

Establishing GB panels for the CUSC, the Grid Code and the BSC under BETTA

Ofgem/DTI conclusions

April 2004 95/04

Summary

On 24 February 2004, Ofgem/DTI published a consultation document on the establishment of GB panels for the CUSC, the Grid Code and the BSC¹.

The purpose of this document is to consider the responses to that consultation and to reach conclusions on the way forward. This document should be read in conjunction with that consultation document.

In summary the conclusions reached are:

- ◆ that relevant new panel members should be put in place for the GB Grid Code, the GB CUSC and the GB BSC with effect from the first panel meeting when the code concerned has GB scope
- ◆ that the existing Grid Code Review Panels should be asked to identify individuals to represent the groups for whom seats are allocated on the GB Grid Code Review Panel (GCRP). Legal drafting will be put in place with a view to the notification of those individuals to the GB GCRP Chairman being deemed to have occurred 21 days before the first meeting of the GB GCRP
- ◆ that the election processes to be used for the election of the GB BSC and CUSC panels should be those incorporated in the recently published near final drafts of the GB BSC² and the GB CUSC³ and that, based on the list of parties who identify themselves to ELEXON and NGC as those who intend to be a BSC Trading Party or a CUSC User at BETTA go-live, Ofgem/DTI will write to ELEXON and NGC with lists of those who should have the right to nominate candidates and to vote (subject to the BSC provisions in respect of trading party groups⁴), and

¹ "Establishing GB Panels for the CUSC, the Grid Code and the BSC under BETTA, Ofgem/DTI consultation", February 2004, Ofgem 38/04

² "The Balancing and Settlement Code (BSC) under BETTA, Ofgem/DTI Conclusions and publication of near final legal text for the GB BSC", April 2004, Ofgem 92/04

³ "The Connection and Use of System Code (CUSC) under BETTA, Ofgem/DTI Conclusions and publication of near final legal text for the GB CUSC, April 2004, Ofgem 91/04

⁴ The BSC provides that all Trading Parties may nominate candidates and but the right to vote is given to each trading party group rather than to each Trading Party. A Trading Party Group is a Trading Party and

- ◆ that the timing for the next date for the re-election of the GB BSC Panel should not be advanced from October 2006.

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1. Rationale

- 1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in a consultation paper of December 2001⁵ ('the December 2001 consultation paper') and a report of May 2002⁶ ('the May 2002 report'). These reforms are planned to be introduced in April 2005⁷.
- 1.2. Since May 2002, Ofgem/DTI have published a number of consultation and conclusions documents on BETTA and its component parts. Copies of these papers and non-confidential responses to them can be found on the Ofgem website⁸.
- 1.3. On 30 January 2003 the DTI published a draft of the Electricity (Trading and Transmission) Bill (the E(TT) Bill) together with a Regulatory Impact Assessment (RIA), which explains the purpose and impact as well as the expected costs and benefits of the proposed primary legislation to enable the BETTA reforms. The E(TT) provisions of that draft Bill have now been incorporated into the Energy Bill which had its Third Reading in the House of Lords on 20 April 2004.
- 1.4. In September 2003, Ofgem/DTI published the second consultation on a Grid Code to apply across GB⁹ (the GB Grid Code). In November 2003, Ofgem/DTI published the third consultation on the Balancing and Settlement Code to apply throughout GB¹⁰ (the GB BSC). In December 2003, Ofgem/DTI published the third consultation on a Connection and Use of System Code to apply GB-wide¹¹

⁵ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper', Ofgem, December 2001. Ofgem #74/01.

⁶ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps' Ofgem/DTI, May 2002. Ofgem #38/02.

⁷ Subject to Royal Assent to the Energy Bill in July 2004.

⁸ www.ofgem.gov.uk (see BETTA publications).

⁹ '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.

¹⁰ 'The Balancing and Settlement Code under BETTA, Ofgem/DTI Conclusions and second consultation on the legal text of a GB BSC', November 2003, Ofgem # 152/03.

¹¹ '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', December 2003, Ofgem # 167/03.

