

Direct Dial: 020 7901 7017

Email: David.Halldearn@ofgem.gov.uk
Angela.Pearce@dti.gov.uk

16 February 2005

Dear Colleague

Consultation on Scottish nuclear site licence provisions agreements

Background

Both in England and Wales and in Scotland agreements exist between the licensees of some nuclear power stations and the owner/operator of the transmission system to which the power station is connected in relation to the management of the connection plant and apparatus. Such agreements have the purpose of supporting the requirements of the nuclear site licence for such power stations. In England and Wales, the Connection and Use of System Code ("CUSC") identifies two such agreements in its definition of "nuclear site licence provisions agreements" ("NSLPAs") and gives the provisions of those agreements precedence over the CUSC provisions in relation to matters relating to the modification of connection assets and plant and apparatus at the site to which the agreement refers¹.

For the agreements (equivalent to the NSLPAs in England and Wales) in Scotland ("Scottish NSLPAs"), this gives rise to two issues:

- (a) the need to ensure that the provisions of the Scottish NSLPAs take precedence over the relevant CUSC provisions in the same way as for NSLPAs in England and Wales; and
- (b) given the separation of roles between transmission owners ("TOs") and the GB system operator ("GBSO"), the need to ensure that the provisions of the Scottish NSLPAs can be fulfilled by the party (or parties) who contracts with the nuclear power station.

On 30th April 2004, Ofgem/DTI issued a conclusions document on the CUSC under BETTA² ("the April 2004 conclusions") incorporating near final legal drafting for the GB CUSC. In that document Ofgem/DTI noted that the third GB CUSC consultation³ stated that Ofgem/DTI consider that BETTA should not require any change to any nuclear site licence

¹ This precedence provision is laid out in clause 6.9.4 of the CUSC.

² "The Connection and Use of System Code (CUSC) under BETTA, Ofgem/DTI conclusions and publication of near final legal text for the GB CUSC", April 2004, Ofgem 91/04

³ "The Connection and Use of System Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a CUSC to apply throughout GB", June 2003, Ofgem 46/03

and that BETTA should seek to put in place arrangements on a GB-wide basis which have exactly the same effect on such licences as the current arrangements.

In the third GB CUSC consultation, Ofgem/DTI noted that agreements equivalent to the two NSLPAs currently referred to in the CUSC, exist in relation to sites in Scotland and it will therefore be necessary to ensure that the provisions of such agreements take precedence over the provisions of the GB CUSC in relation to modification of connection assets and plant and apparatus at the site to which the agreement refers (as currently provided for in England and Wales by clause 6.9.4 of the CUSC).

Ofgem/DTI also noted in the third GB CUSC consultation that the GB system operator and the transmission owners will both have a role to play in the satisfaction of provisions under the Scottish NSLPAs under BETTA. Ofgem/DTI proposed that the GB system operator should be party to the Scottish NSLPAs and that the GB system operator, Scottish transmission owners and nuclear site licensees should agree the framework for these agreements.

Ofgem/DTI noted in the April 2004 conclusions that three respondents to the third GB CUSC consultation commented on this issue. All supported Ofgem/DTI's proposed approach. In addition:

- (a) the first respondent noted that System Operator – Transmission Owner Code (STC) back-off obligations on transmission owners will have to be developed as transmission owners will have an integral role in NSLPAs;
- (b) the second respondent stated that NSLPAs will predominantly apply to transmission owner activities; and
- (c) the third respondent commented that the minimum change required for BETTA would be the addition of the GB system operator as a party to the existing Scottish NSLPAs.

Ofgem/DTI noted that National Grid Company (NGC), as the GB system operator, and the Scottish transmission owners had initiated discussion of the Scottish NSLPAs and would progress the matter in order that appropriate agreements are in place for BETTA. Ofgem/DTI further noted that minor CUSC drafting changes would be required at the end of the process to identify specific Scottish NSLPAs in the CUSC, where existing NSLPAs in England and Wales are listed. That change would have the effect of allowing the provisions of the Scottish NSLPAs to take precedence over the relevant CUSC provisions in the same way as for NSLPAs in England and Wales.

Since the publication of the April 2004 conclusions, NGC has been in discussion with SP Transmission Limited (SPTL) and British Energy (BE), the two parties to a Scottish NSLPA (in respect of Torness and Hunterston power stations), on this topic. Ofgem/DTI also note that a further Scottish NSLPA exists between SPTL and British Nuclear Fuels Limited (BNFL) in respect of the Chapelcross power station, which is planned to close in April 2005. Ofgem/DTI understand that SPTL is in discussion with BNFL on the future of this agreement following the closure of the Chapelcross power station.

Neither Ofgem nor the DTI has been party to the discussions on either of these agreements, since they relate to the terms of private bilateral agreements, but Ofgem/DTI understand that SPTL, BE and NGC have developed an agreed approach which is discussed below.

The agreed approach

Ofgem/DTI understands that the approach agreed between SPTL, BE and NGC is to make the minimum changes to the Scottish NSLPA (between SPTL and BE) to enable, for example the necessary information to be passed from SPTL to NGC. In order that SPTL can deliver all elements that the Scottish NSLPA with BE requires of it, it is necessary that some of those contractual obligations are “backed-off” onto NGC. NGC and SPTL propose that this should be achieved through provisions in the STC.

This approach is somewhat different from that anticipated in the April 2004 conclusions, where Ofgem/DTI anticipated that NGC would become a party to the Scottish NSLPAs. However, Ofgem/DTI note that is an approach of minimum change to the Scottish NSLPAs and that the BETTA legal framework does not require that the Scottish NSLPAs should be changed into a tri-lateral form. Ofgem/DTI also note that the “back-off” changes to the STC are relatively minor as shown in appendix 1.

