

**Transmission charging related conditions
and the requirement to offer terms –
arrangements under BETTA**

An Ofgem/DTI conclusions document

July 2004 186/04

Table of contents

1. Introduction.....	1
2. Timetable and next steps	4
3. Other Issues.....	5
4. Licence conditions relating to charging methodologies.....	8
SLC C4 (Charges for use of system)	8
SLC C5 (Use of system charging methodology)	8
SLC C6 (Connection charging methodology).....	14
5. Offering terms for connection to and use of the GB transmission system.....	19
SLC C8 (Requirement to offer terms).....	19
SLC D4A (Obligations in relation to offers for connection)	25
Disputes arising during the preparation of offers	29
SLC C7 (Prohibition on discriminating between users)	35
6. Determination of disputes between the GB system operator and the person seeking a connection.....	38

1. Introduction

- 1.1. On 18 March 2004, Ofgem/DTI published a mini-consultation on transmission charging related licence conditions and the requirement to offer terms¹ (“the March 2004 mini-consultation”). The March 2004 mini-consultation followed on from previous consultations by Ofgem/DTI on electricity transmission licence conditions under BETTA.
- 1.2. In December 2002, Ofgem/DTI published a four volume consultation on regulatory arrangements for electricity transmission licensees under BETTA². Volume two of this consultation³ set out initial proposed changes to the electricity transmission licences. This consultation was followed by subsequent consultations in June 2003⁴ and December 2003⁵ (“the December 2003 consultation on transmission licences”) with ‘near final’ text of transmission licences published in April 2004⁶. These documents are available to view on the Ofgem website (www.Ofgem.gov.uk) and on the DTI website (www.dti.gov.uk).
- 1.3. Each of these consultations set out the rationale behind consultations on electricity transmission licences under BETTA. In the interests of brevity this is not repeated here.
- 1.4. In August 2003, Ofgem/DTI consulted on the specific issue of transmission charging and a GB market⁷. Part 1 of that document proposed that the GB system operator should be the sole party responsible for charging users for connection to and use of the GB transmission system and that the licence

¹ “Transmission charging related licence conditions and the requirement to offer terms: arrangements under BETTA”, an Ofgem/DTI mini-consultation, March 2004, Ofgem #57/04.

² “Regulatory framework for transmission licensees under BETTA, Volumes 1-4”, Ofgem/DTI, December 2002.

³ “Regulatory framework for transmission licensees under BETTA. Volume 2: Electricity transmission licences under BETTA”, an Ofgem/DTI consultation, December 2002, Ofgem #88/02.

⁴ “Regulatory framework for transmission licensees under BETTA - second consultation on electricity transmission licences under BETTA”, an Ofgem/DTI consultation, June 2003, Ofgem #59/03.

⁵ “Regulatory framework for transmission licensees under BETTA - third consultation on electricity transmission licences under BETTA” an Ofgem/DTI consultation, December 2003, Ofgem #178a/03 & 178b/03.

⁶ “Publication of ‘near final’ electricity transmission licences under BETTA”, Ofgem/DTI April 2004, Ofgem #82/04.

⁷ “Transmission Charging and the GB Wholesale Market”, an Ofgem/DTI consultation, August 2003, Ofgem #86/03.

obligations placed on the GB system operator should be based on those currently placed on NGC in relation to England and Wales. Part 2 of the document was a separate consultation by DTI on the related question of whether transmission charges should be adjusted for renewable generators in remote areas who would otherwise be faced with high transmission charges.

- 1.5. Ofgem/DTI's conclusions on Part 1 of that document on arrangements to apply to the GB system operator in relation to charging were set out in Ofgem/DTI's paper on GB charging under BETTA⁸("the December charging paper").
- 1.6. The December 2003 consultation on transmission licences considered the legal drafting required to give effect to the policy conclusions set out in the December charging paper. Comments raised by respondents were considered in the March 2004 mini-consultation which included second draft legal text for licence obligations for the GB system operator.
- 1.7. A number of associated obligations on transmission owners were discussed at a high level in the December 2003 consultation on transmission licences. The March 2004 mini-consultation considered more detailed proposals and set out a first draft of legal text. The purpose of these licence conditions was to ensure that the transmission owners were required to take such steps as are necessary and consistent with their role in planning their respective transmission systems in order that the GB system operator will be able to meet its obligations to offer terms for connection to, and use of, the GB transmission system.

Purpose of this document

- 1.8. This document:
 - ◆ considers responses raised by respondents to the March 2004 mini-consultation and any new comments relating to these licence conditions raised by respondents to the April 2004 'near final' legal text

⁸ "Transmission charging and the GB Wholesale Electricity Market, Ofgem/DTI conclusions on Part 1: Changes to transmission licences to implement BETTA", Ofgem/DTI December 2003, Ofgem #159/03. Transmission related charging conditions and the requirement to offer terms – arrangements under BETTA Ofgem/DTI 2 July 2004

- ◆ concludes on legal text for licence conditions relating to transmission charging for the GB system operator under BETTA
- ◆ concludes on obligations and legal text for licence conditions for the GB system operator and the transmission owners relating to the preparation of offers for connection to the GB transmission system
- ◆ explains how Ofgem/DTI intend to reflect the involvement of the transmission owners in the preparation of offers by the GB system operator for use of the GB transmission system where contingent infrastructure may be required in relation to that offer, and
- ◆ concludes on how Authority determinations will operate in situations where the matter being disputed by the party seeking connection to or use of the GB transmission system from the GB system operator may impact upon one (or more) transmission owners.

2. Timetable and next steps

- 2.1. The Government currently intends to implement BETTA on 1 April 2005, Royal Assent having been received in July 2004.
- 2.2. Ofgem/DTI intend to publish final, complete legal text for the transmission licences, which will include both enduring and transitional provisions, in August 2004. This text will include the 'near final' legal text included in this conclusions paper. It is intended that this text will be introduced into the transmission licences at BETTA go-active (which it is currently anticipated will occur on or around 1 September 2004). The August 2004 publication will include the legal text attached to this document at Annex B. In the event that any further required amendments are identified for these licence conditions between now and designation, either as a result of developments relating to BETTA or as a result of modifications undertaken by the Gas and Electricity Markets Authority in exercise of its statutory powers under section 11 and 11A of the Electricity Act 1989, additional consultations will be undertaken in the form of open letters to be published on the Ofgem website. This is the same process as that set out for all other transmission licence conditions under BETTA in Ofgem/DTI's April 2004 document which set out 'near final' legal text of electricity transmission licences under BETTA.
- 2.3. If you wish to discuss any aspect of this document, please contact Lisa Vango, e-mail Lisa.Vango@ofgem.gov.uk telephone 020 7901 7178 or Maria Bazell at DTI, e-mail Maria.Bazell@dti.gsi.gov.uk telephone 020 7215 6159.

3. Other Issues

- 3.1. A number of respondents who commented on the March 2004 mini-consultation also included comments that were not directly related to that mini-consultation but related more generally to other aspects of the BETTA project. Ofgem/DTI's views in relation to most of these issues are provided below. Responses to the two remaining issues that were raised by respondents to the March 2004 mini-consultation (regarding the need to progress consideration of transitional arrangements for BETTA and access to the GB transmission system for existing transmission users) are, in Ofgem/DTI's view, addressed through other recent Ofgem/DTI publications and as such are not considered further here⁹¹⁰.
- 3.2. One respondent commented that although it understands that BETTA's objectives are wider than the implementation of Directive 2003/54/EC¹¹, it is of the view that it is important that relevant issues arising from the implementation of the Directive are addressed and incorporated into the BETTA process.
- 3.3. Ofgem/DTI consider that the appropriate forum for consideration of issues relating to the implementation of the Directive is the process that is being undertaken by the DTI to determine any required actions for implementation. Ofgem/DTI do not consider that the BETTA arrangements themselves will raise particular issues different from those that require consideration under the existing arrangements in England and Wales and Scotland and as such do not consider that further specific consideration for BETTA (beyond DTI's considerations in relation to existing arrangements) will be required.
- 3.4. It should be noted that the March 2004 mini-consultation stated that Ofgem/DTI did consider that the existing arrangements were in compliance

^{9137/04} – Legal arrangements for the transition to and implementation of the British Electricity Trading and Transmission Arrangements www.ofgem.gov.uk.

¹⁰ 174/04 – The initial allocation of GB transmission system access rights under BETTA: A consultation on draft legal text www.ofgem.gov.uk.

¹¹ Implementation of Directive 2003/54/EC of the European Parliament and of the Council concerning Common Rules for the Internal Market in Electricity and repealing Directive 96/92/EC and of Article 7 of Regulation No.1228/2003 of the European Parliament and of the Council on Conditions for Access to the Network for Cross-Border Exchanges in Electricity.

with Article 23(4) of Directive 2003/54/EC and, therefore, that no further amendments would be required under BETTA in respect of this particular Article. This statement should instead have noted that consideration of issues relating to compliance were still under consideration.

- 3.5. One respondent commented that, given the number of comments from respondents to the August 2003 consultation¹², governance issues and modification processes relating to charges should be separately reviewed by Ofgem as Ofgem/DTI consider that such issues are deemed to be outside the scope of BETTA.
- 3.6. Ofgem/DTI note the views of the respondent in this regard but reiterate that decisions as to the requirement for any such review are a matter for Ofgem and are outside the scope of the Ofgem/DTI BETTA Project.
- 3.7. One respondent commented that the March 2004 mini-consultation did little to alleviate concerns that Scottish users will be placed at an inherent disadvantage by the overall process for offering terms for connection to and use of the GB transmission system. From a practical, contractual and legal perspective this respondent's view is that this process is likely to be more complex and prone to delay and disputes wherever it requires the involvement and co-operation of multiple transmission licensees than in cases involving the GB system operator only. This respondent's view is that it is therefore more important to establish robust provisions which specify these interactions and the associated rights and obligations and it is disappointed to note that Ofgem/DTI remain so far from a conclusion in this area.
- 3.8. Ofgem/DTI recognise that applications for connection to the GB transmission system in relation to sites in Scotland may require assessments to be undertaken by more than one transmission licensee and that the likelihood of multiple assessments being required is greater if the connection site is in Scotland rather than in England and Wales. It is, however, possible that connections in England and Wales will require an assessment of the impact on one or more Scottish transmission systems; for example it is likely that the

¹² "Transmission Charging and the GB Wholesale Market", an Ofgem/DTI consultation, August 2003, Ofgem #86/03.

impact on SP Transmission Limited's transmission system will need to be modelled if generation proposes to connect in northern England. The number of systems on which modelling needs to be undertaken is more a function of prevailing power flows in GB, (these are currently predominately north-south) rather than whether generators connect to a particular transmission system. Were predominant flows to be south-north, then it is likely that more interactions would arise when generators proposed to connect in England and Wales rather than in Scotland. Hence, which connection applications require assessments by more than one transmission licensee is more a function of the underlying disposition of generation and demand rather than one of geography. Insofar as setting out the interactions and associated rights and obligations in this area is concerned, Ofgem/DTI draw attention to draft STC text¹³ ("the July 2004 STC update ") and paragraphs 2, 3 and 4 of part 2, Section D of the draft STC text. This sets down clear deadlines between licensees in relation to various elements of the new connection process.

- 3.9. In one respondent's view it would have been more useful to have associated draft STC text published at the same time as the March 2004 mini-consultation. As such, in its opinion, respondents have not been given enough information about how Scottish connections will be handled by the GB system operator and transmission owners in order to provide detailed comment.
- 3.10. Ofgem/DTI recognise that the draft STC text for processing connection applications was not published prior to the closing date of the March 2004 mini-consultation. However, the draft STC text relating to connections was included in the STC consultation published on 30 April 2004¹⁴, which closed on 14 June 2004. Following publication of that consultation, parties were able to view the associated STC text alongside the proposed licence drafting and comment accordingly in responding to the STC consultation.

¹³ "The SO-TO Code under BETTA: draft text in progress and CUSC provisions relating to disputes and limitation of liability – an Ofgem/DTI mini consultation document' Ofgem/DTI #148/04.

¹⁴ The SO-TO Code under BETTA' Ofgem/DTI #90/04.

4. Licence conditions relating to charging methodologies

- 4.1. This chapter considers licence conditions relating to the preparation of methodologies and statements for connection and use of system charges. It summarises responses received to the March 2004 mini-consultation and sets out Ofgem/DTI's conclusions on draft legal text for these licence conditions. Ofgem/DTI's policy conclusions on arrangements to apply to the GB system operator in relation to charging were set out in Ofgem/DTI's December paper on GB charging under BETTA¹⁵.

SLC C4 (Charges for use of system)

March 2004 mini-consultation

- 4.2. The March 2004 mini-consultation set out that it will be the responsibility of the GB system operator to charge users for use of system and that it is therefore appropriate that the GB system operator is responsible for the preparation of a statement, in a form approved by the Authority, that sets out charges for use of the GB transmission system.
- 4.3. Ofgem/DTI took the view in the March 2004 mini-consultation that it is not appropriate for transmission owners to be placed under an obligation to support the GB system operator in meeting its obligations under this SLC. In Ofgem/DTI's view, information exchange provisions under the STC will be sufficient.

SLC C5 (Use of system charging methodology)

March 2004 mini-consultation

- 4.4. In the March 2004 mini-consultation Ofgem/DTI restated their conclusion that the GB system operator should be subject to a licence obligation based upon

¹⁵ "Transmission charging and the GB Wholesale Electricity Market, Ofgem/DTI conclusions on Part 1: Changes to transmission licences to implement BETTA", Ofgem/DTI December 2003, Ofgem #159/03. Transmission related charging conditions and the requirement to offer terms – arrangements under BETTA Ofgem/DTI 8 July 2004

existing SLC C7A (Use of System Charging Methodology) in relation to its use of system charging methodology.