(the GB CUSC). Each of these consultation documents considered whether, in the light of the application of the codes across GB under BETTA, elections should be held for those seats on the code panels where members are elected, and each document stated that this question would be further addressed in a consultation on transitional issues under BETTA.

- 1.5. On 24 February 2004, Ofgem/DTI published a consultation document¹² on the establishment of GB panels for the CUSC, the Grid Code and the BSC under BETTA (the GB panels consultation). The purpose of this document is to consider the responses to that consultation and to reach conclusions on the way forward. This document should be read in conjunction with the GB panels consultation document.

¹² "Establishing GB Panels for the CUSC, the Grid Code and the BSC under BETTA, Ofgem/DTI consultation", February 2004, Ofgem 38/04

2. Timetable

- 2.1. As described in the May 2002 report, the BETTA project plan is based upon an implementation date (in this document called the BETTA go-live date) of April 2005¹³.
- 2.2. The proposed timetable and process for establishing GB panels for the CUSC, the Grid Code and the BSC is as follows:
- ◆ this paper sets out Ofgem/DTI's conclusion on the issues addressed in the GB panels consultation
 - ◆ NGC and ELEXON will be asked to commence the election processes as soon as possible and to publish a timetable for each process
 - ◆ it is currently assumed that it will be necessary to identify panel members in August 2004, on the basis of Royal Assent to the Energy Bill by July 2004 and on the assumption that the GB codes should be introduced as soon as possible after Royal Assent, and
 - ◆ it is anticipated that legal drafting to put the GB panel members into effect will be included in consultation documents on transitional legal drafting for the CUSC, Grid Code and BSC, which are planned for publication in June 2004.
- 2.3. If you wish to discuss any aspect of this document, please contact Simon Street, e-mail simon.street@ofgem.gov.uk telephone 020 7901 7057 or Owain Service email owain.service@dti.gsi.gov.uk at the DTI on 020 7215 2779.

¹³ This date is subject to the Energy Bill receiving Royal Assent in July 2004.

3. Respondents' views and Ofgem/DTI conclusions

- 3.1. Nine parties responded to the consultation: DWS BETTA Review Group¹⁴, British Energy, Centrica, ELEXON, National Grid Transco, Powergen UK, SP Distribution, ScottishPower UK Division and Scottish and Southern Energy.
- 3.2. The GB panels consultation made a number of specific proposals. In this chapter these proposals are considered in turn, together with the respondents' views on them. Some respondents raised other issues, these are considered later in the chapter.

New panel members

- 3.3. In the GB panels consultation, Ofgem/DTI proposed that relevant¹⁵ new panel members should be put in place for the GB Grid Code, the GB CUSC and the GB BSC with effect from the first panel meeting after the code concerned comes into effect across GB. All nine respondents expressed views on this proposal with a broad degree of support for the proposal.
- 3.4. However, two respondents thought that, given that there would be an election for CUSC Amendment Panel members shortly after BETTA go-live (coming into effect in October 2005) and that there are powers to appoint additional members, it was not necessary to hold a special election for the CUSC Amendment Panel. One respondent stated that their overriding view was that a simple, pragmatic and fit-for-purpose approach should be adopted which may or may not require elections of appointment processes and one respondent thought that the panel elected under the existing BSC processes in England and Wales would remain appropriate in the GB context.

¹⁴ Denton Wilde Sapte representing British Energy plc, EDF Energy plc, Powergen UK plc, Centrica plc, and RWE Innogy plc.

¹⁵ The relevant members are the seven members and five alternate members of the CUSC Amendment Panel elected by CUSC Users; the five members of the BSC Panel elected by Trading Parties and the representative members of the Grid Code Review Group.

- 3.5. Ofgem/DTI recognise that there are powers under the BSC and the CUSC for the appointment of an additional panel member in each case. However, such powers were not put in place to deal with the introduction of BETTA but to enable the appointment of an additional panel member in the event that there are groups not adequately represented¹⁶ by the panel membership. Ofgem/DTI believe that the circumstances of the introduction of BETTA are quite different and that it is necessary to recognise the increase in geographic scope and potential new electorate and candidates by providing for new panel members.
- 3.6. Ofgem/DTI therefore conclude that relevant new panel members should be put in place for the GB Grid Code, the GB CUSC and the GB BSC with effect from the first panel meeting after the code concerned comes into effect on a GB-wide basis.