Ofgem/DTI are content with this approach and propose, in appendix 1 to this document, the necessary changes to the STC. In relation to the proposed obligations (in paragraph G3.6) on NGC for the provision of data to SPTL, Ofgem/DTI note that the STC will make that general obligation subject to the permissible data exchanges laid out in schedule 3 of the STC. Appendix 2 contains the associated changes to the CUSC, which were anticipated in the April 2004 conclusions. The proposed changes to the CUSC are based upon the assumption that the Scottish NSLPA between SPTL and BNFL in respect of the Chapelcross power station will endure beyond the closure of the station. Given the current uncertainty about the future of this agreement, Ofgem/DTI believe that this is the prudent approach. Should the agreement not endure, Ofgem/DTI anticipate that a proposal for an amendment to the definition of “Nuclear Site Licence Provisions Agreement” in the CUSC will be brought forward in due course.

Views invited

Ofgem/DTI invite views on the agreed approach to the Scottish NSLPAs and the proposed legal drafting changes for the STC and the CUSC.

Any comments on these proposals should be sent to David Halldearn at the address above by 2 March 2005. Alternatively, comments can be emailed to BETTA.consultationresponse@ofgem.gov.uk. If you wish to discuss any aspect of this proposal, please contact Simon Street, email simon.street@ofgem.gov.uk, telephone 0207 901 7057 (or 07885 059630).

Yours sincerely,



David Halldearn,
Director, Scotland & Europe,
Ofgem

Angela Pearce,
Head of the BETTA Team,
DTI

Proposed changes to the STC

Add the following paragraphs to section G3 of the STC:

- G3.4 Where requested by NGC upon reasonable notice, SP Transmission Limited shall provide such information and advice in relation to its obligations and rights under the Scottish NSLPAs as shall be reasonable to enable NGC to comply with its obligations under the Code, the Grid Code and the CUSC.
- G3.5 Where requested by NGC upon reasonable notice, SP Transmission Limited shall undertake such actions in relation to its obligations and rights under the Scottish NSLPAs as shall be reasonable to enable NGC to comply with its obligations under the Code, the Grid Code and the CUSC.
- G3.6 Where requested by SP Transmission Limited upon reasonable notice, NGC shall provide such information and advice as shall be reasonable to enable SP Transmission Limited to comply with the Scottish NSLPAs.
- G3.7 Where requested by SP Transmission Limited upon reasonable notice, NGC shall undertake such actions as shall be reasonable to enable SP Transmission Limited to comply with the Scottish NSLPAs.⁴
- G3.8 SP Transmission Limited shall notify NGC as soon as reasonably practicable of any proposal to amend the Scottish NSLPAs and shall consult with NGC in relation to the potential impact of any such proposal on the Code, the Grid Code and the CUSC to ensure that the views of NGC on that proposal are obtained and, where NGC so requires, communicated to the relevant counterparty to the Scottish NSLPAs.
- G3.9 NGC shall notify SP Transmission Limited as soon as reasonably practicable of any proposal to amend the Code and/or the Grid Code and/or the CUSC which may affect the Scottish NSLPAs and shall consult with SP Transmission Limited in relation to the potential impact of any such proposal on the Scottish NSLPAs to ensure that the views of SP Transmission Limited on that proposal are obtained and, where SP Transmission Limited so requires, considered as part of the consultation process in relation to the Grid Code and the CUSC.

Add the following new definition to Section J of the STC:

“Scottish NSLPAs”	the agreement (as from time to time amended) between SP Transmission Limited and British Energy Generation (UK)
-------------------	---

⁴ The more detailed provisions and procedures needed to meet the procedural requirements in relation to the Scottish NSLPAs will be dealt with in each of the relevant STCPs, which will in the relevant places highlight the need to ensure that the relevant Scottish NSLPA provisions are covered, but in line with the drafting elsewhere in the STC this use of the STCPs is not specifically referred to in the drafting to be included in Section G of the STC.

Limited in relation to (i) Hunterston power station and Torness power station and (ii) the agreement (as from time to time amended) between SP Transmission Limited and British Nuclear Fuels plc in relation to Chapelcross power station.

Proposed changes to the CUSC

Make the following changes to CUSC paragraph 6.9.4

- 6.9.4 To the extent that the provisions of ~~any the~~ **Nuclear Site Licence Provisions Agreement** ~~(being an agreement dated 30th March 1990 between NGC and Nuvlear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between NGC and British Energy Generation Limited and described as such)~~ relate to **Modifications** (either by a **User** or by **NGC**) as (and only as) between the ~~parties to such agreement~~ **User and NGC**, they shall prevail over the provisions of this Paragraph 6.9 to the extent that they are inconsistent.

Add the following new definition to the CUSC Section 11:

“Nuclear Site Licence Provisions Agreement”

shall mean each of the following agreements (as from time to time amended) (a) the agreement between **NGC** and Magnox Electric plc (formerly called Nuclear Electric plc) dated 30 March 1990, (b) the agreement between **NGC** and British Energy Generation Limited dated 31 March 1996, (c) the agreement between SP Transmission Limited and British Energy Generation (UK) Limited dated 29 May 1991 in relation to Hunterston power station and Torness power station, and (d) the agreement between SP Transmission Limited and British Nuclear Fuels plc dated [xxx]] in relation to Chapelcross power station.⁵

⁵ Details of the agreement in relation to Chapelcross power station to be completed once available as a result of further development of the relevant run-off arrangements.