

February 2000

**The New Electricity Trading Arrangements
Proposed licence conditions**

Ofgem/DTI Consultation Document

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1. Introduction

1.1 Purpose of this Document

In December 1999, Ofgem published a consultation document¹ containing proposals on licence changes required for the new electricity trading arrangements in England and Wales (NETA) and related transmission issues. These proposals built on Ofgem/DTI's conclusions for NETA set out in their October 1999 Conclusions Document.² The related transmission issues were discussed in more detail in a separate consultation document published by Ofgem in December 1999.³

This consultation document summarises the responses received by Ofgem to the December licence consultation and sets out Ofgem/DTI's views on the licence conditions required in connection with NETA (including the licence conditions required to introduce a new connection and use of system code). Draft licence conditions reflecting Ofgem/DTI's conclusions are annexed to this document.

This consultation document does not address:

- ◆ licence proposals for the NETA system operator incentive arrangements to be contained in NGC's licence (Ofgem expects to publish initial proposals on the NETA incentive arrangements in March);
- ◆ licence changes which may be required to introduce a new transmission access and pricing regime (any licence changes required as a result of changing the transmission access arrangements would need to be considered at that time).

References in this document to the December consultation or the December licence consultation are to the Ofgem publication 'The New Electricity Trading Arrangements and Related Transmission Issues – Proposals on licence changes', unless expressly stated otherwise.

¹ The New Electricity Trading Arrangements and Related Transmission Issues – Proposals on licence changes, Ofgem Consultation Document, December 1999.

² The New Electricity Trading Arrangements, Ofgem/DTI Conclusions Document, October 1999

³ NGC System Operator Incentives, Transmission Access and Losses under NETA, Ofgem Consultation Document, December 1999.

1.2 Outline of this Document

Chapter 2 provides a brief headline summary of the responses received to the December consultation on licence changes required to implement NETA and outlines Ofgem/DTI's views, having considered those responses. Chapter 3 describes in more detail (by reference to each type of licence) the responses received in relation to the balancing and settlement arrangements (including procurement and use of balancing services and the Balancing and Settlement Code) and explains Ofgem/DTI's thinking as reflected in the draft licence conditions annexed to this document at Annexes 1-3. Chapter 4 discusses the process for implementation of the new trading arrangements in the light of responses received. Chapter 5 describes in more detail the responses received on the question of reform of the governance regime for connection to, and use of, NGC's system, provides a brief commentary on the draft licence conditions in Annex 4, and explains Ofgem/DTI's thinking on implementation of this proposal. Chapter 6 refers to other Government and Ofgem consultations which are related to the NETA proposals.

1.3 Views Invited

Views are invited on the proposed draft licence conditions annexed to this document and on the other licence changes described in this document. It would be helpful to receive responses by 27 March 2000.

Ofgem/DTI intend to publish a further consultation document in March on the content of the new connection and use of system code (CUSC). Therefore, responses on the CUSC issues raised in Chapter 5 and on the draft CUSC licence conditions in Annex 4 of this document may, if preferred, be submitted in response to that subsequent consultation document.

Replies should be sent to:

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Electronic responses may be sent to lorraine.ladbrook@ofgem.gov.uk

Respondents are free to mark their replies as confidential although we would prefer, as far as possible, to be able to place responses to this document in the Ofgem library. Unless clearly marked 'confidential', responses will be published by placing them in the Ofgem library.

Copies of all responses (including those marked 'confidential') will be sent to the DTI.

If you wish to discuss any aspect of this document, Dorcas Batstone on 0121 456 6357 will be pleased to help.

2. Executive Summary

2.1 Background

Wholesale Trading Arrangements

The existing legal and regulatory framework and the proposals for new wholesale electricity trading arrangements in England and Wales have been described in detail in earlier Ofgem and Ofgem/DTI documents on this subject.

In summary, it is proposed to replace the existing mandatory Pool, established through the Pooling and Settlement Agreement, with new trading arrangements designed to be more efficient and to provide greater choice to market participants, while maintaining the operation of a secure and reliable electricity system. The new arrangements will include:

- ◆ forward and futures markets (including short-term power exchanges) which evolve in response to the requirements of participants and allow contracts for electricity to be struck over timescales ranging from several years ahead to on-the-day markets;
- ◆ a Balancing Mechanism in which NGC, as system operator, accepts offers of and bids for electricity close to real time to enable it to balance the system;
- ◆ a Settlement Process for charging participants whose contracted positions do not match their metered volumes of electricity, for the settlement of accepted Balancing Mechanism offers and bids and for clearing certain other costs of balancing the system.

The arrangements for the Balancing Mechanism and the Settlement Process will be contained in a Balancing and Settlement Code (BSC). The initial BSC will be designated by the Secretary of State and any subsequent modifications will require the prior approval of the Director General.

Appendix 4 to this document contains an outline of the BSC. The NETA Programme intends to provide details of their proposals on the consultative process for BSC shortly.

It is intended to introduce these new arrangements through modifications to the licences of all licensees issued under the Electricity Act 1989. The modifications will be made

by the Secretary of State using powers to be granted to him under the Electricity Act following its amendment as part of the Government's programme of utility reform. The Utilities Bill⁴ contains the relevant amendments to the Electricity Act, giving powers to the Secretary of State to make these licence modifications.

In summary, the proposals for licence changes are as follows:

- ◆ NGC will be required to have in force at all times a code (the BSC) setting out the balancing and settlement arrangements, as approved by the Director General.
- ◆ NGC and all licensed generators and suppliers (and, in due course, distributors) will be required to comply with the BSC (as modified from time to time) and to sign up to a framework agreement by which the BSC is given contractual force.
- ◆ Modifications to the BSC will require the prior approval of the Director General.
- ◆ Existing licence obligations in relation to the Pooling and Settlement Agreement (P&SA) will be removed although licensees will still be obliged to comply with the P&SA for final settlement and reconciliation in respect of settlement periods prior to commencement of trading under the BSC.
- ◆ The obligation on generators to submit certain generating units to central despatch by NGC will be removed (but generators and suppliers will continue to be bound by the Grid Code, which will include arrangements for accepting Balancing Mechanism bids and offers, for calling off ancillary services and for dealing with emergencies).
- ◆ The obligation on suppliers to contract for electricity sufficient to meet the generation security standard will be removed.
- ◆ NGC's duty to purchase ancillary services economically and to despatch plant in accordance with a merit order will be replaced by the new system operator incentive arrangements, underpinned by a general duty to operate the transmission system in an efficient, economic and co-ordinated manner.

