Treatment of Embedded Exemptable Large Power Stations under BETTA

An Ofgem conclusions and consultation on Code changes

January 2005

Summary

In November 2004, Ofgem/DTI concluded upon a number of matters relating to the treatment of Embedded Exemptable Large Power Stations (EELPS) under BETTA and set down and invited views upon, a number of further proposals relating to their treatment. This document summarises the responses received in relation to the November proposals, sets down Ofgem's conclusions and invites views upon the detailed legal drafting required to support the treatment of EELPS under BETTA.

In November 2004, Ofgem/DTI proposed that each EELPS User should be required to either:

(i) register the EELPS as stand-alone BM Unit(s) and enter into a bilateral agreement based upon the form of the existing Bilateral Embedded Generation Agreement[1] (BEGA), or

(ii) not register the EELPS as stand-alone BM Unit(s) and enter into a bilateral agreement based upon a new "Bilateral Embedded Licence exemptable Large power station Agreement" (BELLA).

It would be a matter for the relevant user to choose which of these options was appropriate in relation to each EELPS.

Whilst the BEGA arrangements already existed, the purpose of the BELLA was to provide a de-minimis set of arrangements whereby EELPS not wishing to enter into a BEGA could still be required to meet certain technical requirements set out in the GB Grid Code.

The principal difference between a BELLA and a BEGA was that:

- the BELLA would not allocate any use of system rights nor Transmission Entry Capacity to the EELPS, nor would the contractual provisions of the CUSC relating to the payment of connection and use of system charges be switched on
- the EELPS would not be required to become a BSC Party (to the extent that another party was responsible for the EELPS under the BSC)

[1] See Exhibit 2 of Schedule 2 of the CUSC.

- certain elements of the Grid Code would not necessarily be applicable to the EELPS. For example, unless required by NGC, the EELPS would not be required to provide Physical Notifications and outage planning information under Operating Code 2, and

- any reinforcement of the transmission system that was required to accommodate the connection of the EELPS to the relevant distribution system would be dealt with via the relevant DNO rather than directly with the EELPS.

In this document, Ofgem conclude that it is appropriate to continue to progress the development of EELPS broadly in line with the conclusions and further proposals set out in November. In light of the responses received however, Ofgem also propose that:

i) in certain instances (i.e. where the provision of such services is not essential for BETTA go-live) additional time should be given for the EELPS and NGC to enter into any associated arrangements for the provision of ancillary services; and

ii) subject to there being no other material change and the request to switch being made prior to 1st October 2005, Ofgem propose that those EELPS that have been required to choose between the BEGA and BELLA options prior to BETTA go-live will be given an opportunity to apply once to NGC to switch between the options without this affecting their place in the queue for the purposes of determining any contingent infrastructure under licence condition C18[2].

[2] It is noted that this does not mean that EELPS cannot apply to move between the two options on an enduring basis.

Table of contents

1. Introduction

1.1. In England and Wales (E&W) generators satisfying the definition "Large"- that affect the transmission system as a result of either being directly connected to it or, if connected to a distribution system that is connected to the transmission system, being of significant size, are in almost all instances licensed. The terms of licenses generally compel such users to enter into agreements with NGC, even where they are not connected to NGC's transmission system, whereby NGC can, amongst other things, obtain information or services that may be required to operate the transmission system.

1.2. In Scotland however, due to the nature of the transmission system and its definition to include 132 kV transmission circuits, generators of a smaller capacity than is the case in E&W which are either directly connected to the transmission system or embedded, may affect the transmission system. This position is recognised in the fact that, amongst other things, pre-BETTA, requirements have been imposed on generators of 30 MW or more in SP Transmission Limited's (SPTL's) area, and 5 MW or more in Scottish Hydro-Electric Transmission Limited's (SHETL's)[3] area and these are reflected in the definition of "Large"[4] in the GB Grid Code[5]. However, unlike in England and Wales, a substantial number of such generators are not required to hold licences, either as a result of falling into a class exemption, or as a result of having had an exemption granted by the Secretary of State.

1.3. Nevertheless, due to the vertical integration of transmission and distribution businesses in Scotland, the combined distribution/transmission business previously has been able to impose conditions that may be necessary for the safe and secure operation of the transmission system, even where the user is not connected to the transmission system.

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[3] The equivalent definition in the Scottish Grid Code is the Central Despatch Limit.
[4] Power Station with a registered capacity of 100 MW or more in E&W, 30 MW or more in SPTL's area and 5MW or more in SHETL's area.
[5] Note 'Grid Code' is used throughout the document to refer to NGC's Grid Code which will become generally applicable on a GB basis from BETTA go-live.

