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13 July 2004

Dear Colleague,

BETTA consultation on legal drafting for the GB CUSC

In April 2004, Ofgem/DTI published a conclusions document¹ following a series of consultations on the development of a Connection and Use of System Code (CUSC) to apply GB wide under BETTA ('the GB CUSC'), together with 'near final' draft legal text of the GB CUSC.

The April 2004 conclusions document noted that should further changes be required to the draft GB CUSC legal text in the period prior to the designation of the text by the Secretary of State (currently planned for September 2004), for example to reflect in the draft GB CUSC conclusions reached in other areas of BETTA, any changes would be consulted on as required. It also noted that such consultation would be likely to take the form of an 'open letter consultation' rather than a full consultation.

This is the first such open letter consultation, the purpose of which is to invite respondents who wish to do so to comment on a proposed change to the draft GB CUSC, which is reflected in the draft legal text contained in appendix 1 of this document. This change has arisen as a result of conclusions reached in relation to small generator issues under BETTA. The proposed change is discussed below, together with a description of the issue the change seeks to address and an explanation of Ofgem/DTI's conclusions.

Timetable

Any comments on the legal drafting contained in appendix 1 should be sent by 27 July 2004, to:

¹ "The Connection and Use of System Code (CUSC) under BETTA: Ofgem/DTI conclusions and publication of near final legal text of the GB CUSC", Volumes 1 and 2, April 2004, Ofgem 91/04a and 91/04b

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Alternatively, comments can be emailed to BETTA.consultationresponse@ofgem.gov.uk. If you wish to discuss any aspect of the legal drafting contained in appendix 1, please contact Lesley Nugent, email lesley.nugent@ofgem.gov.uk, telephone 0141 331 2012.

Proposed changes to section 6

In November 2003, Ofgem/DTI published a consultation document on small generator issues under BETTA² ('the small generators consultation'). The small generators consultation was designed to complement the BETTA consultation process in respect of individual industry codes and documents, by addressing particular issues affecting small generators across the range of these codes and documents.

One of the issues addressed in the small generators consultation is the CUSC obligation that all users connected to or using the transmission system should be a party to the Balancing and Settlement Code (BSC). If this obligation is retained in the GB CUSC, this would mean that all generators connected at 132kV in Scotland would be obliged to be parties to the GB BSC. The rules applying to transmission connected generators under the CUSC would prevent a licence exempt transmission connected generator from utilising one of the trading options available to embedded licence exempt generators, ie by contracting with a supplier and avoiding the requirement to become a BSC party. Ofgem/DTI set out their view that it was not immediately clear whether it is necessary for small, directly connected generators to be parties to the GB BSC and that an alternative approach would be to enable another party to take responsibility for the generator's output under the BSC.

In May 2004, Ofgem/DTI published its conclusions in relation to the small generator consultation³. This conclusions document noted that Ofgem/DTI are minded to amend the CUSC to apply under BETTA to remove the requirement for licence exempt transmission-connected generators to be party to the BSC, further noting for the avoidance of doubt that obligations to comply with the CUSC and Grid Code would not be affected.

An amendment to clause 6.29 of the CUSC is proposed in the legal drafting contained in Appendix 1, to reflect this conclusion.

Ofgem/DTI note that the NGC statement of the use of system charging methodology states that the lead party of BMUs comprising generation that have a Bilateral Connection Agreement with

² "Small generator issues under BETTA: An Ofgem/DTI consultation document", November 2003, Ofgem 145/03

³ "Small generator issues under BETTA: An Ofgem/DTI conclusions document", May 2004, Ofgem 96/04

NGC are liable for generation charges. As a result of the change outlined in this letter, it is possible that the lead party of a BMU for transmission connected exempt generation might not have a Bilateral Agreement with NGC in respect of that connection site. To ensure that NGC continues to be in a position under BETTA to charge directly connected exempt generators in accordance with relevant CUSC provisions it may be appropriate for NGC to propose an adjustment to the use of system charging methodology. NGC may also seek to put in place arrangements to ensure that they receive data that they require in order to calculate such charges.

Way forward

As noted above, any comments on the draft legal text contained in appendix 1 to this letter should be sent by Tuesday, 27 July 2004.

Appendix 1 – Proposed draft legal text for GB CUSC section 6

Ofgem/DTI propose that GB CUSC 6.29 is amended as follows⁴:

6.29 **BSC**

Each and every **User** connected to or using the ~~NGC~~**GB** Transmission System shall be a **BSC Party** except for:

6.29.1 ~~Non-Embedded Customers~~ being supplied by a **Trading Party**; ~~and~~

6.29.2 ~~A User acting in the category of Exempt Power Station directly connected to the GB Transmission System where another party is responsible under the BSC for the export from such Exempt Power Station.~~

New Definition

Exempt Power Station

A **Power Station** where the person generating electricity at that **Power Station** is exempt from the requirement to hold a **Generation Licence** under the **Act**;

⁴ This text is change-marked against the draft GB CUSC legal text, published in April 2004.