Grid Code Review Panel

- 3.7. In the GB panels consultation, Ofgem/DTI proposed that the existing Grid Code Review Panels should be asked to identify individuals to represent the groups to whom seats will be allocated on the GB Grid Code Review Panel (GCRP), with a view to their notification to the GCRP Chairman being deemed to have occurred 21 days before the first meeting of the GB GCRP.
- 3.8. Seven respondents expressed their views on this proposal and again there was a wide measure of support for Ofgem/DTI's proposal. However one respondent questioned whether a reappointment in August/September would significantly change the current position. Another respondent noted that Ofgem/DTI had not yet concluded on the composition of the GB Grid Code Review Panel and questioned whether the existing Grid Code Review Panels themselves could be asked to nominate individuals and suggested that it would be necessary to oblige the relevant licensees who chair the panels to do this.

¹⁶ BSC Section B 2.6 refers to groups "whose interests are not reflected in the composition of Panel Members". CUSC Section 8.3.3 refers to groups whose interests in respect of the CUSC "are not reflected in the composition of Panel Members".

- 3.9. Ofgem/DTI note that the recently published consultation on the GB Grid Code¹⁷ lays out their conclusions on the composition of the GB Grid Code Review Panel. Prior to Royal Assent to the Energy Bill and the commencement of the powers that the E(TT) provisions in the Bill provide for the Secretary of State, there is no power to oblige anyone to nominate individuals to represent the groups specified for the GB Grid Code. Ofgem/DTI therefore intend to write to the chairmen of the two existing Grid Code Review Panels asking them to seek the nomination of relevant individuals to form the initial GB Grid Code Review Panel (until February 2005) and in this way to request the existing GCRPs to nominate the appropriate individuals.
- 3.10. Ofgem/DTI also conclude that transitional drafting for the GB Grid Code should be developed to deem that the notification of the new GB GCRP members to the GCRP Chairman had occurred 21 days before the first meeting of the GB GCRP, since the Grid Code appointment process requires that new members are notified to the GCRP Chairman 21 days before the first meeting at which they become members of the GCRP.

The GB CUSC and GB BSC Election processes

- 3.11. Ofgem/DTI proposed in the GB panels consultation that NGC should be asked to seek confirmation from all those who plan to be Users under the GB CUSC at BETTA go-live of their intention to be so, and to follow an election process based on that set out in the then current published version of the GB CUSC, treating each of those identified as a CUSC User as eligible to nominate candidates and to vote. Further Ofgem/DTI proposed that ELEXON should be asked to seek confirmation from all those who plan to be a Trading Party under the GB BSC at BETTA go-live of their intention to be so, and to follow an election process based on that set out in the then current published version of the GB BSC, treating each of those identified as a BSC Trading Party (and where appropriate as a member of a trading party group) as eligible to nominate candidates and to vote.

¹⁷ "The Grid Code under BETTA, Ofgem/DTI conclusions and second consultation on the text of a GB Grid Code", April 2004.