As mentioned earlier, NGC's licence will also need to be modified to include changes to reflect the incentive arrangements which will apply when NETA is introduced. Ofgem intends to publish initial proposals on these changes in March.

⁴ The Utilities Bill was introduced in the House of Commons on 20 January 2000 [Bill 49].

The DTI is also considering whether it will be necessary to attach conditions to certain exemptions in connection with NETA. This will be the subject of further consultation as mentioned in Chapter 6.

Connection and Use of System Arrangements

Ofgem's December consultation document 'NGC System Operator Incentives, Transmission Access and Losses under NETA' provided a detailed outline of the existing regulatory and contractual arrangements for connection to, and use of, NGC's transmission system.

It is proposed to replace the existing contractual framework (contained in the Master Connection and Use of System Agreement (MCUSA), and the Supplemental Agreements which sit under it) with a new Connection and Use of System Code (CUSC). Similar to the BSC, all licensees would be required to comply with the CUSC and to sign a framework agreement giving contractual force to it. The CUSC would contain modification procedures designed to ensure that the arrangements remained consistent with their overall objectives as set out in NGC's licence. All modifications would require the prior approval of the Director General.

The CUSC adopted initially would essentially contain what is currently in MCUSA and those elements of the Supplemental Agreements which can be made generic (together with the new governance arrangements). It would not contain revised arrangements for transmission access and pricing. Ofgem will, however, be looking to NGC to develop and propose appropriate modifications to the CUSC in due course, consistent with Ofgem's general policy of seeking a more market-based approach to the sale of transmission access rights.

2.2 Responses Received

Ofgem received 31 responses to the December licence consultation document. These responses came from NGC, generators, suppliers, distributors, consumer organisations and existing service providers to the Pool. A list of those who responded is attached at Appendix 1. A number of additional respondents commented on the CUSC proposals in response to Ofgem's December consultation on 'NGC System Operator Incentives, Transmission Access and Losses under NETA'. These additional respondents are listed separately in Appendix 1.

A summary of responses is attached at Appendix 2.

Responses on transmission access issues (and their interaction with the balancing regime) discussed in the December licence consultation document will be summarised in further consultation documents which Ofgem expects to publish in the spring.

2.3 *Headline Issues*

This section summarises the headline issues which attracted comment from a number of respondents. Later chapters of this document address each of these (and other) issues in more detail.

Balancing and Settlement Code

The main area of debate focused on the process for changing the BSC.

The Director General's Power to 'Direct' Modifications to the BSC

Many respondents expressed the view that the Director General should not be entitled to direct change to the BSC without the modification procedures laid down in the BSC having been followed.

Ofgem/DTI confirm that there will be no power for the Director General, subject to any change to the overall regulatory framework, to make unilateral changes to the BSC which have not been proposed and developed in accordance with the modification procedures laid down in the BSC. Nor will the Director General have power to make a proposal under those procedures (although the Director General may ask the BSC Panel to review a particular issue from time to time). The procedures themselves will, of course, allow for a fast-track modification process in urgent cases, but this would be coupled with the option for an *ex post* review similar to the process adopted in relation to Transco's Network Code.

The one exception to this is during the transitional period prior to commencement of trading under the BSC. It is envisaged that, during that period,⁵ the enduring modification procedures would effectively be suspended and the Director General would have power to direct change in the circumstances set out in the Implementation

⁵ Currently anticipated to be some three months.

Scheme. These circumstances would include, for example, changes necessary to take account of problems encountered during the testing and trialling process.

The BSC Objectives

These are the objectives to be set out in NGC's licence, by reference to which the Director General would approve or reject proposed BSC modifications. They include the efficient discharge by NGC of its licence obligations, the efficient, economic and co-ordinated operation of the transmission system and the promotion of competition.

A number of respondents questioned the breadth of the proposed objectives.

Given the broad nature of the BSC (which covers the balancing mechanism and imbalance settlement) and its interaction with other arrangements (both within and outside the electricity industry), Ofgem/DTI believe that it is not appropriate to restrict unduly the criteria by which the Director General will assess a proposed BSC modification. Moreover, Ofgem/DTI believe there is merit in seeking to align (as far as possible and appropriate) the objectives by reference to which changes to the balancing and settlement arrangements in gas (in the network code) and (in the BSC) electricity are assessed.

The Enduring Change Co-ordination Provisions Post NETA

The majority of respondents commented on the proposals for co-ordinating change across the matrix of core industry documents once the BSC is operational. While many recognised the need to address this issue (and many supported wholesale reform of the governance of MCUSA), concern was expressed that:-

- ◆ existing change mechanisms under other core industry documents should not (or could not) be overridden by a change co-ordination obligation in licences;
- ◆ licensees should not be required to do things outside their control.

Ofgem/DTI acknowledge both these concerns. The proposed licence obligation is intended to ensure that licensees co-operate in the change process and do not deliberately take actions which frustrate or unduly delay implementation of an approved BSC modification. It is not the intention to circumvent the procedures established under other documents or to require licensees to do things beyond their control. However,

licensees will be expected to use their best endeavours to achieve the necessary consequential changes to these documents.

Ofgem/DTI believe that it would be desirable in principle to align the change mechanisms of central industry agreements. If, notwithstanding the licence obligation on change co-ordination, the industry continues to experience difficulties in changing other central industry documents in order to give effect to BSC modifications (thus prejudicing the effective operation of the BSC), Ofgem/DTI will consider whether to use the NETA power under the Utilities Bill and/or to take other measures to remedy these difficulties.

Balancing Services

While most respondents recognised the need for NGC to have discretion in the way in which it operates and balances the system, subject to an appropriate incentive scheme being in place, many also felt that some control was needed in this area. Concern focused particularly on:-

- ◆ NGC trading energy ahead of Gate Closure;
- ◆ the interaction between NGC's role as transmission asset owner and system operator;
- ◆ removal of the economic purchasing obligation;
- ◆ the accountability of NGC for its actions;
- ◆ the circumstances in which NGC could issue involuntary instructions.

