

David Haldearn
BETTA Project
Ofgem
9 Millbank
London
SW1P 3GE

Richard Court
Commercial Frameworks
Manager

richard.court@ngtuk.com
Direct tel +44 (0)1926 656146
Direct fax +44 (0)1926 656520

6 August 2004

Dear David,

Initial Allocation of GB Transmission system access rights under BETTA

We welcome the opportunity to comment on the draft legal text to give effect to Ofgem's proposals for addressing the transitional issues associated with the introduction of BETTA. Our response firstly deals with our thoughts in principle with the approach proposed, secondly deals with some practical issues associated with adopting such an approach, and finally sets out some detailed issues with respect to the legal drafting

Principles behind the Proposed Approach

We support Ofgem/DTI's conclusions on the proposed way forward for the initial allocation of GB Transmission system access rights. We believe this offers a pragmatic approach to the initial allocation. However, as identified in our Technical Report, we believe that this decision may lead to significant constraint costs and these will need to be reflected in NGC's future SO Incentive schemes. Also the transmission network may not be in accordance with the requirements of the GB Security and Quality of Supply Standard and therefore we would expect appropriate derogations to be given to the GBSO and TOs.

We set out below some more detailed comments on the practical issues associated with delivering this approach. In particular we believe that implementation will require significant input from the Scottish TO licensees and ourselves over the period from BETTA Go-Active to BETTA Go-Live.

We concur with Ofgem's assumption that the proposal as stated should mean that all parties with existing commissioned plant should get access rights in line with their existing arrangements. In addition, we note that, for parties applying to the England & Wales network, offers for access should be of a similar form than those that they would have received pre-BETTA.

We are unsure however of the precise impact of the proposals in terms of existing Scottish offers and agreements. This uncertainty largely surrounds whether the Scottish TOs have the remit, under their current licences, to make or have made offers reflecting investments on the wider Scottish network rather than just within their respective area. For example, for an access request in the North of Scotland, are only local SHETL system works identified or are SP system works identified as well and included in the agreement in some way? This is what we assume is implied by the licence drafting contained in the consultation and we support this as the most sensible way ease a transition to common GB Offers. We note however that if works in Scottish offers have been identified solely in the licensee's own area (SP Transmission Ltd or Scottish Hydro Electric Transmission Ltd) then there may be the need to identify works in the other area in the GB offer to Scottish connectees under the proposed transitional access rights allocation. This obviously may then require additional work by the Scottish transmission licensees to identify the works.

Obviously the implementation of a cut off date before which transitional access rights will apply may incentivise a rush of speculative applications to emerge, particularly in Scotland where it is possible there may be a material difference between contingent works identified in a transitional offer and one made in the enduring regime. In addition, the proposals may incentivise applications to be made on the Scottish side of the England/Scotland border rather than just South of the border if such application would trigger large contingent works in the North of England. If the application is made in Scotland, these works will not be contingent reinforcements, if the application is in E&W they will be. We therefore believe it will be important to ensure that applicants have to pay a sensible application fee to the existing Transmission licensee for their application to be considered. In addition, once signed the provisions of the agreements should be enforced, such as security provision for works, to ensure that only serious and viable projects are progressed and that other more viable projects are not unduly restricted.

A key element in determining whether there is the potential for any perverse incentives to be given from the proposed arrangements will be the interpretation of what is meant by the bracketed phrase in the proposal "the offer shall not be contingent on completion of network reinforcement works on circuits relating directly to the Scotland-England Interconnector (**or works directly consequential to such network reinforcement**)". We interpret this to mean that if, in considering access rights for an application in Scotland, the Interconnector circuits and upgrade works in Northern England were required to be uprated to meet the Security Standards, then these would not be classified as contingent reinforcements for the Scottish applicant. If the next person in the queue was an applicant in the north of England and it was identified that with the increased flow from the previous Scottish applicant the same works in Northern England would suffice to meet the Security Standards then these works would not be classed as contingent for the applicant in the north of England as they are essentially directly consequential to the Interconnector upgrade works. This interpretation ensures that the second applicant is not left in a potentially discriminatory position of having to wait for access for an investment that was triggered by another party and would remove any incentive in this circumstance to connect North of the Interconnector rather than South. We would welcome Ofgem's view on whether this was the intention of this phrase and that this interpretation is correct.

The analysis set out in our Technical Report illustrated that, under some of the forecasted levels of renewable generation, there may be some very significant constraints costs if access rights were to be granted without all contingent reinforcements in place. The potential constraint volume of 2-3TWh (as identified in the technical report) if priced at

what we would believe to be a realistic efficient level of around £25/MWh, would give a constraint cost across the Scottish border between £50m and £75m. These volume and cost figures represent a central case view, and there remains a significant risk that both the volume and price of constraint could be significantly larger. Indeed, in subsequent years, we would anticipate significantly higher constraint costs as more renewable generation connects.