- 3.12. Seven respondents commented on various aspects of these proposals. Again there was wide support among those who expressed a view on the overall approach. However, one respondent stated that the prospect of appeals to modification decisions (as proposed under the Energy Bill) necessarily enhances the importance of panel recommendations, adding that in this context it is important that the panel election process should ensure that the panel can genuinely reflect the balance and breadth of views of industry stakeholders. The respondent considered that the two votes per trading party group rule may skew the outcome of any GB BSC election process and stated their preference for a constituency based model similar to that used for the Grid Code.
- 3.13. Ofgem/DTI continue to believe that the legitimacy of any election process will be enhanced if the same process as that specified under the GB code is used and that it is necessary to recognise the wider geographical scope of the GB codes by giving the new electorate an opportunity to participate in the establishment of the GB panels. This respondent is, in effect arguing for a change to the election process under the GB BSC. Ofgem/DTI cannot accept that this is a matter that arises due to the implementation of BETTA and consider that, therefore it is not within the scope of matters to be addressed under the powers provided to the Secretary of State under the E(TT) provisions of the Energy Bill. Ofgem/DTI also note that it is open to BSC parties to propose changes to the panel election rules if they wish.
- 3.14. Another respondent suggested that if there is a party who has voted in the election process but does not participate post-BETTA, those votes and the effect on the election outcome should be identified and nullified. Ofgem/DTI do not believe that this would be an appropriate way forward. Such a circumstance could only occur for an unlicensed party (since licensees will be obliged by their licence to accede to the BSC and the CUSC) who had expressed an intention to become a BSC Trading Party, since all those who need to enter into bilateral agreements with the GB system operator will be obliged to become CUSC Users. The question would arise as to when it would be clear that the party concerned was not to become a BSC Trading Party by some time after BETTA go-live. It would be necessary to define a time. If the time was short it could be argued to be unreasonable. If the time were long, it would run the risk of removing a panel member retrospectively and potentially throwing previous

panel decisions into doubt. All of this has to be weighed against the likelihood that had such a party voted, a different election result would have obtained. Ofgem/DTI consider the risk of such an outcome to be small and, given the complexities associated with addressing such a concern, do not believe that such an approach is either necessary or proportionate.

- 3.15. The same respondent stated that their preferred approach for all panels is one of least change for the initial BETTA transitional period, with wherever possible the adoption of a simple, pragmatic and fit-for-purpose approach to provide the initial GB panels. Ofgem/DTI do not agree that least change is an appropriate criterion in this instance. Ofgem/DTI still believe that it is right to recognise that, in widening of the scope of the codes, it is important to recognise the existence of a potential new electorate for panel members which Ofgem/DTI believe needs to be given the opportunity to participate in the election of GB panel members. Ofgem/DTI also believe that the process they have proposed is simple, pragmatic and appropriate in the circumstances.
- 3.16. Three respondents expressed concern about the inefficiency, as they saw it, of running an election process for the existing BSC Panel, which the BSC requires to commence on 1 July 2004, in parallel with the proposed process for electing GB BSC panel members. Several respondents suggested delaying the election for the existing BSC panel members so that it will be overtaken by the introduction of the GB BSC. Ofgem/DTI note this suggestion but consider that it would require a change to the current BSC, which neither Ofgem nor the DTI have the power to propose. ELEXON suggested that, if two elections are to be operated at about the same time it would be more efficient and less confusing to participants if the two election processes were to be combined so that papers for both were sent out to participants at the same time. While noting that it will be for ELEXON to determine how to fulfil its various responsibilities most effectively, Ofgem/DTI welcome this suggestion for improving efficiency and clarity.
- 3.17. One respondent stated that the scope of the proposed ELEXON and NGC information gathering exercise, rather than simply establishing how many likely new parties there will be post-BETTA, should be used to elicit additional explicit information as to whether these potential parties believe that if the initial GB panels were 'rolled forward' from the existing E&W panels – they would be

considered acceptable or unrepresentative. The respondent added that this should give a clear steer as to the most appropriate way forward with a clear industry mandate. Ofgem/DTI are of the view that it is the purpose of this consultation process to elicit such views on the processes for the establishment of GB panels. It is therefore unnecessary to ask NGC and ELEXON to repeat the exercise.