NGC, on the other hand, felt that controls in these areas were both inconsistent with the desire for innovation and creativity in its approach to balancing the system and liable to compromise its ability to maintain system security.

Ofgem/DTI have confirmed their belief that, provided there is an appropriate incentive scheme in place, NGC should have discretion to operate and balance the system in accordance with its statutory and licence duties in whatever way it considers appropriate. However, with greater discretion comes the need for:-

- ◆ greater transparency and accountability; and
- ◆ controls aimed at preventing the abuse by NGC of its unique position as owner and operator of the transmission system.

Moreover, Ofgem/DTI agree with the sentiment expressed by various respondents that an incentive scheme alone cannot be expected to deliver overall efficiency and economy.

Therefore, Ofgem/DTI conclude that:-

- ◆ NGC should be entitled to trade energy ahead of Gate Closure but only in connection with operating and balancing the system efficiently and economically;
- ◆ NGC should be placed under a duty to operate its transmission system in an efficient, economic and co-ordinated manner;
- ◆ NGC should be required to produce statements of its policies regarding the procurement and use of balancing services and to report subsequently on its actions by reference to these statements;
- ◆ the circumstances in which NGC is expected to issue involuntary instructions need to be defined but with sufficient flexibility to take account of day-to-day realities.

As far as the TO/SO split is concerned, there is no current intention to achieve an effective structural split between these activities within NGC's transmission licence, nor is there currently power to make them separate licensable activities. Ofgem/DTI believe that, in the absence of an effective structural separation, the best approach is to align NGC's incentives so as to remove as far as possible the scope for conflict and promote overall efficiency in the development, maintenance and operation of the system.

The Connection and Use of System Code

Respondents generally favoured reform of the governance arrangements for connection to and use of NGC's transmission system. However, views were mixed about the best way of achieving this.

Ofgem/DTI agree that more flexible governance arrangements are needed. The interactions between the terms upon which access to NGC's system is provided and the arrangements for operating and balancing the system demand a more streamlined

approach to change. Moreover, the interactions between the gas and electricity markets highlight the need for greater alignment between the processes for change in each market.

There is also merit in harmonising change mechanisms as far as possible in the interests of efficiency and understanding.

Ofgem/DTI therefore believe that the best way of achieving these goals is to introduce a governance regime for connection and use of NGC's transmission system along similar lines to the ones already in place for the Grid Code and Transco's Network Code and the one envisaged for the BSC. In other words, a code would be established by NGC containing the rules for connection and use of system (it is envisaged that the initial code would contain what is currently in MCUSA and those elements of the Supplemental Agreements which are generic to each type of Supplemental Agreement, together with the new governance arrangements). Changes to the code would require the prior approval of the Director General by reference to a set of high-level objectives set out in NGC's licence.

2.4 Timing and Sequence of Reform

Chapter 6 of this document refers to a number of other related reforms which are proposed or are being considered. These include:

- ◆ separation of the licensing of electricity supply and distribution;
- ◆ introduction of standard licence conditions for each type of electricity licence (as under the Gas Act 1986 as amended by the Gas Act 1995);
- ◆ new wholesale electricity trading arrangements for Scotland; and
- ◆ a new regime for exemptions under the Electricity Act 1989.

It is currently anticipated that the changes required for NETA will be introduced before these other reforms. It is expected that NETA will be introduced in the autumn of this year. The draft licence conditions annexed to this consultation document therefore reflect the changes which will be required at that time. It may be necessary to make changes to these conditions (as well as to other licence conditions) when the other reforms are introduced. Chapter 6 seeks to give an indication of these changes.

While introduction of the CUSC is considered important for the effective operation of NETA, Ofgem/DTI recognise that it may not be possible to introduce CUSC in time for NETA. However, Ofgem/DTI hope to be able to implement this reform as soon as possible thereafter.

For the sake of clarity, Appendix 6 of this document lists a number of recent and anticipated consultations by Ofgem and/or the DTI on issues relating to NETA.

3. Balancing and Settlement Arrangements

3.1 Introduction

This chapter considers the proposed new wholesale trading arrangements (including procurement and use of balancing services and the balancing and settlement arrangements).

In relation to each key issue, this chapter contains a summary of the responses received to the December licence consultation document, and explains Ofgem/DTI's views in the light of those responses. The explanation should be read in conjunction with the draft licence conditions annexed to this document.

As explained in the previous chapter, the draft licence conditions represent the proposed licence changes which would need to take effect before NETA is introduced. In other words, they reflect changes necessary to existing licences as they currently stand. The generic drafting annexed to this document will need to be tailored to each individual licence (for example, the numbering of the conditions may be different in some licences).

The licence proposals have been prepared on the assumption that the other utility reforms referred to in Chapter 6 will take place after NETA is introduced. This means, for example, that the proposed NETA changes annexed to this document do not reflect the separation of supply and distribution as separate licensable activities, nor do they reflect changes which may be required in order to turn these conditions into 'standard licence conditions'. The drafting also assumes that introduction of the new Gas and Electricity Markets Authority⁶ will take place after NETA is introduced; as a result, the licence conditions continue to refer to the 'Director' for the time being.

Consequential changes will therefore be needed when other reforms are implemented.

⁶ The Utilities Bill makes provision for the replacement of the Director General of Electricity Supply and the Director General of Gas Supply with a single regulatory authority for both sectors to be known as the Gas and Electricity Markets Authority.

Transmission-related Issues

This document does not address the transmission access issues highlighted in the December licence consultation document. Nor does this document address potential interactions between the energy balancing regime and the capacity regime, which could result in further change to the NETA licence conditions. Those respondents who mentioned this issue felt unable to comment in depth in the absence of more detailed information on the proposed transmission access arrangements. This interaction will need to be explored as and when detailed proposals for a new capacity regime are developed.

Sequencing

Chapter 4 of this document explains that the NETA Programme currently anticipates a period (expected to be some three months) between 'go-active' when the BSC and the NETA Implementation Scheme come into force and 'go-live' when trading begins under the BSC. The time of 'go-live' (referred to in the relevant licence conditions as the 'Effective Time') will be designated by the Secretary of State or the Director General, having regard to their general duties under the Electricity Act 1989.

