

Our Ref: LV
Direct Dial: 020 7901 7017
Email: David.Halldearn@ofgem.gov.uk
Angela.Pearce@dti.gsi.gov.uk

28 January 2005

Dear Colleague,

BETTA open letter on proposed changes to Standard Licence Condition (“SLC”) C18 of the transmission licence, other SLCs, the CUSC and the STC to reflect the possible late issuance of GB offers under SLC C18 and other required changes: Ofgem/DTI Conclusions

Invitation of views on the proposal by the Secretary of State to exercise powers to further amend SLC C18 in relation to the treatment of Embedded Exemptable Large Power Stations: Ofgem/DTI Consultation

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 of State also exercised her powers to modify the new standard licence conditions for the transition period¹. The new SLCs and the transitional modifications came into effect on and from 1 September 2004.

In December 2004, Ofgem/DTI published an open letter consultation² (“the December 2004 letter”) on possible changes to SLC C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) (“SLC C18”) which 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

¹ 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).

² “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; 286/04”

which NGC will be required to issue GB offers, conditions governing the order in which the GB offers are to be issued and conditions governing certain terms of the GB offers to certain users. Provisions in the Connection and Use of System Code (“CUSC”), 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 and making of GB offers.

The December 2004 letter considered changes to SLC C18 and associated arrangements in light of an Ofgem/DTI open letter published in November 2004 on the possible late issuance of GB offers in certain circumstances (“the November 2004 letter”)³, and further consideration of the practicalities of adhering to SLC C18 as currently drafted. It also proposed that a number of changes be made to SLC C18 and the associated arrangements in relation to these matters and set out draft legal text to give effect to these proposals.

This Ofgem/DTI open letter briefly summarises the proposals set out in the December 2004 letter, sets out the views of respondents about those proposals and sets out Ofgem/ DTI’s final conclusions.

December 2004 letter

The December 2004 letter explained that the November 2004 letter had set out the expectation of the transmission licensees that certain users who were not due to be connected to or using the GB transmission system at the BETTA go-live date may not receive their GB offer in the timescales set out in SLC C18. The December 2004 letter expressed an expectation that the Authority would, in accordance with its powers under SLC C18, direct or consent to (as appropriate) an extension of the dates by which particular classes of user should receive their GB offers in accordance with the timescales set out in the November 2004 letter. That letter also explained that many of the GB offers issued under SLC C18 would be likely, if accepted, to have a material effect on other GB offers which would be open for acceptance at that time, accordingly, many GB offers would be interactive with one another. Many interactive GB offers may therefore be withdrawn, revised and reissued. For these reasons it is likely that many GB offers and revised GB offers to be made under SLC C18 will be made after the BETTA go-live date.

The December 2004 letter included proposals for amendments to the various legal documents to reflect the likely issuance of some offers for connection to the GB transmission system after the BETTA go-live date. This included proposals to modify licence conditions which apply to transmission owners in their role in the preparation of GB offers. It also included proposed changes to section 12 – Transition Issues of the CUSC to support the management of interactive GB offers during the transition period.

The December 2004 letter noted the requirements placed upon NGC by SLC C18 to make offers of terms for use of system to users who apply before BETTA go-live but who did not have an agreement with a transmission licensee as at 1 September 2004 (“Category B and Category C persons”) within 28 days and to ensure that the order in which offers for both connection and use of system are made would be such that later applicants would not receive their offers before earlier applicants. It expressed the view that this placed unreasonable demands on the

³ “BETTA open letter on likely late issuance of offers under standard licence condition C18 of the electricity transmission licence, November 2004”, 257/04

transmission licensees in the preparation of GB offers and proposed that the timescales for making an offer of terms for use of system to Category B and Category C persons under SLC C18 should be consistent with those which apply to an offer of terms for connection (that is, within 3 months (except where the Authority consents to a longer period) of the date of the application rather than within 28 days of the date of the application). The December 2004 letter therefore noted 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.

It should be noted that the aforementioned directions and consents from the Authority to extend the dates by which particular classes of user should receive their GB offers in accordance with the timescales set out in the November 2004 letter will permit NGC to make offers of terms for connection to Category B and Category C persons within 4 months (rather than 3 months). The reasons for the need for this extension were explained in the November letter. The directions and consents will also permit NGC to make offers of terms for use of system to Category B and Category C persons within 4 months (rather than 28 days) in accordance with the principle concluded upon above i.e. that the timescales for making an offer of terms for use of system to Category B and Category C persons under SLC C18 should be aligned with those for the making of offers of terms for connection.

The December 2004 letter also noted that 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. Given 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, the December 2004 letter suggested that it was unnecessary to link their production to the same timescales as those offers that could trigger the need for system reinforcement. It therefore proposed 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.