1.4. Under BETTA, NGC, as GB system operator, is the contractual counter-party for connection to and/or use of the transmission system, and hence is the party that will require conditions on users that may be necessary for the safe and secure operation of the transmission system, again, even in cases where the user is not connected to the transmission system.

1.5. In this paper, Ofgem reports on responses to a consultation published in November 2004[6] (the "November 2004 document") on the treatment of Embedded Exemptable Large Power Stations (EELPS), draws conclusions on the basis of those responses, and proposes legal drafting for the transmission licence, CUSC, STC and Grid Code to give effect to these conclusions. Comments on the drafting are requested by 7th February 2005 and Ofgem intend to issue its conclusions on the drafting shortly thereafter.

1.6. Ofgem also note that due consideration will be given to matters relating to use of system charging at the next transmission price control reviews. It is likely that these reviews will consider a number of related charging issues, including:

- exploring the scope for long and shorter-term access rights
- the appropriate charges to reflect the range of generation types and system capacity products available; and
- the appropriate charging mechanism for distribution system embedded generation.

[6] "Treatment of Embedded Exemptable Large Power Stations under BETTA. An Ofgem/DTI conclusions and further consultation document.", November 2004, 253/04.

2. November 2004 document

Ofgem/DTI proposals

2.1. In the November 2004 document, Ofgem/DTI concluded upon a number of matters raised in the July 2004 paper[7] and set down, and invited views on, a number of further proposals. These conclusions and further proposals are summarised below.

Requiring EELPS to accede to the CUSC framework agreement

2.2. In the November 2004 document Ofgem/DTI stated that they were of the view that, in general, EELPS should be required to enter into appropriate agreements with NGC under BETTA. In order to achieve this, Ofgem/DTI proposed that EELPS should be required to accede to the Connection and Use of System Code (CUSC) Framework Agreement and, under the auspices of CUSC, enter into a bilateral agreement of an appropriate form with NGC.

2.3. In order to require EELPS to accede to the CUSC Framework Agreement, Ofgem/DTI proposed the following approach:

(i) placing an obligation on any User who owns or operates a Distribution System not to energise the connection between any EELPS and its Distribution System, nor permit the use of its Distribution System by the EELPS, until the person who owns or operates the relevant EELPS has acceded to the CUSC Framework Agreement

(ii) additionally, and without prejudice to the above, placing an obligation on any User who owns or operates a Distribution System to use its best endeavours to procure that any person who owns or operates an EELPS, and with whom the User has an agreement for connection to or use of the User's Distribution System, accedes to the CUSC Framework Agreement, and

(iii) placing an obligation on each Transmission Owner who currently has an agreement for use of its transmission system with a person who owns or operates an EELPS to use its best endeavours to procure that the EELPS accedes to the CUSC Framework Agreement.

2.4. Ofgem/DTI also stated that:

(i) it would be desirable for exempt generators to enter into appropriate arrangements with NGC, as they have previously with the transmission companies in Scotland

(ii) on the basis of the proposals set down in the July 2004 paper, this would mean that the EELPS should accede to the CUSC Framework Agreement

(iii) Ofgem and DTI will promote such arrangements in the coming months and that DTI, in its approach to exempting generation, must pay close heed to the safe and secure operation of the total system, and that if that could not be guaranteed, would consider revoking exemptions

and noted that:

(iv) it may be possible to consider amendments to the Balancing and Settlement Code (BSC) making the registration of metering systems which relate to EELPS in the Central Meter Registration Service (CMRS) or Supplier Meter Registration Service (SMRS) conditional upon the EELPS having acceded to the CUSC Framework Agreement.

Obligations on EELPS

2.5. The November 2004 document stated that Ofgem/DTI were of the view that the starting point for the scope of the obligations to be placed on EELPS should be broadly equivalent to the scope of the obligations that they currently face under their local arrangements today, although it was accepted that, in some cases, the

[7] 'Treatment of Embedded Exemptable Large Power Stations under BETTA – An Ofgem/DTI Mini

scope of the obligations may need to change as a consequence of the introduction of BETTA.

2.6. Ofgem/DTI proposed to adopt an approach as follows:

- each EELPS User should be required to either

  i) register the EELPS as stand-alone BM Unit(s) and enter into a bilateral agreement based upon the form of the existing Bilateral Embedded Generation Agreement[8] (BEGA), or

  ii) not register the EELPS as stand-alone BM Unit(s) and enter into a bilateral agreement based upon a new "Bilateral Embedded Licence exemptable Large power station Agreement" (BELLA).