Some of the licence changes described in this document will need to take effect at 'go-active' while others will need to take effect at or around 'go-live'. For example, the obligation to comply with the BSC will take effect from go-active (this means that rights and obligations in relation to data registration, entry processes, funding of central costs, provision of credit cover and so on will apply even though the obligation to commence trading under the BSC will not be triggered until the go-live date). In the meantime, licensees will continue to be bound by their existing licence obligations in respect of the Pool.

As a result, it is envisaged that provision would be made in each licence for the Secretary of State to designate the date when each licence change is to come into effect. A new condition ('Power to bring Conditions into Effect') would be inserted into each licence for this purpose.

3.2 NGC's Transmission Licence

Establishment and scope of the Balancing and Settlement Code

The December Licence Consultation Document

The October Conclusions Document ('The New Electricity Trading Arrangements') confirmed that the BSC would be established via a condition in NGC's licence. The December consultation document proposed that the scope of the BSC would be defined in broad terms in NGC's licence to include the Balancing Mechanism and Imbalance Settlement. Imbalances include energy and information imbalances and losses.

Respondents' Views

There was general support for the proposed scope of the BSC and the proposals for its establishment and on-going maintenance.

One respondent felt the scope of the NETA should not extend to the inclusion of a new losses scheme, arguing that a new losses scheme was not necessary for the implementation of NETA.

NGC recognised that it was appropriate for certain rules and regulations relating to the BSC to appear in its licence but emphasised that it would be necessary to distinguish NGC's role in the on-going maintenance of the BSC from the roles of the BSC Panel and BSCCo.

Ofgem/DTI's Views

Ofgem/DTI welcome the support given to the proposed scope, and provisions for establishment and maintenance, of the BSC.

As confirmed in earlier consultation documents, the BSC will include arrangements for calculating and allocating losses. Ofgem's December 1999 consultation document on transmission issues presented proposals for the introduction of a new losses scheme. Ofgem anticipates issuing a further consultation on these issues in April. It is anticipated that a new losses scheme would be implemented at the same time as any changes to the current transmission access regime.

Ofgem will consider at the time that such a scheme was to be introduced where the most appropriate 'home' for the revised arrangements for the treatment of losses would

be, ie. whether in the BSC or the CUSC. In the meantime, the allocation of liabilities for losses will be undertaken in the BSC.

As far as NGC's role in the establishment and maintenance of the BSC is concerned, Ofgem/DTI recognise the need to distinguish between NGC's direct obligations under its licence and the obligations of the BSC Panel and BSCCo under the BSC. This is reflected in the drafting of the relevant licence condition in NGC's licence, which seeks to distinguish those things which the BSC must provide for from those things which NGC, as licensee, must do. In some cases, NGC will be obliged to 'step in' or enforce compliance of particular BSC provisions if the BSC Panel or BSCCo fail to act in accordance with their duties under the BSC. The circumstances in which this can happen are limited and it is not anticipated that the Director General will need to resort to this power. However, since the Director General will have no direct regulatory control over the BSC Panel or BSCCo, it is felt prudent to reserve this power for the protection of the industry and consumers. This theme is developed further in later sections of this chapter.

BSC Modification

December Licence Consultation Document

The December consultation document confirmed earlier conclusions set out in the Ofgem/DTI October Conclusions Document that modifications to the BSC would require the prior approval of the Director General and the Director General would have powers to ensure that the implementation of desirable modifications is not delayed by the BSC governance arrangements.

Respondents' Views

Concern was expressed regarding the proposed power for the Director General to direct NGC to make modifications. Several respondents questioned whether this was necessary given that the Director General will be appointing the BSC Chairman. Many respondents opposed the idea that the Director General could change the BSC without going through the established modification procedures.

One respondent said a definition of the circumstances under which the Director General could direct NGC to 'step in' was required.

Ofgem/DTI's Views

The need for prior regulatory approval of all BSC modifications formed part of the conclusions set out in Ofgem/DTI's October Conclusions Document and is a fundamental feature of the proposed governance reforms of the wholesale trading arrangements.

It is also consistent with the approach taken in relation to network codes developed under the standard public gas transporter's licence, which include provisions for balancing and settlement.

The power to 'direct' a modification (in other words, to require NGC to sign the relevant document giving legal effect to the BSC modification) is only intended to be effective following approval by the Director General of a modification proposed and developed in accordance with the modification procedures laid down in the BSC. The basic components of these procedures will be enshrined in NGC's licence. It is not intended, within the existing regulatory framework, that the Director General will have a unilateral power to propose and direct change without the modification procedures having been followed.

These principles are captured in the drafting set out in Annex 1. The Director General's power of direction, following approval of a proposed modification developed in accordance with the procedures in the BSC, is the means by which the Director General can then oblige NGC to execute the relevant document to 'make' the modification.

The one exception to this is during the transitional period prior to commencement of trading under the BSC. It is envisaged that, during that period⁷ (referred to as the period between 'go-active', when the BSC is established, and 'go-live', when trading begins), the enduring modification procedures would be effectively suspended and the Director General would have power to direct change in the circumstances set out in the Implementation Scheme. These circumstances would include, for example, changes necessary to take account of problems encountered during the testing and trialling process. This is necessary as, under the current timetable, testing and trialling will not begin until the BSC is established as a legal document. It will not be open to the

⁷ Currently anticipated to be some three months.

Director General to change the fundamental rules for determining liabilities under the BSC.

Where possible in the time available, the Director General would seek to consult in advance on the changes required prior to go-live. There may also be provision for review of these changes after the event.

The circumstances under which the Director General could direct NGC to 'step in', in other words to take over the modification process, will follow from the BSC itself. Broadly speaking, it is intended that this right will be exercised only where the BSC Panel or BSCCo has failed to comply with the modification procedures or to implement an approved modification. Since the Director General will not have any direct powers in relation to the BSC Panel or BSCCo, Ofgem/DTI believe this is an important safeguard for the good operation of the BSC.

