the detailed drafting of some provisions in the GB CUSC. Ofgem/DTI intend to ensure that the drafting of documents is consistent where there are interactions between the two arising as a result of BETTA and Ofgem/DTI will identify such interactions on an ongoing basis as the BETTA documents are further developed. Respondents are free to raise comments on any areas where they consider that such interactions need to be addressed.
- 6.5. It is noted that in many places in the GB CUSC, obligations are placed upon the GB system operator which cannot be fulfilled by the GB system operator without

the provision of services and assets by the transmission owners. The requirement for the transmission owners to provide such services and assets will be set out in licence conditions and in the STC and the attendant CUSC 'back-off' obligations will be set out in the STC.

Drafting Approach

- 6.6. In preparing the legal drafting for the GB CUSC, Ofgem/DTI have identified a number of instances where the current CUSC drafting appears to be time expired. That is, the CUSC clauses were introduced in respect of circumstances which appear no longer to apply. Ofgem/DTI consider that the use of legislative powers to introduce changes to the CUSC that are not required for BETTA would be inappropriate when other processes exist that enable the introduction of such changes. In the main therefore, Ofgem/DTI are not proposing to change any such time expired provisions except where they are judged likely to cause confusion in the other elements of GB CUSC drafting. Should an amendment proposal in respect of such changes to the CUSC be brought forward and subsequently approved by the Authority, such changes would be consulted upon by Ofgem/DTI in terms of their inclusion in the GB CUSC.

Generic changes

- 6.7. In version 1 of the draft GB CUSC, which was published as volume 2 of the second GB CUSC consultation, references to the National Grid Company (NGC) were replaced with a reference to the GB system operator (the "System operator"). In version 2 of the draft GB CUSC, published in volume 2 to this, the third GB CUSC consultation, references to NGC have been reinstated. Given the expectation that NGC will be appointed as the GB system operator under BETTA, and given the expectation that NGC will undertake both GB system operation activities and transmission ownership activities in England and Wales under its transmission licence, Ofgem/DTI consider that it is appropriate to refer to NGC as opposed to the System Operator. This will ensure that the GB CUSC obligations applying to NGC apply to NGC in its full capacity as both GB system operator and owner of transmission assets in England and Wales. In addition, where the GB CUSC refers to a transmission licensee other than NGC, that is, a

transmission licensee that is carrying out transmission ownership activities, the term “Relevant Transmission Licensee” has been included, and this is defined as SP Transmission Limited in the south of Scotland and Scottish Hydro Electric Transmission Limited in the north of Scotland.

- 6.8. Also in the previous draft legal text of the GB CUSC, the words “NGC’s transmission system” were replaced with “transmission system”. However, as a result of further thinking on the definition of transmission system in relation to the transmission licences under BETTA (such further thinking to be included in the consultation paper on transmission licences under BETTA planned for publication in December 2003), a further pervasive change in this version of the legal text is to refer to the “GB Transmission System”. It is proposed that the “GB Transmission System” will be defined in Section 11 of the GB CUSC by using the same definition that will be used in the transmission licence under BETTA. This definition will also be consulted upon in the forthcoming consultation paper on transmission licences under BETTA, and will be introduced in the next version of the legal text of the GB CUSC.
- 6.9. Other generic changes were made in the last version of the draft legal text, where references to “NGC Assets” or “NGC’s Plant and Apparatus” occur. “NGC Assets” were replaced by a new term “Connection Assets” or by reference to the transmission system as appropriate. References to “NGC’s Plant and Apparatus” were altered so that the ownership of the plant and apparatus was not specified (except where necessary to specify that it is not the User’s plant and apparatus). Ofgem/DTI have reviewed this approach and, in this second draft of the legal text, included a generic definition of the term “Transmission” and prefixed a number of existing terms with the word “Transmission”. For example, references to NGC’s Plant and Apparatus have become references to “Transmission Plant” and “Transmission Apparatus”, as distinct from any other “Plant” and “Apparatus”. This has the effect of conveying that the plant or apparatus concerned is owned or operated by a transmission licensee, rather than the User. In addition, reference to “Connection Assets” (which were previously NGC assets) has become “Transmission Connection Assets”.