  It would be a matter for the relevant user to choose which of these options was appropriate in relation to each EELPS

- disputes between NGC and the EELPS in relation to the form of the BELLA to be entered into should be capable of being referred to the Authority for a determination

- EELPS entering into a BEGA would be treated in the same way as any other generator entering into a BEGA and would be required to comply fully with the Grid Code (insofar as it applied to them), and it would be necessary for such EELPS to be registered as BM Units in accordance with the BSC. Where ancillary services are to be provided, a mandatory services agreements would be needed

- the BELLA would not allocate a Transmission Entry Capacity (TEC) to the EELPS, nor would the contractual provisions of the CUSC relating to the payment of connection and use of system charges be switched on. Neither would the BELLA require the generator to become a BSC Party, nor that the EELPS generators be registered as BM Units under the BSC.

Consultation Document', 15/07/04, Ofgem #161/04.
[8] See Exhibit 2 of Schedule 2 of the CUSC.

They would, however be required to comply with all the requirements placed on Large Power Stations under the Grid Code. These include complying with the minimum technical, design and operational criteria and performance requirements and the provision of communications plant referred to in the Connection Conditions of the Grid Code, for example Operational Metering. This would also include, where required by NGC, submission of a form of Physical Notifications (PNs) in accordance with Balancing Codes (Ofgem understands that NGC may be developing an simpler submission system for smaller users)

- where works on the transmission system are required to accommodate the connection of the EELPS to the relevant distribution system, the energisation of the EELPS would be contingent upon the completion of these works. Where the EELPS user enters into a BEGA, the arrangements in relation to any required works would be dealt with in a construction agreement between NGC and the EELPS. Where the user elects to enter into a BELLA, any works would be dealt with as a modification to the connection agreement between NGC and the relevant Distribution Network Operator (DNO). In this case, the relevant DNO would not be permitted to energise the EELPS until the necessary works specified in the connection modification had been completed, and

- the CUSC amendment processes would apply to EELPS users in the same way as other CUSC users and consequently EELPS users would participate in the CUSC amendment processes. The amendment arrangements applying to the BELLA would be equivalent to the arrangements applying to other bilateral agreements under the CUSC.

Summary of differences between BEGA and BELLA

2.7. The November 2004 document stated that the proposals would permit the EELPS to choose to enter into a BEGA in the same way that embedded generators may currently enter into a BEGA. In this case, the provisions relating to BEGAs in the existing CUSC would apply. Alternatively the EELPS may elect to enter into a BELLA. Whilst the EELPS would generally be required to comply with the provisions of the Grid Code applying to Large Power Stations in either case, the principal differences for those parties entering into a BELLA would be:

- the BELLA would not allocate any use of system rights/ Transmission Entry Capacity to the EELPS, nor would the contractual provisions of the CUSC relating to the payment of connection and use of system charges be switched on
- the EELPS would not be required to become a BSC Party (to the extent that another party was responsible for the EELPS under the BSC)
- certain elements of the Grid Code would not necessarily be applicable to the EELPS. For example, unless reasonably required by NGC, the EELPS would not be required to provide Physical Notifications, and by agreement the outage planning information under Operating Code 2 may be reduced, and
- any reinforcement of the transmission system that was required to accommodate the connection of the EELPS to the relevant distribution system would be dealt with via the relevant DNO rather than directly with the EELPS.

3. Respondents' views

3.1. There were fifteen responses to the consultation paper, one of which was confidential but this respondent had no objection to the general terms of their response being referred to.

Requiring EELPS to accede to the CUSC framework agreement

3.2. Twelve respondents commented on the proposal to require EELPS to accede to the CUSC Framework Agreement. Three respondents were in favour of the proposal, whilst a further respondent described the proposal as a pragmatic solution. Eight respondents disagreed with the proposal.

3.3. Of the respondents that supported the proposal, one expressed a preference for requirements to be applied via the industry codes, whilst a second said that the CUSC gives clear, transparent governance with Authority oversight. In addition to transparency, a third respondent said that a code provided a mechanism for referral and avoids potential discrimination. This respondent also argued that this route would also prevent needlessly duplicating much of the CUSC and Grid Code in wholly standalone bilateral agreements, and would mean that EELPS have sufficient influence in the governance of industry arrangements.