- 4.5. Ofgem/DTI also set out their intention to clarify the wording of the condition to exclude from the meaning of 'cost reflective' certain financial transfers between the GB system operator and transmission owners, to remove the risk of double-counting. The 'costs' associated with transmission assets in Scotland could, in the absence of such clarification, reflect both the GB system operator's cost in terms of revenue paid to the transmission owner and the cost of the asset to the transmission owner itself. Such double-counting would be inappropriate. In the March 2004 mini-consultation, Ofgem/DTI set out that the precise drafting to deliver this approach would be considered as work on development of revenue restrictions to apply under BETTA progressed.
- 4.6. Also set out in the March 2004 mini-consultation was Ofgem/DTI's view that any information exchange required between the transmission owners and the GB system operator to allow the GB system operator to comply with this SLC would be achieved through provisions contained in the STC rather than in a licence condition. The need for an additional SLC on transmission owners to provide relevant information to the GB system operator was not considered necessary. In addition, Ofgem/DTI set out their view that this approach would not preclude the transmission owners from commenting on the GB system operator's proposals through existing consultation processes.

Respondents' views

- 4.7. As a number of respondents' views on SLC C4 and SLC C5 related to both conditions, comments on these SLCs are considered together below. Discussion of these views and Ofgem/DTI's response and conclusions are also set out in a single section.
- 4.8. One respondent commented that it agreed that the GB system operator should be responsible for setting use of system charges. However, this respondent added that recent consultations have demonstrated that strict adherence to a model developed for one system (England and Wales) may not be entirely suitable for GB wide application.

- 4.9. A second respondent noted that proposed SLC C4 allows for the initial GB charging methodologies proposed by NGC to be subject to further consultation and conditional approval by the Authority which this respondent supports, noting that it is consistent with the introduction of England and Wales charging methodologies under NGC's existing licence. However, this respondent remains concerned that issues arising from the implementation of Directive 2003/54/EC should be addressed and incorporated into the BETTA process¹⁶.
- 4.10. One respondent commented that the extension of a charging model that purports to be cost reflective in an England and Wales context can be in direct conflict with other relevant objectives, eg facilitating competition in generation and supply, and that a number of subjective input assumptions in the model could have a significant effect on the final tariffs produced. In addition, this respondent went on to add that there was a risk that punitive charges emanating from the "cost reflective" model could threaten security of supply and be in conflict with government targets for renewable generation. Consequently, "the relevant objectives" contained in this SLC should be extended to include stability, consistency with government policy and proportionality (especially if the final tariffs are to comply with EU legislation). A second respondent added its view that an extra relevant objective may need to be added in order to implement any direction from Ofgem/DTI to reduce or cap the charges applicable to renewable generation.
- 4.11. One of the respondents to the March 2004 mini-consultation also commented that it is important that obligations under SLC C5 are correctly framed to ensure that the charges are reasonable and proportionate.
- 4.12. One respondent commented that the costs to be included should only be those of the licensee and that the price control will need to be drafted in such a way as to recognise that cost claims made by the other transmission licensees will be allowed costs for the purposes of charge setting. The respondent further commented that this will also need to be covered in the Scottish transmission owner price controls.

¹⁶ The approach to be adopted in respect of ensuring the compliance of industry arrangements with Directive 2003/54/EC is discussed above in chapter 3.

- 4.13. A different respondent commented that in its view, not all payments made by the GB system operator to transmission owners should be disregarded when determining GB system operator costs, eg payments made by the GB system operator to transmission owners with respect to the cost of alteration of outages would represent a genuine cost to the GB system operator so should be recoverable through the Balancing Services Use of System (BSUoS) charging methodology. In its view, only monies recovered by the GB system operator on behalf of transmission owners and then passed on to the transmission owners according to their revenue restrictions should be excluded as a GB system operator cost. In addition, this same respondent went on to add that it is essential that the revenue restriction placed on the GB system operator reflects the transmission owner revenue restriction, ie that the amount of revenue recoverable by the GB system operator on behalf of the transmission owner matches the revenue which the GB system operator is required to pay out to the transmission owners.
- 4.14. A further respondent commented that a number of issues (eg double counting) have been deferred by Ofgem/DTI pending progress in other areas such as the development of revenue restrictions to apply to each transmission licensee and it urged Ofgem/DTI to progress these issues as soon as possible so that future consultations can be based on a more complete picture.
- 4.15. Finally, one respondent commented that it had no further comments on the drafting included in the March 2004 mini-consultation with regard to SLC C4.

Discussion

- 4.16. As explained in the March 2004 mini-consultation, Ofgem/DTI have concluded that the GB system operator should be subject to licence conditions based upon existing SLC C7 (Charges for Use of System) and SLC C7A (Use of System Charging Methodology) in NGC's current licence. It is Ofgem/DTI's view that the relevant objectives set out in SLC C7A, being generic in nature, are as applicable to consideration of charging across GB as they are to the consideration of charging in England and Wales.
- 4.17. In response to arguments in favour of amending or augmenting the relevant objectives currently applicable to NGC in the transition to GB charging, it is

Ofgem/DTI's view that any such amendments or augmentation would not be necessary or expedient in order to meet the objectives of BETTA, which is to implement a single set of GB transmission and trading arrangements, and as such would fall outside the scope of the legislative powers for the implementation of BETTA.

- 4.18. Ofgem/DTI recognise that there are important issues to be considered before NGC comes forward with its final proposals for approval, and believe that the current process of consultation led by NGC is the appropriate forum for these issues to be raised and considered. At the end of this process, Ofgem will consider the proposals that are put forward for approval in the light of the relevant objectives and its wider statutory duties. Please see comments at 3.3 above for further details on the approach to be taken by DTI to the implementation of Directive 2003/54/EC.
- 4.19. A number of respondents commented on these SLCs in relation to what should and should not be contained within the relevant price controls. One respondent's comment that "the price control will need to recognise that cost claims made by other transmission owners will be allowed costs for the purposes of charge setting and that this will also need to be covered in Scottish transmission owner price controls" and the respondents comment that "not all payments made by the GB system operator to transmission owners should be disregarded when determining GB system operator costs" have been noted by Ofgem/DTI. However, Ofgem/DTI take the view that it is important to separate the issues of setting charges for use of system and of determining revenues for certain activities to be carried out by NGC and transmission owners.
- 4.20. For the purposes of setting user charges, Ofgem/DTI believe that in extending NGC's existing licence obligations in relation to the Use of System Charging Methodology (new SLC C5 under BETTA) it is necessary to make it clear that charges should reflect the actual cost to the transmission sector as a whole, excluding payments made between the transmission licensees. Given that, under BETTA, it is proposed that NGC will be responsible for payment of the transmission owners' revenues, and that essentially it is intended that the transmission owners' revenue restrictions will take the form of a revenue cap (albeit potentially with some "incentive adjustments") from NGC's perspective, the cost of procurement of, for example, an additional transformer in Scotland

could be argued to be zero. If the transmission owner needs to procure a transformer to meet its planning standard obligations, to the extent that this is implicitly funded through the allowable revenues in that transmission owner's revenue restriction, then the incremental cost to NGC would be zero (albeit it could be argued that the costs were implicit in the transmission owner's allowable revenues). In order to avoid this potential misunderstanding in the interpretation of what constitutes costs for the purposes of SLC C5, Ofgem/DTI have proposed to exclude such inter-transmission licensee payments, and instead look to the new costs to the transmission sector as a whole. It is further noted that, in principle, it would be possible for one licensee to carry out some of the activities of another on a competitive basis. For example, SP Transmission Limited could sub-contract (outside the STC) to maintain NGC's transmission system as an excluded service. In this case, these payments would represent an "on the ground" cost to NGC, and should be reflected in the charging methodology (if and where appropriate). Hence, it is possible that not all of the payments between the licensees should be excluded from the cost reflective definition in SLC C5 and the draft in the March 2004 mini-consultation limits the exclusion to the provision of services remunerated under the transmission owner price controls. In the March 2004 mini consultation Ofgem/DTI proposed that the exact definition of those costs which should be excluded would be developed once the detailed form of the revenue restriction conditions on transmission owners have been finalised, but explained that essentially what would be excluded would be payments for services provided under the STC. On further consideration, Ofgem/DTI consider that the appropriate reference to include in the licence obligation is to exclude payments made under the STC. Changes have been made to this effect.

- 4.21. The above issue on costs is separate from the issue of what should be the allowable revenues for NGC and transmission owners. Whilst it is anticipated that there will be a strong cost-reflective element to much of the transmission owners' revenues, this does not need to be relied upon for the purposes of determining a charging methodology.
- 4.22. Ofgem/DTI have made further changes to SLC C4 to reflect that the timing of the obligation for the GB system operator to have in place GB methodologies and statements will be 'as soon as practicable' after the date the condition comes

into effect rather than immediately upon introduction of the licence condition (which is currently planned for 1 September 2004).

4.23. In addition, an incorrect reference to “changes” in paragraph 6(b) of SLC C4 has been replaced with “charges”.

4.24. Changes have also been made to some of the definitions which accompany these licence conditions, to:

- ◆ reflect amendments to the title of SLC C8
- ◆ to correct a typographical error in the definition of ‘associated TO agreement’
- ◆ to amend the definition of ‘associated TO offer’ to: clarify that an ‘associated TO offer’ can be associated to an ‘SO offer’ and/or another ‘TO offer’; to correct a typographical error in the title of SLC C8; and in response to a comment made by one respondent to make an ‘associated TO offer’ a generic term which will then be linked to particular ‘SO offers’ or ‘TO offers’ in each instance where it is used.

4.25. ‘Near final’ legal text for these SLCs is contained in Annex B. Amendments to the text that was published in March 2004 are highlighted.

SLC C6 (Connection charging methodology)

March 2004 mini-consultation

4.26. In the March 2004 mini-consultation, Ofgem/DTI set out their view that it is appropriate for the GB system operator to be subject to proposed licence condition SLC C6 based on SLC 7B (Connection Charging Methodology) under BETTA.

4.27. In the same way that Ofgem/DTI took the view that there was no requirement for specific provision for the transmission owners to be involved in consultation arrangements during the preparation of the use of system charging methodology, the same view was taken with regard to SLC C6. In addition, Ofgem/DTI also took the view that it was not necessary to place licence obligations on transmission owners with regard to the exchange of information

required for the preparation of the connection charging methodology. Any requirement to exchange information to allow this to be produced would be addressed in the STC.

- 4.28. In addition, Ofgem/DTI took the view that “the applicable objectives” that the GB system operator’s connection charging methodology must meet will need to be amended to prevent the counting of certain monetary transfers between the transmission licensees in the same manner, and for the same reasons, as SLC C5. As this SLC refers to “the relevant objectives” contained in SLC C5, Ofgem/DTI stated their view that any amendments relating to SLC C5 would equally apply to this SLC.
- 4.29. The drafting proposed in the March 2004 mini-consultation also sought to ensure that discretion regarding the identification of works on the GB transmission system in response to an application for connection or modification of an existing connection received by the GB system operator will rest with the transmission licensee on whose transmission system those works will be required.
- 4.30. Finally, Ofgem/DTI noted that it will be necessary to consider the drafting of paragraph 8 of SLC C6 in relation to connections made before 1990.

Respondents’ views

- 4.31. One respondent commented that it agreed with the proposed modification which clarifies which transmission licensee has discretion regarding the identification of required works to the GB transmission system to accommodate new connections. This respondent also agreed that it is not necessary to impose licence conditions on transmission owners to provide information to the GB system operator for connection charging purposes as this will be covered in the STC.
- 4.32. A second respondent commented that, like proposed SLC C4, this proposed SLC allows for the initial GB methodologies proposed by NGC to be subject to further consultation and conditional approval by the Authority. However, this respondent remained concerned that issues arising from the implementation of Directive 2003/54/EC should be addressed and incorporated into the BETTA process.

- 4.33. One respondent added that it had no further comments on the drafting included in the March 2004 mini-consultation for this proposed SLC.

Discussion

- 4.34. As explained in the March 2004 mini-consultation, Ofgem/DTI have concluded that it is appropriate for the GB system operator to be subject to a licence condition based on SLC C7B under BETTA.

Formatted: Indent: Left: 0.25 cm, Hanging: 1 cm, Tabs: 1.25 cm, List tab + Not at 1.52 cm

- 4.35. Ofgem/DTI note the comment made by one respondent that this proposed SLC **allows for the initial GB methodologies proposed by NGC to be subject to further consultation and conditional approval by the Authority but that this respondent remained concerned that issues arising from the implementation of Directive 2003/54/EC should be addressed and incorporated into the BETTA process. Ofgem/DTI note that this comment is similar to those raised by this respondent regarding proposed SLC C4. The approach that is to be taken in relation to changes that may be required to bring existing arrangements in line with Directive 2003/54/EC is discussed above at paragraphs 3.3 and 4.19.**

- 4.36. In the March 2004 mini-consultation, Ofgem/DTI noted that the references in paragraph 8 of existing SLC C7B which distinguish connections in England and Wales before 1990 and those made after 1990 (pre vesting and post vesting connections respectively) would need to be considered further to determine what changes were required for BETTA. Ofgem/DTI have considered these provisions and have concluded that, to the extent that a distinction is drawn in this licence condition today in England and Wales with regard to connection charges for pre vesting and post vesting connections then it is appropriate to continue to draw that distinction in England and Wales under BETTA. In order to provide for this, draft SLC C6 (Connection charging methodology) (which will apply to the GB system operator) have been amended to make it clear that arrangements relating to pre-vesting connections only relate to such connections within England and Wales.

- 4.37. Ofgem/DTI have made further changes to SLC C6 to reflect that the timing of the obligation for the GB system operator to have in place GB methodologies and statements will be 'as soon as practicable' after the date the condition comes

into effect rather than immediately upon introduction of the licence condition (which is currently planned for 1 September 2004).

- 4.38. Changes have also been made to correct cross references in paragraphs 10(b) and 14 and to reinstate the existing references to NGC's revenue restriction licence conditions.

Possible licence obligations applying to the transmission owners under BETTA

March 2004 mini-consultation

- 4.39. In the March 2004 mini-consultation, Ofgem/DTI took the view that it is appropriate that the transmission owners should be subject to licence conditions which set out specific items for which transmission owners will be able to make an additional charge to the GB system operator.
- 4.40. Ofgem/DTI explained in the March 2004 mini-consultation that the appropriate location and detail of such provisions will need to be considered further in light of proposals for the form of regulation and incentives to apply to transmission owners under BETTA.