The December 2004 letter stated that Ofgem/DTI intended that the direction that is to be issued to extend the timeframe for making offers for use of system should not therefore include offers for use of system being made to electricity suppliers. Having given further consideration to this proposal, Ofgem/DTI are now of the view that excluding GB offers for use of system for suppliers from the effect of this direction is not necessary as NGC are in any event obliged by SLC C18 to make these offers "as soon as reasonably practicable". Ofgem/DTI therefore intend that the direction that is to be issued to extend the timeframe for making offers for use of system should not exclude offers of terms for use of system for suppliers.

The December 2004 letter further noted the possible interactions between the GB offers of terms to be made under SLC C18 and the changes to be made to existing agreements as a result of the BETTA run-off arrangements. The December 2004 letter suggested that SLC C18 should be amended to clarify that the obligation upon NGC in SLC C18 to, where appropriate, take into account existing rights and restrictions when preparing GB offers should apply in relation to existing agreements before they are changed in accordance with the BETTA run-off arrangements scheme.

Finally, the December 2004 letter described the changes to the various SLCs and provisions within the CUSC and the STC which Ofgem/DTI considered necessary to give effect to these

proposals and set out draft legal text in annexes. It also noted that 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.

Views of respondents

Ofgem/DTI received two responses to the December 2004 letter. One respondent welcomed Ofgem/DTI's view that the Authority should issue directions or grant its consent (as appropriate) to allow NGC to make offers of terms for use of system under SLC C18 in timescales aligned with those for offers of terms for connection. The same respondent suggested that, in light of the volume of applications received, the obligations surrounding the issuance of GB offers to Category B persons, including the methodology for treatment of interactive offers, ought to be reviewed. It also suggested that, given the slippage of dates for the issuance of GB offers under SLC C18, the status of existing agreements both in England and Wales and in Scotland, should be considered.

The same respondent supported the proposed changes to SLC C18 to exclude use of system offers which do not involve reinforcement of the transmission system from the sequencing provisions of schedule 1 to SLC C18. They also supported the proposed clarification that NGC should, in preparing GB offers, take into account rights and restrictions that may have been run off.

The same respondent also provided some detailed comments on the draft legal text in new paragraph 6 of schedule 1 to SLC C18, questioning the reasons for inclusion of the references to "connection or modification" to existing connection.

The respondent also pointed out what it considered to be an omission from the proposed changes to clauses 12.2.9 and 12.2.10 of the CUSC, stating that the December 2004 letter proposed that these clauses be amended to allow the Authority to direct changes to the date set out therein but the draft legal text included no such amendments. It also noted that a direct link is drawn within section 12 of the CUSC to any direction issued under SLC C18 regarding timescales for issuance of GB offers and suggested that such links should be established wherever possible. The same respondent suggested that the ability for the Authority to direct a date other than 1 February 2005 as the date by when NGC should inform Scottish Users that they should enter into an interface agreement with a Scottish transmission licensee, should be written into section 12 – Transition Issues of the CUSC.

The second respondent expressed a concern about the provisions of SLC C18 which require that applications in Scotland made on or before 31 December 2004 should not be contingent upon reinforcement of the interconnector circuits nor on deeper reinforcement in England and Wales and that, as result, applicants in England and Wales will be required to provide financial security for reinforcement of the transmission system that would otherwise have been "tagged to the substantial volume of renewable projects planned for Scotland".

Ofgem/DTI views

Ofgem/DTI note the support for consent to be granted by the Authority to allow NGC to make offers of terms for use of system under SLC C18 in timescales aligned to those which apply to

offers of terms for connection. Ofgem/DTI also notes the support for the proposed changes to SLC C18 to clarify that NGC, in preparing GB offers, should take into account rights and restrictions that may have been run off in accordance with the BETTA run-off arrangements scheme.

Ofgem/DTI note support for the proposed changes to the sequencing provisions in schedule 1 to SLC C18 such that they should not apply to GB offers of terms for use of system for suppliers. In ongoing discussions on the treatment of use of system offers for suppliers (which are never interactive with other types of offer), it has been brought to the attention of Ofgem/DTI that there may be GB offers, other than use of system offers for suppliers, which may require the extension or reinforcement of the GB transmission system that may be not be interactive with other GB offers. Examples of such a GB offer may relate to a connection site which is significantly geographically removed from the sites to which other GB offers relate or a connection on a part of the GB system that has significant spare capacity. Ofgem/DTI now intend to adopt a more generalised carve-out from the sequencing provisions whereby any GB offer that would not affect any other GB offer made under SLC C18 (whether it is accepted or not) or where acceptance of any other GB offer would not affect the terms of that GB offer should be excluded from the effect of the sequencing provisions of schedule 1 to SLC C18. Legal text to give effect to this change has been included in annex A.