3.4. Of the eight respondents that disagreed with the proposal six believed that EELPS would have little or no impact on the transmission system. Of these six, five believed there would be no impact and, consequently believed that there was no requirement for any agreement between EELPS and NGC. The three respondents that disagreed with the proposals but which believed that EELPS did have an impact on the transmission system, thought that obligations should be imposed through agreements outside the CUSC. One of these three respondents was concerned by the "open nature" of the CUSC, with amendments being progressed through the CUSC Panel on which it believed that EELPS were inadequately represented. This, it contended, would enable erosion of the principles under which embedded generators operate, without appropriate consultation and consideration, and it had no confidence that a process

controlled by NGC and Ofgem would deliver appropriate solutions when neither body, it considered, had much experience of embedded generation.

3.5. Three respondents commented on the means of ensuring accession. Regarding the enforcement of accession via the DNO refusing to energise a connection until accession is completed; one respondent suggested that it may be easier to enforce accession earlier on, although the generator might not enter into the BELLA or BEGA until later. This respondent suggested that it would be inadvisable to delay complex meter registration processes due to a failure to accede to the CUSC, and that, if necessary, the Secretary of State could exercise power to revoke exemption although this should not be undertaken lightly.

3.6. The other two respondents commented that "reasonable endeavours" rather than "best endeavours" might be a more appropriate as obligation on DNOs and Transmission Owners to require EELPS to accede.

3.7. None of the respondents commented on the proposals to place obligations on the Transmission Owners to seek to require EELPS to accede.

3.8. One respondent observed that there was no conditionality on the registration of metering systems in the BSC at present, although there is an obligation in K1.2.5 on persons responsible for imports and exports to have in place all appropriate connection agreements. This respondent suggested that the BSC definition of "Connection Agreement" could be amended to extend the obligation to parties that are responsible for imports and exports at EELPS.

Obligations on EELPS

3.9. Ten respondents commented generally on the obligations relating to EELPS.

3.10. One of these respondents said that the obligations placed on EELPS should be broadly similar to those under the existing arrangements. Five respondents said that the obligations placed on EELPS should not exceed those under the existing arrangements or the Scottish Grid Code through their connection agreements. Four respondents said that obligations on EELPS should be the minimum necessary, one suggesting that the onus should be on NGC to prove that it needed any information or service.

3.11. Six of the respondents suggested that the obligations in the CUSC went beyond that which was necessary, and that, as a result, the proposal was disproportionate. One of these respondents said that the CUSC sets out terms and conditions for directly-connected generators and a clearly defined category of distribution connected generation, and that these generators could fully evaluate their obligations in accordance with rules and processes which are already in place. Another said that the CUSC is a complex and unwieldy document which is for a transmission system to which EELPS are not connected and of which they make no use. Another argued that it was ludicrous to impose obligations under the BSC and CUSC that are appropriate for generators which could be 100 times the size of EELPS in Scotland. Two described the compelling of power stations as small as 5 MW to be bound by the CUSC as a "sledgehammer" approach. One respondent described the proposals as an extension of GB System Operator's control beyond the level currently thought necessary by the Scottish transmission licensees.

3.12. These and other respondents commented more specifically on the obligations and conditions that would apply to EELPS under the proposals.

BELLAs versus BEGAs

3.13. Seven respondents were concerned regarding the rights afforded by the BELLA. In particular, these respondents were concerned that EELPS that elected to enter into a BELLA would be surrendering firm access rights that they enjoy under their current arrangements or that the rights to transmission system access (and hence the likelihood of being constrained off) were unclear. One of these respondents speculated that generators with BELLAs were unlikely to be constrained off, but was concerned that this situation might change in future.

3.14. In addition to concerns about the rights of access to the transmission system under BELLAs, four of these seven respondents expressed concern about the allocation of transmission access rights to EELPS under BEGAs. One particular concern was that EELPS did not have information about local demand which the respondents felt was necessary in order to calculate the Transmission Entry Capacity that would be required for any given EELPS.

3.15. These respondents were concerned that the proposals would place them in the position of having to choose between BELLAs and BEGAs, and that they had inadequate information at this stage on which to base such a decision and this placed them in a position of unacceptable uncertainty.

Compliance with Balancing Codes

3.16. Four respondents were concerned by the proposal that EELPS entering into a BELLA would have, at NGC's request, to submit PNs and would have to comply with certain provisions of Balancing Codes 1 and 2 (BC1 and BC2) of the Grid Code. They pointed out that Ofgem/DTI had stated that they "would not support a model that required such generators to be BM Units (on the basis that such a model would be operationally convenient for NGC) because it would also have the effect of placing additional unnecessary obligations on the generator (i.e. to trade on the basis of a BM Unit)". These respondents regarded the proposal as being for the operationally convenience of NGC. A further respondent noted that NGC was already fully aware of the use of the transmission system caused by its site, and thus questioned the applicability of the proposals to pre 1 April 2005 EELPS users.

