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17 December 2004

Dear Colleague,

**BETTA open letter on proposed changes to Standard Licence Conditions C18, C8 and D15 for Transmission Licences, Section 12 of the CUSC, Section I of the STC – and transitional licence obligations for all generation, distribution and supply licensees to reflect the possible late issuance of GB offers under transmission licence condition SLC C18 and other required changes**

### ***Background***

In August 2004, the Secretary of State exercised her powers under the Energy Act 2004 to determine new standard licence conditions ("SLCs") for electricity transmission licences. The Secretary also exercised her powers to modify the new standard licence conditions for the transition period until BETTA go-live<sup>1</sup>. The new SLCs and the transitional modifications came into effect on and from 1 September 2004.

In particular, the new transitional modifications to the SLCs for the BETTA transition period included the insertion of SLC C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) ("SLC C18"). This condition places obligations upon National Grid Company plc ("NGC") (the relevant transmission licensee for the purpose of SLC C18) to make offers of terms for connection to or use of the GB transmission system to users during the transition period ("GB offers"). SLC C18 sets out, amongst other things, dates by which NGC will be required to issue GB offers, conditions governing the order in which they are to be issued and conditions governing certain terms of GB offers to certain users. Provisions in the Connection and Use of System Code ("CUSC") and the System Operator – Transmission Owner Code ("STC") and the SLCs of the electricity generation, distribution and supply licences also set down arrangements for the development of and entering into of GB offers.

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<sup>1</sup> The "transition period" is the period from 1 September 2004 to the BETTA go-live date, currently anticipated to be 1 April 2005 (except in particular circumstances).

This Ofgem/DTI open letter considers SLC C18 and the associated arrangements in light of:

- ◆ an Ofgem/DTI open letter published in November 2004 on the possible late issuance of GB offers ('the November letter')<sup>2</sup>, and
- ◆ further consideration of the practicalities of adhering to SLC C18 as currently drafted.

Ofgem/DTI propose that a number of changes are made to SLC C18 and the associated arrangements in relation to these matters and sets out, in this open letter, draft legal text to give effect to these proposals. Views are invited on these proposals and on the draft legal text attached to this letter **by 12 January 2005**. Responses to this open letter should be sent to:

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Any questions on the proposals or legal drafting included within this open letter should be addressed to Patrick Smart at Ofgem on 0207 7901 7350, email [patrick.smart@ofgem.gov.uk](mailto:patrick.smart@ofgem.gov.uk) and copied to Angela Pearce at DTI on 020 7215 2748, email [Angela.Pearce@dti.gsi.gov.uk](mailto:Angela.Pearce@dti.gsi.gov.uk).

### ***Possible late issuance of GB offers***

The November letter stated that, in some instances, GB offers are likely to be made by dates later than those referred to in SLC C18. Ofgem/DTI explained that the transmission licensees had informed Ofgem that, in light of certain factors including the larger than expected volume of applications received and the scarcity of appropriately trained staff, certain users who were not due to be connected to or using the GB transmission system at BETTA go-live (currently anticipated for 1 April 2005) may not receive their GB offer in the timescales set out in SLC C18. The November letter also referred to the Authority's power to direct or consent to an extension of the dates by which the classes of user should receive their GB offers. The November letter also set out Ofgem/DTI's expectation that NGC would request the consent of the Authority to issue GB offers to categories of users or individual users in timescales reflective of those set out in the November letter where they consider such consent is required. Such a request for consent was received from NGC on 13 December 2004.