The extent to which such constraint costs actually occur will depend on the extent to which new generation projects commission but also on whether the reinforcements required, but excluded from any contractual access agreement, are built. In terms of the latter issue, we note Ofgem is separately considering the investments required to reinforce the Anglo-Scottish interconnector circuits and the network in the North of England through the RETS investment review. We note that timely completion of these investments may be extremely important given Ofgem's DTI's conclusions on the initial access rights allocation.

Practical Issues

In order to effect the proposed legal text we believe a GB Queue would have to be created to establish the initial allocation. It is our understanding that the proposed licence drafting defines two User categories in terms of the transitional arrangements and an order in which they are to be considered.

Category 1

Firstly, Users who have signed agreements as at 1 September 2004 will be considered in the chronological order that they signed their agreement. We assume that in practice this will be done in two stages:

Stage 1 would consider all those Users currently operational and commissioned onto the transmission systems. In practice, given an assumption of initially compliant transmission systems, existing access arrangements for all plant currently commissioned would be transferred across into new GB agreements. Essentially a Connection Entry Capacity (CEC), a Transmission Entry Capacity (TEC) and a site specific connection charge would need be established in their GB agreement to cover their access right to the system. In addition, any restrictions to their access contained in their existing agreements would also be carried across, for example any existing non firm arrangements or any requirement to accommodate a non-standard connection design (e.g., as Ofgem note where the transmission licensee owns a generator transformer rather than the generator itself). Clearly it will be very important that the GBSO is provided the information to establish what these terms are and that this information is accurate. For example, in incorporating these non-firm provisions it will be important to establish the precise restrictions on use of access, the removal of any undue compensation in the event access is restricted and to ensure no impact on other Users such as effects on system operation costs. Clearly it will be important to ensure that these arrangements do not cause any operational security concerns.

Stage 2 would consider Users who have signed agreements as at 1 September 2004 (but are yet to commission) to any of the 3 transmission licensees' networks. These Users would then be considered in the chronological order of the date at which they signed their

agreement. Contingent reinforcements would be identified (excluding the Interconnector circuits and works directly consequential to the Interconnection upgrade) in either England & Wales or Scotland (as a whole) depending on where the applicant applies for access. We envisage that this would mean that E&W applicants should see little or no change to the contingent reinforcements in a revised GB agreement. For Scottish applicants, there may be some changes to the contingent reinforcements if their existing Scottish agreement had only been considered on the basis of requirements on the transmission system they applied to be connected to (i.e. SP or SHETL in isolation).

For all parties in this Stage 2 the following will need to be established in a GB offer; a Connection Entry Capacity (CEC), a Transmission Entry Capacity (TEC), site specific connection charge, a programme of works including a list of contingent reinforcements which establishes a date by which firm access is assumed to be granted (subject to consent issues). Again for those Users who have signed agreements including non-firm arrangements or require accommodation of a non standard connection design, we assume these would be carried across. [In these circumstance any contingent works to translate these agreements into firm access at a later date would be identified on the same basis as the other transitional offers].

Category 2

Secondly Users who have applied to connect before 1 January 2005 to any of the 3 transmission licensees' networks but did not have a signed agreement at 1 September would then be considered in the chronological order in which they applied for access. Contingent reinforcements would be identified (excluding the Interconnector circuits and works directly consequential) in either England & Wales or Scotland (as a whole) depending on where the applicant applies for access. We envisage that this would mean that E&W applicants should see little or no change to the contingent reinforcements in a revised GB offer from that which they would have seen in an existing E&W offer pre BETTA. This assumes the interpretation set out above of "works directly consequential to the Interconnector ". Hence that when considering reinforcements required in England & Wales as a result of an application that not only are the Interconnector circuits excluded but also any reinforcements that are required directly as a result of increased Scotland to England flows from the previous application..

For Scottish applicants, there may be some changes to the contingent reinforcements compared with any existing Scottish offer made or to be made if such Scottish offer has only been considered on the basis of requirements on the transmission system they applied to be connected to (i.e. SP or SHETL in isolation).

For all parties in this transitional criteria the following will need to be established in a GB offer; a Connection Entry Capacity (CEC), a Transmission Entry Capacity (TEC), site specific connection charge, a programme of works including a list of contingent reinforcements which establishes a date by which firm access is assumed to be granted (subject to consent issues). Again for those Users who have signed offers including non-firm arrangements or require accommodation of a non standard connection design, we assume these would be carried across. [In these circumstance any contingent works to translate these agreements into firm access at a later date would be identified on the same basis as the other transitional offers.]