3.17. Another respondent recognised the need for some EELPS to provide information and services. A further respondent commented that certainty as to the operational obligations for generators entering into BELLAs would be welcomed. Another respondent was concerned that, given a formal variation procedure would be needed to include any requirement to submit PNs in the bilateral agreement, it is likely that NGC would be more likely to require the submission of PNs at the outset. This respondent thus suggested that any such requirement were agreed outside the terms of the bilateral agreement.

Metering and BM Unit registration

3.18. Six respondents commented on metering and BM Unit registration issues. One of these respondents stated that the financing and commercial arrangements for its wind farm were made on the legitimate assumption that it was not required to register as a separate BM Unit. A second of the respondents stated that an EELPS choosing to register its meters in CVA and register a BM Unit should be required

to agree a BEGA; whilst an EELP registered in SVA[9] should agree a BELLA. A third questioned: whether an EELPS registered in CVA needed to register the BM Unit itself (and hence become a BSC Party) rather than having a third party register it; whether an EELPS registered as a separate BM Unit necessarily needed to have BEGA or whether it could still agree a BELLA; and whether there was any reason why a SVA-registered EELPS could still enter into a BEGA rather than a BELLA, whilst another also said it was unclear whether third parties could register meters. A fifth respondent said it agreed that an EELPS does not have to be a Party to the BSC provided another BSC Party is responsible for its output. The sixth respondent stated that Ofgem's current position contradicted its position in May 2004[10] where Ofgem/DTI said that it did not support a model that required generators to be BM Units.

3.19. A further respondent did not comment directly on registration, but said that it will be important to maintain embedded and/or exemptable trading options available in E&W with both a BEGA and a BELLA.

General provisions of the CUSC

3.20. In addition to general remarks on the appropriateness and complexity of the CUSC, one respondent supported the idea in section 5.1 of the November 2004 document of identifying more specifically the obligations in the general CUSC sections that it is proposed will apply to EELPS.

Conditionality of connections on completion of transmission reinforcement.

3.21. Three respondents were concerned by the proposal that EELPS could not be energised by the DNO prior to agreement by NGC, arguing that this blurred the lines between distribution and transmission system operation, and querying the legitimacy of any party other than the DNO to determine connection dates and requirements. Two of these respondents argued that consequently the proposals

[9] i.e. registered in the Supplier Meter Registration Service (SMRS) for the purpose of Supplier Volume Allocation (SVA) for the SVA Metering System.
[10] "Small Generator Issues under BETTA. An Ofgem/DTI Conclusions Document", May 2004, 96/04.

were discriminatory as these generators had no right to use the transmission system and that NGC could not similarly prevent the closure of demand.

Other

3.22. One respondent stated that the proposal that EELPS should remain a CUSC Party unless the Authority determined otherwise was inconsistent with CUSC 5.1.3 allowing embedded generators to cease to be a CUSC Party upon the termination of any bilateral agreements.

3.23. One respondent questioned who would be the applicant and recipient of Grid Code derogations.

3.24. One respondent also queried how EELPS which did not choose to be BM Units might be compensated for Grid Code compliance testing, given that the mechanism for compensating generators was through the payment for bid-offer acceptances.

3.25. One respondent questioned whether NGC would have much incentive to review the treatment of EELPS, in the light of work on Licence Exempt Embedded Medium Power Stations (LEEMPS), if EELPS were by then already subject to the CUSC.

3.26. One respondent commented that there was no mechanism whereby a Transmission Owner could specify any site-specific technical conditions for EELPS as it could for a transmission-connected generator under the terms of the System Operator - Transmission Owner Code (STC) using the Connection Site Schedule.

3.27. Two respondents commented that having to put in place bilateral agreements between the EELPS and NGC would create considerable additional transitional work for the three transmission licensees adding to the burden of implementation of BETTA.

3.28. Two respondents commented on embedded benefits were concerned that the proposals were unclear on the preservation of embedded benefits under a BEGA,

and that the loss of exempt status would result in the loss of all embedded benefits arising under the BSC and TNUoS charging arrangements.

4. Ofgem's views and conclusions

Requiring EELPS to accede to the CUSC framework agreement

4.1. Ofgem notes both the responses in favour of and against the proposal that EELPS should be required to accede to the CUSC Framework Agreement.