- 3.18. Three respondents commented on the process for identifying the electorate for the GB BSC and GB CUSC election processes. One respondent proposed that a list of those that should be invited to participate should be provided to Ofgem/DTI who would be asked to confirm that the list was appropriate, as comprehensive as possible and contains the names of all appropriate persons. The same respondent sought clarification of any criteria to be used to check the reasonableness of the stated intention of parties to be come a GB BSC Trading Party.
- 3.19. A second respondent stated that it would be difficult to be sure as to who was to accede to the GB CUSC and in what capacity and stated their belief that therefore (as was the case when the MCUSA was transitioned) the onus must be on the users to identify themselves. The third respondent referred to the same difficulty of identifying the new electorate and suggested that the Scottish transmission licensees should be asked to provide assistance in identifying prospective “Scottish” GB users, who will then be eligible to take part in the GB election process.
- 3.20. Another respondent sought clarification of any criteria to be used to check the reasonableness of the stated intention of parties to become a GB BSC Trading Party in relation to establishing the appropriate electorate. Further, they sought clarification whether those who are not current BSC parties must have relevant assets in Scotland in order to qualify to vote.
- 3.21. Ofgem/DTI note that BSC Trading Parties do not need to hold assets in order to participate in the current election process, merely to hold Energy Accounts and do not therefore believe that it would be appropriate to adopt any such criteria for the GB codes election processes.
- 3.22. Ofgem/DTI welcome the above suggestions and are persuaded that the right way forward is to rely on parties who intend to be BSC Trading Parties or CUSC

Users at BETTA go-live to identify themselves to ELEXON and NGC as appropriate. However, Ofgem/DTI also note that there may be a risk that a party may be included on a list of potential electorate for either the GB BSC or the GB CUSC election, when they do not intend to accede to the agreement by BETTA go-live. Ofgem/DTI therefore intend that, based on the list of parties who identify themselves to ELEXON and NGC as those who intend to be a BSC Trading Party or a CUSC User at BETTA go-live, Ofgem/DTI will write to ELEXON and NGC with lists of those who should be able to participate in the election process.

- 3.23. In order to help such people to identify themselves to ELEXON or to NGC, Ofgem/DTI will ask ELEXON and NGC to put invitations on their web-sites and inform existing BSC and CUSC parties. Ofgem will also put a notice on its web-site and will ask the two Scottish transmission licensees to make Scottish parties aware of the need to make themselves known to ELEXON and NGC.
- 3.24. Ofgem/DTI conclude that the election processes to be used for the election of the GB BSC and CUSC panels should be those incorporated in the recently published near final drafts of the GB BSC¹⁸ and the GB CUSC¹⁹ and that each party identified in the lists sent to ELEXON and to NGC by Ofgem/DTI should have the right to nominate candidates and to vote (subject to the BSC provisions in respect of Trading Party groups²⁰), noting that in respect of the GB BSC election each such party will be assumed to be the holder of two energy accounts and thus entitled to two votes.

Subsequent elections

- 3.25. In the GB panels consultation, Ofgem/DTI identified that after the planned implementation of BETTA, the next election of CUSC Amendment Panel members is due to complete on 1 October 2005 and the next election for BSC

¹⁸ "The Balancing and Settlement Code (BSC) Under BETTA, Ofgem/DTI Conclusions and the publication of near final legal text for the GB BSC", April 2004, Ofgem 92/04.

¹⁹ "The Connection and Use of System Code (CUSC) under BETTA, Ofgem/DTI Conclusions and publication of near final legal text for the GB CUSC", April 2004, Ofgem 91/04.

²⁰ The BSC provides that all Trading Parties may nominate candidates and but the right to vote is given to each trading party group rather than to each Trading Party. A Trading Party Group is a Trading Party and every affiliate of that Trading Party

Panel members is due to complete on 1 October 2006. In addition, Grid Code Review Panel members are subject to an annual replacement or renewal process. Ofgem/DTI proposed that no change should be made to the timing of the GB Grid Code re-appointment processes following the initial appointment of the initial GB GCRP and that no change should be made to the timing of the GB CUSC re-election processes following the initial appointment of the initial GB panel, unless the GB CUSC is given effect substantially later than August 2004, when Ofgem/DTI will reconsider the matter. In respect of the GB BSC Panel however Ofgem/DTI questioned whether the next date (after the initial appointment of the GB panel) for the re-election of GB BSC panel members should be advanced from October 2006 to October 2005.