Respondents' views

- 4.41. One respondent considered that it might be necessary to specify in the transmission owner licence condition any items for which the transmission owner may make an additional charge on the GB system operator as an excluded service.

Discussion

- 4.42. Ofgem/DTI note the comment made by one respondent that it may be necessary to specify in the transmission owner licence conditions any items for which the transmission owner may make an additional charge on the GB system operator as an excluded service. As set out in the March 2004 mini-consultation the appropriate location and detail of such provisions will need to be considered further in light of proposals for the form of regulation and incentives to apply to transmission owners under BETTA. In particular,

provisions may need to set out how the transmission owners make charges in relation to connections. Ofgem/DTI are currently taking forward work in this area in conjunction with work to develop price controls to apply to the transmission licensees under BETTA. It is not intended that licence conditions in this area will be put in place for 1 September 2004. Such provisions, if required, will be consulted upon in due course.

5. Offering terms for connection to and use of the GB transmission system

- 5.1. This chapter considers licence conditions relating to the offering of terms for connection to, and use of, the GB transmission system. It summarises responses received to the March 2004 mini-consultation and sets out Ofgem/DTI's conclusions in relation to these licence conditions.
- 5.2. This chapter also considers responses to comments on SLC C7 (Prohibition on discriminating between users). The drafting for this proposed SLC was not included in the March 2004 mini-consultation but was contained in the December 2003 consultation on transmission licences and the April 2004 publication of 'near final' text of the electricity transmission licences.

SLC C8 (Requirement to offer terms)

March 2004 mini-consultation

- 5.3. In the March 2004 mini-consultation, Ofgem/DTI explained that it had been concluded that the GB system operator, as the party that will offer connection to and use of the GB transmission system, should be subject to a licence obligation based upon existing SLC C7D (Requirement to offer terms). Ofgem/DTI sought further views on the draft licence obligation that would apply to the GB system operator.
- 5.4. Ofgem/DTI proposed that amendments be made to this SLC so that the GB system operator is obliged to reflect in its offer to the user (the 'SO offer') any offers received by the GB system operator from a transmission owner ('TO offer' or 'TO offers') that have been made in relation to a particular connection (or modification) request. It was intended that these amendments would ensure that the transmission owner and the person requesting the connection (or modification) could be confident that the terms offered by the GB system operator reflect those proposed by the relevant transmission owner.
- 5.5. It was Ofgem/DTI's intention that the drafting proposed in the March 2004 mini-consultation would also clarify that the discretion, as to what work is

required to the GB transmission system to support an offer for a connection (or modification of a connection) will rest with the transmission licensee on whose transmission system those works will be required.

- 5.6. Drafting of the SLC published in the March 2004 mini-consultation also sought to clarify that should a transmission owner not intend to provide a 'TO offer' as a result of being relieved of its obligations on one of the grounds set out in SLC D4A paragraph 3¹⁷, the transmission owner will be obliged to inform the GB system operator of this. Furthermore, the draft licence condition included within the March 2004 mini consultation provided that, where the GB system operator is notified by a transmission owner that it does not intend to make a 'TO offer' in these circumstances, the GB system operator will be relieved of its obligations to make an offer to the person seeking a connection (or modification).
- 5.7. However, Ofgem/DTI also made it clear that, where the GB system operator is proposing to make alternative offers to the person seeking a connection (or modification) and where paragraph 6 of SLC C8 or, in relation to a transmission owner, paragraph 3 of SLC D4A, does not apply to all of those alternatives, the GB system operator and/or the transmission owner will not be relieved of their respective obligations to make a 'SO offer' or a 'TO offer,' as appropriate.

Respondents' views

- 5.8. A number of respondents commented on these proposals.
- 5.9. One respondent commented that it agreed that the process for responding to connection applications should be contained in the STC and that the basis of the GB system operator offer should be the transmission owner offer. However, this respondent was concerned about the timescales involved in this process as typically several months of informal discussions with a potential customer can take place before agreeing the details on which to base connection studies and entering into the formal 3 month connection process. Concerns regarding the 3 month timescale to offer terms were also raised by a

¹⁷ Please note this reference is now paragraph 4 in the revised draft licence condition attached to this paper.
Transmission related charging conditions and the requirement to offer terms – arrangements under BETTA
Ofgem/DTI 20 July 2004

second respondent. In its view, given the additional interfaces between the GB system operator and transmission owners, this period will not be sufficient.

- 5.10. The second respondent also commented that, in its view, the drafting at paragraph 2 of this SLC (“connection or modification to an existing connection”) is too narrow and should also include a reference to use of system.
- 5.11. This respondent also made general drafting comments including a proposal that as only the GB system operator can recoup the costs involved in paragraph 4(b) (“the ability or likely future ability of any transmission licensee to recoup a proportion of such costs from third parties”), the reference in the SLC should be to “the licensee” rather than “any transmission licensee”. This respondent also highlighted incorrect cross references within this SLC.
- 5.12. A third respondent supported the proposed approach for transmission charging related conditions and the requirement to offer terms.
- 5.13. One respondent disagreed with Ofgem/DTI’s decision to make transmission owners responsible for the design and delivery of connections to its transmission assets. One respondent commented that the licence conditions proposed result in a key element of BETTA being undermined. In its view Ofgem/DTI have previously stated that the GB system operator would be the single contractual interface for users for both use of system and connections, to provide independent access to the transmission system and that access to the transmission system should not be provided by a company that has associated generation interests. This respondent agrees with these principles but in its view these have been effectively undermined by the licence conditions in the March 2004 mini-consultation. The arrangements proposed require the GB system operator to be the contractual link with users but leave the responsibility for calculating the work required, including any necessary reinforcement, to the transmission owner to whose network the user wishes to connect. The arrangements proposed will, in its view, only result in an extension of the present arrangements, but with increased complexity due to an additional contractual layer between the GB system operator and the transmission owner.

5.14. This respondent also commented that transmission owners should not be responsible for planning their systems or costing new connections and should simply lease their assets to the GB system operator. However, the respondent understands that Ofgem/DTI are of the view that this is not appropriate. This respondent considered that the terms of the offers by transmission owners should not be passed through to users and instead a clause should be added whereby the GB system operator can dispute the terms of a 'TO offer' on economic grounds or on the basis that they would lead to discrimination against a particular user or class of user. The GB system operator could then be required to provide offers for connection on a non-discriminatory basis in its licence.

Discussion

- 5.15. Ofgem/DTI have concluded that it is appropriate that the GB system operator will be subject to a licence obligation based upon existing SLC C7D (Requirement to Offer Terms).
- 5.16. In relation to the concerns raised by two respondents that the three month timescale contained in proposed SLC C8 to process connection applications may not be sufficient under BETTA, in the April 2004 consultation on STC text, Ofgem/DTI requested views upon proposals from Development Group¹⁸ (DG) 4 to extend the timescale to provide an offer for connection to a user from 3 months to 4 months. Responses to this consultation were due on 14 June 2004. If the outcome of this consultation requires changes to licence conditions, specific proposals for consultation will be brought forward.
- 5.17. In any event, however, the GB system operator under SLC C8 and a transmission owner, under the STC, will have the right to request that the Authority grants an extension allowing them additional time to provide an offer of terms in the same way as provided for in the existing transmission licences. In addition, as is the case today, transmission licensees will not be precluded from informally discussing with users potential applications for connection to

¹⁸ Development Groups (DGs) are developing the detail of the arrangements to apply between transmission licensees under BETTA. Each DG is responsible for delivery of a set of agreed and documented operating process relating to specific areas of interaction that will form the basis of STC procedures. DG's are made up of representatives of transmission licensees and Ofgem/DTI.

the GB transmission system in advance of a formal application for connection and/or use of system being made.

- 5.18. Ofgem/DTI do not agree with the view of one respondent that the reference in paragraph 4(b) should be to “the licensee” rather than “any transmission licensee”. This is because such recovery can include revenue from other sources such as the leasing of assets for use by telecoms companies. However, the incorrect cross references within this proposed SLC highlighted by this respondent have now been amended.
- 5.19. Ofgem/DTI note the comments made by one respondent that it disagreed with Ofgem/DTI’s decision to make transmission owners responsible for the design and delivery of connections to its transmission assets. Ofgem/DTI recognise that there are concerns over leaving responsibility, particularly for design of new connections, with transmission owners who have affiliated generation and supply businesses. However, the transmission owner role in the design and delivery of connections is consistent with their role in planning and developing their transmission system under BETTA. The transmission owners will not, however, be the contractual counterparty for connection/use of system under BETTA, instead this will be provided by NGC.
- 5.20. Ofgem/DTI also note that the GB system operator is prevented from discriminating between any persons or class or classes of persons in the carrying out of works for the purpose of connection to the GB transmission system or the retention of a connection to the GB transmission system by proposed SLC C7 (Prohibition on discriminating between users). Transmission owners will not be allowed to unduly discriminate as between any persons or any class or classes of person or unduly prefer itself or any affiliate or related undertaking over any other person or persons or any class or classes of person or persons in meeting its obligations under SLC D4A as a result of SLC D5 (Prohibition on engaging in preferential or discriminatory behaviour). It is envisaged that transmission licensees will only be permitted to charge NGC, in respect of connections, for justifiable cost and a reasonable rate of return and applicants for connection and use of system will continue to benefit from a right to request a determination of offered terms by the Authority.

- 5.21. Ofgem/DTI also note the comments made by one respondent that the drafting of paragraph 2 of this proposed SLC is too narrow and should include a reference to use of system. Ofgem/DTI have given further thought to the involvement of transmission owners in certain elements of offers for use of the GB transmission system made by the GB system operator, where contingent infrastructure requirements are identified in relation to that offer, and how such involvement should be reflected in the transmission licence.
- 5.22. Ofgem/DTI propose that, under the STC, transmission owners will be required to enter into agreements with the GB system operator relating to the identification and delivery of additional required infrastructure to accommodate use of system that will enable the GB system operator to provide users with offers for use of system.
- 5.23. While the detailed arrangements for transmission owners in this area are to be set down in the STC, Ofgem/DTI are of the view that the requirement for transmission owners to enter into agreements (in accordance with the STC) with the GB system operator relating to offers for use of the GB transmission system should be set out, at a high level, in the transmission licence. The GB system operator will then be subject to an obligation to reflect the terms of these 'TO offers' in its offer to the applicant (the definition in the licence of 'TO offer' has been amended to cover offers relating to use of system as well as to connection or modification of a connection). Arrangements relating to the determination of offers for use of system (including any 'TO offer' made in connection with an offer for use of system) will also be set out in the licence.
- 5.24. Amendments have been made to this condition to reflect this approach, including changes to update cross references to SLC D4A following the introduction of new provisions relating to offers for use of system by the GB system operator.
- 5.25. Further changes have been made to this licence condition to refer to offers for modification of an existing connection in paragraph 2 as well as referring to offers for connection, to correct a typographical error in paragraph 5 and to correct cross references in paragraphs 5 and 7 following the introduction of new paragraph 2 of this condition under BETTA.

- 5.26. Annex B contains drafting for the 'near final' text of proposed SLC C8. Amendments that have been made to the version published in March 2004 are highlighted.

SLC D4A (Obligations in relation to offers for connection)

March 2004 mini-consultation

- 5.27. In the March 2004 mini-consultation, Ofgem/DTI set out their view that it is appropriate to place a specific licence obligation on a transmission owner in respect of its role in the preparation of offers to the GB system operator for the undertaking of works on its transmission system necessary such that the GB system operator can provide a connection (or modification of a connection) to the GB transmission system.
- 5.28. Ofgem/DTI set out a number of criteria that this licence condition should meet. These included that it should:
- ◆ recognise that the GB system operator will be under an obligation to notify transmission owners of receipt of an application for connection to the GB transmission system (or modification of an existing connection) in accordance with the STC (the STC provides that such notification takes place where that transmission owner may be affected by the request for a connection (or modification of an existing connection))
 - ◆ oblige the transmission owner to submit a 'TO offer' to the GB system operator in relation to such applications
 - ◆ provide that the transmission owner will be required to submit a 'TO offer' in accordance with the timescales that are to be set down in the STC (such timescales in the STC apply once they have received all information that they may reasonably require and are entitled to receive in connection with such application under the STC)
 - ◆ require that a 'TO offer' should make detailed provision regarding for example works (if any) required on the relevant transmission owner's

transmission system to connect the GB transmission system to any other distribution or transmission system and the inclusion of any further terms that are considered appropriate

- ◆ require that the transmission owner shall be obliged to co-operate and co-ordinate its activities in relation to the preparation of a 'TO offer' with other transmission licensees in accordance with the STC (in the same way in which the GB system operator will be obliged to co-operate and co-ordinate its activities with other transmission licensees in relation to connections (or modifications))
- ◆ provide that the transmission owner shall not be obliged to make a 'TO offer' or to enter into a 'TO offer' in certain prescribed circumstances, for example where to do so would be likely to involve the licensee in a breach of its duties under section 9 of the Electricity Act 1989 or its licence conditions, and
- ◆ in instances where the transmission owner is not obliged to make a 'TO offer' and does not intend to make a 'TO offer' the transmission owner will be obliged to notify the GB system operator to that effect.

Respondents' views

5.29. Three respondents commented on this proposed SLC.

5.30. One respondent commented that, given that the GB system operator will be making the connection offer, it is appropriate for there to be a licence condition on transmission owners specifying the information to be provided in relation to offers for connection. This respondent also agreed that the detail of the information and the exchange of information should be set down in the STC, as this can more easily be amended to reflect technological changes. However, in its view the exceptions in clause 3 of the proposed SLC do not cover the range of situations where a transmission owner would not be obliged to make an offer. In particular, a customer might apply to the GB system operator for a connection, but on further investigation it may be that the connection can more easily and cheaply be made to the local distribution network. Consequently, this respondent suggested that "(ii) if the person

making the application agrees to withdraw the application to the system operator” be added to the drafting.

