

23rd January 2004

David Halldearn
BETTA Project
Office of Gas and Electricity Markets
9 Millbank
London
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Dear David,

**The Balancing & Settlement Code under BETTA:
Ofgem/DTI Conclusions and second consultation on the legal text of a GB BSC**

Thank you for the opportunity to comment on the issues raised by this consultation.

British Energy has previously provided responses in relation to the two earlier BSC consultations issued in December 2002 and June 2003. These responses highlighted a number of significant concerns that remain valid. This response is an appropriate opportunity to reiterate and expand on a number of those concerns particularly as the Ofgem programme timetable issued in November 2003 seeks to achieve 'designation' of key industry documents by the Secretary of State during July/August in order to maintain the April 2005 'go-live' date.

The 'go-live' date seems an increasingly challenging target, given the nature and extent of progress to date on BETTA issues and other market initiatives. For example, one cause for concern is the current status of innovative and fundamental E&W charging reforms for application across GB. Although approved for implementation in E&W from April 2004, the design and impact of these reforms have yet to be fully assessed on a GB-basis.

Key Points:

- **We remain concerned that a number of significant regulatory reforms (BETTA included) are being taken forward in a seemingly ad-hoc way making it extremely difficult for market participants to fully understand and assess the overall impact and effects of these proposed reforms. In light of this it is necessary to caveat this and other BETTA-related responses.**
- **We are mindful that while there is now increased legal certainty of BETTA implementation, new code modifications which propose significant reform to the E&W BSC (and other key/core industry documents) in the interim period before 'designation' should be halted in order to reduce the threat to timely implementation.**
- **Whilst we commend Ofgem's commitment to undertake 'GB' consultations on BSC and other code modifications/amendments, the nature of the process(es) to be followed, given the governance restrictions, means that for all practical purposes a 'GB' review at this time cannot be as comprehensive as an E&W review.**

- **We note that the conclusions of the treatment of ‘small generators’ under BETTA remains an unresolved issue and has been specifically excluded from consideration within this consultation and associated draft legal text. We would urge Ofgem/DTI to bring forward its conclusions at the earliest opportunity.**
- **The BETTA work programme should address the potential threats to timely implementation and include contingency provisions to allow for the introduction of a ‘fit for purpose’ GB-market should this prove necessary.**

Detailed Comments

British Energy continues to support the DTI/Ofgem BETTA project in principle. However, we still have serious concerns regarding the way in which the planning and execution of BETTA and other associated market reforms are being taken forward. In particular, we are concerned that a number of significant reforms (BETTA included) are being taken forward in parallel yet in isolation of each other. This apparent ad-hoc, piecemeal approach makes it impossible for market participants to fully understand and assess the overall impact and effects of the proposed reforms. As a consequence, this increases market uncertainty and regulatory risk.

Although Ofgem has previously resisted freezing significant development of the market whilst BETTA arrangements are being developed (in parallel and largely in isolation), we believe that there is now a compelling case to do so.

We are mindful that there is now increased legal certainty of BETTA implementation. However, in order to reduce the threat to timely implementation, new code modifications which propose significant reform to market arrangements, either via the E&W BSC or other key/core industry documents, in the interim period before ‘designation’ should be halted.

We are already in a position where the current NGC-instigated GB transmission charging reforms consultation, predicated on the ‘approved’ E&W charging modifications to be implemented in April 2004, are fundamentally flawed. In addition, we note that NGC are continuing to bring forward proposals associated with transmission access reform in E&W within CUSC. Continuing with such reforms threatens the timely implementation of BETTA in April 2005. DTI/Ofgem’s primary focus should now be solely on delivering BETTA, and BETTA alone.

We have commented above that whilst we commend Ofgem’s commitment to undertake ‘GB’ consultations on BSC and other code modifications/amendments in the period prior to ‘designation’, the nature of the process(es) to be followed, given the governance restrictions means that for all practical purposes a ‘GB’ review cannot be as comprehensive as an E&W review.

Turning to the main consultation documents, we note and concur with Ofgem’s conclusions in relation to:-

- The governing law of the GB BSC should be English law and the jurisdiction shall be exclusively the courts of E&W
- The GB BSC shall be implemented by modifying the current BSC

- The GB BSC Panel's role and constitution shall be unchanged but further consideration will be made of the need of its members to reflect wider GB scope
- E&W metering Codes of Practice should be adopted for GB with definitions of the 'relevant' CoPs amended to reflect current compliant metering systems under the SAS

Draft Legal Text

In relation to the draft legal text provided, we would highlight that the comments provided form part of a 'work in progress', in part because the documents reviewed are early drafts, but also because we do not have full drafts of all the relevant associated documentation available to us at this stage. Therefore, as the BETTA Programme progresses, we are likely to have to revisit documents on which we previously commented (e.g. the STC) in light of what is contained in subsequent draft legal texts of other documents (e.g. the Transmission Licences and the CUSC). Our comments below replicate the comments issued to you last week by the BETTA Review Group (BRG), of which British Energy is a party.

Section A - Parties and Participation

Section 1.3 deals with who may become party to the BSC and in what capacity they do so. The old Section 1.3.1(a), refers to the Transmission Company but this reference has now been changed so that it reads "the Transmission Company (being the Party which is the holder for the time being of the Transmission Licence, which has in effect in that Licence standard licence conditions relating to system operation);"

The change has been made to ensure that, of the Transmission Owners, only NGC in its capacity as System Operator can be party to the BSC. We agree in principle with this approach, and the contractual structure envisaged. However this arrangement needs to be adequately addressed in the STC as we have commented in our response to the recent STC mini consultation.

Section D - BSC Cost Recovery and Participation Charges

Changes have been made to Sections 5.1.1, 5.1.2 and to Annex D-5 so as to provide for the recovery of BETTA Support Costs on a GB wide basis. BETTA Support Costs are those costs, expenses and liabilities which BSC Co can incur in undertaking BETTA Support Work. BSC Co cannot undertake any BETTA Support Work unless it has proposed a work specification to the Authority and the Authority has approved such work specification. The BSC does not provide that the Authority must consult with Parties before authorising work packages. We appreciate that the existing Elexon work

package arrangements provide for prior review of and approval of such costs and that Elexon publishes work packages for consultation. However, we are concerned that the current work package arrangements may in certain circumstances amount to an "ex-post challenge" in that they provide for consultation after the relevant costs have been incurred.

It is proposed that the period in which such costs can be recovered be five years. The BSC Panel is given the power to determine the Aggregate BETTA Costs and the BETTA Recovery Shares for all Trading Parties and it is provided that such determination shall be binding in the absence of "manifest error". We believe that this test is too high, as there may be circumstances in which the Panel has made an incorrect determination but it is difficult to establish "manifest error".

Annex S-2 – GSP Groups

Sections 5.1.4 and 6.5.3 of Annex S-2 have been changed to enable different day-types to be specified for each GSP Group. The change is required because Scotland has different bank holidays from England and Wales and this was thought to be the most effective way of adjusting the settlement systems. It should also be noted that different parts of Scotland have different bank holidays. Whilst this appears sensible, we are concerned that these changes may have significant systems and IT implications, and assume that the relevant Working Group has carefully considered such issues.

In relation to the above draft legal text comments, we would reiterate that these should not be considered as the full extent of comments at this time

If you wish to discuss any of the above issues please do not hesitate to contact me. I am sending a copy of this response to the DTI



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