- 6.10. It has also been necessary in a number of areas to amend the legal drafting to make it clear that the process to be adopted to ensure the fulfilment of both NGC's and the Users' rights and obligations may differ depending on whether the connection site is located in England and Wales or in Scotland. This does not imply that the rights and obligations differ, but only that the means of ensuring they are fulfilled will be different for sites located in Scotland from those in England and Wales. In Scotland, NGC must procure that a another transmission licensee fulfils obligations which will be set out in the STC in order that NGC can fulfil its obligations to the user under the CUSC, whereas, in England and Wales, NGC will fulfil the obligations directly itself. The references to "England and Wales" and to "Scotland" have been placed in square brackets as, subject to further consideration of this issue, it may be more appropriate to refer to the specific area in which the transmission licensee referred to is authorised by licence to carry out transmission activities.

Scots law issues

- 6.11. For clarity, references to the Insolvency Act in clause 5.3.1(b) have been amended to cover Scotland.
- 6.12. The Civil Procedures Rules 1998 do not apply in Scotland. Reference to these in section 7 has been removed. Ofgem/DTI consider that the meaning of the section is clear without reference to these rules.
- 6.13. The Mental Health Act 1983 has limited application in Scotland. The relevant legislation in Scotland is the Mental Health (Scotland) Act 1960. Clause 8.5.1(b)(iii) has been amended by adding a reference to the Mental Health (Scotland) Act 1960.
- 6.14. To avoid ambiguity, the definition of "Competent Authority" has been amended to include a reference to Scottish Ministers.
- 6.15. Changes have been made to Schedule 2, Exhibit 3 (Construction Agreement). In clause 2.2 there is a reference to each party granting to the other "all such wayleaves, easements, rights over or interest (but not estates) in land or any other consents reasonably required by the other in order to enable the works to

be completed". In order that this covers connection sites situated in Scotland the words in brackets have been amended to read "(but not estates as regards land situated in England and Wales and not heritable or leasehold interests as regards land situated in Scotland.)".

- 6.16. In addition, clause 2.4.1 of the Construction Agreement has been amended. In this clause, there is reference to costs incurred in acquiring permanent easements in respect of any electric line or underground cable forming part of the connection asset works. In order that this covers servitudes in Scotland this has been amended by adding the words "other rights" to cover the Scottish position.
- 6.17. Exhibit B refers to "legal estate" and "freehold". This has been amended in order that, in relation to connection sites in Scotland, the reference is to "legal interest" rather than "legal estate" and to "feuhold (ownership)" rather than "freehold".
- 6.18. The following changes have been made to Exhibit O (Interface Agreement):
- ◆ the definition of "Rights of Access" includes English terminology. To apply this in relation to connection sites in Scotland, the phrase "enjoys an easement appurtenant to User's land" has been amended by adding "or in Scotland has a right of servitude, wayleave or similar right which benefits the User's land"
 - ◆ clause 13. In relation to heritable property in Scotland, legal advice suggests that it will not be possible for an equitable interest to arise under an English law trust and it may therefore be necessary to establish a trust under Scots law. The suggested amendment to clause 13 acknowledges that neither NGC nor a Scottish transmission licensee acquire any title, right or interest in the user's land and this should mean that recourse to a trust provision remains exceptional. Views are invited on the proposed amendment
 - ◆ clause 24.1. In relation to connection sites in Scotland, references to the "HM Land Registry" are to the "Land Registry of Scotland" and references to the "Chief Land Register" should be to "The Keeper", and

- ◆ clause 24.2. In relation to connection sites in Scotland, preferred practice would be to attach a certified copy of the agreement to the most recent conveyance as an alternative option to endorsing a memorandum. This clause has therefore been amended by the addition of the words "(or in Scotland certified copies of any such agreement are attached)" after the word "attached" on line four. Further, "or as in Scotland, a feuhold interest" has been added after the word "freehold".

