

28<sup>th</sup> May 2004

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Dear David

**Response to 'Near Final' Legal Text of the GB BSC Consultation**

Thank you for the opportunity to comment on this GB BSC consultation issued in April 2004.

British Energy continues to support the DTI/Ofgem BETTA project in principle. We have previously expressed our concerns regarding the way in which the planning and execution of BETTA and other associated market reforms are being taken forward, which makes it extremely difficult 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.

We noted in the 'CUSC' December 03 consultation (para 4.189 referred) that Ofgem/DTI "intend that a full legal review of all the draft codes will be undertaken later in the development cycle." However we note that Ofgem now consider the publication of this 'near final legal text of the BSC and CUSC...and well developed drafts of the GB Grid Code and STC' to provide 'sufficient time for parties to consider these documents as a set prior to designation' (4.67). Whilst we acknowledge that there will be another opportunity to perform such a full review in the period prior to designation and post designation, this represents a degradation of the intent and is a less than optimum solution.

**Key Points:**

- **We would reiterate our overall process concerns issued in previous consultation responses that the number of significant market reforms (BETTA; GB Charging; impact of Government's renewables growth policy; GB Transmission Access Rights; 'small generators'; ongoing codes' amendments) coupled with the lack of clarity with 'transition' arrangements continue to make it extremely difficult for market participants to fully understand and assess the overall business impact. It remains necessary therefore to caveat this and other BETTA-related responses.**
- **We remain of the opinion that the BETTA work programme should address the potential threats to timely implementation, particularly in the light of other 'external' threats, for example in the form of potential amendments to the Energy Bill which could jeopardise the July 04 'designation' milestone. Contingency arrangements to allow the introduction of a 'fit for purpose' GB-market from April 2005 should be made.**



- We noted previously that Ofgem/DTI do not intend to enshrine ‘commercial continuity’ as a principle under BETTA. However we remain firmly of the view that there should neither be ‘undue discrimination’ or the creation of windfall winners or losers as a practical consequence of BETTA implementation.
- We would refer you to our expressed concern detailed within our parallel GB CUSC consultation response regarding the lack of information still in relation to transitional and implementation arrangements together with the significant number of consultation activities to be undertaken during the next two months.
- We note and support the view that Ofgem consider the legal text provided with this consultation is ‘close to its final form’ (3.19) and that it is likely that any further potential changes are ‘likely to take the form of an open letter rather than a full consultation paper.’

### **General Comments:**

**Transitional Arrangements:** Despite Ofgem’s ongoing development of transitional arrangements are concerned that an Ofgem/DTI ‘statement of approach’ will only be published during June, followed by consultations on the provisions for transition to the GB Codes (ref: BETTA Programme Indicative Timetable published 27<sup>th</sup> May). Indeed this ‘indicative timetable’ offers little comfort to the industry other than to confirm that there is still a significant amount of work associated with transitional issues (which is still of undefined scope), licences and the GB Codes, all to be performed in the next two months. The compression of the significant number of Ofgem/DTI consultations, plus a further suite of unquantified BETTA related consultations from Elexon/NGC makes it an extremely demanding period for the industry with limited resource.

**Open letter consultations:** We note too the potential for consultations to take the form of an open letter, (3.19) rather than a full consultation paper should further changes to the GB BSC appear necessary as a consequence of work in other areas. Whilst this approach appears sensible, we would be concerned if such an approach leads to much truncated consultation periods and/or leads to a plethora of ‘mini-consultations’

**Contingency:** We remain of the opinion that the BETTA work programme should address the potential threats to timely implementation and include contingency provisions to allow for the timely introduction of a ‘fit for purpose’ GB-market should this prove necessary from 1<sup>st</sup> April 2005.

Specific Comments:



**Shetland Isles:** We note the continued intent to include the Shetland Isles into the GB arrangements, with the distribution licensee responsible for balancing generation and demand. As the Shetlands are not connected, there may be a need for incentive schemes (and possibly mainland imbalance pricing) to take account of the permanent nature of the 'constraint'. As the risks and costs would be shared with the rest of GB participants, does this represent a subsidy to the Shetlands?

**Jurisdiction:** We note that in line with the GB CUSC consultation that Ofgem have now decided that jurisdiction be extended to include the courts of Scotland, albeit the governing law remains exclusively that of England & Wales.

