

The Balancing and Settlement Code (BSC) under BETTA

Ofgem/DTI Conclusions and publication of near final legal text of the GB BSC – Apr 2004

SP Transmission Ltd's Response

In keeping with SP Transmission Ltd's commitment to BETTA, the opportunity to respond to this near final text of the GB BSC is welcomed.

The points on which SP Transmission Ltd wishes to comment are few in number, but are significant issues in respect of the BETTA arrangements.

Disconnection rights

SP Transmission Ltd would re-iterate its previous point that those rights and obligations imposed upon the TO by the ESQC Regulations in respect of disconnection should be reflected in the BSC. It is incorrect to say that the STC will provide that the GBSO will in all cases require the TO to carry out disconnections. The point being made is that the ESQC Regulations impose direct legislative rights and obligations on the TOs in respect of disconnections. These rights and obligations must be unfettered by the terms of the STC.

Liability

SP Transmission Ltd would again re-iterate its previous point that the GB BSC must be unequivocal in setting out that the TO will be held harmless when acting on the instructions of the GBSO. This is not simply a matter for the STC as the TO would be open to an action under delict. As a minimum there should be provision for an exclusion of all rights of Users to claim against TOs, the Contract (Rights of Third Parties) Act 1999 would make these exclusions in the BSC contractually enforceable. This is the proposed model set out by Ofgem/DTI in their consultation on the SO-TO Code (April 2004) in respect of the CUSC, and the solution would seem equally applicable under the BSC.

Jurisdiction

SP Transmission Ltd welcomes the extension of jurisdiction to the courts of Scotland.

Further Drafting Points

Section F: Modification Procedures

SP Transmission Ltd welcomes the obligation on the BSC Panel to establish joint working arrangements with the STC Committee, but believes that these joint working arrangements would be best supported by an obligation on the BSC Panel to invite representatives of the STC Committee to become members of a Modification Group when the Panel believes a Modification Proposal may impact upon the STC. The

current proposal is merely enabling and it is arguably therefore not sufficiently strong to ensure that the impact on the STC is considered at the working group stage.

Section H: General

Paragraph 6 (Liability and Related Issues). See the comments made above. In general the TOs should be unequivocally held harmless for any of their actions on the instructions of the GBSO. In particular the TOs should also have the benefit of the same limitations of liability available to NGC as the transmission company.