BSC Objectives

December Licence Consultation Document

The objectives against which the Director General will assess whether to approve a BSC modification proposed and developed in accordance with the modification procedures will be set out in NGC's licence. The December consultation document proposed the following objectives:

- ◆ the efficient discharge by NGC of its licence obligations;
- ◆ the efficient, economic and co-ordinated operation of the transmission system;
- ◆ the promotion of effective competition in the generation and supply of electricity and (so far as consistent with that objective) in the sale and purchase of electricity;
- ◆ the promotion of efficiency in the implementation and administration of the BSC (without prejudice to any provisions to facilitate the introduction or implementation of new Scottish trading arrangements).

Proposed modifications to the modification procedures themselves would be assessed by reference to a separate objective. The test would be whether the change better achieved the requirements for modification set out in NGC's licence (including the proper, prompt and efficient consideration of modification proposals) provided this did not conflict with the other objectives outlined above.

Respondents' Views

About a third of respondents commented on the proposed high level objectives for the BSC. Some respondents supported them, whilst others (including NGC) felt they were too closely aligned to the existing functions and responsibilities of NGC. Several respondents felt the objectives were too broad and needed to be supplemented by a more prescriptive set of objectives.

Two respondents expressed the view that the objective relating to the efficient discharge by NGC of its licence obligations should be extended to cover the efficient discharge by all licensees of their licence obligations.

NGC commented that the objectives did not seem to reflect fully the position of the BSC and appeared to overlap with the objectives of the Grid Code. NGC also suggested that the objectives went beyond the scope of the matters to be delivered through the BSC.

Views were mixed as to whether any weighting should be attached to the objectives. Several respondents believed a hierarchy was desirable, whilst others felt it was unnecessary.

Ofgem/DTI's Views

Ofgem/DTI believe that the objectives outlined in the December consultation document represent an appropriate set of criteria by which to assess modifications. In addition to allocating responsibility for imbalances, the balancing and settlement arrangements will facilitate system and energy balancing by NGC, as system operator, and will provide the legal mechanism by which generators and suppliers give effect to contracts for the sale and purchase of electricity (through contract notification).

Given the extensive impact of these arrangements on other aspects of the electricity industry (including transmission and distribution) and on other markets, and given the complexity of these relationships, Ofgem/DTI believe it would not be sensible or feasible to prescribe the objectives in any more detail or to limit them further. It will be important for the ultimate protection of consumers to ensure that the Director General can take into account the implications of a BSC modification on the electricity industry as a whole.

Moreover, the increasing convergence of gas and electricity markets means that developments in the balancing and settlement arrangements of both markets should, wherever possible and appropriate, be assessed by reference to similar criteria.

Ofgem/DTI believe that the efficient discharge by other licensees of their licence obligations would be adequately covered by other objectives (notably the promotion of competition). The role of NGC in securing stability of operation on, and in balancing, the total system means that a particular objective linked to the efficient discharge of NGC's licence obligations is appropriate.

Ofgem/DTI agree with the view that the objectives should not be weighted in any way. The Director General will need to give appropriate weight to each of the objectives, and to strike an appropriate balance, on a case by case basis. The nature of the BSC (covering the Balancing Mechanism and Imbalance Settlement) and the interaction between these two elements suggest that any predetermined weighting in favour of particular objectives would be inappropriate.

BSC Modification Procedures

December Licence Consultation Document

The December consultation document outlined the key components of the modification procedures which were proposed for inclusion in NGC's licence. It also gave an indication of various matters which would be addressed within the BSC itself. The July NETA Consultation Document, as confirmed by the October NETA Conclusions Document, contained more detailed proposals for the modification procedures to be contained in the BSC.

Respondents' Views

There was general support for the inclusion of a timetable as part of the modification report. One respondent commented that the modification process needed to distinguish between urgent and non-urgent modifications. A consensus view existed that the Director General should be required to justify his decisions in respect of BSC modifications. There was also a view that the Director General should be required to respond quickly to modification reports submitted to him.

Of those respondents who expressed a view, there was support that the BSC should facilitate the adoption of similar arrangements in Scotland with a view to ensuring the co-ordinated consideration of modifications in both markets.

NGC observed that it would be essential to distinguish clearly NGC's role in the on-going maintenance of the BSC from the roles of the BSCCo or BSC Panel.

Ofgem/DTI's Views

Ofgem/DTI agree that there should be procedures for urgent and non-urgent modifications. These procedures will be contained in the Code itself.

The Utilities Bill proposes an amendment to the Electricity Act 1989, which would oblige the new Gas and Electricity Markets Authority to give reasons for certain decisions, including the giving of directions issued in pursuance of a condition included in a licence by virtue of section 7.3(a) or (b) of the Act.

As far as its licence obligations are concerned, NGC's role in maintaining and modifying the BSC will be limited to signing the relevant modification document, provided that the governing bodies of the BSC carry out their modification functions in accordance with the requirements of the BSC. However, if they fail to do so, the industry (including NGC) should not find itself in a position where modifications to the BSC cannot be implemented. Therefore, as mentioned earlier, Ofgem/DTI believe it is prudent to establish a mechanism whereby the Director General can direct NGC to take over this process (for example, to ensure that the relevant changes to systems and processes take place).

BSC Compliance

December Licence Consultation Document

Consistent with the October NETA Conclusions Document, the December consultation document confirmed that all licensees would be required by licence to sign on to the framework agreement, by which the BSC would be made contractually binding, and to comply with the BSC. This obligation would therefore extend to all licensed generators, transmission companies and suppliers (including their distribution businesses) and, following the separation of supply and distribution as licensable activities, distributors as well.

The December consultation document went on to describe the proposed licence changes which would give effect to these design requirements.

Respondents' Views

Most respondents agreed that the proposals in this respect were sensible. One respondent commented that the case for extending the jurisdiction of the BSC to network operators was not fully proven. Another respondent observed that the obligation on NGC to comply with the BSC goes beyond that required under Condition 7 of the Public Gas Transporter's Licence. Compliance with the Code should, in their view, be a matter of contract and the courts.

One supplier raised the issue as to whether the BSC would have disciplinary powers over BSC participants. This could give rise to a two-tier disciplinary system: via the regulatory regime for licence holders and BSC for non-licensed BSC signatories.

