

THE CONNECTION AND USE OF SYSTEM CODE UNDER BETTA

OFGEM/DTI CONCLUSIONS AND SECOND CONSULTATION ON THE LEGAL TEXT OF A GB CUSC – DECEMBER 2003

SP TRANSMISSION LTD'S RESPONSE

SUMMARY

SP Transmission Ltd welcomes the opportunity to comment on this paper. Our views on the issues for consultation are set out below. However SP Transmission Ltd maintains that this paper is part of a much larger whole and that our views are therefore dependent upon the development of other areas and in particular the SO-TO Code (STC).

1. General Comments

- 1.1 SP Transmission Ltd welcomes this conclusions document and the second draft legal text of the GB CUSC. Rather than re-iterate at length the arguments set out in the ScottishPower response to the June 2003 consultation SP Transmission Ltd will adopt and maintain those comments and arguments.

2. Detailed Issues

GB System Operator contracting with users

- 2.1 SP Transmission Ltd refers to the arguments presented in the ScottishPower response to the June 2003 consultation and maintains that the model being adopted by Ofgem/DTI is not the most efficient in its treatment of the User/GBSO/TO relationship.
- 2.2 The point made by Ofgem/DTI in paragraph 4.20 concerning best practice is well made, in its recognition that best practice in this area is represented by the model where the User contracts with an Independent System Operator (ISO). It should be noted however that this model of best practice is not that currently proposed. In the best practice model the ISO is independent of TO interests. This is not the case in the currently proposed model where NGC will be fulfilling the roles of both GBSO and TO.
- 2.3 Although we continue to have reservations about the model favoured by Ofgem/DTI, SP Transmission Ltd can see no sensible alternative to the contractual liability framework put forward in the consultation. SP Transmission Ltd would therefore support the contractual framework where the user would have a contractual relationship with the GB system operator (the GB CUSC). In the event that the GB system operator's obligations under the GB CUSC were not performed, the user would be entitled to pursue the GB system operator. The GB system operator would in turn have backed-off any liability that it is exposed to as a consequence of a failure of a TO to perform its obligations under the STC.

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

2.4 SP Transmission Ltd for the valid reasons set out in the ScottishPower responses to the June 2003 consultation maintains that the full transition to a GB CUSC for BETTA go-live is unnecessary.

Governing law and jurisdiction of the GB CUSC

2.5 SP Transmission Ltd for the valid reasons set out in the ScottishPower responses to the June 2003 consultation maintains that there is no reason why the governing law should be that of England and Wales and even less reason to exclude the jurisdiction of the Scottish courts. SP Transmission Ltd maintains that even in a scenario where the governing law is to be that of England and Wales there is no reason to exclude the jurisdiction of the Scottish courts to decide a matter using English law.

Governance of the GB CUSC

2.6 SP Transmission Ltd for the valid reasons set out in the ScottishPower response to the June 2003 consultation maintains that the TOs should be represented on the GB CUSC Amendments Panel.

2.7 As a minimum there should be well considered cross code amendment provisions to ensure both cross-code consistency and co-ordinated, practical implementation of changes.

Principles of ownership

2.8 The legal review of the GB CUSC drafting from a Scots Law perspective is to be welcomed. However there remain a significant number of areas where further amendment is required purely to reflect the difference in law and terminology and some of these are captured in the schedule of comments annexed hereto. It should be noted however that the suggested drafting of the interface agreement (Exhibit O) is being reviewed separately and will follow under separate heading.

Transitional Issues

2.9 In addition to points made in the ScottishPower response to the June 2003 consultation, SP Transmission Ltd would wish to raise the transitional issue of connection offers. Under its existing licence obligations SP Transmission Ltd are obliged to receive applications and issue offers of connection. Some early debate is required to establish if there is to be a cut-off date when offers will cease to be processed by the TO and begin to be processed by the designated GB system operator. It should be noted that any such arrangement might require transitional licence arrangements.