4.2. Although some respondents regard the CUSC as being complex and unwieldy and designed for transmission-connected generation, Ofgem considers that much of the perceived complexity of the CUSC is contained within the proforma bilateral agreements and that the provisions of the main part of the CUSC that would apply to EELPS are largely general in nature. If EELPS were not required to accede to the CUSC, but were required instead to enter into standalone agreements with NGC, Ofgem believes that much of the same matters as are covered within the sections of the CUSC that would apply to EELPS under the proposals, such as default, dispute resolution and definitions, would still be required. This is particularly the case given that substantial sections of the CUSC, e.g. those relating to transmission charges, do not apply to EELPS entering into the proposed BELLAs.

4.3. Ofgem also considers it important that users (and NGC) should have the right to refer disputes as to the terms of the BELLA to the Authority, and hence bespoke mechanisms would need to be created for the governance of such agreements so that disputes could be resolved by the Authority.

4.4. Furthermore, Ofgem considers that there should be benefit to users of being bound by an agreement which is subject to wider industry scrutiny, which is not the case with stand-alone agreements. Ofgem recognises the counter-argument that the CUSC would be subject to amendment proposals advanced by more parties than would be the case with a stand-alone agreement, and that amendments could be made to the CUSC without the agreement of any individual party. However, nonetheless, Ofgem understands that compliance with the Scottish Grid Code may be a condition of existing standalone connection agreements pre-BETTA, and amendments to the Scottish Grid Code may be made without the agreement of the parties to connection agreements.

4.5. Ofgem also notes comments that EELPS have no impact on the transmission system in Scotland. Ofgem does not agree with these comments. Whilst the impact of some EELPS on the transmission system may be considered to be minimal, this is not the case for all EELPS, and it is noted that the requirement for such generators to comply with the terms of the Scottish Grid Code pre-exists the introduction of BETTA. Ofgem is of the view that the EELPS proposals are simply a continuation under BETTA of existing arrangements applying to such generators. Ofgem agrees with the view that any derogations to these requirement should be made by a transparent and demonstrably non-discriminatory process.

4.6. Accordingly Ofgem considers that the CUSC provides the appropriate framework for agreements between EELPS and NGC, and agree with the view that this approach provides clear transparent governance with Authority oversight and that it avoids potential discrimination. The principles of common and transparent arrangements are consistent with those adopted throughout BETTA.

4.7. In response to the comments received in relation to the use of "best endeavours" Ofgem note that the proposal not to place an absolute obligation on the DNO resulted from the fact that it could not be guaranteed that the agreement between the DNO and the user could be amended to require user compliance. However, Ofgem continue to believe that requiring EELPS to enter into the relevant agreements is important and continue to believe that a "best endeavours" obligation is appropriate.

Obligations on EELPS

4.8. Ofgem notes the views that the obligations that should be applied to EELPS should be broadly similar to those that apply to such generators today. However, Ofgem considers that the conditions that would be imposed on EELPS in Scotland by the GB Grid Code are comparable to those imposed on those same generators today through the Scottish Grid Code and, as discussed above, the general terms in the CUSC would be required in any standalone agreement. To the extent that generators are unable to comply with the technical provisions of the Grid Code, then it will be necessary for NGC (and the generators if

licensed) to seek derogations. Ofgem believes that it is not appropriate to introduce a solution that applies in Scotland alone as this would discriminate between EELPS. However, Ofgem does not anticipate that the proposed arrangements will result in any substantial need for EELPS to comply with technical Grid Code requirements where they have not previously needed to comply under the existing Grid Codes in E&W and Scotland.

BELLA vs. BEGA

4.9. Ofgem also notes concerns about the terms of BEGAs and BELLAs, and particularly concerning the perceived removal of rights in the BELLA to access the transmission system, and on the difficulty for EELPS of choosing whether to enter into a BELLA or BEGA.

4.10. Ofgem believes that such concerns are misplaced. As was noted by one respondent, the arrangements concerning BEGAs are entirely unaffected by the proposals that have been the subject of this consultation. Even absent these proposals, EELPS would have the option to enter into a BEGA with NGC, and the terms of these agreements and the basis for the allocation of rights to access the transmission system would be identical to the terms that would be offered to an identical generator of the same capacity embedded at the same location, but in the absence of exempt status. The principal purpose of the BELLA put forward in these proposals is to require technical compliance of those EELPS who elect not to enter into a BEGA.

4.11. As regards the BELLA, the effect of this agreement is only to impose essentially the same technical requirements for information and mandatory provision of services that are required of such generators under the Scottish Grid Code. Furthermore, an EELPS electing to enter into a BELLA would not be subject to being constrained off under circumstances that are different from any other generator that does not have an agreement with NGC.