The timescales set out in the November letter indicated that users who did not have agreements in place with a transmission licensee as at 1 September 2004 may not receive their GB offer until after BETTA go-live (currently scheduled for 1 April 2005) and in any event by 1 May 2005 depending on volumes of applications received. The November letter also made clear that the effect of the advice received from all three transmission licensees is that users who are either connected to or using the GB transmission system or are scheduled to be connected to or scheduled to be using the GB transmission system at the BETTA go-live date will receive their

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<sup>2</sup> "BETTA open letter on likely late issuance of offers under standard licence condition C18 of the electricity transmission licence, November 2004", 257/04

GB offers in accordance with the timescales set out in SLC C18. Where it is proposed to extend the timescales for production of a GB offer, all three transmission licensees have advised that such extensions should, in themselves, have little or no significant impact on the timescales in which an applicant could connect to or use the GB transmission system. Furthermore, Ofgem/DTI note that it is not proposed that the change in the dates set out above will affect the infrastructure requirements upon which GB offers are made conditional. That is to say, those persons who apply to a transmission licensee for an offer of terms before 1 January 2005 will receive a GB offer that shall;

1. not be contingent on the completion of transmission system works on circuits which relate directly to the interconnection (or works directly consequential, in the context of the relevant offer, to such transmission system works);
2. in the case of a person in Scotland, not be contingent on the completion of transmission system works in England and Wales;
3. in the case of a person in England and Wales, not be contingent on the completion of transmission system works in Scotland.

In the November letter, Ofgem/DTI recognised that changes might be required to various legal documents to reflect the possible late issuance of these offers. It was noted that specific proposals would be brought forward in due course. Section A of this open letter sets out Ofgem/DTI's proposals for amendments to the various legal documents to reflect the likely issuance of some offers for connection to the GB transmission system after BETTA go-live. This includes proposals to modify licence conditions which apply to TOs in their role in the preparation of GB offers.

### ***Interactive GB offers under SLC C18***

Schedule 1 to SLC C18, amongst other things, sets out conditions to be followed by NGC in identifying transmission system works upon which offers of GB terms for certain persons who had an agreement in place with a transmission licensee as at 1 January 2005 ("existing users") should be contingent. Specifically it requires that NGC identify transmission system reinforcement works for existing users with an agreement with a transmission licensee as at 1 September 2004 ("Category A persons") *".. in the order in which each such existing user accepted the offer for connection or use of system which led to its existing agreement, starting with the existing user who accepted its offer earliest, provided that, where it is not reasonably practicable for the licensee to determine the date upon which an offer was accepted by a particular existing user, the relevant date for these purposes shall be the date upon which that relevant existing user's Plant or Apparatus was commissioned"*<sup>3</sup>.

The offers to be made to Category A persons as defined above will not be contingent upon offers to other users (nor will other offers be contingent upon them). This is because when preparing offers for Category A persons (as defined above), NGC assumes that all prior offers have been accepted, and when preparing subsequent offers, NGC assumes that that existing user has accepted their offer. For all other persons who receive a GB offer under SLC C18, NGC does not assume this, and consequently, all other offers have the potential to be interactive with other offers. The arrangements applying in respect of interactive offers to apply from BETTA go-live across GB are currently set down in clause 6.10.4 of the CUSC, although these provisions only

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<sup>3</sup> Schedule 1 to SLC C18, paragraph 3, sub-paragraph (b)

apply in respect of GB offers made under the enduring licence condition SLC C8 and not under SLC C18. CUSC clause 6.10.4 requires that where NGC issues an offer ("the Second Offer") and NGC is aware that there is an existing offer ("The First Offer") which if accepted would affect the terms of the Second offer, NGC shall;

- A. immediately notify both of the existence of offers that may affect the terms of their own offers;
- B. be entitled to make the terms of each conditional upon the acceptance or otherwise of the other, and;
- C. be entitled to vary the terms of one, in accordance with licence timescales should the other be accepted.

It was always the underlying intention that interactive GB offers should be managed in this way and having reviewed the transitional arrangements to apply to licences and Codes, Ofgem/DTI propose that Section 12 of the CUSC which deals with transitional matters should be amended such that NGC can adopt a process whereby they are able to manage interactive GB offers issued under SLC C18 in a manner equivalent to that which will apply to GB offers from BETTA go-live. Section B of this open letter sets out Ofgem/DTI's proposals for amendments to the CUSC in relation to interactive offers made under SLC C18.

