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18/01/05

Dear Colleague

Conclusions on amendments to the STC and Consultation on Schedule 10 Changes

Background

On 30th November 2004, Ofgem/DTI issued an open letter consultation in relation to a number of amendments to the STC. The letter noted that Paragraph 7 of Standard Condition B12 (System Operator – Transmission Owner Code) of transmission licences ("SLC B12") provides that:

- “7. The Authority may, during the transition period, where it considers it to be necessary or expedient for the purposes of implementing BETTA (and following such consultation with such persons, and in such manner, as the Authority deems appropriate) direct the system operator to amend the STC, in such manner as may be specified in those directions, in the following circumstances:
- (a) to take account of any matters which emerge as a result of the testing and trialling of computer systems and processes required to support the arrangements set out in the STC;
 - (b) to correct any errors or omissions or to remove any inconsistencies in the STC, including the correction of any conflict between different provisions of the STC or the removal and correction of any inconsistency between different provisions of the STC or between any provision of the STC and any provision of this licence, the BSC, CUSC or Grid Code;
 - (c) to make such changes as may be required or as may be appropriate as a result of the Scots Law Review;
 - (d) to make technical refinements to the drafting of the STC which serve to clarify or enhance the STC or the arrangements contemplated by the STC and do not significantly and adversely affect the interests of STC parties;

- (e) to make the changes required or appropriate for the purposes of reflecting in the STC the development of the following matters:
 - (i) the STC procedures which are to have effect on and from the BETTA go-live date;
 - (ii) the completion of Schedule Three to the STC (Information and Data Exchange Specification), Schedule Four to the STC (Criteria for Assessing Those Transmission Systems Affected by a Construction Project) and Schedule Ten to the STC (Charges);
 - (iii) finalisation of the security and quality of supply standards referred to in standard condition C17 (Transmission system security standard and quality of service) and standard condition D3 (Transmission system security standard and quality of service);
 - (iv) the revenue restriction licence conditions which are to apply to transmission licensees under BETTA;
 - (v) payment provisions, including arrangements for security;
 - (vi) limitations of liability; and
 - (vii) the form and content of the specifications setting out the transmission services to be provided by each transmission owner on the BETTA go-live date;
- (f) to make such changes as are necessary or expedient to ensure that BETTA can commence and take place on and from the BETTA go-live date;
- (g) to make changes to the provisions of the STC which are consequent upon changes being made to the BSC, CUSC or the Grid Code pursuant to the equivalent provision to this of standard condition C3 (Balancing and Settlement Code (BSC)), standard condition C10 (Connection and Use of System Code (CUSC)) or standard condition C14 (Grid Code);
- (h) to make any other minor incidental, consequential or supplementary changes resulting from any of the changes referred to in sub-paragraphs (a) to (g); or
- (i) in any other circumstance, where the Secretary of State has consented to such direction being made.”

The letter went on to state that Ofgem/DTI have, through a variety of means, become aware of the need for certain amendments to be made to the STC, and propose to issue a direction to the system operator to make such amendments. Ofgem/DTI considered that the proposed amendments set out in the letter were expedient for the implementation of BETTA and invited views upon the proposed amendments.

In light of the responses received, this letter sets down Ofgem/DTI's conclusions on such matters.

Amendments Proposed in the November 2004 letter

The proposed amendments to the STC as designated by the Secretary of State and set out in the November 2004 letter are marked in track changes below (or in some cases a description of the proposed change is included). Note that only the changed paragraphs are included in the change marked text below. Where not explicitly included in the mark up, no changes were proposed to the provisions of the Code.

B5.1.4

Amend Section B, sub-paragraph 5.1.4 to replace "herein to" with "to herein".

