

# National Grid Transco

## **Response to OFGEM/DTI Consultation on Provisions for the Transition to the GB CUSC, GB Grid Code and GB Connection and Use of System Agreements under BETTA (July 2004)**

### **Introduction**

1. We welcome the opportunity to comment on “Provisions for the Transition to the GB CUSC, GB Grid Code and GB Connection and Use of System Agreements under BETTA – July 2004” (the consultation document.)

### **Overview**

2. We respond to each of the key issues as laid out in the consultation document in turn. Generally where we have not commented upon a specific issue NGC is broadly supportive of OFGEM’s proposal(s) in that area.

### **The Legal Elements of Transition:**

3. Having reflected on the matters referred to in Paragraph 4.3 of the consultation, we now believe that it would be preferable for those generic GB changes required to the existing E&W agreements to be addressed by provisions in sec 12 rather than by requiring NGC and existing E&W users to enter into, in all cases, an agreement to vary. This recognises that a number of the changes will be changes in the “form” of the documents as a result of the changing definitions and that where there is no other effect on the signed agreements it is more efficient to deal with these changes in this manner. We also believe that the drafting to achieve this can be made robust and clear and that any agreements to vary or modifications raised under the enduring arrangements after Betta go-live could be used to “tidy up” and put their agreement into a GB form if users wished. Whilst this approach could be adopted at either Betta go-active or Betta go-live, Betta go-active has the advantage in that any E&W offers made after Betta go-active would then be in the GB “form” although limited in scope by section 12. This would limit the number of E&W agreements which would rely on provisions in section 12 to effect the generic changes and also follows the approach adopted for the GB Grid Code and GB BSC and so delivers consistency across the code documents.

### **Transitional Licence Conditions for Connection to and Use of System**

4. The transitional licence condition drafting in Appendix 4 paragraph 3(b) currently obliges NGC to offer to amend agreements with existing E&W users within certain timescales. As outlined above, were the generic changes dealt with in section 12, agreements to vary would only be required where there were other changes necessary such that the existing agreement was consistent with NGC’s licence condition. We believe that this is a much more efficient and less disruptive approach and that the licence drafting should recognise this “as required” approach.
5. We note that, whilst the definitions of “existing other applicants” and “existing Scottish applicant” in Appendix 4 are both by reference to 1 January 2005, the timescale for the production of offers set out in paragraphs 7(b) and (c)

respectively differs. We assume, in light of paragraph 4.18 of the consultation paper, that this is not intentional. Otherwise it would mean that we could need to provide an offer to someone who was an existing other applicant, which is only known at 1 January 2005, before 1 January 2005. It also results in different treatment for GB offers for E&W and Scottish applicants which would not appear to be justified.

## **Transitional Provisions**

### **Application of the CUSC and Grid Code**

6. As explained in paragraph 3 above we believe that there is merit in bringing the enduring GB CUSC provisions into effect at Betta go-active rather than Betta go-live and then limiting their scope through section 12. The drafting in section 12 would need amending to reflect this “reverse” approach but would be simpler in that a number of the definitions within section 12 would no longer be required as the section 11 definitions could be relied upon.

### **Changes to Bilateral Agreements with users in England and Wales**

7. As explained above, if the generic changes were dealt with in section 12, agreements to vary would only be required in cases where something other than those generic changes needed amending to give effect to the GB arrangements.
8. We also note that there are a number of areas relating to agreements for connection to or use of the GB transmission system where the transition arrangements could be particularly complex. Further development of these particular areas is ongoing and may lead to additional requirements for transitional provisions as provided for in section 12.

### **Putting in place bilateral agreements with users in Scotland**

9. NGC will shortly be contacting Scottish users concerning the completion of the CUSC accession agreements necessary for them to accede to the GB CUSC

### **Agreement of offers**

10. NGC supports Ofgem’s view that a GB agreement should be in place at Betta go-live between NGC and a user where a connection is energised at that date and whilst we will work with users to achieve this welcomes the failsafe provided by the obligation on parties to sign any referred agreement pending the Authority determination.