Compliance with Balancing Codes

4.12. As described above, the requirement to comply with elements of the Balancing Code, including the submission of PNs is intended to replicate the provision of

information and to provide for the despatch of various ancillary services that are already required by the Scottish Grid Code. Nevertheless, it is noted that given the fact that the market and associated balancing arrangements under BETTA differ significantly from the pre-BETTA arrangements in Scotland, Ofgem recognises that NGC may require PNs from generators that have not been required to submit information on intended operating levels to the Scottish transmission licensees.

4.13. Ofgem does not agree with comments that suggested that compliance with some aspects of the Balancing Codes contradicts Ofgem/DTI's conclusions in May 2004 that EELPS should not have to be BM Units. The conclusions in May 2004 explicitly referred to the manner of trading the exports of such generator. The provision of information about and despatch of certain ancillary services from, a generating unit or power station that are required under a BELLA do not constitute an obligation to be a separate BM Unit within the BSC.

Metering and BM Unit registration

4.14. As regards the registration of meters and BM Units, Ofgem does not intend that the proposals should affect existing arrangements as to which parties may register meters and BM Units, and agree with the comment that it is important to maintain trading options currently available in E&W. All of the trading options that are currently available in E&W remain available. The proposals simply require that the EELPS that have not elected to enter into a BEGA should be subject to a BELLA that requires compliance with certain Grid Code technical conditions. Thus Ofgem agrees that a party that generates electricity at an EELPS may elect for another party to be (and that other party elects to become) responsible for the exports (including in the case of a BEGA, for the bids and offers) at that power station.

4.15. Furthermore, Ofgem notes the comment that there need not be a one-to one correspondence between the system in which meters are registered (i.e. via CMRS or SMRS) and the type of agreement (i.e. BEGA or BELLA). However, EELPS that are registered in SMRS will be part of a BM Unit registered by a

Supplier, and only the additional terms of the BELLA will be appropriate. The Supplier BM Unit will be subject to the wider CUSC obligations that apply to BM Units, including the liability for transmission charges. Conversely, an EELPS registered in CVA will constitute a BM Unit and it is appropriate that the conditions that apply to BM Units, including the correspondence of maximum PNs and Transmission Entry Capacity (TEC), which are provided under the BEGA.

Conditionality of connections on completion of transmission reinforcement

4.16. Ofgem notes the objections of respondents to the possibility that the granting of a BELLA could be conditional on the completion of any necessary transmission system reinforcement works. However, even in the absence of these proposals, CUSC 6.5.1 requires any DNO not to energise a connection to, or permit use of its distribution system by, any Power Station unless, where required, an appropriate Bilateral Agreement has been entered into. Although there may be some ambiguity perceived as to when a Bilateral Agreement is required, this ambiguity is unlikely to extend to instances where to connect or permit use of the distribution system would put NGC or a transmission owner in breach of its planning standards. It is also noted that to the extent that an EELPS applied for connection in Scotland prior to the introduction of BETTA, its connection could and would be made contingent upon the completion of any necessary transmission infrastructure works. Hence, Ofgem is of the view that such arrangements again constitute an extension of the arrangements that have existed prior to the introduction of BETTA, albeit the contingent infrastructure under BETTA is assessed on a GB basis.

4.17. Consequently Ofgem does not agree with the view that the proposals extend the control of NGC into the operation of distribution, or that the proposals blur the distinction between distribution and transmission system operation. Ofgem also considers that if the connection of an embedded generator were to put NGC or a transmission owner in breach of its transmission licence or contractual obligations under the CUSC or the STC, including by putting it in breach of

planning standards, it is proper for NGC to impose conditions on the connection of that user.

4.18. Finally, whilst Ofgem recognises generally the desirability of symmetry of treatment between generation and demand, this does not extend to compelling customers to take demand in circumstances where generators can be prevented from generating. Thus, Ofgem does not agree with the comment that the proposals discriminate against EELPS in this regard.

Other

4.19. Ofgem agrees with the comment that the proposal that EELPS should remain a CUSC Party unless the Authority determines otherwise is inconsistent with CUSC 5.1.3, and therefore proposes some amendments to CUSC 5.1.3.

4.20. Derogations to the Grid Code are derogations to the licence condition requiring compliance with the Grid Code. Ofgem's view is thus that, where the EELPS is not a licensee, derogations would need to be sought by NGC. Any such derogation will affect the EELPS only through the contractual arrangements between the EELPS and NGC. Where the EELPS is a licensee then derogations would be needed by both NGC and the EELPS.