**Cost Recovery & SAS Costs:** We note that it is proposed that E&W BSC BETTA costs will be recovered from GB BSC parties over 5 years. As the BSC BETTA costs are relatively small compared to previous developments, such as the 1998 arrangements and NETA, a shorter period may be more appropriate in this case.

We support the view that SAS run-off costs should not be borne by E&W parties or by GB BSC parties, since they represent costs for the benefit of SAS parties only.

**Settlement Metering:** We agree with the pragmatic proposal to exclude from Code of Practice requirements those meters subject to the SAS and where appropriate to seek dispensations.

**SVA Profiling:** We note the conclusion that the GB BSC should allow for different day types in Scotland and that a single set of profiles, with a single sunset time, be adopted.

**BMRS Zones:** On balance we agree with Ofgem's proposal for extending the Northern Zone to maintain commercial confidentiality.

**Half-Hour data for transmission owners:** We note that this remains an unresolved issue. By putting the service in the BSC, BSC parties will pay for providing the data. We believe that Transmission Owners (TO) could receive settlement data, including BM Unit data, in the same manner as non-parties, with payment of a small fee and signing of an agreement. In this case the data user pays for the data. Alternatively, if the SO has the data, it could be forwarded on by the SO, provided that any restrictions on use are passed through. In this case, transmission system users pay for the data. There is no apparent reason why the TO's should require data not already available to the existing TSO's, and if there is, then that is not a BETTA matter?

**Change Co-ordination :** The proposal, mirrored in the parallel CUSC consultation, that the GB BSC Panel should set up joint working arrangements with the STC committee and invite representatives of the STC committee onto the modification group for any modification which it believes could impact upon the STC seem reasonable.

**England & Wales Modifications:** Ofgem's view that the impact on BETTA of individual BSC Modifications raised before BETTA should be considered individually on their merits seems reasonable. We expect that Ofgem will take heed of participant concerns that particular modifications might be better delayed until after BETTA implementation, where reasonable justification is given.

**"Scottish Trading Arrangements" :** We would be interested to know what IPR are granted by BSC Agents to BSCCo, and by virtue of section E2.5 to parties undertaking similar activities in Scotland. We agree that this clause should be maintained until SAS run-off is complete.

**Transition and BETTA Go-Live:** Notwithstanding our general concerns on 'transition', clearly parties will be contracting on the basis of a 1<sup>st</sup> April 2005 implementation date. Any delay to this date is most likely to disadvantage those parties which were prepared for the intended BETTA date,



rather than those which were not prepared. We acknowledge that a notice period is required for a delayed date, but believe that the closer to planned go-live we get, the shorter that notice period should need to be, and we do not support an extended delay.

**Consultation Process** - We support Ofgem's view that the changes to the BSC are relatively limited and further consultation on the full text is probably not required.

### **Comments on Volume 1 - Section 5 - Modifications**

Modifications to the England & Wales BSC - Approved Modifications. Notwithstanding the fact that we do not necessarily support Ofgem's approval of some modifications, we see no reason why the approved modifications P118, P119, P126, P122, P116, P130, P114, P123, P99, P98 mentioned in the consultation should not be applied to the GB BSC. The same view applies to approved modifications P141, P133 and P127.

### **Legal Drafting Comments:**

Transmission Company - we see no reason to refer explicitly to National Grid Company plc in defining the role which is to be performed under the BSC.

Transmission Licence - we see no reason to change the definition of the Transmission Licence other than to redefine the area which is covered.

Annex S-2 S6.5.2: We see no reason why section S6.5.2 requires change for BETTA. If the Panel chooses to use the same sunset variable for each GSP Group currently, we see no reason why it should not choose to use the same value for each GSP Group under BETTA. If any party wishes to entrench a single sunset variable as a permanent feature of the BSC, it should raise a modification in the normal way.

Annex S-2 6.5.3(c) relating to Regression Coefficients. We see no reason to make this change because of BETTA. This looks like an opportune change for other reasons which are not clear.

F1.7.2 & section F generally: It is considered that the SO-TO Code should be a core industry document, in which case it would not need to be singled out in the BSC for special consideration.

Annex D-5, 3.3.4: Typo - Should read '...Trading Parties shall make...'

If you wish to discuss any of the above issues please do not hesitate to contact me.

Yours sincerely

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