This amendment to Section B, paragraph 5.1.4 is proposed to correct a typographical error. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

B7.3.2 to the end of B7.3

Amend Section B, sub-paragraph 7.3.2 to the end of Section B, paragraph 7.3 as follows:

"7.3.2 The Relevant Parties may only make amendments to existing Code Procedures or create additional Code Procedures if and to the extent that:

7.3.2.1 the amendment or addition is falls within the terms and arrangements set out in Standard Condition B12; and consistent with,

7.3.2.2 ~~and~~ the amendment or addition does not impair, frustrate or invalidate the provisions of the Code; and

7.3.2.3~~2~~the amendment or addition does not impose new obligations or liabilities or restrictions of a material nature on Parties which are not subsidiary to the rights and obligations of the Parties under the Code; and

7.3.2.4~~3~~the amendment or addition is not inconsistent or in conflict with the Code, Transmission Licence Conditions or other relevant statutory requirements; and

7.3.2.5 the Relevant Parties deem that the amendment or addition is appropriate to support compliance with the Code.

7.3.3 All Relevant Parties shall use ~~their best~~ reasonable endeavours to agree between themselves any amendment to an existing Code Procedure or creation of a new Code Procedure that is proposed by a Relevant Party.

7.3.4 The Relevant Parties may agree an amendment to an existing Code Procedure or creation of a new Code Procedure under this paragraph 7.3 despite the prohibition in sub-paragraph 7.3.2.3 only where the Authority has notified the Relevant Parties in writing that they may do so. The Parties shall provide the Authority with such information as it may direct in order to inform its decision under this sub-paragraph 7.3.4.

- 7.3.~~54~~ Where the Relevant Parties are unable to reach agreement pursuant to sub-paragraph 7.3.3, any such Relevant Party may promptly forward the matter as a Dispute to the Authority under Section H, paragraph 4.1 whereupon the Parties shall comply with such determination and direction as the Authority may make after taking such steps as the Authority may deem fit in order to make such direction (including, without limitation, seeking representations from the Parties and any other person and consulting on any potential amendment to an existing Code Procedure or creation of a new Code Procedure). The Parties shall be bound by such direction as the Authority shall make in relation to an amendment to a Code Procedure or creation of a new Code Procedure until such time as the Relevant Parties can agree between themselves any changes pursuant to this paragraph 7.3.
- 7.3.~~65~~ For the avoidance of doubt, any direction made by the Authority pursuant to sub-paragraph 7.3.~~54~~ shall not constitute approval of any such amendment to a Code Procedure or creation of a new Code Procedure and any notice issued by the Authority pursuant to sub-paragraph 7.3.4 shall only constitute a waiver of such prohibition for the purposes of this Code and shall not constitute approval of the amendment to a Code Procedure or creation of a new Code Procedure in any other respect.
- 7.3.~~76~~ Where an amendment to a Code Procedure or the creation of a new Code Procedure is agreed pursuant to sub-paragraph 7.3.3 or directed pursuant to sub-paragraph 7.3.5 then the Relevant Parties shall co-ordinate the sending of the text of the amended Code Procedure or new Code Procedure (and including the proposed effective date for such amendment or new Code Procedure), signed and dated by all Relevant Parties, to the Committee Secretary (for and on behalf of all Relevant Parties).
- 7.3.~~87~~ Upon receipt of a signed amended Code Procedure or new Code Procedure pursuant to sub-paragraph 7.3.~~76~~, the Committee Secretary shall immediately (and in any event prior to the effective date specified by the Relevant Parties in such amended Code Procedure or new Code Procedure):
- 7.3.~~87~~.1 send a copy of the amended Code Procedure or new Code Procedure to each of the Relevant Parties and to the Authority;
 - 7.3.~~87~~.2 update Schedule Two to include the relevant details of the amended Code Procedure or new Code Procedure;
 - 7.3.~~87~~.3 send a notice containing a copy of the amended Schedule Two to the Authority, each of the Parties and to such other person as the Authority may designate from time to time, upon the date of which notice, such amended Schedule shall be deemed to be an amendment to the Code for the purposes of this Section B;
 - 7.3.~~87~~.4 post a copy of the amended Schedule Two on the Code Website; and
 - 7.3.~~87~~.5 update the library of Code Procedures pursuant to Section A, paragraph 3.
- 7.3.~~98~~ An amendment to a Code Procedure or the addition of a new Code Procedure pursuant to this paragraph 7.3 shall take effect on the date specified in any notice issued pursuant to Section B, sub-paragraph 7.3.~~87~~.3.