Specific changes

- 6.19. In the remainder of this chapter the sections of the draft GB CUSC are considered in turn and the more significant proposed changes explained.

Section 1 – Applicability of Sections and Related Agreements Structure

- 6.20. No specific changes are proposed for this section.

Section 2 – Connection

- 6.21. As explained in chapter 4 above in the discussion of the CUSC "Transfer Date" provisions, Ofgem/DTI consider that the requirement in relation to the provision of the additional technical facilities listed in 2.9.4. should not be extended to Scotland. This paragraph has been amended to limit its applicability to generators in England and Wales commissioned prior to the Transfer Date.
- 6.22. Section 2.11, relating to Interface Agreements, has been amended to take account of the proposal put forward in the June consultation on the STC, that Interface Agreements should be between the user and NGC in relation to connection sites in England and Wales, and between the user and the relevant transmission licensee in relation to sites in Scotland.
- 6.23. In section 2.12.1, the changes suggested in the previous draft, (as described in 4.70 above) to seek to generalise the principles for the point of connection to the transmission system, have been removed and the original wording reinstated.

- 6.24. In sections 2.14.2 and 2.19.1, as discussed in chapter 4, Ofgem/DTI consider that the exemption from the obligation to provide security cover for termination amounts should be extended to generators in Scotland commissioned prior to the Transfer Date. No amendments are required to this paragraph to provide for this.

Section 3 – Use of System

- 6.25. As explained above, Ofgem/DTI consider that requirement in relation to the provision of the additional technical facilities listed at 3.3.3. should not be extended to Scotland. This paragraph has been amended to limit its applicability to generators in England and Wales commissioned prior to the Transfer Date.

Section 4 – Balancing Services

- 6.26. As noted in the second GB CUSC consultation, clauses 4.4.2.4 and 4.4.2.5 refer to the costs of changes that may have been necessary to bring generators' equipment up to the standards required by the Grid Code at the time of Vesting. Should any changes to these provisions be required to allow for the position in Scotland, they will be considered as part of the consideration of implementation and transitional issues.
- 6.27. Clause 4.1.2.5 has been amended to reflect that the operational metering equipment may be owned by NGC or a transmission owner.
- 6.28. No other specific changes are proposed to this section. As noted in chapter 4, subject to the outcome of the consultation on small generator issues, changes may be required to this section.

Section 5 – Events of Default, Deenergisation, Disconnection and Decommissioning

- 6.29. As noted above, references to the Insolvency Act in clause 5.3.1(b) have been amended to cover Scotland.

- 6.30. Section 5.4.4 and 5.9.5 have been amended to capture potential breaches that threaten to put NGC in breach of its transmission licence, or another transmission licensee in breach of its licence.

Section 6 – General Provisions

- 6.31. Section 6.12 of the CUSC describes the provisions for limitation of liability between parties to the CUSC Framework Agreement. When the provisions for limitation of liability for transmission licensees under the STC are developed, it will be necessary to review these CUSC provisions to identify if any change is necessary.
- 6.32. As noted in the second GB CUSC consultation, section 6.17 refers to the assumption of the transfer of data that was required under the Grid Code, having been transferred before Vesting. This section may need to be amended when transitional requirements are considered.
- 6.33. Section 6.29 obliges every user connected to or using the transmission system to be a party to the BSC, except for customers connected to the transmission system who are being supplied by a BSC Party. This obligation is one of the issues addressed in the consultation on small generator issues.
- 6.34. Appendix 1 of section 6, describes the requirements for the provision of communication equipment by users of the transmission system. Ofgem/DTI requested views from respondents to the second GB CUSC consultation as to whether this requirement should apply GB-wide. Chapter 4 of this document concluded that these communications requirements should apply GB wide. No changes are required to bring this into effect.
- 6.35. As discussed in chapter 4, clause 6.9.4 has been amended to refer to “any” Nuclear Site Licence Provisions Agreement, and a new definition of Nuclear Site Licence Provisions Agreement has been added in section 11, in order that the provisions of all existing NSPLAs in both England and Wales and Scotland take precedence over the provisions of the CUSC in relation to modification.