Ofgem/DTI's Views

Ofgem/DTI believe that, as with the P&SA, licensees should be required by licence to comply with the BSC. Bearing in mind the particular features of electricity (in particular, the limited ability to store electricity), Ofgem/DTI consider that compliance with the balancing and settlement arrangements should not simply be a matter of contract for those players with the ability to have a significant impact on the efficient operation of balancing and settlement. Moreover, the consequences of these arrangements for customers, who are not party to the contract, suggest that some kind of regulatory safeguard is needed. Further, the governance arrangements (in particular, the absence of direct regulatory powers over the Panel and BSCCo) make it desirable that the BSC should have regulatory force.

Ofgem/DTI confirm, as set out in the October Conclusions Document, that distributors will also be obliged by licence to sign up to the framework agreement and to comply with the BSC for the purposes of metering at the grid supply point (GSP) level (and associated obligations). The BSC itself will make clear what the duties of distributors are as parties to the BSC. By signing the framework agreement, distributors will then become contractually bound by these obligations. It would not be feasible to carve these obligations out into a separate agreement from the BSC.

In connection with the separation of supply and distribution, the DTI intends to consult on whether conditions in relation to the BSC need to be attached to distribution exemptions. A consultation paper will be published shortly.

Enduring Change Co-ordination

December Licence Consultation Document

The December consultation document proposed a licence obligation to facilitate change to other central industry documents, where change is necessary and consequential on approved changes to the BSC.

The purpose of this proposal is to ensure, as far as possible, BSC modifications cannot be frustrated or undermined by licensees, where the modification is dependent on change being made to other central industry documents.

The December consultation document also invited views on whether the governance of other central industry documents (such as the Master Registration Agreement) should be reformed and made more flexible.

Respondents' Views

The majority of responses were opposed to the proposed requirement on licensees to secure and implement changes to other industry documents. Concerns existed that it would undermine the existing contractual framework and give precedence to the BSC. Several respondents observed that individual licensees should not be held accountable for the action of others through a licence obligation, given the collective responsibility attached to the majority of existing documents and agreements. One respondent noted that many of the industry documents and agreements contain their own legal rights, obligations and procedures that an individual participant or regulator cannot override. This effectively prevented the use of the power, in their opinion.

There was a view that the condition should be softened to 'reasonable endeavours'.

There was general support for the concept of impact assessments, though a view emerged that this should be the responsibility of the BSCCo/BSC Panel rather than a responsibility on individual parties.

Most respondents did not favour the proposal that the governance of the key existing industry documents be changed to align with the BSC. This was generally deemed unnecessary and not fully justified.

Ofgem/DTI's Views

A cornerstone of the proposed reforms of the current Pool arrangements is the introduction of a more flexible and responsive governance regime which reflects changing market conditions. It is fundamental to this principle that the new modification procedures, culminating in the power of the Director General to approve/veto proposed changes, should not be frustrated or unduly delayed as a result of the BSC's relationship with and dependency on other documents.

Ofgem/DTI believe it would be desirable to align the change mechanisms as far as possible both across the key electricity industry documents and, also, across the gas and electricity sectors generally. However, in the timetable for introduction of NETA, it will not be possible to address these issues in full. The proposed change co-ordination condition is therefore intended to ensure that licensees do not seek deliberately to undermine the new governance arrangements of the BSC.

Licensees will be expected to do what they can to facilitate the process. It is anticipated that the impact of proposed BSC modifications on other central industry documents will be assessed at the same time as a BSC modification is being considered. The NETA Programme is looking at ways in which the change management procedures under core industry documents can be synchronised as far as possible to fit with the timetable for assessing a BSC modification. The BSC modification report will contain the results of the impact assessment. If the modification is approved, licensees will be expected to co-operate in seeking to amend other documents to reflect the BSC modification.

It is clearly not intended to require licensees to do things which they do not have the power to do. It is also not intended to override existing change mechanisms in other documents. The drafting of the relevant licence obligation reflects this. However, to the extent a licensee does have a role to play in the change process of another document, it should not, in Ofgem/DTI's view, be able to use that position to hinder implementation of approved BSC modifications.

Bearing in mind the pivotal importance of the BSC in the web of industry documents, Ofgem/DTI believe licensees should be required to use their best endeavours to secure change to core industry documents necessary to implement a BSC modification.

If the industry continues in the future to experience difficulties in making changes to other central industry documents in order to give effect to BSC modifications despite this licence obligation on change co-ordination, Ofgem/DTI will consider whether to use the NETA power under the Utilities Bill and/or to take other measures to remedy these difficulties.

Scope of Balancing Services

December Licence Consultation Document

As explained in December, NGC will have a range of options available under NETA to enable it to operate and balance the system in accordance with its statutory and licence obligations. These are referred to collectively as 'balancing services'.

With regard to the scope of balancing services, the December consultation document stated that consideration would have to be given as to whether two specific services should be considered as balancing services:

- ◆ the provision of services by NGC, for example the installation and/or use of Static Var Compensators (SVCs); and
- ◆ emergency support from external grid operators.

Respondents' Views

NGC, in its response, stated that the definition of balancing services would need further careful thought. Six respondents commented on the treatment of NGC's compensation for its own equipment. Nearly all of these respondents stated that the procurement and use of balancing services should as far as possible be market-based and that NGC's own equipment should form part of the market and compete on equal terms.

A few respondents commented on the treatment of emergency support from grid operators. There was a consensus that such actions should not be treated as a 'normal' balancing service. This view was shared by NGC who said that there had been only one such occurrence of emergency support in the past ten years and, consequently, it

could not be regarded as a normal service. However, in the context of the options available to NGC for 'normal' balancing actions, a unanimous view was expressed that services offered by interconnectors should be treated in the same way as offers from other parties.

Ofgem/DTI Views

Ofgem/DTI agree with the majority of respondents on the issue of the treatment of NGC's own services, such as its own compensation equipment, that is the utilisation and compensation of such services/equipment should be treated in the same manner as services offered by other participants. However, the treatment of these assets for price control purposes mean that this is not currently workable.

Ofgem is consulting separately on the treatment, for price control purposes, of NGC's reactive power assets. Subject to the outcome of that consultation, it would be Ofgem's intention to ensure that the remuneration for such assets reflected the true value of those assets in competition with services available to NGC from other sources.

Given the unanimous view of respondents, Ofgem/DTI believe that emergency support from external grid operators should not be treated in the same way as 'normal' balancing services.