7.3.109 Unless otherwise directed by the Authority, only the Committee Secretary shall be entitled to amend Schedule Two, and shall only be entitled to do so in accordance with and pursuant to sub-paragraph 7.3.87.”

These amendments to Section B, paragraph 7.3 were proposed in order to permit the scope of Code Procedures to align with the potential scope of the Code as specified in SLC B12. The need for such an amendment emerged during the process of drafting STC Procedures and it was proposed to direct such a change pursuant to SLC B12, paragraph 7(e)(i).

Given that parties are required to use their best endeavours to seek to resolve disputes, including in relation to disputes over the content of existing or new Code Procedures, Ofgem/DTI stated that they believed that it was unnecessary for parties to be required to use their “best” endeavours to agree amendments to existing Code Procedures or the creation of new ones.

C Part One 3.1.1 and 3.2.2

Amend Section C, Part One, sub-paragraph 3.1.1 as follows:

“3.1.1 maintain its Services Capability Specification (in accordance with Section D, Part One, sub-paragraph 2.8.2) by including, without limitation, information describing the parameters and levels within and to which its Transmission Services have been planned to be provided, or such higher levels up to which its Transmission Services are normally capable of being so provided, to NGC: such information to include and identify the technical limits that would normally apply to the provision of its Transmission Services (such technical limits as identified in the Services Capability Specification here referred to as the “**Normal Capability Limits**” applicable to those Transmission Services); and”

Amend Section C, Part One, sub-paragraph 3.2.2 as follows:

“3.2.2 amend the content of its Services Capability Specification, including amendments to any Normal Capability Limits;

3.2.2.1 in the case of the correction of typographical errors only, at any time by submitting copies of such amendments to NGC; and

3.2.2.2 in all other cases; pursuant to Section D, Part One, sub-paragraph 2.8.2.”

The proposed changes to paragraphs 3.1 and 3.2 of Section C, Part One were intended to clarify the fact that the normal capability limits that can be relied on for the purposes of the STC are those set out in the Services Capability Specification (as defined in the STC) even if these do not (for example as a result of transcription error) reflect, as they should under the STC, the output of the process in Section D, Part One, sub-paragraph 2.8.2. The proposed amendments would also permit changes to the Services Capability Specification to be made to expedite the correction of any typographical errors that may have been made whilst other amendments required to the information contained in the Services Capability Specification

shall continue to be required to be amended by way of the investment planning process under the STC. The need for such amendment emerged during the process of developing the Service Capability Specifications and it was proposed to direct such a change pursuant to SLC B12, paragraph 7(e)(vii).

C Part One 4.6.4.1

Amend Section C, Part One, sub-paragraph 4.6.4.1 to change the full stop at the end of the sub-paragraph to a semi colon. This amendment was proposed to correct a typographical error. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

C Part One 6.3

Amend Section C, Part One, paragraph 6.3 to read:

“6.3 In the event that NGC shall at any time become aware that Operational Capability Limits or, where relevant, other conditions notified to it pursuant to paragraph 4.14 are being or have been exceeded, then NGC shall, in accordance with Licence Standards, where applicable, immediately:”

This amendment was proposed to clarify the fact that the action to be taken by NGC may not necessarily be set down in licence standards, and it was proposed that the obligations should prevail even if this is not the case. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

D Part Two 2.2.

Delete: “, as a consequence of a User Application,” and “in respect of such User Application”.