Ofgem/DTI are of the view that where any GB offer issued under SLC C18, which are withdrawn (because another interactive offer has been accepted) and a revised GB offer made then the revised GB offer should be developed in accordance with conditions of SLC C18. To the extent that any revised GB offers are made under SLC C18 then it was always the case that this was likely to have taken place after BETTA go-live and, in light of the possible late issuance of GB offers in accordance with the November letter, the likelihood of this occurring would appear to have increased. Therefore, these drafting changes will need to endure beyond BETTA go-live.

The drafting changes required to deliver this will be achieved through the changes made to extend SLC C18 and SLC D15, discussed in Section A below, to permit the issuance of GB offers under SLC C18 after BETTA go-live and the equivalent changes made to extend the applicability of the CUSC and STC transitional text beyond BETTA go-live in relation to the issuing of GB offers under SLC C18.

### ***Requirement to offer terms for use of system under SLC C18 in 28 days***

SLC C18 requires NGC to make offers of terms for connection and use of the GB transmission system to existing users by 1 February 2005 or such later date as the Authority may consent. In respect of those who apply to a transmission licensee before BETTA go-live but who are not existing users ("existing applicants"), NGC is required to make offers of terms for connection by the later of 3 months from 1 January 2005 or the date that they applied and to make offers of terms for use of system by the later of 28 days from 1 January 2005 or the date that they applied.

Schedule 1 to SLC C18, also requires NGC to make offers of terms to existing users who signed agreements after 1 September 2004 ("Category B existing users") and to existing applicants no later than the date by which another Category B existing user or another existing applicant receives their GB offer where that other existing user or existing applicant applied after the first Category B existing user or existing applicant. In other words Schedule 1 provides that if

someone applies after you, you should receive your GB offer no later than the date on which that person receives their GB offer. There is no distinction currently made between offers of terms for use of system and offers of terms for connection set out in Schedule 1 to SLC C18. The effect of this is that, should a person apply to a transmission licensee for use of system before the end of the year, NGC will be required to make all offers of connection terms to those who had applied before that person on or before the 28 January 2005. Ofgem/DTI considers that, given the information provided by the licensees as to their position in relation to producing GB offers, it is impracticable for the licensees to prepare offers in these timescales.

Given that, in some cases, use of system only applications can trigger the need for contingent infrastructure, Ofgem/DTI consider that it is appropriate that the “sequencing” effect of Schedule 1 to SLC C18 should apply equally to those persons looking to make such applications as it applies to those who are seeking to connect directly to the transmission system. Ofgem/DTI therefore consider that the timescales for making an offer of terms for use of system under SLC C18 should be consistent with those which apply to an offer of terms for connection. It is Ofgem/DTI’s intention to issue a direction to NGC to allow them to make offers of terms for use of system under SLC C18 in timescales aligned with those for the making of offers of terms for connection (i.e. 3 months).

It was Ofgem/DTI’s intention that the sequencing provisions of Schedule 1 to SLC C18 should apply to those parties seeking terms that may trigger the need for reinforcement of the GB transmission system. Ofgem/DTI understand that electricity supplier use of system offers do not trigger the need for new investment in the transmission system and given that these offers are not affected by and do not affect other offers, it is unnecessary to link their production to the same timescales as those offers that could trigger the need for system reinforcement. Ofgem/DTI therefore also propose that Schedule 1 to SLC C18 should be modified such that electricity supplier use of system GB offers are excluded from the sequencing arrangements set down therein. In addition, Ofgem/DTI intend that the direction that is to be issued to extend the timeframe for making offers for use of system should exclude offers for use of system being made to electricity suppliers.

Section C of this open letter sets out Ofgem/DTI’s proposals for modifications to SLC C18 to address issues related to the sequencing of GB offers under Schedule 1 of SLC C18.