Ofgem/DTI note the view of the respondent who questioned the inclusion of the references to "connection or modification" and suggested changes to the drafting of the new paragraph 6 of schedule to SLC C18. In light of the revised drafting for that paragraph (discussed above), the respondent's comments would no longer appear to be relevant.

Ofgem/DTI note the view that amendments to clauses 12.2.9 and 12.2.10 of section 12 – Transition Issues of the CUSC were omitted from the text appended to the December 2004 letter. Ofgem/DTI agree that an amendment to clause 12.2.10(c) was omitted from this drafting, which has now been included in the text in annex C. Ofgem/DTI do not consider that amendment is required to clause 12.2.9 of section 12 – Transition Issues of the CUSC as it contains provisions which provide the Authority with the ability to approve dates other than those specified.

Ofgem/DTI note the view that the obligations surrounding the making of GB offers in response to applications received before 1 January 2005 for which there was not a signed offer as at 1 September 2004 should be reviewed. Ofgem/DTI recognise the importance of these arrangements and will continue to keep them under review. To the extent that it becomes apparent that further changes are required, these will be addressed as and when the need arises. It is also Ofgem's intention to issue a separate communication on the volume of the applications that have been received by transmission licensees between 1 September 2004 and the end of that year and the impact that this may have on their ability to produce GB offers in a timely manner.

Ofgem/DTI note the view that, wherever possible, the directions to be issued by the Authority under section 12 - Transition Issues of the CUSC should be referred back to an equivalent ability of the Authority to make directions under SLC C18. Ofgem/DTI agrees and considers that the proposed CUSC drafting is consistent with this approach.

Ofgem/DTI note the view that the section 12 – Transition Issues of the CUSC should include provisions which give the Authority the ability to direct a date other than 1 February 2005 as the date by when NGC should inform Scottish users that they should enter into an interface agreement with a Scottish transmission licensee. Ofgem/DTI note that this obligation only applies in respect of existing Scottish users, that is to say those users in Scotland who had an agreement with a Scottish transmission licensee as at 1 January 2005. Ofgem/DTI consider that the task of identifying those existing Scottish users which are required to enter into an interface agreement with a Scottish transmission licensee and then notifying those existing Scottish users of the requirement is not unduly onerous and should be capable of being completed by 1 February 2005. Ofgem/DTI is therefore not minded to make the change proposed by the respondent.

Ofgem/DTI note the view that, in light of the delay in issuing certain GB offers, the status of existing agreements needs to be considered. Ofgem/DTI would expect NGC to make any specific proposals that it may have in this area in its forthcoming consultation on the subject of legal cutover for BETTA.

Ofgem/DTI note the concern that users in England and Wales may, as a result of the effect of the provisions set out in SLC C18 relating to the identification of contingent reinforcement for those who apply before 1 January 2005, be asked by NGC to provide financial security for reinforcement of the transmission system in England and Wales. However, Ofgem/DTI do not consider that this is the effect of SLC C18. To the extent that persons in Scotland who apply before 1 January 2005 provoke the need for reinforcement of the interconnector circuits or of the transmission system in England and Wales, then users in England and Wales should not be requested to provide financial security for those reinforcements. NGC is only permitted to include terms for contingent reinforcement in GB offers which are necessary and appropriate as a result of those terms. To the extent that a certain party provokes the need for reinforcement of the transmission system then no other offer of terms should include a requirement to provide the financial security for that reinforcement. Ofgem/DTI do not therefore consider that any changes are necessary to deal with the concern raised by the respondent.

Ofgem/DTI conclusions

In light of the responses received, Ofgem/DTI conclude that it is appropriate to change the SLCs, the CUSC and the STC in accordance with the proposals set out in the December 2004 letter except where changes from those proposals have been outlined in this letter. The changes which Ofgem/DTI have concluded should be made are summarised as follows.

SLC C18 of transmission licences

- to provide that SLC C18 will continue to have effect after the BETTA go-live date
- ensure that any GB offers issued under SLC C18 continue to have effect after the BETTA go-live date in accordance with the provisions 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 scheme⁴

- 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 the BETTA go-live date, enter into the GB offer) needs to be altered to allow for the Authority to specify a different date for the purpose of that paragraph, and
- disapply the sequencing provisions set out in paragraph 5 of schedule 1 to SLC C18 in respect of particular GB offers of terms for use of system for suppliers and GB offers which, (regardless of whether or not they are accepted), do not affect other GB offers made under SLC C18 or would be affected by the other GB offers if such GB offers were accepted first.