System Operations (Involuntary Instructions)

December Licence Consultation Document

The December consultation document discussed the proposal that NGC should be obliged to accept all available, relevant Balancing Mechanism bids and offers before resorting to involuntary reductions of or increases in generation and demand. Such an obligation would ensure that imbalance prices were not artificially capped at times of system stress and would thus give accurate signals to the market about the costs of balancing the system.

The December consultation document recognised NGC's concerns about the extent of this obligation and invited views on whether, and if so how, the obligation might be appropriately qualified.

Respondents' Views

There were eleven responses on this issue, of which seven were supportive of the idea that there should be a licence obligation on NGC to accept all available, relevant Balancing Mechanism bids and offers. One of these eleven respondents said that such an obligation would imply the need of a clear statement in NGC's licence of the security standard against which NGC has to secure a reserve of generation through the Balancing Mechanism.

Of the remaining respondents, one said that they were unable to comment on the appropriateness of such a condition in the absence of more detail on the SO incentive arrangements and the design of the Balancing Mechanism. Another respondent argued that there should be no such thing as an involuntary reduction in demand. Instead, the demand of customers without half-hourly meters should be assigned an administered price (effectively, a value of lost load) so that such demand could be deemed to have submitted offers to the Balancing Mechanism.

NGC agreed that there should not be a cap on the prices at which offers and bids would be accepted but it pointed out that technical factors may mean that the initiation of involuntary demand or generation reductions may be unavoidable in certain circumstances, even if Balancing Mechanism bids remained available.

One other respondent argued against a licence condition, suggesting that the actions of NGC, as system operator, should not be constrained arbitrarily. It suggested that NGC should be given commercial freedom with regard to system operations subject to a broad framework defined in a Balancing Principles statement but NGC should be required to explain any deviation from these 'normal' principles.

Ofgem/DTI's Views

Ofgem/DTI recognise the close interactions between this proposal and the NETA system operator incentive arrangements. Ofgem/DTI also recognise the need for flexibility to enable the framework within which NGC works to adapt to a fast-changing environment and to evolve over time in response to experience and to changes to the BSC, the Grid Code and the connection and use of system arrangements. Ofgem/DTI also endorse the need for transparency and a common understanding about the principles which will guide NGC's decision-making process.

With these factors in mind, Ofgem/DTI agree with the suggestion that the circumstances in which involuntary action is permitted (in preference to accepting available Balancing Mechanism bids and offers) should be defined in the Balancing Principles statement, rather than on the face of the licence. This will provide an opportunity to refine those definitions as the market develops and as the incentive arrangements develop.

It is anticipated that involuntary action might include increases or decreases of electricity, and any instructions outside dynamic parameters, where there is no prior agreement in place.

The Balancing Principles statement is discussed later in this Chapter. It is envisaged that a draft of this statement would be developed by NGC (in discussion with the Director General) in parallel with development within Ofgem of the NETA system operator incentive arrangements. The draft statement would then be made available for consultation.

Non-discrimination

December Licence Consultation Document

The December consultation document proposed that, in addition to the incentive arrangements, it would be necessary to impose an obligation on NGC not to discriminate in the procurement or use of balancing services.

Respondents' Views

The proposals in this respect were mostly supported, with the general view that the provisions should be extended to cover NGC's actions in constraint management.

NGC recognises the appropriateness of such a condition, but believes it should be targeted to its procurement of services rather than the use of such services in operational timescales.

Ofgem/DTI's Views

Ofgem/DTI believe it is important to prohibit discrimination in order to promote effective competition in generation and supply. Ofgem/DTI do not accept that this requirement should be limited to the procurement of balancing services (ahead of Gate

Closure). Discrimination in the selection of Balancing Mechanism bids/offers and in the call-off of other balancing services in operational timescales should also be prohibited.

Procurement of Balancing Services

December Licence Consultation Document

Ofgem/DTI's view, outlined in the October Conclusions Document, is that, provided there is an appropriate incentive scheme in place, NGC should have discretion to procure balancing services via whatever route it considers fit, consistent with its statutory and licence duties. However, along with greater discretion comes the need for greater openness and transparency.

Consistent with these aims, the December consultation document suggested that the economic purchasing obligation, which currently regulates NGC's purchase of Ancillary Services, could disappear if an appropriate incentive scheme is established in its place. Ofgem also invited views on whether NGC should be required to produce a statement setting out its policy in procuring balancing services ahead of Gate Closure (whether for delivery through the Balancing Mechanism or otherwise). Ofgem's initial view was that such a procurement statement would assist in ensuring that NGC operated the system in an open and transparent manner but it should be confined to broad principles, unless experience showed in due course that a more detailed description of NGC's intentions was necessary.

The December consultation document also suggested that NGC should provide information on a regular basis about the contracts it has entered into and an assessment from time to time of the impact of these contracts on the imbalance cash-out price.

Respondents' Views

Five respondents commented on the issue of economic purchasing. They argued that the economic purchasing obligations on NGC should remain or at least be retained for a transitional period. In general, respondents were concerned that relying on incentive schemes alone was not sufficient to ensure NGC purchased balancing services economically and that an obligation was required to provide protection to the market.

They argued that an economic purchasing obligation would support any procurement policy statement and ensure that NGC's purchase of balancing services does not impact on imbalance cash-out prices.

Nine respondents believed that a procurement policy statement was essential, with most others believing it was desirable on balance. However, one vertically integrated company saw little value in a procurement policy statement if a Balancing Principles statement was in place. Most respondents argued that the procurement policy statement should be approved by the Director General and that it should only be modified with the Director General's approval following a full and open consultation. The majority of respondents felt that the statement must be placed in the public domain and there was support for the inclusion of reporting requirements such as statements of actual contractual arrangements.

NGC was of the view that a procurement policy statement was unnecessary given the development of more transparent and market-based mechanisms for the procurement and use of balancing services and the Director General's ability to review actions after the event.

Ofgem/DTI's Views

Ofgem/DTI believe it is important to allow NGC discretion in the purchase of balancing services provided that its activities are conducted in an open and transparent manner and provided an appropriate incentive scheme is in place.

While Ofgem/DTI therefore believe that specific rules about NGC's system operation activities are inappropriate, Ofgem/DTI also recognise the concerns expressed by the industry that an incentive scheme alone is not necessarily sufficient in all circumstances. In consequence, Ofgem/DTI propose that NGC should be subject to a licence duty to operate its transmission system in an efficient, economic and co-ordinated manner. This is consistent with one of the objectives by which modifications to the BSC would be evaluated.