### ***Requirement to take into account existing rights and restrictions***

SLC C18 sets out matters that should be included in a GB offer. These include an obligation to include in the GB offer such further terms as may be appropriate for the purpose of the agreement, taking account, in the case of existing Scottish users, of any rights afforded to and any restrictions imposed upon the relevant person pursuant to any existing agreement<sup>4</sup>. Given that it is possible that the transmission licensees may be required to amend existing agreements in accordance with the BETTA run off arrangements<sup>5</sup> scheme before NGC makes a GB offer to the relevant user, the current drafting, in Ofgem/DTI’s view, could be construed so as to provide that in such instances NGC would not be required to take into account any rights that may have

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<sup>4</sup> This is an extract from NGC’s actual obligation. Reference is made to paragraph 5(g) of SLC C18 where the full obligations are set out.

<sup>5</sup> The draft BETTA run-off arrangements scheme: a consultation paper. An Ofgem/DTI consultation, November 2004 248/04

been 'run-off'. Ofgem/DTI do not consider that this is appropriate and are of the view that the relevant provisions of SLC C18 should be amended to clarify that this obligation applies in relation to existing agreements before they are changed in accordance with the BETTA run off arrangements scheme. Section A of this open letter sets out Ofgem/DTI's proposals for modifications to SLC C18 to bring about such clarification.

## **A. CHANGES TO PERMIT THE ISSUANCE OF GB OFFERS AND FOR THOSE GB OFFERS TO HAVE EFFECT AFTER BETTA GO LIVE**

Ofgem/DTI have recently been considering in detail the mechanics of the transition to the enduring BETTA licensing arrangements from those in effect prior to BETTA go-live. As part of these considerations, it has become apparent that it will be necessary for the provisions of SLC C18 and SLC D15 to continue to have effect after BETTA go-live to address the potentially interactive nature of GB offers.

As explained in the November letter, Ofgem/DTI expect NGC to request the Authority's consent or otherwise seek the Authority's direction to issue GB offers to certain categories of user later than the timescales currently set out in SLC C18 and that the effect of any such consent or direction would be that certain GB offers previously scheduled to be issued before BETTA go-live will be issued after BETTA go-live. This will also mean that SLC C18 and SLC D15 will be required to have effect after BETTA go-live in relation to these people.

It is therefore proposed to make modifications to the following documents such that SLC C18 and associated licence conditions will continue to have effect (in relation to offers submitted prior to Go-live) until such offers (including those revised GB offers made following a withdrawal due to the acceptance of another interactive GB offer) have either been entered into or have lapsed.

### ***SLC C18 of the SLCs for transmission licences***

It is proposed that SLC C18 should be modified in order to;

- require NGC to issue GB offers under SLC C18 after BETTA go-live to all those persons who either have an agreement or had applied for connection or use of system prior to BETTA go-live
- ensure that any GB offers issued under SLC C18 continue to have effect after BETTA go-live in accordance with conditions of SLC C18
- clarify that NGC, in taking into account, where appropriate, rights afforded to and any restrictions imposed upon the relevant person pursuant to any existing agreement, should consider any rights and restrictions included within those existing agreements which have been affected by the operation of the BETTA run-off arrangements scheme<sup>6</sup>
- recognise that the existing provision in paragraph 15 (which requires that any GB offer which has been referred for determination will, where the Authority has not determined the matter two weeks before BETTA go-live, enter into the GB offer) needs to be altered to allow for the Authority to specify a different date.

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<sup>6</sup> This is an extract from NGC's actual obligation. Reference is made to paragraph 5(g) of SLC C18 where the full obligations are set out.

Section 134 of the Energy Act 2004 provides that the Secretary of State may modify electricity licence conditions (either SLCs or special conditions (including amended SLCs) if she considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements.