### **Data**

12. In addition to the other data requirements NGC will require 3 years historic demand data for Scottish users for the purposes of investment planning and generation scheduling and the transitional provisions within the GB CUSC and GB Grid Code will need amending so that the Scottish users have an obligation to provide or to enable the relevant transmission licensees to provide this to NGC.

### **Back Off Arrangements**

13. We note that throughout the consultation document, specific conditions and obligations are placed upon NGC that require cooperation and information from the relevant transmission licensees. Whilst in general we do not disagree with any of the proposed conditions or obligations, we look forward to working with Ofgem and the relevant transmission licensees to develop the necessary obligations within the TO transitional licence obligations and the SO-TO Code to satisfy us that we will be able to effectively discharge our transitional licence and code obligations.

#### **Interactions with GB Access Reforms**

14. We note that a number of proposals put forward in the consultation will be dependent on the outcome of the ongoing consultation on GB Access Reforms. We note that some of the proposals may therefore have to be significantly changed from their existing form pending the outcome of the GB Access Reforms consultation process.

#### **Drafting Comments**

15. Specific drafting comments are attached.

## **Drafting Comments**

### **Appendix 2**

C14 para 7(c) reference should be to parties to whom the Grid code applies.

### **Appendix 4**

Should definition of licensee refer specifically to NGC?

Para 2 “reasonable” should be inserted between “such” and “steps” on line 1.

Para 3(b) insert “such of” before “existing” on line 1 and “as are necessary” after “system on line 2

Para 3(c) should cross ref be to 8

Para 4 should cross ref be to 8

Para 5(e) insert “and to the extent appropriate” after “connection” on line 1 for consistency with 6(e)

Para 5(e)(iii) Should this be renumbered as 5(f) and start with “contain”? Remove square brackets. What is the purpose of the words “as appropriate” at the end?

Para 6(a) insert “to the extent appropriate” after “reflect” on line 1 for consistency with 5(a)

Para 6(e)(iii) Should this be renumbered as 5(f) and start with “contain”? Remove square brackets. What is the purpose of the words “as appropriate” at the end?

Para 7(a) this should be linked to notification by relevant transmission licensee of such users (cf 7(c)(i)

Para 7(b) (i) and (ii) replace “the first day of the transition period” on line 1 with 1 January 2005.

Para 8(d0 what is meant by “notification” is it the notification by TO to NGC under 7© (i) and (ii)?

### **Appendix 8**

Clause 9 There may be issues with reference to exclusive jurisdiction but to two areas

### **Appendix 9**

General.

Drafting of Section 12 of the CUSC to be amended so that it reflects the GB CUSC being in effect as at Go-Active rather than as at Go-Live (principally this will result in a reduction in the number of definitions used in Section 12 alone as the generic GB CUSC definitions can be used for the purposes of Section 12 and some tweaking of the wording generally in terms of what then applies), making the approach used for the CUSC consistent with that used for the Grid Code/BSC.

Further consideration to be given to the precise language describing the rights and obligations of Users and NGC in the provisions to reflect more accurately what is practically happening in that period (i.e. in relation to Paragraphs 12.2.2 to 12.2.4 of the CUSC and GC.A2.2 to GC.A2.4 of the Grid Code).

Concept of existing CUSC agreements being read and construed as though certain generic amendments have been made to them to be reintroduced into Section 12 of the CUSC (which will result in amendments to Paragraph 12.2.6 of the CUSC and creation of a new appendix).

The drafting in Appendix 4 of the consultation paper will need to be consistent with the approach taken in the CUSC in respect of the amendment of existing CUSC agreements.

## **Appendix 10**

GCA.3.1 Given the GB SQSS consultation as the outcome could have an impact upon the GB Grid Code, an additional provision enabling amendments to the Grid Code as a consequence of this at GCA1.11 should be considered.