- 5.31. A second respondent commented that current SLC D8B provides for the installation of appropriate meters, but that there is no analogous provision in SLC D4A. In this respondent’s view metering is important to transmission owners, eg in relation to monitoring the operation of the transmission system within agreed limits, and this respondent questions why this provision is omitted and in doing so leaves no party with an obligation to install meters.
- 5.32. This respondent also went on to comment that the current assumption at DG3 and DG4 is that the transmission owners will not necessarily provide information as to the final “costs” of the works to the GB system operator but instead may stipulate charges. Those charges will not necessarily be a specification of costs. The way in which the charge is formulated will depend on a number of matters including user requirements. If a user wants to pay for a connection on a fixed price basis a transmission owner offer of terms will reflect this and the charge will not be made on the basis of reconciliation to actual project costs. Accordingly there is considerable flexibility in respect of charging. Consequently, in this respondent’s view, the drafting of paragraph 1(d) should be adjusted to provide for the agreed flexibility by referring to “charges”, rather than costs.
- 5.33. A third respondent commented that, for consistency with SLC C8, paragraph 7 of this SLC should set out the timescales for a transmission owner offer. This respondent also highlighted cross referencing errors in the proposed SLC.

Discussion

- 5.34. Ofgem/DTI note the comments made by one respondent that the situations in which a transmission owner is not obliged to make a ‘TO offer’ should include situations where a user withdraws its application. Ofgem/DTI are of the view that this situation exists under the licence today (whereby a transmission licensee is not explicitly relieved of its obligation under the relevant licence condition to make an offer if an applicant withdraws its application) and therefore it is not appropriate or necessary to include such a provision in transmission owner licence conditions. However, Ofgem/DTI also consider

that it would improve the efficiency of the proposed arrangements if the GB system operator was obliged to notify the relevant transmission owners if a connection application was withdrawn and considers that this will be part of the STC process.

- 5.35. This same respondent added that there needs to be a provision added to SLC D4A that is analogous to that contained in SLC D8B (and proposed SLC C8, para 3(c)) with regard to metering. Ofgem/DTI have considered this comment further and are of the view that it is appropriate to include such a provision in SLC D4A to the effect that a description of any metering that is required be included in a 'TO offer'. However, Ofgem/DTI also note that transmission system monitoring equipment does not necessarily comprise of metering provided as part of a customer's connection.
- 5.36. One respondent commented that the current assumption at DG3 and DG4 is that the transmission owners will not necessarily provide information as to the final "costs" of the works to the GB system operator but instead may stipulate charges and that as a result, the drafting of paragraph 1(d) of this proposed SLC should be adjusted to provide for the agreed flexibility by referring to "charges", rather than costs. The broad purpose of these licence conditions is to enable the GB system operator to meet its obligations in respect of users. This includes an obligation to ensure that charges to users are reflective of costs. To do this, the GB system operator needs cost information from the transmission owners (irrespective of whether or not the charges levied by transmission owners to the GB system operator are equivalent to the costs incurred). The respondent's proposals would provide for GB system operator's charges to users being indirectly reflective of costs, in that it would only reflect costs to the extent that charges levied by a transmission owner on the GB system operator reflected costs, but in Ofgem/DTI's view it is important to preserve the direct reference to reflecting costs.
- 5.37. One respondent proposed that the timescales for making a 'TO offer' should be included in this SLC. Ofgem/DTI are of the view that such provision is not appropriate in the licence as the detailed arrangements that will apply to the preparation of TO offers will be set out in the STC.

- 5.38. As explained above, Ofgem/DTI are of the view that it is appropriate that transmission owners should be subject to a licence obligation relating to making 'TO offers' to the GB system operator in respect of an application for use of the GB transmission system. As explained above, while the detailed arrangements for the preparation of TO offer's in such instances will be set out in the STC, it is considered appropriate for such arrangements to be required in the licence, at a high level. Ofgem/DTI have therefore amended proposed SLC D4A to reflect this change and have made a number of other changes to reflect this inclusion, for example paragraph 3 within the proposed SLC D4A for March 2004 is now paragraph 4.
- 5.39. In addition, Ofgem/DTI have made a number of minor changes to paragraphs 1 and 2 to more appropriately reflect the drafting of SLC C8 and to remove unnecessary duplication between such obligations.
- 5.40. Annex B contains 'near final' text for proposed SLC D4A. Amendments proposed to the drafting contained in the March 2004 consultation are highlighted.

Disputes arising during the preparation of offers

March 2004 mini-consultation

- 5.41. As set out in the March 2004 mini consultation, under the proposed arrangements in SLC D4A (Obligations in relation to offers for connection) an affected transmission owner will be obliged to provide the GB system operator with a 'TO offer' which will be prepared in accordance with the procedures which are to be set out in the STC.
- 5.42. Under the proposed arrangements for the licence and the STC, discussed in the March 2004 mini-consultation, the transmission licensees (including NGC in relation to the transmission system in England and Wales) will be required to co-operate with and assist other transmission licensees to enable the preparation of offers (both the preparation of a 'SO offer' and any 'TO offers') for connection (or modification), including in relation to the identification of works that are required to accommodate a request for connection (or for modification of an

existing connection) to the GB transmission system¹⁹. In relation to requests for connection (or modification) each transmission licensee will be identifying any proposed changes that are required to its transmission system to support that connection (or modification) and will be required to discuss any proposed changes with other transmission licensees where those transmission licensees may be affected by such works, in order, for example, to co-ordinate contingent infrastructure works over more than one licensee's transmission system. Any required changes to a licensee's transmission system (or modification) will ultimately be reflected in that licensee's investment plan if the 'TO offer' is accepted.

5.43. Ofgem/DTI recognised in the March 2004 mini-consultation that it was possible that two (or more) transmission licensees may disagree about appropriate changes to a licensee's transmission system that may be required to support a request to the GB system operator for connection (or modification) to the GB transmission system. In such circumstances Ofgem/DTI considered that it was appropriate that a mechanism was in place for such disagreements to be resolved and that ultimately the Authority may be required to make a decision to resolve any dispute.

5.44. However, it was not Ofgem/DTI's intention that such dispute resolution arrangements would operate so as to allow one transmission licensee to become inappropriately involved in another transmission licensee's decisions about its own transmission system. It was not intended that a transmission licensee would have a right, in all instances, to raise a dispute on proposed changes to another transmission licensee's transmission system to enable the GB system operator to accommodate a request for a connection (or modification).

5.45. In addition, Ofgem/DTI considered that it may be necessary for NGC, in its role as GB system operator, to be able to raise a dispute in relation to one (or more) 'TO offers' which have been submitted to the GB system operator in response to a request for connection (or modification). Ofgem/DTI considered that, as the GB system operator will be obliged to reflect the 'TO offer' (or 'TO offers') in the offer that it submits to the person seeking connection (or modification) it may be

¹⁹ It should be noted that all of Ofgem/DTI's proposals from March 2004 will also relate to disputes arising in relation to the preparation of 'TO offers' relating to use of system under the STC.

appropriate to allow the GB system operator to raise a dispute in relation to a 'TO offer' in certain circumstances. While Ofgem/DTI considered that it may be appropriate for provision to be made for such disputes to arise (and be resolved) it was again not intended that such arrangements would allow the GB system operator to become inappropriately involved in the decisions of another transmission licensee with regard to that licensee's own transmission system.

- 5.46. As set out in the March 2004 mini-consultation, Ofgem/DTI considered that it would be necessary to make provision, within the regulatory structure being put in place for BETTA, for the resolution of disputes arising in the processing of TO offers. In the March 2004 mini-consultation, Ofgem/DTI set out three options for the location of these arrangements. These were in a licence obligation, in the STC or in a combination of licence obligations and the STC. However, in Ofgem/DTI's view, it was appropriate that the process for resolving disputes that may arise over another transmission licensee's proposed changes to its transmission system to accommodate a request for a connection (or modification), be addressed in the STC.
- 5.47. In addition, Ofgem/DTI also took the view that the mechanism for the resolution of disputes raised by the GB system operator following submission of the 'TO offer' (or 'TO offers') should also be set down in the STC.
- 5.48. In the March 2004 mini-consultation, Ofgem/DTI requested views on the proposed changes set out above and in particular whether it is appropriate to place all arrangements relating to disputes arising between transmission licensees relating to matters that support the GB system operator's obligation to provide offers for a connection (or modification to an existing connection) in the STC.
- 5.49. The March 2004 mini-consultation set out Ofgem/DTI's thoughts on the appropriate scope and nature of the dispute arrangements which would apply in relation to the preparation of 'TO offers' under the STC. Ofgem/DTI explained that it was intended that the general dispute arrangements being developed for the STC would be used in relation to the preparation of 'TO offers' which provided for disputes to be raised where a transmission licensee considers that proposed changes to another transmission licensee's transmission system may

materially or adversely affect the licensee's ability to develop and maintain an efficient, economical and co-ordinated system of electricity transmission.

- 5.50. The STC dispute arrangements were included in the April 2004 consultation on the SO-TO Code under BETTA. A further update of this draft text was published on 1 July 2004.

Respondents' views

- 5.51. One respondent commented on the appropriate part of the regulatory framework to set down arrangements for the resolution of disputes during the preparation of offers. In its view the STC provisions are the appropriate mechanism to resolve disputes.
- 5.52. This respondent considered that, after an attempt to resolve the dispute between transmission licensees themselves, all such disputes should be determined by the Authority. This respondent went on to ask whether that process would also cover the situation where a transmission owner is of the view that it cannot make an offer under SLC D4A paragraph 3 which in turn relieves the GB system operator from making an offer.
- 5.53. This respondent added that the GB system operator should also be able to raise a dispute where making a GB system operator offer reflecting the 'TO offer' may put the GB system operator in breach of its statutory or licence obligations and that the list of exclusions from making a 'SO offer' in SLC C8 should be widened accordingly.
- 5.54. This same respondent suggested that, where a dispute is raised by any transmission licensee about the terms of any proposed 'TO offer' during the preparation of that 'TO offer', it would need to be resolved within the GB system operator's timescales for making an offer. These timescales would need to be extended with the consent of the Authority or paragraph 6(d) could be extended to cover the situation where a 'TO offer' or proposed changes to a licensee's transmission system which forms part of a 'TO offer' is the subject of a dispute under the STC.
- 5.55. A second respondent commented that it agreed that any disagreements between transmission licensees should be dealt with through the STC dispute

process. However, in this respondent's view, if a decision imposed on a transmission licensee as a result of this process results in an additional cost on any party, then the decision of the Authority should also include the recovery of the additional costs.

- 5.56. One respondent commented that the existing opportunity for a transmission licensee to refer a matter relating to an offer to the Authority for determination should be retained for the transmission owners, noting that such provision is not currently made in the dispute arrangements. In particular the respondent commented that it is not inconceivable that a transmission owner may seek a determination from the Authority on technical or commercial matters in order that the transmission owner can fulfil its obligations to provide a TO offer.

Discussion

- 5.57. Ofgem/DTI note the comment made by one respondent concerning a transmission owner not making a 'TO offer' on the basis that to do so would put it in breach of SLC D4A, paragraph 3 and the ability of the GB system operator to seek a dispute under the STC of such a decision. Ofgem/DTI do not consider that such arrangements are required. A transmission owner is obliged to make a 'TO offer' except where it has been relieved of that obligation on one of the grounds set out in paragraph 3 (now 4) of SLC D4A. To the extent that the GB system operator does not consider that the transmission owner is correct in considering that it has been relieved of this obligation, such matters are appropriately a case for the Authority in considering whether or not the transmission owner's obligation to provide a 'TO offer' has been complied with.
- 5.58. Ofgem/DTI note the comment made by one respondent that paragraph 6 could be extended to cover situations where a dispute under the STC is being considered, as such situations may not be resolved within the required timescale for providing an offer. Ofgem/DTI do not agree with the respondent. The respondent proposes that the GB system operator is relieved of its obligation to make an offer to the applicant in instances where an STC dispute relating to that offer is ongoing. While some arrangements are required to reflect that an offer may not be able to be made to the applicant within the required timeframe, the appropriate arrangements are those already provided

for in the licence condition not those proposed by the respondent. The licence condition, while prescribing a timeframe for the provision of offers to the applicant, provision is made within that licence condition for the timescales for the making of an offer to the applicant to be extended by the Authority. Such arrangements will, in Ofgem/DTI's view, be sufficient to address concerns regarding any delay to the resolution of an STC dispute and its impact on the GB system operator's ability to make an offer within a prescribed timeframe.

- 5.59. Ofgem/DTI note the comments of one respondent that, if a decision imposed on a transmission licensee as a result of the STC disputes process results in an additional cost on any party then the decision of the Authority should also include the recovery of the additional costs. In considering disputes which might result in additional costs, the Authority will look at what it considers to be a reasonable level of costs. On a case by case basis, the Authority may provide guidance on what costs are recoverable.
- 5.60. As discussed earlier in this chapter, a 'TO offer' provided by a transmission owner may consist of an agreement entered into by the transmission owner with the GB system operator to allow an offer for use of system to be made to a user. Amendments have been included in SLC D4A setting out a transmission owner's obligations in relation to entering into agreements with the GB system operator regarding use of system. Ofgem/DTI propose that the dispute arrangements proposed in the STC which will apply to the preparation of 'TO offers' will apply equally to disputes arising in relation to the preparation of 'TO offers' to support requests for use of the GB transmission system.
- 5.61. Ofgem/DTI note the respondent's comment that existing arrangements which allow the transmission owner to refer to the Authority matters relating to an offer that is yet to be made to the applicant should continue to apply to the transmission owners under BETTA. However, the provisions of SLC C9 (which is based upon the existing arrangements) relate to the referral of a failure to reach agreement once an offer has been made to the applicant so that the Authority can settle any terms in dispute. As such Ofgem/DTI do not consider that arrangements need to be put in place for the transmission owners under BETTA in relation to such matters.