The changes described in the first two bullet points set out above require amendments to be made to Section E of the SLCs which was introduced at BETTA go-active, to provide that the transitional arrangements do not fall away at BETTA go-live. Ofgem/DTI recognise that the required drafting changes discussed in the first two bullet points to deliver these proposals (and the related drafting changes to other licence conditions discussed below) could have been included in this open letter. However, Ofgem/DTI consider that it is more appropriate to take these changes forward as part of its work on making final changes to the electricity transmission licence to prepare for the 'cutover' to the new GB arrangements that will apply from BETTA go-live, recognising that it is possible that further required changes to these provisions (and their supporting definitions) may be required as part of preparations for the 'cutover' of the legal framework. As such, Ofgem/DTI intend that the proposed draft legal text to give effect to these changes will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

However the third and fourth bullet points describe transitional changes, which in Ofgem/DTI's view are required prior to BETTA go-live. As such proposed draft legal text to amend SLC C18 to give effect to the change described in the third bullet point is set out in Annex A to this document.

#### ***SLC C8 (Requirement to offer terms) of the SLCs for transmission licences***

It is proposed that SLC C8 should be modified in order to clarify that its provisions only apply in respect of applications made to NGC after BETTA go-live. This change is required given that SLC C18 will continue to have effect for a period after BETTA go-live.

As explained above, Ofgem/DTI intend that the draft legal text to give effect to this modification will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

#### ***SLC D15 (Obligations relating to the preparation of TO offers during the transition period) of the SLCs for transmission licences***

It is proposed that SLC D15 should be amended such that it continues to have effect in relation to an offer for which SLC C18 will also continue to have effect. It is proposed that SLC D15 will continue in effect alongside SLC D4A but that the former will only relate to pre-BETTA go-live applications.

As explained above, Ofgem/DTI intend that the draft legal text to give effect to this change will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

#### ***SLC D4A (Obligations in relation to offers of connection etc) of the SLCs for transmission licences***

It is proposed that SLC D4A should be amended in order to clarify that its provisions only apply in respect of applications for terms made to NGC after BETTA go-live. This change is required given that SLC D15 will continue in effect for a period after BETTA go-live.

As explained above, Ofgem/DTI intend that the draft legal text to give effect to this change will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

### ***Transitional SLCs for generation, distribution and supply licensees***

Under the provisions of SLC C18, GB offers issued to existing users are to be open for acceptance for one month after which time NGC will refer the GB offer to the Authority for determination and progress on the basis of the terms offered in the interim. There are mirror obligations in the relevant conditions of the electricity generation, distribution and supply licences. Respectively these are SLC 19C (Offers for connection to or use of the GB transmission system in the transition period) ("G. SLC 19C"), SLC 30C (Offers for connection to or use of the GB transmission system in the transition period) ("D. SLC 30C") and SLC 31C (Offers for connection to or use of the GB transmission system in the transition period) ("S. SLC 31C"). These conditions require the relevant licensees, where they are existing users and have failed to agree terms with NGC, to enter into the terms offered pending the outcome of the Authority's determination. Currently these obligations cease to have effect at BETTA go-live, however this seems inappropriate given that in respect of those existing users who did not have an agreement at 1 September 2004, it is possible that they will not have entered into these GB offers before BETTA go-live due to the issues raised in the November letter and any delay as a result of their GB offer being interactive with other GB offers.

Ofgem/DTI therefore considers that G. SLC 19C, D. SLC 30C and S. SLC 31C should be modified such that they continue to have effect after BETTA go-live. It is not, in Ofgem/DTI's view necessary to limit the application of provision to only apply to pre-BETTA arrangements as the licence conditions refer specifically to offers made under SLC C18 of the transmission SLCs.

As explained above, Ofgem/DTI intend that the draft legal text to give effect to this change will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

### ***CUSC***

It is proposed to amend the CUSC such that Section 12 continues to apply to the processing of GB offers in relation to parties who either had an agreement prior to BETTA go-live or have made an application prior to BETTA go-live.