This amendment was proposed to clarify the process by which TO Construction Offers will be made to NGC in respect of elements of a Transmission Owner’s Investment Plan which relate to replacement of connection assets. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

G 3.4

It was proposed to delete paragraph 3.4 of Section G from the STC. Paragraphs 3.1 to 3.4 of Section G of the STC were originally included to reflect the arrangements in Section 6.11 of the CUSC. More specifically, Paragraph 3.4 of STC Section G was originally intended to mirror 6.11.6 of the CUSC. However, Ofgem/DTI further reviewed these arrangements and were of the view that the continued inclusion of the current paragraph 3.4 would result in STC arrangements which do not appropriately mirror the provisions of section 6.11 of the CUSC. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

G 4.2

It was proposed to include the words “or TO Construction Agreement” between the words “Code” and “other” in paragraph 4.2 of Section G. This omission was identified in

correspondence sent to Ofgem. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

G 4.3

It was proposed to include the words “or any of its officers, employees or agents” after the last occurrence of “Party Liable” in paragraph 4.3 of section G. Ofgem/DTI considered that this is an omission and it was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

G 18.1

It was proposed to amend paragraph 18.1 of Section G to read:

“18.1 This Code and any TO Construction Agreement shall be governed by and construed in accordance with English law, ~~save that, for the avoidance of doubt, the principle of *lex situs* shall apply in respect of immovable property is located shall apply for the purposes of this paragraph 18.~~”

This change was identified following a Scots Law review of the STC. It was noted that the proposed change is also consistent with section 6.25 of the CUSC. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(c).

Section J

It was proposed to amend three definitions in Section J of the STC as follows:

"Code Procedures" the procedures forming a part of this Code as more particularly defined in Section A, paragraph 2.43;

"External Interconnections" as defined in the Grid Code as at the Code Effective Date;

"Week" shall have the same meaning as the term "Week" is ~~defined or~~ used in the Grid Code as at the Code Effective Date;

In the case of the definition of “Code Procedure”, the amendment was proposed to correct a typographical error. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

In the case of the definition of “External Interconnections”, the amendment was proposed to ensure that the definition is made consistent with the general way in which terms are defined in the STC where references to other Codes are used. This would ensure that the STC does not change directly as a consequence of an amendment to the other Code. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

In the case of “Week”, the amendment was proposed as clarification given that “Week” is not explicitly defined in the Grid Code. It was proposed to direct the change under the provisions of SLC B12, paragraph 7(b).

Schedule 4

Further to a notification from the transmission licensees as part of the BETTA Programme, Ofgem/DTI proposed that Schedule Four of the STC be amended to include the text and information set out in Appendix 1 to the November 2004 letter. It was proposed to direct these changes under the provisions of SLC B12, paragraph e(ii).

Schedule 9B paragraph 1.2.1 (b) and (c)

It was proposed to delete the space between “c” and “onsents” and to replace the semi colon at the end of sub-paragraph 1.2.1(c) of Schedule 9B with a full stop. These are typographical errors and it was proposed to direct these changes under the provisions of SLC B12, paragraph 7(b).

Section Numbering

For ease of reference, it was proposed to insert a section number at the bottom of each page of the STC. It was proposed to direct changes to rectify this omission under the provisions of SLC B12, paragraph 7(b).

Responses to the consultation and Ofgem views

Respondent's general views

Three responses were received in response to the open letter consultation. One respondent stated that they had no objection to any of the proposals and another indicated that they had no comments on the proposals.

The other respondent supported the majority of the proposed changes although they raised a number of questions and concerns in response to a small number of the proposed changes. They also noted that they did not believe that the proposed changes addressed their main areas of outstanding concern in relation to the SO-TO Code.

They stated that in the absence of the price control arrangements, it was not possible for them to determine how much further work was needed in relation to the SO-TO Code. However, they believed that a number of User facing obligations that NGC has under the CUSC in relation to compensation for temporary physical disconnection (CAP048), Emergency Instructions and Intertrips are yet to be properly reflected in the SO-TO Code.

They also highlighted concerns that the contents of Schedule 3 and Schedule 10 of the SO-TO Code would not be confirmed until closer to Go-live. They were particularly concerned that there would be insufficient time to ensure that Schedule 3 was consistent with the processes developed for STCPs.