SLC C7 (Prohibition on discriminating between users)

December 2003 consultation on transmission licences

- 5.62. In the December 2003 consultation on transmission licences, Ofgem/DTI set out their view that a licence condition based on existing SLCs C7C (Non-discrimination) and D8A (Non-discrimination in the Provision of Use of System and Connection to the System) should be applied to the GB system operator under BETTA.
- 5.63. In the December 2003 consultation, Ofgem/DTI considered the comments raised by respondents to the June 2003 consultation on the possible inclusion of provisions relating to non-discrimination in the retention of connections. Two respondents to the June 2003 consultation did not consider that such provision would be required for the GB system operator under BETTA while one respondent took the view that as such discrimination would be undesirable were it to occur it should be prohibited.
- 5.64. Ofgem/DTI took the view in the December 2003 consultation on transmission licences that it was appropriate to retain this provision as discrimination in the retention of a connection would be undesirable. Ofgem/DTI noted that this provision does not exist in NGC's current licence but considered that, to the extent that the removal of this provision under BETTA could result in a lower level of regulatory protection being afforded to consumers in Scotland, it would be appropriate under BETTA to retain this provision and to extend it to cover GB rather than provide different levels of protection in England and Wales and Scotland.

Respondents' views

- 5.65. One respondent to the December 2003 consultation on transmission licences supported Ofgem/DTI's proposal that provisions relating to the retention of connections should be included in proposed SLC C7.
- 5.66. A second respondent did not support the introduction of an additional prohibition on the GB system operator in relation to the retention of connections. Its view was that this will not be necessary given the introduction

of a GB Connection and Use of System Code (CUSC) that will provide common, non-discriminatory connection terms. In addition, this respondent is concerned that one possible reading of the prohibition is that it confers on existing Scottish connections enhanced rights when compared to those conferred under the GB CUSC which appears to be contrary to much of the work being undertaken on BETTA. This respondent would welcome further clarification that this is not the case.

Discussion

- 5.67. In the December 2003 consultation on transmission licences, Ofgem/DTI considered that this provision may provide users in Scotland with an additional level of protection against discrimination and that as such it should be retained. Ofgem/DTI further took the view that it would be appropriate to extend this provision to apply across GB rather than remove the provision for users in Scotland given the desirability of providing users across GB with the same level of protection.
- 5.68. Ofgem/DTI recognise the concerns raised by one respondent seeking clarification as to the scope of this provision, in particular in relation to the additional protection which would be afforded by such a provision.
- 5.69. In the light of the comments raised by respondents Ofgem/DTI have considered this matter further.
- 5.70. The provisions of the CUSC which will apply on a GB basis under BETTA do not specifically prohibit discrimination in this area. However, in considering whether or not the retention of this provision and its extension to GB under BETTA is appropriate, Ofgem/DTI have had regard to the provisions relating to non-discrimination that will be relevant to the GB system operator under BETTA. To the extent that Ofgem/DTI consider that the arrangements put in place under BETTA will preclude such behaviour then Ofgem/DTI do not consider that it is necessary to place this extended obligation on NGC, as GB system operator under BETTA.
- 5.71. The arrangements that will apply GB wide through the GB CUSC under BETTA will establish common arrangements for access to and use of the GB transmission system. Such arrangements are required, under paragraph 1 of

SLC C10 (CUSC) to facilitate competition in generation and supply of electricity. Furthermore, NGC will, as GB system operator, be prohibited from discriminating in the provision of use of system and in the carrying out of works for connection to the GB transmission system. Against this overall framework Ofgem/DTI have not identified any examples of discrimination which would only be prohibited by provisions relating to the retention of connection, which Ofgem/DTI view as a subset of the more general prohibition described above. As such, Ofgem/DTI consider that the overall arrangements being put in place under BETTA will provide that the equivalent protection remains in place under BETTA for Scottish users and that as such, it is not necessary, as part of BETTA, to extend the application of this provision to GB and in view of this and in view of certain respondents' concerns that it may lead to undue preference being given to certain categories of user, it has been deleted. As such the draft of SLC C7 which is included in Annex B of this paper does not include provisions relating to the prohibition of discrimination in the retention of connection.

6. Determination of disputes between the GB system operator and the person seeking a connection

- 6.1. This chapter sets out Ofgem/DTI's views on what arrangements should be put in place under BETTA to enable the Authority to 'determine' the terms of an offer for use of system or connection (or modification of an existing connection) which has been made by the GB system operator to a person seeking a connection (or modification of an existing connection) or use of system in accordance with SLC C8, where such terms are in dispute.

Determination of offers made by the GB system operator

March 2004 mini-consultation

- 6.2. In the March 2004 mini-consultation, Ofgem/DTI set out their view that it continued to be appropriate for a person seeking connection (or modification of an existing connection) to retain the ability to seek a determination by the Authority of any terms of an agreement offered by the GB system operator that are in dispute, as is the case today. Ofgem/DTI also considered that the ability to seek a determination in relation to offers for use of system should be retained under BETTA.

Offers made by transmission owners in accordance with SLC D4A

- 6.3. Ofgem/DTI explained that as, under BETTA, transmission owners will be responsible for investment planning in their respective areas, transmission owners will be responsible for connection design and for the identification of contingent infrastructure requirements for their own transmission system (as a result of any potential connection (or modification of an existing connection)). Under the licence arrangements proposed by Ofgem/DTI, a transmission owner will be obliged to provide a 'TO offer' to the GB system operator following notification by the GB system operator. This notification follows a request from

a person seeking a connection (or modification of an existing connection) which has been received by the GB system operator²⁰. As explained in chapter 5 of this paper, the GB system operator will be obliged to reflect any 'TO offers' in its 'SO offer'.

- 6.4. In view of this, Ofgem/DTI considered that it was necessary to consider how, in the event that an offer of terms made by the GB system operator to the person seeking a connection (or modification) or use of system is referred to the Authority, determination arrangements will operate given that the disputed terms may reflect those included in a 'TO offer' (or 'TO offers'). While Ofgem/DTI note that the disputed terms in any determination might be solely related to terms defined by the GB system operator, it is recognised that at least in some cases the terms which are being referred may relate to terms defined by a transmission owner in its 'TO offer'. As such the determination process arrangements for BETTA will need to provide for appropriate handling of such consequential impacts.
- 6.5. Ofgem/DTI identified two possible options for addressing this issue in the determinations process. Ofgem/DTI recognised that these options shared a number of common features, eg the consideration of associated 'TO offers' by the Authority when considering an 'SO offer' that has been referred for determination. These common features are contained in the descriptions set out below even though they are not considered to be determining factors between the two options.

Option A

- 6.6. This option proposed that it might be appropriate to put in place a direct link between the determination of an offer made by the GB system operator to the applicant (made under SLC C8 and sent for determination under SLC C9) and the determination of any terms of 'TO offers' that relate to the terms of the SO offer that are in dispute. Under such arrangements, the Authority would be able to consider and direct appropriate changes to be made to the 'SO offer' and to any

²⁰ It should be noted that the determination arrangements discussed in the March 2004 mini consultation related to 'TO offers'. At that time the term 'TO offer' related to offers in connection with connection to the GB transmission system (or modification of an existing connection) and did not include offers related to use of the GB transmission system. However, Ofgem/DTI consider that the matters discussed in the March 2004

'TO offer' (or 'TO offers') that relates to that 'SO offer' and which requires amendment at the same time in order to give effect to the Authority's determination.

- 6.7. If 'TO offers' are to be subject to possible amendment in this way then Ofgem/DTI considered that it would be necessary to ensure that transmission owners are appropriately involved in the process at the time that the Authority is undertaking its deliberations. Therefore under Options A and B, the Authority would need to be made aware (through an obligation on the GB system operator to so notify) of any 'TO offers' which relate to the 'SO offer' being referred as the Authority would need to involve any affected transmission owners in discussions. Ofgem/DTI also considered that it would be necessary, under Options A and B, to ensure that any transmission owner who might be affected by the determination of the 'SO offer' should also be brought to the attention of the Authority and that all such transmission licensees should be made aware of the determination. The involvement of the transmission owners in the Authority's determination of a dispute of an 'SO offer' will be particularly important where the matters that are in dispute are of a nature that relates to identified requirements for that transmission owner's transmission system, such as identified contingent infrastructure requirements and completion timescales, although their involvement may also be important in other circumstances as well.
- 6.8. Ofgem/DTI consider that, in any event, it would be necessary under both options for the transmission owner to have an appropriate level of involvement in the Authority's consideration of the 'SO offer', where the subject matter of the determination included in the 'SO offer' reflects a 'TO offer' that has been made in accordance with the STC.
- 6.9. Under option A, at the point in time at which the Authority makes a decision on the 'SO offer', it will also make a decision on any associated 'TO offer' (or 'TO offers'). Specific licence provisions could be put in place that would provide that the Authority, in reaching a determination on an 'SO offer', can direct that specific changes are made to any 'TO offer' (or 'TO offers') that relate to the 'SO offer' and which require amendment as a result of the Authority's determination.

The transmission owner could then be obliged to enter into an agreement which fully reflects that 'TO offer', so determined, if the GB system operator wishes to do so.

Option B

- 6.10. This option sets out determination arrangements that would not put in place an explicit link between the determination of the 'SO offer' and any affected 'TO offer' (or 'TO offers') that relates to that offer in the licence condition. Under such arrangements, the Authority, in making its determination on the 'SO offer', would not direct changes to be made to any associated 'TO offer'. Ofgem/DTI do however consider that it would still be necessary under option B (as is the case under option A described above) for the affected transmission owners to be notified to the Authority and to be appropriately involved in the Authority's consideration of the 'SO offer', where the subject matter of the determination included in the 'SO offer' reflects a 'TO offer' that has been made. Consequently, specific provision would need to be made to ensure that the Authority is made aware of any associated 'TO offers' or transmission owners who may be affected by any determination of the 'SO offer' and that those transmission licensees are made aware of the referral of the 'SO offer'.
- 6.11. Under option B, if the outcome of the Authority's determination of the 'SO offer' impacted on any 'TO offer' (or 'TO offers') then any changes to the 'TO offer' (or 'TO offers') would need to be agreed bilaterally by the GB system operator and the transmission owner. Under these arrangements there would be scope for the GB system operator or the relevant transmission owner to refer the 'TO offer' to the Authority for determination if the parties are unable to agree the required amendments.

Benefits of option A and B

- 6.12. Ofgem/DTI considered in the March 2004 mini-consultation that, under both options A and B, where the subject matter of a determination relates to matters contained within a 'TO offer' (or may otherwise affect a transmission owner) that transmission owner will need to be involved in the Authority's deliberations and should, as a minimum, have the opportunity to make representations to the Authority in relation to its 'TO offer'.

- 6.13. Ofgem/DTI considered that the central benefit of option A is that, determinations relating to a 'SO offer' and an associated 'TO offer' are made at the same time. Under Option B, where the 'TO offer' is not determined at the same time as the 'SO offer', where the outcome of the Authority's determination requires changes to be made to any associated 'TO offer', it could be argued that it will be necessary to either delay the 'SO offer' until required amendments to the 'TO offer' are agreed (or are determined by the Authority if agreement cannot be reached) or require the GB system operator to enter into its agreement with the applicant even if the associated 'TO offer' has not been amended to take account of the determination
- 6.14. Ofgem/DTI recognised that, given the expected involvement of transmission owners in the determinations process, in many instances, the transmission licensees may reach agreement on any amendments to the 'TO offer' at the same time as the Authority makes its determination on the 'SO offer' or shortly afterwards and that as such the scope for further delay is small. In such situations Ofgem/DTI recognised that it might be preferable, for changes to be made by agreement rather than by determination. However, this may not be the case in all situations and it might be considered that any potential delay for the applicant in such cases is undesirable and would be avoided under option A. However, it could be argued that such arrangements would cause no greater delay than option A, as the Authority, in directing changes to the 'SO offer' and any affected 'TO offers' would need to take additional time during the determinations process to identify the required changes.
- 6.15. While possible delay for the applicant would be avoided if the GB system operator is required to enter into its 'SO offer' regardless of whether or not any associated 'TO offer' has been amended, it is recognised that such an approach would potentially cause problems for the GB system operator if the underlying agreements with the relevant transmission owner (or transmission owners) are not in place at that time.
- 6.16. In relation to option A, the Authority will, in considering any determinations of a 'SO offer', need to consider all 'TO offers' which relate to that 'SO offer'. Given that this is the case, it may be considered preferable that the Authority simply makes one decision which amends all relevant offers (ie both the 'SO offer' which is the subject of the referral for determination and any related 'TO offer').

- 6.17. With regard to option B, the central benefit is that it does not require the Authority to take decisions on matters which are not the subject of a disagreement. It is also possible that option B might enable 'TO offers' to be amended in shorter timescales.
- 6.18. Furthermore, option B provides maximum flexibility for the transmission licensees to reach agreement, on a bilateral basis, on changes required to the 'TO offer' as a result of the Authority determining on an offer by the GB system operator to the user, within the confines of the Authority's decision.
- 6.19. Consequently, both options A and B proposed in the March 2004 mini-consultation had particular advantages and disadvantages. If in instances where there will be required changes to reflect the determination of the 'SO offer' by the Authority and such changes are uncontroversial then option B might provide the more suitable option. However, in instances where any such changes are likely to prove controversial or where no changes will be required to the 'TO offers' then option A would appear more appropriate.

Respondents' views

- 6.20. A number of respondents commented on options A and B.
- 6.21. One respondent supported option A because considering and determining a 'SO offer' and any associated 'TO offers' at the same time would bring benefits to customers, licensees and the Authority.
- 6.22. A second respondent also preferred option A as it minimises further delay for applicants. However, this respondent included that paragraph 2(a) and the reference to 'TO offer', should be amended to a reference to 'associated TO offer' with the text following this term being deleted. The respondent is of the view that, should Ofgem/DTI agree that this change should be made, the term 'TO offer' can be deleted from the definitional section as it does not appear to be used elsewhere. This respondent also suggested that the obligation placed on the licensee in paragraph 3, SLC C9 (option A) to enter into an agreement on terms settled should also be replicated in terms of an obligation on the transmission owner to enter into an associated 'TO offer' with the GB system operator as settled under SLC C9. The respondent further considered that it would seem appropriate to reference such an obligation within SLC D4A.