4.21. Ofgem believes that EELPS which do not solely constitute a BM Unit, will still be part of a BM Unit, and thus will be able to receive compensation for compliance tests through bid/offer acceptances for the BM Unit of which they are a part. In any event, Ofgem do not believe that there is any explicit linkage between incurring these costs and recovering them through the balancing mechanism.

4.22. Ofgem does not believe the assertion that were EELPS already subject to bilateral contract with NGC, that this would affect the consideration of options under any review in the light of the work on LEEMPS. Ofgem anticipates that such a review will be open to contributions from parties other than NGC, and thus NGC's view will not constrain the options considered.

4.23. Ofgem agrees with the comment that there is no mechanism whereby a Transmission Owner may specify site-specific technical connection conditions to NGC for embedded generators as it may for a directly-connected generator through the Connection Site Specification under the STC, and propose amendments to the STC accordingly (see Appendix 2).

4.24. Whilst Ofgem considers that the bulk of work in the implementation of BELLAs and BEGAs will fall on NGC, Ofgem recognises that a number of concerns have been expressed that EELPS are being required to choose between the BELLA and BEGA options in the run up to the introduction of BETTA without having sight of the detailed drafting in relation to the BELLA option. Furthermore given the timescales associated with the introduction of these arrangements in the run up to BETTA, Ofgem propose that:

i) in certain instances (i.e. where the provision of such services is not essential for BETTA go-live) additional time should be given for the EELPS and NGC to enter into any associated arrangements for the provision of ancillary services; and

ii) subject to there being no other material change and the request to switch being made prior to 1st October 2005, Ofgem propose that those EELPS that have been required to choose between the BEGA and BELLA options prior to BETTA go-live will be given an opportunity to apply once to NGC to switch between the options without this affecting their place in the queue for the purposes of determining any contingent infrastructure under licence condition C18[11].

4.25. Ofgem notes the concerns about the preservation of embedded benefits. However, Ofgem believes that such concerns are misplaced, as it is not intended that the proposals in themselves should affect the range of trading options for any given generator. In any case, embedded benefits are available under a range of circumstances which are not dependent on a generator being registered in SVA, nor on being exemptable.

[11] It is noted that this does not mean that EELPS cannot apply to move between the two options on an enduring basis.

4.26. Proposed changes to the text of the Transmission Licence, CUSC, Grid Code and STC are shown in Appendix 2.

5. Views invited and way forward

5.1. Respondents are invited to comment on any of the proposals covered in this paper. Each response will be published on the Ofgem website and held electronically in Ofgem's Research and Information Centre, unless there is a good reason why it must remain confidential. Respondents are asked to put any confidential material in appendices, such that the main body of the response can still be published.

5.2. Responses, marked "Treatment of EELPS under BETTA" should be sent by 7th February 2005. Ofgem would prefer responses to be sent by email to BETTA.consultationresponse:ofgem.gov.uk, but responses an also be posted to:

David Halldearn

BETTA Project

Office of Gas and Electricity Markets

9 Millbank

London

SW1P 3GE

5.3. Ofgem will consider the responses received and propose to publish a conclusions paper in early March and issue the necessary directions to modify the relevant documents shortly thereafter.

5.4. 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.

Appendix 1 : Respondents to the November 2004 consultation

1.1 Fifteen responses were received to the November 2004 consultation paper, of which one was confidential. The non-confidential respondents were:

Airtricity

The British Wind Energy Association (BWEA)

Centrica

Crystal Rig Windfarm Limited

e.on

Fred. Olsen Renewables Ltd

Highland and Islands Enterprise (HIE)

National Grid Transco

The Natural Power Consultants Limited

RWE

ScottishPower UK Division

Scottish Renewables

SP Transmission & Distribution

Scottish and Southern Energy

Appendix 2 : Proposed Licence and Code changes

2.1 Ofgem/DTI note that it will be necessary to bring into effect some of the changes set down in this Appendix prior to BETTA go-live.

Licence Changes

2.2 The proposed changes to Condition C18 are set out in the accompanying file: "C18 Changes for EELPS"

CUSC Changes

5.5. The proposed changes to the CUSC are set out in the accompanying files (changes are proposed to CUSC Sections 1,4,5,6,11,12, Exhibit I, Schedule 2 Exhibit 5, and a new Exhibit [X] (BELLA Application) and Exhibiy [Y] (BELLA Offer)).

Grid Code

5.6. The proposed changes to the Grid Code are set out in the accompanying files (changes are proposed to the Glossary and Definitions, OC5 and Balancing Codes 1 and 2).

STC

5.7. The proposed changes to the STC are set out in the accompanying file (changes to Section D Part 1 and Section I are proposed).