- 3.26. Six respondents expressed views on subsequent elections or appointment for the three panels. All those who commented agreed that the CUSC and Grid Code timings should remain unchanged. Ofgem/DTI welcome this support and conclude that no change should be made to the timing of the GB Grid Code Review Panel re-appointment process or to the timing of the GB CUSC re-election process.
- 3.27. All six respondents commented on the question of whether the BSC Panel elections should be advanced from 2006 to 2005. One commented that it should be brought forward specifically to achieve alignment between the BSC and CUSC and one respondent, who believed that it should not be brought forward, cited the coincidence of BSC and CUSC as a reason against such a move. Overall the respondents' views indicated a preference for not bringing forward the timing for the BSC elections.
- 3.28. Ofgem/DTI note that there is no unity of view from respondents. However, Ofgem/DTI also note that there is uncertainty in the date for the coming into effect of the GB BSC and hence the new GB panel and that there is, at most (if the GB panel comes into effect on 1 September 2004), a two month difference between the term of the initial GB BSC Panel and the normal term of a GB BSC Panel if the timing of the next GB BSC Panel election is unchanged. Ofgem/DTI conclude that the date for the next election of the GB BSC Panel should not be advanced from October 2006. Ofgem/DTI also note however

that it will be open to BSC parties, once the GB BSC is in place, to propose a change to the next election date, should they consider this appropriate.

Other comments

- 3.29. Respondents also provided views on an a number of other topics, which are considered below.

Transition

- 3.30. One respondent stated that, given that the GB panels consultation had stated that the Scottish Grid Code would continue in effect until BETTA go-live, and that therefore the Scottish GCRP would continue in effect until the same time, they queried that the consultation was not specific as to the parallel role of the current England and Wales GCRP. This question will be addressed in the forthcoming documents on transitional matters. However Ofgem/DTI note that in the September 2003 consultation on the GB Grid Code²¹ they had expressed the intention that the GB Grid Code would be put in place as a series of changes to the England and Wales Grid Code. This means that the England and Wales GCRP will cease to exist and be replaced by the GB GCRP which will give consideration to both GB and England and Wales matters until BETTA go-live when the GB Grid Code will come into full effect and the Scottish Grid Code will cease to have effect. While the GB and Scottish Grid Codes coexist, proposals for change to the Scottish Grid Code will have to be assessed to determine whether they should be included in the GB Grid Code also.

Identifying the results of elections

- 3.31. Two respondents noted that there will be little or no time between the completion of the necessary election processes and the need to freeze changes to the GB codes prior to designation by the Secretary of State. This means that it will not be possible to write the names of the elected panel members into the codes as the initial panel. Ofgem/DTI note these comments and will ask both ELEXON and NGC to send a report on the election processes (identifying the

²¹ "The Grid Code under BETTA, Ofgem/DTI conclusions and a second consultation on the text of a GB Grid Code", April 2004

successful individuals) to Ofgem as is consistent with current practice. Ofgem will then publish a letter to each of the panel chairmen making them aware of the successful candidates. Appropriate transitional legal drafting for the GB BSC and GB CUSC will be developed to use such a notice to put the initial GB panels in place in time for the designation of the GB BSC and GB CUSC.

GB BSC governance

- 3.32. One respondent commented that they have reservations about simply adopting the governance arrangements that currently apply under the E&W BSC to GB as a whole. They stated that they would therefore advocate a review of the GB BSC governance arrangements within a year of BETTA go-live.
- 3.33. Ofgem/DTI note this view but do not believe it is within the scope of the implementation of BETTA and note that the GB BSC modification process provides the appropriate mechanism for proposing any such reviews of the BSC governance arrangements

Scrutiny of legal texts

- 3.34. One respondent stated that they believed that it was imperative that sufficient time is scheduled during the development process to allow the industry to scrutinise the final legal texts of these documents as a complete set prior to designation.
- 3.35. Ofgem/DTI are aware of this concern but in view of the fact that near final drafts of transmission licences, of the CUSC and of the BSC have recently been published together with substantially complete drafts of the STC and of the Grid Code. Ofgem/DTI believes that this gives interested parties adequate opportunity to scrutinise the set of documents. Ofgem/DTI also plan to publish a complete set of pre-designation documents at the end of July 2004 and believe that together these two opportunities provide parties with sufficient scope to reassure themselves about the BETTA legal texts as a whole.