- 6.23. A third respondent voiced its view that it has a slight preference for option A, but that the key issue is that the institutional arrangements should not disadvantage any applicant relative to any other applicant, irrespective of the network it wants to connect to.
- 6.24. One respondent commented that under option A, the scope of the determination, if it included a 'TO offer', would include matters which were not in dispute. In this respondent's view, it would therefore seem reasonable to allow a transmission owner to make an amended offer to the GB system operator reflecting the terms of the SO/user determination. For this respondent, this implies that option B is the preferable approach as it also has the potential advantage of enabling a quicker amendment of the 'TO offer'. Since the 'SO offer' has to reflect the 'TO offer', it would seem sensible for the new 'SO offer' to be made once the amended 'TO offer' if any has been received.

Discussion

- 6.25. Ofgem/DTI welcome the comments made by respondents concerning option A and B and note that the majority of respondents are in favour of option A.
- 6.26. One respondent commented that it preferred Option B, as Option A would allow the scope of a determination, if it included a 'TO offer', to include matters which were not in dispute. However, Ofgem/DTI are of the view that Option A is the appropriate option as it should help to ensure that the applicant, should it seek a determination and subsequently receive a new offer from the GB system operator, could be confident with that 'SO offer' (and any 'TO offer' that underpins it), has also been suitably amended. However, Ofgem/DTI propose that changes to the 'TO offer' should be limited to those that are necessary as a result of the matters under the 'SO offer' that have been determined. The drafting of SLC C9 has been amended to reflect this change and should, in Ofgem/DTI's view address the concerns of the respondent that the 'TO offer' will be opened up to further changes than those required by the determination of the 'SO offer'.
- 6.27. Ofgem/DTI have also considered comments made by one respondent with regard to the use in paragraph 2(a) of SLC C9 (option A) of the term "TO offer",

and that this should be amended to “associated TO offer”. Ofgem/DTI agree that it is appropriate to make this change. However, the term “TO offer” remains relevant in the licence. This is because “associated TO offer” has a separate meaning to that of “TO offer”. “Associated TO offer” refers to a ‘TO offer’ which relates to a ‘SO offer’ made by the GB system operator pursuant to SLC C8 or to another ‘TO offer’ which relates to such offer.

- 6.28. This respondent also commented that the obligation on a licensee under paragraph 3 (option A) to enter into an associated ‘TO offer’ with the GB system operator should be replicated in SLC D4A to require a transmission owner to enter into an associated ‘TO offer’ with the GB system operator as settled under SLC C9. Ofgem/DTI are of the view that this obligation is already appropriately replicated in SLC4B.
- 6.29. As noted above, amendments have been made to the licence conditions included within this paper to reflect that the transmission owners will also provide ‘TO offers’ in instances where infrastructure works are required in relation to an application for use of the GB transmission system. As explained in chapter 5 of this paper the detailed arrangements for the preparation of such ‘TO offers’ will be set out in the STC (in the same way that the detailed process in relation to connections (or modification of an existing connection) will apply.
- 6.30. Ofgem/DTI consider that it is appropriate that ‘TO offers’ in relation to use of system are dealt with, in terms of determinations, in the same way in which ‘TO offers’ relating to connections (or modifications) are addressed. As such it is intended that Option A will apply to all types of ‘TO offers’ (both those relating to connection (or modification) and those relating to use of system).
- 6.31. In addition to the above, Ofgem/DTI have also given further thought to the determinations process under BETTA. Ofgem/DTI recognise that instances may arise where the outcome of the Authority’s determination of a ‘SO offer’ could mean that a transmission owner, that was not previously required to provide a ‘TO offer’ (either in relation to a connection (or modification) or use of system), may need to provide such an offer.
- 6.32. Amendments have been made to proposed SLC C9 and SLC D4B, contained in Annex B, which provide that the Authority can determine whether any

additional 'TO offers' need to be made in relation to the determination of the 'SO offer'.

- 6.33. In instances where the Authority considers that a previously 'unmade' 'TO offer' may be required, Ofgem/DTI expect that the Authority will consult with the transmission licensee who would be required to make such a 'TO offer' during its considerations. To the extent that such a 'TO offer' is required as part of the 'SO offer' that is determined by the Authority the transmission licensee would then be subject to a requirement to provide a 'TO offer' that reflects the Authority's determination of the 'SO offer'.
- 6.34. A further change has been made to correct a typographical error in paragraph 4 of SLC C9.
- 6.35. Annex B contains drafting of SLC C9 and SLC 4B that highlights changes made to it from the version published in the March 2004 consultation.

Annex A

List of Respondents to March 2004 mini consultation on Transmission charging related licence conditions and the requirement to offer terms and respondents raising issues

- EDF Energy
- Centrica
- National Grid Transco
- Powergen
- Scottish and Southern Energy
- SP Transmission and Distribution
- SP UK Division

Annex B – Near final legal text

1.1 []

"affected transmission licensee"	means a transmission licensee where that licensee's transmission system will or may be affected by the implementation of the matters contained in a TO offer or an offer made or to be made by the system operator pursuant to standard condition C8. ¹ <u>8 (Requirement to offer terms).</u> ²
"associated TO agreement"	means an agreement between the system operator and another transmission licensee which is entered into following the system operator ^{3,4} 's acceptance of a TO offer from that other transmission licensee and reflects that TO offer.
"associated TO offer"	means a TO offer which relates <u>either (1)</u> ⁵ to a given ⁶ <u>an</u> ⁷ offer made by the system operator pursuant to standard condition C8 <u>(Requirement to offer terms)</u> ⁸ or <u>(2)</u> ⁹ to another TO offer which relates to such offer. ¹⁰ <u>an offer made by the system operator pursuant to standard condition C8 (Requirement to offer terms).</u> ¹¹
"TO offer"	means an offer made by a transmission licensee to enter into an agreement with the system operator pursuant to standard condition D4A (Obligations in relation to offers for connection).

Condition C4: Charges for use of system

1. The licensee shall:
 - (a) ~~by~~¹² as soon as practicable after¹³ the date this condition comes into effect determine a use of system charging methodology approved by the Authority; and
 - (b) conform to the use of system charging methodology as modified in accordance with standard condition C5 (Use of system charging methodology).
2. The licensee shall ~~by~~¹⁴ as soon as practicable after¹⁵ the date this condition comes into effect:
 - (a) prepare a statement approved by the Authority of the use of system charging methodology; and
 - (b) prepare, other than in respect of a charge which the Authority has consented need not so appear, a statement, in a form approved by the Authority, of use of system charges determined in accordance with the use of system charging methodology and in such form and in such detail as shall be necessary to enable any person to make (other than in relation to charges to be made or levied in respect of the balancing services activity) a reasonable estimate of the charges to which he would become liable for the provision of such services,

and, without prejudice to paragraph 5 of this condition or paragraph 3 of standard condition C5 (Use of system charging methodology), if any change is made in the use of system charges to be so made other than in relation to charges to be made in respect of the balancing services activity, or the use of system charging methodology, the licensee shall, before the changes take effect, furnish the Authority with a revision of the statement of use of system charges (or if the Authority so accepts, with amendments to the previous such statement) and/or (as the case may be) with a revision of the statement of the use of system charging methodology, which reflect the changes.

3. Approvals by the Authority pursuant to paragraphs 1(a) and 2(a) may be granted subject to such conditions relating to further action to be undertaken by the licensee in relation to the use of system charging methodology better meeting the relevant objectives including, but not limited to, matters identified in any initial consultation by the Authority, as the Authority deems appropriate. Such conditions may include (but are not limited to) elements relating to the time by which action under the conditions must be completed.
4. Nothing in this condition shall affect the ability of the licensee to charge according to the statement issued pursuant to paragraph 2(b).
5. The licensee:
 - (a) shall give, except where the Authority consents to a shorter period, 150 days notice to the Authority of any proposals to change use of system charges other than in relation to charges to be made in respect of the balancing services activity, together with a reasonable assessment of the effect of the proposals (if implemented) on, those charges;^{16, 17} and
 - (b) where it has decided to implement any proposals to change use of system charges other than in relation to charges to be made in respect of the balancing services activity, shall give the Authority notice of its decision and the date on which the proposals will be implemented which shall not, without the consent of the Authority, be less than a month after the date on which the notice required by this subparagraph was given.
6. Unless otherwise determined by the Authority, the licensee shall only enter arrangements for use of system which secure that use of system charges will conform with the statement last furnished under paragraph 2(b) either:
 - (a) before it enters into the arrangements; or
 - (b) before the ~~changes~~¹⁸ charges¹⁹ in question from time to time fall to be made,

and, for the purposes of this paragraph, the reference to the statement last furnished under paragraph 2(b) shall be construed, where that statement is subject to amendments so furnished before the relevant time, as a reference to that statement as so amended.

7. References in paragraphs 1, 2, 5 and 6 to charges do not include references to:
 - (a) connection charges; or
 - (b) to the extent, if any, to which the Authority has accepted they would, as respects certain matters, be so determined, charges determined by reference to the provisions of the CUSC.
8. The licensee may periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 2 and shall, at least once in every year that this licence is in force, make such revisions as may be necessary to such statements in order that the information set out in the statements shall continue to be accurate in all material respects.
9. The licensee shall send a copy of any such statement, revision, amendment or notice given under paragraphs 2 or 5 to any person who asks for any such statement, revision, amendment or notice.
10. The licensee may make a charge for any statement, revision, or amendment of a statement, furnished, or notice sent pursuant to paragraph 9 of an amount reflecting the licensee's reasonable costs of providing such statement, revision, amendment or notice which costs shall not exceed the maximum amount specified in directions issued by the Authority for the purposes of this condition.

Condition C5: Use of system charging methodology

1. The licensee shall, for the purpose of ensuring that the use of system charging methodology achieves the relevant objectives, keep the use of system charging methodology at all times under review.
2. The licensee shall, subject to paragraph 3, make such modifications of the use of system charging methodology as may be requisite for the purpose of better achieving the relevant objectives.
3. Except with the consent of the Authority, before making a modification to the use of system charging methodology, the licensee shall:
 - (a) consult the CUSC users on the proposed modification and allow them a period of not less than 28 days within which to make written representations;
 - (b) send a copy of the terms of the proposed modification to any person who asks for them;
 - (c) furnish the Authority with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations (if any) made to the licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant objectives; and
 - (v) a timetable for implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 4 expires; and

- (d) where the Authority has given a direction that sub-paragraphs (a), (b) and/or (c) should not apply, comply with such other requirements (if any) that the Authority may specify in the direction.
4. Where the licensee has complied with the requirements of paragraph 3, it shall, unless the Authority has within 28 days of the report being furnished to him given a direction that the modification may not be made, make the modification to the use of system charging methodology.
5. In paragraphs 1, 2 and 3 "the relevant objectives" shall mean the following objectives:
- (a) that compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;
- (b) that compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which ~~relate to [activities to be specified]~~²⁰ are made under and in accordance with the STC²²) incurred by transmission licensees in their transmission businesses; and
- (c) that, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses.
6. The licensee shall send a copy of any report furnished under paragraph 3 to any person who asks for any such report.
7. The licensee may make a charge for any report sent pursuant to paragraph 6 of an amount reflecting the licensee's reasonable costs of providing such report

~~[†]The activities which will be referred to here will be defined by reference to the revenue restriction conditions.~~²¹

which costs shall not exceed the maximum amount specified in directions issued by the Authority for the purposes of this condition.

8. Nothing in this condition shall impact on the application of special conditions ~~XX to XX (Revenue restriction provisions)~~.²³ [AA5A to AA5E](#).²⁴

Condition C6: Connection charging methodology

1. The licensee shall:
 - (a) ~~by~~²⁵ as soon as practicable after²⁶ the date this condition comes into effect determine a connection charging methodology relating to connection to the GB transmission system²⁷ approved by the Authority; and
 - (b) conform to the connection charging methodology as modified in accordance with paragraph 10.
2. The licensee shall, for the purpose of ensuring that the connection charging methodology achieves the relevant objectives, keep the connection charging methodology at all times under review.
3. The licensee shall, subject to paragraph 9, make such modifications to the connection charging methodology as may be requisite for the purpose of better achieving the relevant objectives.
4. The licensee shall ~~by~~²⁸ as soon as practicable after²⁹ the date this condition comes into effect prepare a statement approved by the Authority of the connection charging methodology in relation to charges, including charges:
 - (a) for the carrying out of works and the provision and installation of electrical lines or electrical plant or meters for the purposes of connection (at entry or exit points) to the GB transmission system;
 - (b) in respect of extension or reinforcement of the GB transmission system rendered (at the discretion of a transmission licensee where the extension or reinforcement is of that licensee's transmission system) necessary or appropriate by virtue of the licensee providing connection to or use of system to any person seeking connection;
 - (c) in circumstances where the electrical lines or electrical plant to be installed are (at the discretion of a transmission licensee where the electrical lines or electrical plant which are to be installed will form

part of that licensee's transmission system) of greater size than that required for use of system by the person seeking connection;

- (d) for maintenance and repair (including any capitalised charge) required of electrical lines or electrical plant or meters provided or installed for making a connection to the GB transmission system; and
- (e) for disconnection from the GB transmission system and the removal of electrical plant, electrical lines and meters following disconnection,

and the statement referred to in this paragraph shall be in such form and in such detail as shall be necessary to enable any person to determine that the charges to which he would become liable for the provision of such services are in accordance with such statement.

5. An approval by the Authority pursuant to paragraph 1(a) and 4 may be granted subject to such conditions relating to further action to be undertaken by the licensee in relation to the connection charging methodology better meeting the relevant objectives as identified in any initial consultation by the Authority as the Authority deems appropriate. Such conditions may include (but are not limited to) elements relating to the time by which actions under this condition need to be completed.
6. Nothing in this condition shall affect the ability of the licensee to charge according to the statement issued pursuant to paragraph 4.
7. Unless otherwise determined by the Authority, the licensee shall only enter into a bilateral agreement or a construction agreement which secures that the connection charges will conform with the statement of the connection charging methodology last furnished under paragraphs 4 or 10 either:
 - (a) before it enters into the arrangements; or
 - (b) before the charges in question from time to time fall to be made.
8. The connection charging methodology shall make provision for connection charges for those items referred to in paragraph 4 to be set at a level for

connections made after 30 March 1990 which will enable the licensee to recover:

- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the GB transmission system or the provision and installation, maintenance and repair or (as the case may be) removal following disconnection of any electric lines, electric plant or meters; and
- (b) a reasonable rate of return on the capital represented by such costs,

and for connections made before 30 March 1990 [to the licensee's transmission system](#),³⁰ the connection charging methodology for those items referred to in paragraph 4 shall as far as is reasonably practicable reflect the principles of sub-paragraphs (a) and (b).