Implications for Transmission Licensees

We note therefore that implementing the above process will require close co-ordination between the three transmission licencees to ensure the initial allocation appropriates the contingent reinforcements to the right parties. This will require a significant workload on all three licensees and would need to be reflected appropriately in the implementation plan going forward. Clearly given the short time to BETTA Go-Live, this will be a very intensive process to enable all agreements and offers to be in place for Go-Live.

We would be concerned, given the volume of work that needs to be undertaken, if the transitional licence conditions placed any unnecessary restrictions on how the process is delivered. For example, whilst the condition may dictate how an offer should be defined, we do not believe it should set out the order in which offers are posted for example as this may preclude some parallel working and unduly holding up some users from understanding their access rights at an early stage.

In addition, it will be important to understand what "TO Offers" are required in the transitional process. For example, it may be sensible to have one TO Offer covering works which are excluded from Users agreements (e.g., the Interconnector circuits).

For Users who apply after the 1 January 2005, it is assumed the enduring access arrangements will apply, namely all GB reinforcements will be considered and all firm access only granted upon completion of the works. **Comments on the legal drafting**

Annex 1 contains some detailed comments with respect to the legal drafting. A full review of this is required against the TO transitional licence condition with regard to TO offers. We have no comments on the transitional licence condition for Generation, Demand and Supply

Should you wish to discuss any aspect of this response further please contact Lewis Dale or myself.

Yours sincerely,

Richard Court
Commercial Frameworks Manager

Annex 1 Detailed Comments on draft legal Text

We have the following comments on the NGC draft licence condition. We have no comments on the transitional licence condition for Generation, Demand and Supply.

Paragraph 2. Given the generic "take such steps" licence condition (Sec E C19) this provision is not needed and should be deleted.

Paragraph 3(b). As per our response to the 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) we believe that the generic changes to the form of the E&W agreements should be dealt with in the transitional provisions within CUSC and that on that basis the obligation to make offers to amend E&W existing agreements should be limited to where such offer is required to otherwise achieve consistency with this condition.

Paragraph 5(d). Should "relevant agreement" be "existing agreement"?

5(a) The TO's input into the user offer will for existing commissioned sites be the Connection Site specification envisaged by Section I of STC.

Paragraph 5(f) add "and to the extent appropriate" after "connection" on line 1 for consistency with 6(f)

Paragraph 5(f)(ii) note 6 and paragraph 6(f)(ii) note 9. What is the current thinking on this?

Paragraph 5(f)(iii) and 6(f)(iii) should this be renumbered as 5\6(g) and start with "contain"? Remove square brackets from "willing"

Paragraph 6(a) add "to extent appropriate" for consistency with 5(a)

Paragraph 6(d). Should this refer to "as practicable" as per 5(d)?

Paragraph 7 and sch 1 para 3. As drafted this could suggest that there is a prescribed order in which the various offers themselves are made rather than an order, as set out in the consultation, as to how access is allocated. If this is the intention then it seems unnecessarily prescriptive and assumes a linear offers process requiring all offers for one category to be issued before offers for another category can be sent out. If not the intention it would be helpful to remove the wording at the intro of paragraph 7 and reword Sch 1 para 3 as follows.

"In making offers in accordance with condition **[insert appropriate cross reference to the transitional connections condition]** the licensee shall identify the transmission infrastructure requirements relevant to such offer in the following order:"

Paragraph 7(b)(i) and (ii). As per our response to the 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) we believe this should be the same as for existing Scottish applicants and refer in (aa) to [1 January 2005] instead of the first day of the transition period.

Paragraph 8(d) is this reference to the TO transitional offers licence condition?

Sch 1 para 2(b)(i) Remove square brackets around the word directly. Are any changes required to the words in brackets given our interpretation of these as set out in the Principles section of our response?

Sch 1 para 2(b)(i), (ii) and (iii) Is there a need to define “transmission system works” and “transmission reinforcement works”? Is there any intended distinction between them and if not the phrase should be consistent. Paragraph 3 refers to “transmission system infrastructure requirements”.

Sch 1 para 3 reference should be to GB transmission system and (c) should refer to "complete" application on last line."

We note that the licence condition drafting does not include wording similar to the avoidance for doubt wording proposed for licence condition C7 in the recent Ofgem consultation “Betta Consultaion on Draft Licence Condition to Implement a Proposed Interim Charging Measure for small, transmission connected generation”. We would wish something to be included to cover the various categories within the transition period and the move to the enduring arrangements.