

David Halldearn
Ofgem
Director, BETTA
9 Millbank
London SW1P 3GE

our ref: DYB/57949.00007
direct tel: 020 7246 7380
direct fax: 020 7246 7777
e-mail: dyb@dentonwildesapte.com

9 February 2004

Dear David,

Response of BETTA REVIEW GROUP ("BRG") to Ofgem's Consultation Papers on the Connection and Use of System Code under BETTA Volumes 1 and 2 (documents 167a/03 and 167b/03 respectively), published on 19 December 2003 ("the CUSC Consultation Papers")

1. Background

As you know, we have been jointly instructed by a group of five (5) of the industry players in Great Britain, namely British Energy plc, EDF Energy plc, Powergen UK plc, Centrica plc and RWE Innogy plc (collectively known as the BETTA Review Group or "BRG"), to conduct a legal review of all of the key documents relating to the implementation of the British Energy Trading and Transmission Arrangements ("BETTA"). The main purposes of BRG are to ensure that the proposed changes required for BETTA are correctly implemented, consistent across the various documents and Codes, and do not have a material adverse effect on its members' interests from a legal perspective.

2. Purpose of this letter

In this regard, we have reviewed the CUSC Consultation Papers. The purpose of this letter is to set out our clients' Response to these Consultation Papers.

3. BRG's Response

This Response reflects the discussions to date between all BRG members. Please be advised however that individual members reserve the right to make further comments on the points raised in this Response, and any technical or commercial issues of concern to them.

4. CUSC

- 4.1 These changes are currently not substantial in nature and largely reflect the changes that are proposed for the transmission licences under BETTA and the introduction of GB-wide industry codes (e.g. the GB Grid Code and the GB BSC Code) under BETTA; and as such, they do not and should not cause any significant change to BRG members' current legal and commercial positions. This is a key concern to BRG members, who feel strongly that the changes required to move to a single GB-wide system should not adversely affect their commercial interests.

4.2 Terminology - NGC

We should mention at the outset that "NGC" is used throughout the draft CUSC. The use of "NGC" does not distinguish between NGC's system operation activities ("NGC SO") and its transmission ownership activities ("NGC TO"). As we understand it, Ofgem's rationale for using "NGC" reflects the fact that under the proposed arrangements for BETTA, NGC will have a single transmission licence through which both its system operation activities and its transmission ownership activities will be regulated. Our view is that the references to "NGC" should be replaced with references to "GB System Operator" or a similar term which demonstrates the capacity in which NGC is so acting.

4.3 Section 8 – CUSC Amendment – re-election of Panel Members

We note that Ofgem/DTI intend to consult on the issue of re-election of elected Panel members so as to reflect the wider scope of the GB CUSC. However, we note that the key Scottish participants are already CUSC signatories and therefore had the opportunity to propose candidates and vote in the last CUSC Panel elections. Moreover, Ofgem can, at BETTA go-live, nominate an additional CUSC member so as to achieve a more representative Panel. The current CUSC Panel expires within a matter of months after BETTA Go-Live (i.e. October 2005); and the CUSC is after all effectively only being converted into a GB CUSC document. Given all of this, BRG members consider that the re-election of elected Panel members (prior to October 2005) is not necessary.

4.4 Section 5 – Deenergisation

- 4.4.1 The CUSC provides for de-energisation in respect of, among other things, generic events of default by the User (e.g. in the event of insolvency related orders being issued against the User); and site specific breaches by the User.
- 4.4.2 BRG members' view is that de-energisation, given its commercial significance, should be a last resort.
- 4.4.3 Pursuant to section 5.4.1, if a User breaches the CUSC/Bilateral Agreement in respect of a particular connection, and such breach causes or can reasonably be expected to cause a material adverse effect on the business or condition of NGC/other Users/GB Transmission System/any User Systems, then NGC can:
- (i) give the User notice of the breach and require the User to remedy such breach within 28 days or such longer period as agreed between the parties (see section 5.4.1(a)); or

- (ii) give the User notice that the breach is incapable of remedy and require the User (within 5 Business Days after receipt of such notice) to undertake to NGC that it would not repeat such breach (see section 5.4.1(b)).
- 4.4.4 Pursuant to section 5.4.3, if the User fails to comply with 4.4.3 (i) or (ii) above, NGC can de-energise a specific site on giving the User 48 hours notice of same. However, pursuant to section 5.4.4, if the breach continues to the extent that it places/seriously threatens to place NGC/Relevant Transmission Licensee in breach of its Transmission Licence, NGC will be entitled to de-energise the site after having given 12 hours notice of same. The drafting of/interplay between paragraphs 5.4.1, 5.4.3, and 5.4.4 is confusing and appears to be inconsistent. Sections 5.4.1 and 5.4.3 seem to give NGC a right to de-energise a site if the User fails to remedy a breach within 28 days, whilst under, section 5.4.4, NGC can de-energise a site if the User fails to remedy a breach after only 12 hours.
- 4.4.5 In addition, NGC will be entitled to de-energise Users' sites for any breach which places/seriously threatens to place NGC/Relevant Transmission Licensee in breach of its Transmission Licence (whether or not such breaches are really serious or not).
- 4.4.6 BRG members consider that de-energisation should only be reserved for those breaches which places/seriously threatens to place NGC/Relevant Transmission Licensee in 'serious and material' breach (as opposed to some minor technical breach) of its Transmission Licence.

4.5 Exhibit O - Interface Agreement

The User will be connected to the GB Transmission System, and such connection will be governed by, among other things, the CUSC and the Bilateral Connection Agreement. Transmission owners will need to install certain assets and facilities on the User's land so as to facilitate such connection. The Interface Agreement is an agreement directly between the Transmission Owner and the User regarding arrangements in respect of such assets and the use of such assets and facilities. For example, the Draft Interface Agreement sets out details of those rights which the User grants to the Transmission owner to retain, replace, modify and alter Transmission Connection Assets on the User's land, and provisions relating to the relocation and removal of assets, security arrangements in respect of the assets etc.

- 4.5.1 BRG members consider that whilst such interface agreements may be necessary in certain respects (e.g. in relation to those provisions which cover rights of access to Users' land); they do not see that there is much of a need for the majority of the provisions of the Draft Interface Agreement. BRG members' view is that such obligations would be better placed in the CUSC itself. See paragraph 4.5.2 below further in this regard.
- 4.5.2 For example, the Draft Interface Agreement provides that the User must notify the transmission owner if a connection agreement lapses so that the connection assets can be removed. However, if indeed a connection agreement (e.g. between NGC and a User) lapses, why would the User be concerned as to who provided the land to NGC for the connection assets? The Draft Interface Agreement also provides for transmission owners to move assets to a different place on site. However, if a transmission owner wants to move assets, and such relocation would ultimately and commercially affect the User's operations, then, BRG members' view is that the transmission owner should arrange such relocation through the system operator (who should in turn provide appropriate compensation to the User on the transmission owner's behalf).

Please do not hesitate to contact David Birchall, at Denton Wilde Sapte, One Fleet Place, London EC4M 7WS (telephone: 0207 246 7380 or email: dyb@dentonwildesapte.com) regarding any queries in relation to this Response.

Yours sincerely,

David Birchall