Section 7 – CUSC Dispute Resolution

- 6.36. Because of the close relationship between the CUSC and the STC, it is possible that disputes under one code will be associated with a dispute on the same overall topic under the other code. Ofgem/DTI are aware of the possibility of such associated disputes and are giving consideration as to how best to deal with it. In October 2003, Ofgem/DTI published a consultation on the process for handling disputes under the STC⁴³. This work will be progressed further in the context of the STC work.
- 6.37. As noted above, the references to the Civil Procedure Rules have been removed, as these do not apply to Scotland. No other specific changes are currently proposed in this section.

Section 8 – CUSC Amendment

- 6.38. Chapter 4 concluded that there is no need to alter the role or constitution of the CUSC Amendments Panel, but Ofgem/DTI recognise that there is an argument for further consideration of a process of re-election of elected Panel members to reflect the wider scope of the GB CUSC. This will be considered in a consultation on transitional and implementation issues. No specific changes are currently proposed for this section.

Section 9 – Interconnectors

- 6.39. Amendments were proposed to this section in the previous consultation to remove the references to the England – Scotland interconnector. This applies to changes in paragraphs 9.2, 9.23.2 and 9.23.5.
- 6.40. In relation to sections 9.9.2 and 9.13.4, and as explained above, Ofgem/DTI consider that the exemption from the requirement to provide security cover for termination amounts should be extended to generators in Scotland commissioned prior to the Transfer date, and that the provision of the additional technical facilities should not.

- 6.41. In relation to Interface Agreements, 9.15 has been amended to reflect that these agreements will be between the user and NGC in relation to connection sites in England and Wales, and a user and a Scottish transmission owner in relation to connection sites in Scotland.
- 6.42. No other specific changes are proposed for this section.

Section 10 – Transitional Issues

- 6.43. It is possible that much of this section is time expired as mentioned above. However, unless changes are required for the introduction of transitional provisions for BETTA, Ofgem/DTI do not believe that what exists is confusing. No specific changes are proposed for this section.

Section 11 – Interpretation and Definitions

- 6.44. As noted above, a new definition of Relevant Transmission Licensee has been included. This is required when referring to a transmission licensee other than NGC.
- 6.45. The definition of CUSC Implementation Date now refers to the specific date on which the CUSC was first implemented (18th September 2001) as a new CUSC standard licence condition will be determined and brought into effect for BETTA and leaving the definition unamended could be confusing.
- 6.46. All the other changes proposed are consequences of the changes mentioned above.

Schedules and Exhibits

- 6.47. Where NGC is referenced in all forms and agreements for the website and for the postal address, such references have not been changed. In addition NGC is still named as a counter-party in all the bilateral agreements, except in the Interface Agreement, where it is recognised that in relation to connection sites in England and Wales, this will be an agreement between NGC and the user and in

relation to connection sites in Scotland this will be an agreement between a Scottish transmission owner and the user.

Schedule 1 – List of Users

- 6.48. The Schedule is not included in the draft legal text at this time.

Schedule 2 Exhibit 1 – Bilateral Connection Agreement

- 6.49. No specific changes are proposed at this time.

Schedule 2 Exhibit 2 – Bilateral Embedded Generation Agreement

- 6.50. As noted in the second GB CUSC consultation, section 7 of this exhibit erroneously refers to an “Entry Access Capacity” rather than the “Transmission Entry Capacity”. It is not proposed to use the powers provided by the E(TT) provisions of the Energy Bill to make this correction. No specific changes are proposed in this exhibit.

