

National Grid Transco

Response to Ofgem/DTI Conclusions and Consultation Document (February 2004) on The Connection and Use of System Code under BETTA

Introduction

1. We welcome the opportunity to comment on “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 – December 2003” (the consultation.)

Background

2. This consultation is the third on the CUSC under BETTA, and the second to contain legal text. As Ofgem/DTI has highlighted this legal text was prepared by us on behalf of Ofgem/DTI and under their direction. Therefore the legal text does not necessarily represent our own views. However, our response to this consultation has been written independently of Ofgem/DTI and accurately reflects the views of National Grid.

Overview

3. This response is divided into three main parts. Firstly, we discuss Ofgem/DTI's Conclusions from the July 2003 GB CUSC Consultation Document. (The July consultation.) Secondly, we discuss Ofgem/DTI's new proposals in more detail. Finally, we make some further points relating to transition and document consistency.
4. In the July Consultation, Ofgem/DTI proposed to cover a number of new areas. These included Interface Agreements, Security Cover for Termination Amounts, Limitation of Liability, Confidentiality, Obligations to be a Party to the BSC, The provision of Communication Equipment, Disputes, Governance, the appropriate interconnector arrangements, the appropriate shape of the BCA, BEGA and Construction Agreements, Transfer Date and Balancing Services. A number of these issues are addressed in the context of discussing respondents replies to the July Consultation. However, only in the context of Transfer date and security cover are new concrete proposals actually put forward. We would welcome further clarification as to when Ofgem/DTI propose to cover the other issues on the list, all of which potentially require further work.
5. Whilst recognising the complexity associated with the transition arrangements, we are concerned as to the amount of progress that has been made since the July Consultation. Whilst we are broadly comfortable with the conclusions that Ofgem/DTI have drawn from the July Consultation, in effect there are only three main new “proposals” outlined in this document relating to the issues detailed previously. All of these, whilst important, are not particularly substantive in the scheme of the overall arrangements that need to be developed. We are keen to understand at what point Ofgem/DTI believe that it will be possible for interested

parties to review the BETTA Legal framework and Codes in the round, in order to ensure that the arrangements are consistent and that the overall Legal and Contractual framework “dove-tails”. We also believe further work is needed in the short term to firm up how transition to the new arrangements is going to work, and to ensure that the relevant steps are agreed and detailed in the BETTA base-line plan. We are, of course happy to continue to contribute to this further work.

Part 1- Ofgem/DTI Second Consultation Paper- Conclusions

Amendment of the Existing England and Wales CUSC

6. We agree with the Ofgem/DTI conclusion that the England and Wales CUSC should be amended to form the GB CUSC and to have full effect from Go-Live. However, in amending the England and Wales CUSC to become the GB CUSC, consideration will need to be given as to the transitional arrangements that will need to apply in relation to Users in the Interim until Go-Live.

Scottish Transmission Owners as a Party to the GB CUSC

7. Ofgem/DTI have concluded that Scottish Transmission Owners should not be a party to the GB CUSC Framework Agreement and should have no direct role in the amendment process under the GB CUSC. We do not object to this conclusion, but clearly the appropriate “back off” arrangements between the GB CUSC and STC and STCP’s will need to be fully developed and in place, to ensure that the overall contractual framework clearly and consistently defines the responsibilities across the GB Codes. In particular, issues such as disputes, limitation of liability and governance, which need to be backed off between the CUSC and the SO-TO Code are yet to be fully explored. These issues are particularly important because it is key that when the codes are looked at in the round, they are clear and consistent as to the respective obligations of the GBSO, Scottish TO’s and the Users.

Election of GB CUSC Panel members

8. Ofgem/DTI have concluded that there is no need to alter the role or constitution of the Amendments Panel in the GB CUSC. However, Ofgem/DTI also recognise that there is an argument for further consideration of a process of re-election of Panel members to reflect the wider User base under the GB CUSC.
9. We agree that there is no need to alter the role or constitution of the existing England and Wales Panel in the GB CUSC. In order to achieve a panel that reflects the wider User base brought in by the amendment of the England and Wales to GB CUSC there are two main options. Firstly, it would be possible for the GB CUSC elections to take place prior to any aspect of the GB CUSC coming into effect. This could be delivered by using the existing CUSC Annex 8A election provisions, given effect via a transitional scheme. Alternatively, the England and Wales Panel could become the initial GB CUSC Panel but with the addition of new panel members appointed by Ofgem via Ofgem’s existing Section 8 CUSC power to appoint new representatives to the Panel. Following the latter method, a

GB wide election process could then be held after Go-Live. In accordance with the existing CUSC provisions, we would welcome Ofgem/DTI consideration as to how they envisage this exercise will be conducted.