9. Except with the consent of the Authority, before making a modification to the connection charging methodology the licensee shall:

- (a) consult the CUSC users on the proposed modification and allow them a period of not less than 28 days within which to make written representations;
- (b) send a copy of the terms of the proposed modification to any person who asks for them;
- (c) furnish the Authority with a report setting out:
 - (i) the terms originally proposed for the modification;
 - (ii) the representations (if any) made to the licensee;
 - (iii) any change in the terms of the modification intended in consequence of such representations;
 - (iv) how the intended modification better achieves the relevant objectives; and

- (v) a timetable for implementation of the modification and the date with effect from which the modification (if made) is to take effect, such date being not earlier than the date on which the period referred to in paragraph 10 expires; and
 - (d) where the Authority has given a direction that sub-paragraphs (a), (b) and/or (c) should not apply, comply with such other requirements (if any) that the Authority may specify in the direction.
- 10. Where the licensee:
 - (a) has complied with the requirements of paragraph 9, it shall, unless the Authority has within 28 days of the report being furnished to it given a direction that the modification may not be made, make the modification to the connection charging methodology;
 - (b) makes a modification to the connection charging methodology, furnish the Authority with a revised statement showing the changed connection charging methodology and such revised statement of the connection charging methodology shall supersede previous statements of the connection charging methodology furnished under paragraph 4 or this paragraph ~~8~~³¹ 10³² from the date specified therein.
- 11. In paragraphs 2, 3 and 9 "the relevant objectives" shall mean:
 - (a) the objectives referred to in paragraph 5 of standard condition C5 (Use of system charging methodology), as if references therein to the use of system charging methodology were to the connection charging methodology; and
 - (b) in addition, the objective, in so far as consistent with sub-paragraph (a), of facilitating competition in the carrying out of works for connection to the GB transmission system.
- 12. A statement furnished under paragraphs 4 or 10 shall, where practicable, include examples of the connection charges likely to be made in different

cases as determined in accordance with the methods and principles shown in the statement.

13. The licensee shall send a copy of any statement or revision of a statement or report furnished under paragraphs 4, 9 or 10 to any person who asks for any such statement or revision thereof or report.
14. The licensee may make a charge for any statement or revision of a statement or report, furnished or sent pursuant to paragraph ~~14~~³³ 13³⁴ of an amount reflecting the licensee's reasonable costs of providing such which costs shall not exceed the maximum amount specified in directions issued by the Authority for the purposes of this condition.
15. Nothing in this condition shall impact on the application of special conditions ~~XX to XX (Revenue restriction provisions)~~³⁵ AA5A to AA5E.³⁶

Condition C~~7~~³⁷7³⁸ Prohibition on discriminating between users

1. In the provision of use of system or in the carrying out of works for the purpose of ~~connection to the GB transmission system or the retention of a~~³⁹ connection to the GB transmission system, the licensee shall not discriminate as between any persons or class or classes of persons.
2. Without prejudice to paragraph 1 and subject to paragraph 3, the licensee shall not make charges for provision of use of system to any authorised electricity operator or class or classes of authorised electricity operator which differ in respect of any item separately identified in the statement referred to at paragraph 2(b) of standard condition C4 (Charges for use of system) from those for provision of similar items under use of system to any other authorised electricity operator or class or classes of authorised electricity operator except in so far as such differences reasonably reflect differences in the costs associated with such provision.
3. Notwithstanding paragraph 2, the licensee shall not make use of system charges in respect of any item of charge separately identified in the statement referred to at paragraph 2(b) of standard condition C4 (Charges for use of system) on any authorised electricity operator whose contract does not provide for him to receive the service to which such item of charge refers.
4. The licensee shall not in setting use of system charges restrict, distort or prevent competition in the generation, transmission, supply or distribution of electricity.

Condition C8: Requirement to offer terms

1. Unless otherwise determined by the Authority under standard condition C9 (Functions of the Authority), on application made by:
 - (a) any authorised electricity operator in the case of an application for use of system; and
 - (b) any person in the case of an application for connection,the licensee shall (subject to paragraph 6) offer to enter into the CUSC Framework Agreement.
2. On application ~~for connection~~⁴⁰ ~~or modification to an existing connection~~⁴¹ made by any person;⁴² or any authorised electricity operator in accordance with paragraph 1,⁴³ the licensee shall where required by the STC notify other transmission licensees in accordance with the STC and, for the purpose of making an offer for connection ~~or modification to an existing connection~~⁴⁴ or for use of system⁴⁵, shall co-operate and co-ordinate its activities with any other transmission licensees in accordance with the STC.
3. On application made by any person the licensee shall (subject to paragraph 6) offer to enter into a bilateral agreement and/or a construction agreement relating to connection or modification to an existing connection and such offer shall reflect any associated TO offer which relates to that⁴⁶ offer and shall make detailed provision regarding:
 - (a) the carrying out of work (if any) required to connect the GB transmission system to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purpose;
 - (b) the carrying out of works (if any) in connection with the extension or reinforcement of the GB transmission system rendered (~~subject to the operation of standard condition C9 (Functions of the Authority),~~⁴⁷ at the discretion of a transmission licensee where the works are to be carried out on that licensee's transmission system) appropriate or

necessary by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purpose;

- (c) the installation of appropriate meters (if any) required to enable the licensee to measure electricity being accepted into the GB transmission system at the specified entry point or points or leaving such system at the specified exit point or points;
- (d) the date by which any works required to permit access to the GB transmission system (including for this purpose any works to reinforce or extend the GB transmission system) shall be completed (time being of the essence unless otherwise agreed by the person seeking connection);
- (e) the connection charges to be paid to the licensee, such charges:
 - (i) to be presented in such a way as to be referable to the connection charging methodology or any revision thereof; and
 - (ii) to be set in conformity with the requirements of paragraph 8 of standard condition C6 (Connection charging methodology) and (where relevant) paragraph 4; and
- (f) such further terms as are or may be appropriate for the purpose of the agreement.

4. For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works under a bilateral agreement and/or construction agreement, the licensee will have regard to:

- (a) the benefit (if any) to be obtained or likely in the future to be obtained by any transmission licensee or any other person as a result of carrying out such works whether by reason of the reinforcement or extension of

the GB transmission system or the provision of additional entry or exit points on such system or otherwise; and

- (b) the ability or likely future ability of any transmission licensee to recoup a proportion of such costs from third parties.
5. The licensee shall offer terms in accordance with paragraphs 1 and ~~2~~⁴⁸3⁴⁹ above as soon as practicable and (except where the Authority consents to a longer period) in any event not more than the period specified in paragraph 7 below after receipt by the licensee of an application containing all such information as the licensee may reasonably require for the purpose of formulating the terms of ~~its~~⁵⁰the⁵¹ offer.
6. The licensee shall not be obliged pursuant to this condition to offer to enter or to enter into any agreement if:
- (a) to do so would be likely to involve the licensee:
 - (i) in breach of its duties under section 9 of the Act;
 - (ii) in breach of any regulations made under section 29 of the Act or of any other enactment relating to safety or standards applicable in respect of the transmission business;
 - (iii) in breach of the Grid Code; or
 - (iv) in breach of the conditions; or
 - (b) the person making the application does not undertake to be bound insofar as applicable by the terms of the Grid Code and/or the CUSC from time to time in force; or
 - (c) in the case of persons making application for use of system under paragraph 1, such person ceases to be an authorised electricity operator; or
 - (d) it is unable to do so due to another transmission licensee having notified the licensee that, for one or more of the reasons set out in

paragraph ~~3~~⁵²4⁵³ of standard condition D4A (Obligations ~~on a Transmission Owner~~⁵⁴ in relation to offers for connection ~~made by the System Operator~~⁵⁵ etc⁵⁶), it is not obliged to offer to enter or to enter into any agreement with the licensee in accordance with paragraph 1 or paragraph ⁵⁷3⁵⁸ of standard condition D4A (Obligations in relation to offers for connection etc⁵⁹) and that it does not intend to offer to enter or to enter into any such agreement.

7. For the purposes of paragraph ~~4~~⁶⁰5⁶¹ the period specified shall be:
 - (a) in the case of persons seeking use of system only and seeking to become a party to the CUSC Framework Agreement if not already a party, in connection with such use, 28 days; and
 - (b) in the case of persons seeking a bilateral connection agreement or a construction agreement (and seeking to become a party to the CUSC Framework Agreement if not already a party, in connection with such agreements)62, 3 months; and
 - (c) in any other case, 28 days.
8. The licensee shall within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the licensee as may be reasonably required by such person for the purpose of completing an application under the Application Regulations or such provisions of similar effect contained in any further regulations then in force made pursuant to sections 6(3), 60 and 64(1) of the Act.

~~OPTION A~~⁶³ Condition C9: Functions of the Authority

1. If, after a period which appears to the Authority to be reasonable for the purpose, the licensee has failed to enter into an agreement with (as the case may be) any authorised electricity operator or any person entitled or claiming to be entitled thereto pursuant to a request under standard condition C8 (Requirement to offer terms), the Authority may, pursuant to section 7(3)(c) of the Act and on application of such authorised electricity operator or such person or the licensee, settle any terms in dispute of the agreement to be entered into between the licensee and that authorised electricity operator or that person in such manner as appears to the Authority to be reasonable having (in so far as relevant) regard in particular to the following considerations:
 - (a) that such authorised electricity operator or such person should pay to the licensee:
 - (i) in the case of use of system, use of system charges in accordance with paragraphs 1 and 6 of standard condition C4 (Charges for use of system); or
 - (ii) in the case of connection charges in accordance with paragraphs 1 and 7 of standard condition C6 (Connection charging methodology);
 - (b) that the performance by the licensee of its obligations under the agreement should not cause it to be in breach of those provisions referred to at paragraph 6 of standard condition C8 (Requirement to offer terms);
 - (c) that the performance by another transmission licensee of its obligations under any associated TO agreement should not cause another transmission licensee to be in breach of those provisions referred to at paragraph ~~3~~⁶⁴4⁶⁵ of standard condition D4A (Obligations in relation to offers for connection etc⁶⁶);

- (d) that any methods by which the GB transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the licensee) with the Grid Code, the STC and the Distribution Code; and
 - (e) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the licensee pursuant to a request under standard condition C8 (Requirement to offer terms) should be in as similar a form as is practicable.
2. If an application is made in accordance with paragraph 1 above, the licensee shall:
- (a) notify the Authority of:
 - (i) any associated⁶⁷ TO offer which relates to the ~~offer~~⁶⁸ agreement to be entered into⁶⁹ which is the subject of that application;
 - (ii) any transmission licensee (other than a transmission licensee who has made a TO offer) which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the ~~offer~~⁷⁰ agreement to be entered into⁷¹ which is the subject of that application or any associated TO offer which relates to the agreement to be entered into⁷²;
 - (b) notify each transmission licensee who has made an associated TO offer which relates to the agreement to be entered into⁷³ and any other transmission licensee which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the ~~offer~~⁷⁴ agreement to be entered into⁷⁵ which is the subject of that application or any associated TO offer which relates to the agreement to be entered into⁷⁶, of such application; and
 - (c) request that the Authority exercise its powers under section 7(3)(c) of the Act to ⁷⁷

(i) ⁷⁸ settle the terms of each associated TO offer which is affected by the Authority's determination made pursuant to paragraph 1 above or this paragraph 2(c). ~~_____~~ ⁷⁹; and ⁸⁰

(ii) determine whether any TO offer (other than those TO offers (if any) which the licensee shall have notified to the Authority in accordance with paragraph 2(a) above) is required in connection with the Authority's determination made pursuant to paragraph 1 above or this paragraph 2(c). ⁸¹

3. Insofar as any person entitled or claiming to be entitled to an offer under standard condition C8 (Requirement to offer terms) wishes to proceed on the basis of an agreement as settled by the Authority pursuant to paragraph 1, the licensee shall forthwith enter into such agreement.
4. If in respect of any bilateral agreement or construction agreement entered into pursuant to standard condition C8 (Requirement to offer terms) or this condition either the licensee or other party to such agreement proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.
5. If a request is made in accordance with paragraph 4 above, the licensee shall:
 - (a) notify the Authority of any associated TO agreement which relates to the agreement which is the subject of that request;
 - (b) notify each transmission licensee who is a party to an associated TO agreement notified to the Authority pursuant to paragraph (a); and
 - (c) request that the Authority exercise its powers under section 7(3)(c) of the Act to settle the terms of each associated TO agreement which is affected by the Authority's determination made pursuant to paragraph 4 above.

6. Where the licensee is party to a relevant agreement for connection and/or use of system which is other than in conformity with the CUSC, if either the licensee or other party to such agreement for connection and/or use of system proposes to vary the contractual terms of such agreement in any manner provided for under such relevant agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable having (in so far as relevant) regard to the consideration that the terms so settled are, in so far as circumstances allow, similar to the equivalent terms in the CUSC.
7. If a request is made in accordance with paragraph 6 above, the licensee shall:
 - (a) notify the Authority of any associated TO agreement which relates to the agreement which is the subject of that request;
 - (b) notify each transmission licensee who is a party to an associated TO agreement notified to the Authority pursuant to paragraph (a); and
 - (c) request that the Authority exercise its powers under section 7(3)(c) of the Act to settle the terms of each associated TO agreement which is affected by the Authority's determination made pursuant to paragraph 6 above.
8. If the licensee and a CUSC user or other person or party to a relevant agreement are in dispute as to whether:
 - (a) use of system charges made, or to be made, conform with the statement of the use of system charges furnished under paragraphs 2(b) or 8 of standard condition C4 (Charges for use of system) which applied or applies in relation to the period in respect of which the dispute arises;
 - (b) connection charges made, or to be made, conform with the statement of the connection charging methodology furnished under paragraphs 4 or 10 of standard condition C6 (Connection charging methodology)

which applied or applies in relation to the period in respect of which the dispute arises,

such dispute may be referred to the Authority for him to determine whether, in the case of sub-paragraph (a), the charges made, or to be made, conformed with the relevant statement(s) furnished under standard condition C4 (Charges for use of system), or whether, in the case of sub-paragraph (b), the charges conformed with the relevant methodology.