Schedule 2 Exhibit 3 – Construction Agreement

- 6.51. As noted in the second GB CUSC consultation, changes have been necessary in paragraphs 2.2, 2.4, 2.5, 2.6, 4.8 and 11.1 to allow for the fact that the land may belong to a transmission licensee other than NGC. This also requires a change to the definition of “Construction Site”.
- 6.52. Changes have been necessary in paragraph 2.7 to allow for work carried out by a transmission owner on behalf of the System Operator and in paragraph 2.9 to enable access to the construction site for the necessary personnel.
- 6.53. As noted above, changes have been made to 2.2 and 2.4.1 to take account of Scots law issues.

Schedule 2 Exhibit 4 – Mandatory Services Agreement

- 6.54. No specific changes are proposed.

Schedule 3 – Balancing Services Market Mechanism

- 6.55. No specific changes are proposed.

Exhibit A – Accession Agreement

- 6.56. No specific changes are proposed apart from the reference to Great Britain as a possible place of registration of the user company.

Exhibit B – Connection Application

- 6.57. In paragraph 8, it is necessary to permit NGC to consult with other transmission licence holders on the information contained in the application.
- 6.58. As noted above, references to "legal interest" and to "feuhold (ownership)" have been included in relation to connection sites in Scotland.

Exhibit C – Connection Offer

- 6.59. No specific changes are proposed.

Exhibit D – Use of System Application (for embedded generators etc.)

- 6.60. In paragraph 9 it has been necessary to permit NGC to consult with other transmission licence holders.

Exhibit E – Use of System Offer (for embedded generators etc.)

- 6.61. No specific changes are proposed.

Exhibit F – Use of System Application (for suppliers etc.)

- 6.62. No specific changes are proposed.

Exhibit G – Use of System Offer (for suppliers)

- 6.63. No specific changes are proposed.

Exhibit H – Use of System Offer (for interconnectors)

- 6.64. No specific changes are proposed.

Exhibit I – Modification Application

- 6.65. In paragraph 8, it is necessary to permit NGC to consult with other transmission licence holders. The same point arises in the modification application form.

Exhibit J – Modification Offer

- 6.66. No specific changes are proposed.

Exhibit K – Modification Notification

- 6.67. No specific changes are proposed.

Exhibit L – Bi-Annual Estimate for Bilateral Agreement

- 6.68. No specific changes are proposed.

Exhibit M – Secured Amount Statement

- 6.69. No specific changes are proposed.

Exhibit N – Notice of Drawing

- 6.70. No specific changes are proposed.

Exhibit O – Interface Agreements

- 6.71. Exhibit O has been amended to take account of Ofgem/DTI's proposal that Interface Agreements are between the user and NGC in relation to connection sites in Scotland and between the user and a transmission owner in relation to connection sites in Scotland. In addition, a number of changes have been made, to take account of Scots law issues (identified above).
- 6.72. Ofgem/DTI welcome respondents' views on the draft Interface Agreement which it is proposed will form an exhibit to the GB CUSC and the STC.

Views invited

6.73. Views are invited on any of the matters raised in this chapter and in particular on the detailed drafting proposed for the GB CUSC shown in volume 2 of this consultation.

Appendix 1 : List of respondents

The following list identifies all those who submitted responses to the second GB CUSC consultation.

Airtricity

British Energy

Centrica

EDF Energy

Fred Olsen Renewables Ltd

Grangemouth CHP Ltd

Innogy plc

National Grid Transco

Natural Power Consultants

Scottish Power

Scottish and Southern Energy

Scottish Renewables Forum

United Utilities

Wisenergy

Appendix 2 : Changes between version 2 and version 1 of the GB CUSC

Version 1 of the GB CUSC included all approved amendments which had been implemented into the CUSC prior to June 2003.