The December 2004 letter noted that the required changes identified in the first two bullet points will be covered as part of Ofgem/DTI's work on making final changes to the electricity transmission licence to prepare for the 'cutover' to the new GB arrangements that will apply from the BETTA go-live date. Proposed draft legal text to give effect to these changes will be appended to the forthcoming Ofgem/DTI consultation on legal cutover for BETTA.

Proposed legal text to give effect to the changes identified in the third, fourth and fifth bullet points are set out in annex A. It is intended that the Secretary of State will designate these modifications under section 134 of the Energy Act 2004 in due course.

SLC C8 (Requirement to offer terms) of transmission licences

It is intended that SLC C8 (Requirement to offer terms) will be modified in order to clarify that its provisions only apply in respect of applications made to NGC after the BETTA go-live date. This consequential change is required given that SLC C18 will continue to have effect for a period after the BETTA go-live date.

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 transmission licences

It is intended that SLC D15 (Obligations relating to the preparation of TO offers during the transition period) ("SLC D15") will be amended such that it continues to have effect in relation to a GB offer for which SLC C18 will also continue to have effect. SLC D15 will continue in effect alongside SLC D4A (Obligations in relation to offers of connection etc) ("SLC D4A") but the former SLC will only relate to applications made before the BETTA go-live date.

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 of transmission licences

⁴ 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.

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

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

It is intended that SLC 19C (Offers for connection to or use of the GB transmission system in the transition period) of the generation licences, SLC 30C (Offers for connection to or use of the GB transmission system in the transition period) of the distribution licences and SLC 31C (Offers for connection to or use of the GB transmission system in the transition period) of the supply licences will be modified such that they continue to have effect on and from the BETTA go-live date.

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

Section 12 of the CUSC will be amended such that it continues to apply to the processing of GB offers in relation to parties who either had an agreement prior to the BETTA go-live date or have made an application prior to the BETTA go-live date.

The following amendments shall be made to section 12 of the CUSC;

- 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 the BETTA go-live date from which a GB offer may have effect, and
- insert provisions to allow NGC to manage the interactive offer process in respect of GB offers made under SLC C18.

The Authority shall direct these amendments in accordance with its power under SLC C10 (Connection and Use of System Code) as amended by section E of the transmission licence and in particular that they satisfy the criteria specified in SLC C10.8(b). Draft legal text to give effect to these amendments is set out in annex C and annex D.

STC

The STC shall be amended such that section I of the STC continues to apply after the BETTA go-live date, in the context of the processing of Current User Offers and New Transitional Construction Offers that is, to endure after the BETTA go-live date so as to continue to apply in relation to offers (and revised offers) made to those who applied prior to the BETTA go-live date.

The Authority shall direct these amendments in accordance with its power under SLC B12 (STC) as amended by section E of the transmission licence and in particular that they satisfy the criteria specified in SLC B12.7(g). Draft legal text to give effect to these amendments is set out in annex B.

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

Further Amendment to SLC C18 in relation to the treatment of Embedded Exemptable Large Power Stations: Ofgem Consultation

It is also noted that changes to SLC C18 have been proposed in order to complement the changes for Embedded Exemptable Large Power Stations (EELPS) under BETTA , in order to enable generators to change between Bilateral Embedded Generator Agreements ("BEGA") and Bilateral Embedded Licence exemptable Large power station Agreements ("BELLA") for a period after the BETTA go-live date without affecting the dates used for the purposes of determining transmission system works in accordance with SLC C18⁵. Subject to any comments received in response to the proposals it is proposed that the Secretary of State will exercise the powers conferred upon her by section 134 of the Energy Act 2004 to effect the relevant changes to SLC C18. Any views on this proposal should be sent to angela.pearce@dti.gsi.gov.uk by 7th February 2005.

Further Authority Directions under SLC C18

Since the publication of the November letter and the December letter, NGC has requested that the Authority issue a further direction in exercise of the power conferred upon it by subparagraph 7(a)(ii) of SLC C18 to extend the time period prescribed for the issue of GB offers to existing Scottish users in respect of 20 sites in the North of Scotland. NGC has requested the direction as it either has not received particular information from Scottish Hydro-Electric Transmission Ltd to make the GB offers by 1 February 2005 or has not received that information in sufficient time to enable it make the GB offers by 1 February 2005. The Authority has decided to issue such a direction, which can be viewed on the Ofgem website⁶.

⁵ Entitled "Treatment of Embedded Exemptable Large Power Stations under BETTA. Ofgem, 24/01/05. Ofgem, ref: 12/05"

⁶ www.ofgem.gov.uk