Ofgem views

Ofgem note that the issue of the treatment of CAP048 is being progressed as part of the work to develop NGC's System Operator incentives. Furthermore, Ofgem do not believe that it is necessary for the SO-TO Code to be amended in order to deal with the issue of emergency instructions or with intertrips. To the extent that these matters need to be taken into account when setting the appropriate incentives for NGC and/or transmission owners, Ofgem are of

the view that these matters should be dealt with in the formulation of the appropriate revenue restrictions rather than in the STC itself.

Insofar as Schedule 3 is concerned, Ofgem notes that it remains important that the transmission licensees continue to make progress to define the information that they propose should be made available to transmission owners. Ofgem proposes to consult upon a draft Schedule 3 in February.

Finally, in relation to Schedule 10 of the STC, given the development of the revenue restriction licence conditions for transmission owners and the associated proposals for the development of TO charging statements¹, Ofgem are of the view that in principle, it is no longer necessary to have a separate Schedule 10 of the STC setting out the various types of charges, and that consequently Schedule 10 of the STC is now redundant. However, in order to minimise the amount of change required to the designated version of the STC, it is proposed simply to amend Schedule 10 to state that each of the different types of charges is:

“in relation to each Transmission Owner, as set out in the statement prepared in accordance with Special Condition J2 of that Transmission Owner’s transmission licence and approved by the Authority.”

Respondents’ views on specific proposals in the November 2004 open letter

One respondent indicated that they supported the proposals set out in the November 2004 open letter consultation other than in certain specified areas. These were, first that they suggested that the change proposed to Section B, sub-paragraph 7.3.5 warranted further consideration as they believed that it was unnecessary and inefficient for changes to STCPs to need sanction from the Authority in circumstances where the change to the STCP has no impact on any other part of the Commercial Framework.

They also did not believe that it was appropriate to delete Section G, paragraph 3.4 which they stated provided a limitation on the extent of the indemnity i.e. it mirrors the limitation provisions and so limits the indemnity to loss from property damage. They stated that as this limitation would remain between NGC and the nuclear generator under the CUSC, it would seem appropriate to have an open indemnity for the same incident between NGC and the TO. They therefore suggested that the clause should remain. They went on to note that in general Section G, paragraph 3 potentially meant that NGC would be directly indemnifying a TO and that although this indemnity was backed off by an indemnity from the generator in the CUSC it did leave the GBSO exposed if the generator was unwilling or unable to meet such an indemnity. They indicated that they continued to believe that the indemnity should be directly covered between the generator and TO in the NSLPA and that the proposed deletion seemed to increase the scope of the liability under the indemnity.

Finally, they suggested that in relation to Section G, sub-paragraphs 4.2.1 & 4.2.2, the word “the” before “other” on the first line should be replaced with the word “any” and that the definition in Section D, Part 2, sub-paragraph 4.8.2 should relate to TO Construction Offer rather than “connection”.

¹ See Transmission price controls and BETTA, Final proposals and impact assessment. December 2004. Ofgem #279.04.

It has also been brought to Ofgem's attention that in each of Section I, sub-paragraph 8.4.3, the definition of "Works" in Section J and Schedule 8, sub-paragraph 1.1.5, the reference to "Transmission Owner Construction Works" should be replaced with "Transmission Construction Works". Furthermore, in each of Section I, sub-paragraphs 8.5.4 and 9.4.4 and Schedule 9, proforma B, paragraph 4.1, the term "TO Construction Works" should be replaced by "Transmission Construction Works".

Ofgem views

In relation to Section B, paragraph 7.3, Ofgem do not believe that the changes mean that changes to STCPs will need sanction from the Authority in circumstances where the change to the STCP has no impact on any other part of the commercial framework and the STCP itself remains consistent with that framework. As drafted, the proposed additional sub-paragraph 7.3.4 does not, and was not intended to, place restrictions upon changes to Code Procedures. Instead, the drafting of Section B, sub-paragraph 7.3.4 permits changes to Code Procedures to be made (subject to the notified permission of the Authority) despite the fact that the proposed changes would otherwise be limited by the provisions of Section B, sub-paragraph 7.3.2. This does not limit the rights of Parties to Code Procedures to agree changes without the consent of the Authority provided such changes fall within the scope of the limitations set out in Section B, sub-paragraph 7.3.2. Ofgem continue to believe that the changes to Section B set out in the November 2004 open letter consultation are appropriate.