Nuclear Site Licences

- 2.10 At present the CUSC at 6.9.4 makes reference to the provisions of any Nuclear Site Licence Provisions Agreement taking precedence over the GB CUSC in respect of modifications. SP Transmission Ltd would support this provision. In as much that the Scottish NSLPA has worked well since 1990 and refers to Transmission Planning matters which are the province of the TO, the minimum change necessary for BETTA would be the appropriate inclusion of NGC as an additional party to the existing agreement.

SCHEDULE OF COMMENTS ON LEGAL DRAFTING

GB Ref	CUSC	SPT Comment
Section 2		
Para 2.12		The definition of “Bilateral Agreement” is insufficiently wide to capture agreements about ownership contained in the Interface Agreement and specific reference should therefore be made to the Interface Agreement.
Para 2.17.7		Line 3. The words “its licence” should be deleted and reference made to the transmission licences of NGC and the Relevant Transmission Licensees.
Para 2.18		Termination Amounts – Re-use. This paragraph should be reviewed in its entirety to take account of the assets owned by the Relevant Transmission Licensees.
Section 5		
Para 5.2.1		Provision should be made to recognise that the TO will have rights to de-energise for safety reasons. Accordingly the sixth line thereof should insert “or the Relevant Transmission Licensees” between “NGC” and “shall”.
Para 5.3.1(b)(i)		The inclusion of orders of the Sheriff Courts is worthy of note given that orders of the County Courts of England and Wales are not included. For the sake of consistency either the reference to Sheriff Courts should be deleted or reference to County Courts should be inserted.
Section 6		
Para 6.10		General Provisions concerning modifications and new connection sites – The question of whether it is appropriate for NGC to reserve to itself all consultancy and advice and assistance in respect of modifications and new connection sites is still to be fully addressed by the Development Working Groups, but should there be a role for the Relevant Transmission Licensees in this area, then appropriate drafting to reflect that role will require to be inserted here.
Para 6.12		Limitation of liability – The necessary back-off provisions being discussed in relation to the STC will require to be inserted in this section.
Para 6.22		Third Party Rights - If necessary the back-off provisions currently being discussed in relation to the STC will require to be inserted in this section.
Section 8		
Para 8.14		Change co-ordination – It should be clear that there is a duty to establish joint working and change co-ordination roles with the STC.
Section 9		
Para 9.16		The definition of “Bilateral Connection Agreement” is insufficiently wide to capture agreements about ownership contained in the Interface Agreement and specific reference should therefore be made to the Interface Agreement.

Section 11	
Relevant Transmission Licensee	This should refer to “SP Transmission Ltd” and its successor or successors.
Sch 2 Exhibit 3	
Para 2.4.1	Scots law references require to be inserted to refer to wayleaves or servitudes (line 4) the term “or other rights” after the English terms is insufficient. Line 9 should in addition refer to the feu or the ownership of land.
Para 2.7	The phrase within brackets in the first sentence should be extended so that it reads – (which in the case of NGC shall include work carried out by a Relevant Transmission Licensee or their contractors or sub-contractors). - This is necessary to reflect the references to NGC’s contractor or sub-contractor
Para 5.5	Approval to Connect/Energise/Become Operational - As the Relevant Transmission Licensee will be required to consent to the connection in terms of the Electricity Safety, Quality and Continuity Regulations, should this not be reflected in the drafting
Para 9A	Provision of Security – The fact that the assets will be owned by the Relevant Transmission Licensee and not NGC should be reflected throughout this paragraph, but in particular paragraphs 9A.2, 9A.3.1 and 9A.3.2
Para 9B	As immediately above and in particular in respect of Paragraph 9B.7.2
Schedule 3 Exhibit 0	As stated in the body of this response it is believed that further work is required to fully reflect Scots Law here. Comments in respect of this exhibit will therefore follow under separate cover.