9. For the purposes of this condition:

"relevant agreement"

means an agreement in respect of which paragraph 3 of standard condition 10C of the licensee's licence, as such applied immediately prior to 18 September 2001 had effect.

~~OPTION B~~⁸² ~~Condition C9: Functions of the Authority~~⁸³ D4A: Obligations in relation to offers for connection etc⁸⁴

1. ~~If, after a period which appears to the Authority to be reasonable for the purpose, the licensee has failed to enter into an agreement with (as the case may be) any authorised electricity operator or any person entitled or claiming to be entitled thereto pursuant to a request under standard condition C8 (Requirement to offer terms), the Authority may, pursuant to section 7(3)(c) of the Act and on application of such authorised electricity operator or such person or the licensee, settle any terms in dispute of the agreement to be entered into between the licensee and that authorised electricity operator or that person in such manner as appears to the Authority to be reasonable having (in so far as relevant) regard in particular to the following considerations:~~⁸⁵
 - ~~(a) — that such authorised electricity operator or such person should pay to the licensee:~~⁸⁶
 - ~~(i) — in the case of use of system, use of system charges in accordance with paragraphs 1 and 6 of standard condition C4 (Charges for use of system); or~~⁸⁷
 - ~~(ii) — in the case of connection charges in accordance with paragraphs 1 and 7 of standard condition C6 (Connection charging methodology);~~⁸⁸
 - ~~(b) — that the performance by the licensee of its obligations under the agreement should not cause it to be in breach of those provisions referred to at paragraph 6 of standard condition C8 (Requirement to offer terms);~~⁸⁹
 - ~~(c) — that the performance by another transmission licensee of its obligations under any associated TO agreement should not cause another transmission licensee to be in breach of those provisions referred to at paragraph 3 of standard condition D4A (Obligations in relation to offers for connection);~~⁹⁰

~~(d) that any methods by which the GB transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the licensee) with the Grid Code, the STC and the Distribution Code; and⁹¹~~

~~(e) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the licensee pursuant to a request under standard condition C8 (Requirement to offer terms) should be in as similar a form as is practicable.⁹²~~

~~2. If an application is made in accordance with paragraph 1 above, the licensee shall.⁹³~~

~~(a) notify the Authority of:⁹⁴~~

~~(i) any TO offer which relates to the offer which is the subject of that application;⁹⁵~~

~~(ii) any transmission licensee (other than a transmission licensee who has made a TO offer) which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the offer which is the subject of that application or any associated TO offer; and⁹⁶~~

~~(b) notify each transmission licensee who has made an associated TO offer and any other transmission licensee which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the offer which is the subject of that application or any associated TO offer, of such application.⁹⁷~~

~~3. Insofar as any person entitled or claiming to be entitled to an offer under standard condition C8 (Requirement to offer terms) wishes to proceed on the basis of an agreement as settled by the Authority pursuant to paragraph 1, the licensee shall forthwith enter into such agreement.⁹⁸~~

~~4. If in respect of any bilateral agreement or construction agreement entered into pursuant to standard condition C8 (Requirement to offer terms) or this~~

~~condition either the licensee or other party to such agreement proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.~~⁹⁹

~~5. If a request is made in accordance with paragraph 4 above, the licensee shall:~~¹⁰⁰

~~(a) notify the Authority of any associated TO agreement which relates to the agreement which is the subject of that request;~~¹⁰¹

~~(b) notify each transmission licensee who is a party to an associated TO agreement notified to the Authority pursuant to paragraph (a).~~¹⁰²

~~6. If at the date the Authority makes a determination in accordance with paragraph 4 above, the licensee and any other transmission licensee who is a party to any associated TO agreement has not agreed the terms of any variation required to such associated TO agreement to take account of such determination, the Authority may, at the request of the licensee or such other transmission licensee, determine any terms of such associated TO agreement which are in dispute at that time.~~¹⁰³

~~7. Where the licensee is party to a relevant agreement for connection and/or use of system which is other than in conformity with the CUSC, if either the licensee or other party to such agreement for connection and/or use of system proposes to vary the contractual terms of such agreement in any manner provided for under such relevant agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable having (in so far as relevant) regard to the consideration that the terms so settled are, in so far as circumstances allow, similar to the equivalent terms in the CUSC.~~¹⁰⁴

~~8. If a request is made in accordance with paragraph 6 above, the licensee shall:~~¹⁰⁵

~~(a) — notify the Authority of any associated TO agreement which relates to the agreement which is the subject of that request;~~¹⁰⁶

~~(b) — notify each transmission licensee who is a party to an associated TO agreement notified to the Authority pursuant to paragraph (a).~~

107

~~9. — If at the date the Authority makes a determination in accordance with paragraph 8 above, the licensee and any other transmission licensee who is a party to any associated TO agreement has not agreed the terms of any variation required to such associated TO agreement to take account of such determination, the Authority may, at the request of the licensee or such other transmission licensee, determine any terms of such associated TO agreement which are in dispute at that time.~~¹⁰⁸

~~10. — If the licensee and a CUSC user or other person or party to a relevant agreement are in dispute as to whether:~~¹⁰⁹

~~(a) — use of system charges made, or to be made, conform with the statement of the use of system charges furnished under paragraphs 2(b) or 8 of standard condition C4 (Charges for use of system) which applied or applies in relation to the period in respect of which the dispute arises;~~¹¹⁰

~~(b) — connection charges made, or to be made, conform with the statement of the connection charging methodology furnished under paragraphs 4 or 10 of standard condition C6 (Connection charging methodology) which applied or applies in relation to the period in respect of which the dispute arises;~~¹¹¹

~~such dispute may be referred to the Authority for him to determine whether, in the case of sub-paragraph (a), the charges made, or to be made, conformed with the relevant statement(s) furnished under standard condition C4 (Charges for use of system), or whether, in the case of sub-paragraph (b), the charges conformed with the relevant methodology.~~¹¹²

~~11. For the purposes of this condition:~~¹¹³

~~"relevant agreement"~~¹¹⁴

~~means an agreement in respect of which paragraph 3 of standard condition 10C of the licensee's licence, as such applied immediately prior to 18 September 2001 had effect.~~¹¹⁵

Condition D4A: Obligations in relation to offers for connection¹¹⁶ ~~1.~~¹¹⁷ On

notification by the system operator of receipt of an application for connection or for modification to an existing connection in accordance with paragraph 2 of standard condition C8 (Requirement to offer terms), the licensee shall ~~as soon as practicable~~¹¹⁸ (subject to paragraph 2 and paragraph 4)¹¹⁹ offer to enter into an agreement with the system operator and such offer shall make detailed provision regarding:

- (a) the carrying out of ~~works~~¹²⁰ work¹²¹ (if any) on the licensee's transmission system required to connect the GB transmission system to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purpose;
- (b) the carrying out of works (if any) on the licensee's transmission system in connection with the extension or reinforcement of the licensee's transmission system which is rendered (in the licensee's discretion) appropriate or necessary by reason of making the connection or modification to an existing connection to the GB transmission system and for the obtaining of any consents necessary for such purpose;
- (c) where the system operator requests the same, the installation of meters (if any) on the licensee's transmission system required to enable the system operator to measure electricity being accepted into the GB transmission system at the specified entry point or points or leaving such system at the specified exit point or points;¹²²
- (d)¹²³ the date by which any works required on the licensee's transmission system to facilitate access to the GB transmission system (including for this purpose any works on the licensee's transmission system to reinforce or extend the licensee's transmission system)¹²⁴ shall be completed (time being of the essence unless otherwise agreed by the system operator);
- ~~(d)~~¹²⁵ e¹²⁶ such costs as may be directly or indirectly incurred in carrying out the works, the extension or reinforcement of the licensee's transmission system or the provision and installation, maintenance and

repair or (as the case may be) removal following disconnection of any electric lines, electric plant or meters, which works are detailed in the offer;

- (f) such further terms as are or may be appropriate for the purpose of the agreement; and

in providing such information, the licensee shall co-operate and co-ordinate its activities with other transmission licensees in accordance with the STC.

- 2. Subject to paragraph 4, the licensee shall, after receipt by the licensee of an application containing all such information as the licensee may reasonably require for the purpose of formulating the terms of the offer, offer terms in accordance with paragraph 1 above as soon as practicable and (except where the Authority consents to a longer period) in accordance with the time periods specified for this purpose in the STC.

- 3. On notification by the system operator in accordance with paragraph 2 of standard condition C8 (Requirement to offer terms) of receipt by the system operator of an application for use of system, the licensee shall (subject to paragraph 4), where the system operator requests that it do so in accordance with the STC, offer to enter into an agreement with the system operator in respect of such application in the manner provided in the STC and for the purposes of making such offer shall cooperate and coordinate its activities with other transmission licensees in accordance with the STC.¹²⁷

- 4.¹²⁸ The licensee shall not be obliged pursuant to this condition to offer to enter into or to enter into ~~an~~¹²⁹ any¹³⁰ agreement pursuant to this condition if to do so would be likely to involve the licensee:

- (a) in breach of its duties under section 9 of the Act;
- (b) in breach of any regulations made under section 29 of the Act or of any other enactment relating to safety or standards applicable in respects of the transmission business; or
- (c) in breach of the conditions,

and where the licensee is not obliged pursuant to this condition to offer to enter into or to enter into an agreement with the system operator, the licensee shall notify the system operator of that fact (and of the fact that it does not intend to offer to enter into or to enter into an agreement pursuant to paragraph 1 [or paragraph 3](#)¹³¹) as soon as practicable in accordance with the STC.

~~OPTION A~~¹³² **Condition D4B: Functions of the Authority**

1. ¹³³ Insofar as the system operator wishes to proceed on the basis of a TO offer from the licensee as settled by the Authority pursuant to paragraph 2 of standard condition C9 (Functions of the Authority), the licensee shall forthwith enter into an agreement with the system operator which fully reflects the TO offer as so settled.

OPTION B¹³⁴

Condition D4B:¹³⁵ **Functions of the Authority**¹³⁶

~~1. If following any determination by the Authority under~~¹³⁷

~~2. Where the Authority determines in accordance with~~¹³⁸ paragraph ~~1 of standard~~
~~2(c)(ii) of standard~~¹³⁹ ~~condition C9 (Functions of the Authority) in relation~~
~~to a failure by the system operator to enter into an agreement with an~~
~~authorised electricity operator or any person entitled to or claiming to be~~
~~entitled thereto pursuant to a request under standard condition C8~~
~~(Requirement to offer terms), a variation of any TO offer is required and a~~
~~dispute as to such variation arises between the system operator and the~~
~~licensee, the Authority may, pursuant to section 7(3)(c) of the Act and on~~
~~application of the system operator or the licensee, settle any terms of the TO~~
~~offer which are in dispute in such manner as appears to the Authority to be~~
~~reasonable having (in so far as relevant) regard in particular to the following~~
~~considerations:~~¹⁴¹

~~(i) that an offer made by the system operator in accordance with standard~~
~~condition C8 (Requirement to offer terms) must reflect the terms of~~
~~any associated TO offer;~~¹⁴²

~~(ii) that the performance by the licensee of its obligations in relation to the~~
~~TO offer should not cause the licensee to be in breach of those~~
~~provisions referred to at paragraph 3 of standard condition D4A~~
~~(Obligations in relation to offers for connection); and~~¹⁴³

~~(iii) that the performance by another transmission licensee of its obligations~~
~~under any associated TO agreement should not cause that other~~
~~transmission licensee to be in breach of those provisions referred to at~~
~~paragraph 3 of standard condition D4A (Obligations in relation to~~
~~offers for connection);~~¹⁴⁴

~~(iv) that the performance by the system operator of its obligations under~~
~~agreement entered into pursuant to standard condition C8~~

~~(Requirement to offer terms) should not cause the system operator to be in breach of those provisions referred to at paragraph 6 of standard condition C8 (Requirement to offer terms);~~¹⁴⁵

~~(v) that any methods by which the GB transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the licensee) with the Grid Code, the STC and the Distribution Code;~~¹⁴⁶

~~2. If an application is made in accordance with paragraph 1 above, the system operator shall;~~¹⁴⁷

~~(a) notify the Authority of;~~¹⁴⁸

~~(i) any other TO offer which relates to the offer which is the subject of that application;~~¹⁴⁹

~~(ii) any other transmission licensee (other than a transmission licensee who has made a TO offer) which the system operator knows or reasonably considers is or may be an affected transmission licensee for the purposes of the offer which is the subject of that application;~~¹⁵⁰

~~(b) notify each transmission licensee who has made an associated TO offer and any other transmission licensee which the system operator knows or reasonably considers is or may be an affected transmission licensee for these purposes of that TO offer of such application.~~¹⁵¹

~~3. Insofar as the system operator wishes to proceed on the basis of a TO offer settled by the Authority pursuant to paragraph 1, the licensee shall enter into an agreement with the system operator which fully reflects such TO offer as so settled.~~¹⁵² that a TO offer (other than those TO offers (if any) notified to the Authority in accordance with paragraph 2(a) of standard condition C9 (¹⁵³Functions of the Authority¹⁵⁴)) is required in respect of an agreement settled by the Authority pursuant to paragraph 1 of standard condition C9 (Functions of the Authority) and that other TO offer is required to be made by

the licensee, the licensee shall prepare a TO offer which is consistent with such determination and shall submit such TO offer to the system operator as soon as reasonably practicable after the date of such determination and, in any event, within the time periods (if any) specified in such determination. ¹⁵⁵