In relation to Section G, paragraph 3.4, Ofgem do not believe that the effect of this paragraph is to limit the liability of NGC to transmission owners under the STC. Instead, the effect of Section G, paragraph 3.4 as drafted would be to create liability (albeit limited) in certain circumstances where a breach of the STC had not, by virtue of Section G, paragraph 3.1, occurred. Hence the deletion of Section G, paragraph 3.4 has the effect of reducing and not increasing the potential liability from NGC to transmission owners under the STC.

The provisions of Section G, paragraph 3 of the STC were intended to reflect the rights afforded to Nuclear generators under paragraph 6.11.3 of the CUSC. The provision of the CUSC that mirrors the designated STC paragraph 3.4 is CUSC paragraph 6.11.6. Paragraph 6.11.6 of the CUSC establishes that the Nuclear Generator is required to provide an indemnity for certain losses, claims, costs, liabilities and expenses despite the fact that action or inaction allowed under 6.11.1 does not constitute a breach of the CUSC. There is, however, no STC equivalent of CUSC paragraph 6.11.1. Instead, the STC provisions mirror 6.11.3 of the CUSC, not 6.11.1. Given that this is the case, Ofgem continue to be of the view that it is appropriate to delete STC Section G, paragraph 3.4.

Ofgem remain of the view that given that NGC will be instructing transmission owners to take the appropriate action under Section G, paragraph 3.1 of the STC, it is appropriate that NGC, rather than the nuclear generator should indemnify the transmission owner for the consequences. This approach is also considered to be the simplest and consistent with the overall contractual framework of the CUSC/STC.

Based upon the above, Ofgem propose to direct NGC to make the changes set out in the November letter.

Ofgem also agree that it is appropriate to change the word “the” to “other” in the first lines of each of Section G, sub-paragraphs 4.2.1 and 4.2.2 and that it in Section D, Part 2, sub-paragraph 4.8.2, the term “TO Connection Offer” should be replaced with “TO Construction Offer”. Given the minor nature of these typographical corrections, and the fact that they have been raised by a respondent to the consultation, Ofgem do not believe that it is necessary to consult further upon the proposed changes prior to directing the changes pursuant to the provisions of SLC B12, paragraph 7(b).

It has also been brought to Ofgem’s attention that in each of Section I, sub-paragraph 8.4.3, the definition of “Works” in Section J and Schedule 8, sub-paragraph 1.1.5, the reference to “Transmission Owner Construction Works” should be replaced with “Transmission Construction Works”. Furthermore, in each of Section I, sub-paragraphs 8.5.4 and 9.4.4 and Schedule 9, proforma B, paragraph 4.1, the term “TO Construction Works” should be replaced by “Transmission Construction Works”. Again, given the minor nature of these typographical corrections, and the fact that, in this case, they were raised as part of the BETTA programme, Ofgem do not believe that it is necessary to consult further upon the proposed changes prior to directing the changes pursuant to the provisions of SLC B12, paragraph 7(b).

Further views invited

Views on the proposals in relation to Schedule 10 set out above should be sent to Ofgem by 2nd February 2005. Ofgem would prefer responses on this issue to be sent by email to; BETTA.consultationresponse@ofgem.gov.uk, but responses can also be posted to:

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If you wish to discuss any aspect of this document, please contact Richard Haigh by emailing Richard.Haigh@ofgem.gov.uk, or telephoning 020 7901 7487.

List of respondents to the November 2004 open letter consultation

The National Grid Company

Scottish Power Transmission

Scottish and Southern Energy