Section 4 of the GB CUSC – Mandatory Ancillary Services

10. Ofgem/DTI conclude in this area, that subject to the conclusions of the consultation on small generators 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.
11. We have previously responded in detail on this point in relation to both the July Consultation and the Small Generators Consultation, and we look forward to reading Ofgem/DTI's conclusions to the Small Generators Consultation when they are published in due course. Clearly from our perspective, it is key that the GBSO is able to enter into the appropriate agreements with Generators who have a significant impact on the transmission system.

Security Cover – as amended by CAP024

12. Ofgem/DTI have concluded that the GB CUSC provisions for security cover as amended by CAP024 should apply GB wide under the GB CUSC.
13. CAP024 changed the requirement for credit rating, for licensees who are required by their licence to maintain a credit rating, from a fixed value of Standard and Poor or Moody to a requirement to comply with a rating fixed by their licence. We believe in principle that all approved Amendments to the England and Wales CUSC, should be incorporated on a GB basis, unless there are strong reasons why this would not be appropriate. We therefore believe that Security provisions as amended by CAP024 should be incorporated on a GB basis.

Part 2 Ofgem/DTI Third Draft Conclusions

14. Ofgem/DTI make three main new proposals in the Consultation:
 - 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 party to Nuclear Site Licence Provisions Agreements (NSLPA's) 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 arrangements.

Termination Amounts

15. In relation to termination amounts, Ofgem/DTI concluded that all users whose connections were commissioned prior to midnight on 30 March 1990, should be exempted from the provision of security cover for "Termination Amounts." We would like to clarify that this refers to connection assets commissioned prior to midnight on 30 March 1990 as is the case in England and Wales, rather than connection sites per se. Subject to this clarification, we are comfortable on this point.

"Transfer Date" under the CUSC

16. We agree with Ofgem/DTI that 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 (1990) should not be automatically applied to plant in Scotland.

17. Consideration also needs to be given as to whether the Transfer Date in the context of existing Scottish plant should be 1990 and, if so, the consequences of this.

Nuclear Site Licences

18. As Ofgem/DTI observe, with reference to Section 6.9 of the CUSC, the purpose of this arrangement is to ensure that the terms of the CUSC (specifically in respect of modification) do not conflict with the requirements of a Nuclear Site Licence. We agree that this is important, and look forward to working closely with Ofgem and other interested parties going forwards to ensure that the appropriate agreements are put in place in this area. We have further observed that NSLPA activities will predominantly apply to TO activities under BETTA with some notable exceptions such as outage planning.

Other Legal Drafting Issues

19. In section 2 of the CUSC "Connection", reference made in the legal drafting should state "or" Transmission Plant at paragraph 2.6 (line four).

20. We recommend that clarification be made within the text at paragraph 2.12.2 of the GB CUSC, so that reference to usage of the transformers that are part of the GB Transmission System makes clear that the transformers are not owned by the User.

21. We propose that clarification be made to paragraphs 2.11.1 and 9.15.1 so that it is made clear in the draft text that, in Scotland, NGC shall procure only the Relevant Transmission Licensee to enter into Interface Agreements with the Users.

22. Additionally at paragraph 5.7.3, the reference to “parties” should be clarified in relation to Scotland, so that it makes reference that the date for removal in Scotland is that date agreed between the Relevant Transmission Licensee and the User in Scotland rather than between the User and NGC.

Part 3 - The proposed GB CUSC Timetable and associated Ofgem/DTI Consultations

23. Whilst this is the last planned consultation on the draft GB CUSC legal text prior to publication of the “final” text, there are other related consultations, that Ofgem/DTI either has or is about to instigate, that could ultimately have an impact on GB CUSC drafting. We welcome the fact that Ofgem/DTI are aware that the GB CUSC Legal text will need to be re-visited in the light of developments in other areas which include the SO-TO Code, the STCP’s, the Grid Code and the Licence, as well as the conclusions to the small generators consultation. We would, however, welcome further clarity as to what the exact CUSC Consultation process will be going forwards, and when this will be reflected within the BETTA base-line plan. Clearly it is critical to all parties that comprehensive and consistent “back-off” of responsibilities across the GB Codes are in place, prior to switching on any aspect of any of the GB Codes.

Conclusion

24. We welcome the opportunity to comment on “The Connection and Use of System Code under BETTA. Ofgem/DTI Consultation on a CUSC to apply throughout GB – December 2003.”

25. In terms of substance, we broadly agree with the Ofgem/DTI propositions, and have set out our detailed thoughts in this Consultation response. However, we remain concerned that the consultation document is very high level and that more detailed work remains to be done in relation to both the GB CUSC and also the SO TO Code, in order to ensure that the appropriate, fully “backed off” contractual matrix is in place for BETTA. In particular, we are particularly concerned as to the lack of progress that has been made since the July 2003 GB CUSC Consultation in this document.

26. We look forward to continuing to work constructively with Ofgem/DTI in helping Ofgem/DTI to develop the appropriate GB CUSC and associated contractual arrangements. More generally, we will of course be continuing to input constructively into the BETTA Consultation process going forwards.