Ofgem/DTI propose that the following amendments are made to Section 12;

- insert new sub clause in 12.1 such that Section 12 has effect in relation to any GB offers being made under SLC C18 until the date that SLC C18 ceases to have effect;
- insert new sub clauses in 12.2 to permit the Authority to direct a date other than BETTA go-live from which a GB offer may have effect;
- amend existing sub clauses 12.2.9 and 12.2.10 to permit the Authority to direct a date other than the BETTA go-live as being the date by which users need to have put in place required security for connection charges or use of system charges.



It should be noted that Section 12 provides in some instances for the timescales for the preparation of GB offers to be amended by direction. In some of those instances a direct link is drawn to any direction issued under SLC C18 (and as such a separate direction under the CUSC is not required). However in certain areas separate direction under the CUSC will be required in order to revise the dates set out in Section 12 to align with the arrangements for C18. It is Ofgem's intention that such directions should be made as and when appropriate in light of other directions and / or consents that may be made under SLC C18. In addition, the second two bullet points discussed above propose that the CUSC is amended to provide for the Authority to issue two further directions for the purposes of altering timescales. It is also intended that directions will be issued under these provisions as and when appropriate to reflect the revised arrangements for SLC C18.

The Authority proposes to direct any such amendments in accordance with its power under SLC C10 (Connection and Use of System Code) as amended by Section E of the transmission licence. Draft legal text to give effect to these proposals is set out in Annex C. Ofgem/DTI note that some of these changes, namely the change to provide that Section 12 of the CUSC continues to apply beyond BETTA go-live could have been taken forward as part of any final changes to the CUSC to prepare for 'cutover' to the new GB arrangements. Such an approach would have been consistent with the approach described above which has been adopted for the licences. However, Ofgem/DTI consider that the scope for possible interaction with other changes that may be required for legal cutover within the CUSC is more limited in this instance and that as such it would be appropriate to take forward these changes as part of this open letter process.

## **STC**

It is proposed to amend the STC such that Section I continues to apply after BETTA go-live, in the context of the processing of Current User Offers and New Transitional Construction Offers ie to endure after BETTA go-live so as to continue to apply in relation to offers (and revised offers) made to those who applied prior to BETTA go-live.

The Authority shall direct any such amendments, following this open letter consultation, in accordance with its power under SLC B12 (STC) as amended by Section E of the transmission licence. Draft legal text to give effect to these proposals is set out in Annex B to this open letter. Ofgem/DTI again consider that the scope for possible interaction with other changes that may be required for legal cutover within the STC is more limited than could be the case in the context of the licences and that as such it is appropriate to take forward these changes as part of this open letter process.

## **B. CHANGES TO CUSC TO SUPPORT INTERACTIVE GB OFFERS ISSUED UNDER SLC C18**

It is proposed to amend the CUSC such that provisions are inserted into Section 12 – Transitional Issues to allow NGC to manage the interactive offer process in respect of GB offers made under SLC C18.

The Authority shall direct any such amendments, following this open letter consultation, in accordance with its power under SLC C10 (Connection and Use of System Code) as amended by

Section E of the transmission licence. Draft legal text to give effect to these proposals is set out in Annex D to this open letter.

### **C. OTHER CHANGES TO SLC C18**

It is proposed to modify SLC C18 such that NGC may make GB offers for use of system under SLC C18 in the same timescales as those which apply to GB offers for connection under SLC C18. Schedule 1 to SLC C18 should be amended such that the sequencing provisions set out in paragraph 5 should not apply to GB offers of terms for use of system for suppliers.

Section 134 of the Energy Act 2004 provides that the Secretary of State may modify electricity licence conditions (either SLCs or special conditions (including amended SLCs) if she considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements. Proposed draft legal text to amend SLC C18 to give effect to this change is set out in Annex A to this open letter.

### **VIEWS SOUGHT**

**Ofgem/DTI seeks views on the matters raised in this open letter mini-consultation and in particular on the;**

- **proposed changes to the SLCs and the proposed draft legal text for SLC C18**
- **proposed changes to the CUSC**
- **proposed changes to the STC**
- **proposed draft legal text in Annexes A to D.**