Version 2 of the GB CUSC includes the following approved amendment which was implemented prior to 15th December 2003:

Number	Effect of Amendment
CAP 044	This amended the election arrangements contained in Annex 8A.4 of the CUSC to extend these to include "Resigning Panel Alternates", which has also become a defined term in the CUSC.

The following table sets out the changes between version 1 of the draft GB CUSC and version 2 of the draft GB CUSC. These changes are discussed in more detail in chapter 6.

Proposed change	Sections changed
"system operator" replaced with "NGC" (a reversion to the existing CUSC text)	Generic change

Reference to NGC throughout, but reference to “Relevant Transmission Licensee” included where appropriate	Generic change
“NGC’s Transmission System” replaced with “GB Transmission System”	Generic change
“Transmission” defined and prefixed to a number of existing terms	Generic change
“NGC Assets” and “NGC Asset Works” replaced with reference to “Transmission Connection Asset” and “Transmission Connection Asset Works”	Generic change
Distinction between Connection Sites in Scotland and those in England and Wales, and NGC’s and the Users’ obligations in relation to these	Generic change
Square brackets inserted around references to legal documents	Generic change
Distinction between Plant and Apparatus owned by the User, and that which is	Section 3; Section 11; Exhibit B; Exhibit J.

owned by a transmission licensee	
Scots law changes	Section 5; Section 7; Section 8; Section 11; Schedule 2, Exhibit 3; Exhibit B; Exhibit O.
Removal of proposed change in relation to the section of the CUSC setting out principles of ownership	Section 2
Transfer Date changes – in relation to provision of technical facilities, addition of reference to England and Wales	Section 2; Section 3; Section 9.
Changes to reflect that Interface Agreements will be between the user and NGC in relation to Connection Sites in Scotland and between the user and NGC in relation to Connection Sites in England and Wales	Section 2; Section 9; Exhibit O.
Nuclear Site Licence Provisions Agreements amendments	Section 6; Section 11; Schedule 2, Exhibit 3.
Reference to “Main Business” in Interface Agreement replaced with “Licensed business” in order that this	Exhibit O, Part I and Part II

captures the activities of the three transmission licensees authorised by their respective transmission licences	
Added reference to incorporate GB instead of England and Wales, where appropriate	Section 6; Section 8; Section 11; Exhibit A.
Replaced definition of CUSC Implementation Date with specific time and date	Section 11

Appendix 3 Statement of CUSC version

GB CUSC Section	V1.0 GB CUSC	V2.0 GB CUSC
	E&W Version	E&W Version
Section 1	V1.1	V1.1
Section 2	V1.1	V1.1
Section 3	V1.3	V1.3
Section 4	V1.7	V1.7
Section 5	V1.1	V1.1
Section 6	V1.3	V1.3
Section 7	V1.0	V1.0
Section 8	V1.4	V1.5
Section 9	V1.3	V1.3
Section 10	V1.0	V1.0
Section 11	V1.7	V1.8
Schedule 2 Exhibit 1	V1.1	V1.1
Schedule 2 Exhibit 2	V1.1	V1.1
Schedule 2 Exhibit 3	V1.1	V1.1
Schedule 2 Exhibit 4	V1.1	V1.1
Schedule 3	V1.3	V1.3
Exhibit A	V1.0	V1.0

Exhibit B	V1.2	V1.2
Exhibit C	V1.0	V1.0
Exhibit D	V1.1	V1.1
Exhibit E	V1.0	V1.0
Exhibit F	V1.1	V1.1
Exhibit G	V1.0	V1.0
Exhibit H	V1.0	V1.0
Exhibit I	V1.0	V1.0
Exhibit J	V1.0	V1.0
Exhibit K	V1.0	V1.0
Exhibit L	V1.0	V1.0
Exhibit M	V1.0	V1.0
Exhibit N	V1.0	V1.0
Exhibit O Part I	V1.1	V1.1
Exhibit O Part II	V1.0	V1.0