To promote openness and transparency in the way in which NGC procures balancing services and to provide the market with sufficient advance information about NGC's procurement strategy to enable the market to respond accordingly, Ofgem/DTI believe

NGC should be required to produce a statement, probably at twelve-monthly intervals, outlining the kinds of balancing services NGC is interested in purchasing in the coming year and the mechanisms by which it intends to do so. This statement is only intended to give a general indication of NGC's proposed purchasing requirements and the method of procurement. The form of the statement would require prior regulatory approval. If NGC's views change after the statement is published, NGC would be required to issue a revised version to ensure that the market was aware of the change in strategy. The statements, and any revisions, would be published.

Ofgem/DTI also believe that NGC should provide the market with information from time to time about the contracts it has actually concluded, ahead of Gate Closure, for the provision of balancing services. It is proposed that this should also be on an annual basis.

Subject to these requirements (and the establishment of an appropriate incentive scheme), Ofgem/DTI believe NGC should be free to contract for balancing services in whatever timescales and in whatever form it sees fit in order to meet its statutory and licence obligations to operate and balance the system efficiently. Ofgem published a consultation in December which considered various options for the treatment of balancing services contracts, notably reserve, under NETA. The NETA Programme is currently looking at ways in which the contract payments for certain balancing services (particularly reserve) might feed into the calculation of the energy imbalance charges. The outcome of this assessment may require some refinement of these conditions.

Balancing Principles

December Licence Consultation Document

The procurement statement described above would serve to give industry participants an indication of NGC's intentions in procuring balancing services ahead of Gate Closure.

The December consultation document also raised the possibility of requiring NGC to publish a statement of the principles which it would apply in using or calling off balancing services in real time. There is a parallel in the Operational Guidelines which Transco is required to produce. Ofgem believed that the publication of 'Balancing Principles' would provide greater transparency and openness about the way in which

system operations are carried out and thus provide reassurance to participants in a climate where NGC has greater discretion in its system operation activities.

The December document suggested that the statement of Balancing Principles could cover the manner in which NGC exercises its discretion in calling from the range of balancing services available to it. As with the procurement statement, it was envisaged that the Balancing Principles would be fairly general in nature but sufficient to ensure openness and accountability on the part of NGC in the way in which it operated the system.

Respondents' Views

The vast majority of respondents on this issue (15 out of 20) agreed that a statement of Balancing Principles had considerable merit. A range of views, however, was held as to the level of detail which should be covered by the Principles. Some respondents felt that the statement should be limited to broad principles and one respondent questioned whether this statement was the appropriate vehicle in which to set out the mechanisms by which NGC would resolve particular problems. Another argued that the Balancing Principles should cover NGC's operating policies in detail and four respondents believed that the Balancing Principles statement should extend to covering NGC's management of transmission constraints.

One vertically integrated company saw little value in the Balancing Principles statement while another was supportive of the statement but felt they would be pointless unless NGC was obliged to comply with them.

The consensus amongst respondents was that the statement should be approved by the Director General and made publicly available. There was support for reporting requirements on NGC to provide information about its actions to both market participants and the Director General.

NGC felt that a Balancing Principles statement was inappropriate as this could restrict its operational flexibility and hence its ability to operate the system at minimum cost. NGC is of the opinion that the most effective way of ensuring that balancing is achieved at minimum cost is through appropriate incentive arrangements.

Ofgem/DTI's Views

It is Ofgem/DTI's view that NGC should be required to provide a statement of broad principles for the operation of balancing activities. The statement would require the prior approval of the Director General and would be subject to annual review (to ensure the statement remained consistent with NGC's other licence and statutory duties). Proposals emerging as a result of those reviews would again require prior regulatory approval before the change could be made.

As noted earlier, one example of the type of issue Ofgem/DTI would expect to see addressed in the Balancing Principles would be the approach to be adopted in relation to involuntary instructions issued by NGC.

It is recognised that the Balancing Principles should not restrict the ability of NGC to discharge its statutory and licence obligations to provide for a secure system. However, NGC should, in Ofgem/DTI's view, be required to use reasonable endeavours to comply with the principles set out in the statement and should be required to justify to the Director General any divergence from them.

In order to ensure confidence in NGC's processes, Ofgem/DTI believe that NGC should be required to report annually on its compliance with these Principles and to provide an auditor's assessment of its level of compliance. It is envisaged that these reports would be made publicly available. These requirements would replace the existing Scheduling and Despatch Audit under the Pooling and Settlement Agreement.

Prohibited Activities

December Licence Consultation Document

Condition 2 of NGC's licence currently prohibits NGC from acquiring electricity for sale unless the acquisition is made as part of the Ancillary Services Business. The December consultation document noted that this provision will need to be amended to reflect the new arrangements which envisage the replacement of the term Ancillary Services with the wider concept of balancing services. Ancillary Services would be included in the definition of 'balancing services'.

Thus, it was suggested that the current condition should be replaced with one that prohibited NGC from acquiring electricity except to provide 'balancing services'. It was

recognised that the prohibition would need to allow NGC sufficient flexibility and should not penalise it in situations where it has to sell back energy, having over-bought, but should prevent speculative trading on the part of NGC.

In addition, views were invited on the question of whether it may be appropriate to reserve a power for the Director General to prohibit NGC from using certain markets if necessary.

Respondents' Views

Eight out of the eleven respondents commenting on this issue expressed concern that the proposed prohibition on NGC in respect of acquiring electricity for resale would not apply to the purchase of balancing services before Gate Closure. They argued that allowing NGC to buy and sell electricity would reduce liquidity in forwards markets and could distort the market more generally.

One respondent noted that removal of the prohibition would make it difficult to reconcile three key objectives - broad incentive arrangements, discretion for NGC in the actions it takes and the prevention of speculative trading. Another respondent argued that if the proposal was implemented, Chinese Walls would be needed to prevent NGC from exploiting the information asymmetry it enjoys. A further respondent argued that a clear statement of how purchases of energy or options ahead of Gate Closure will be treated would be needed to ensure that cash-out prices provide clear economic signals.

NGC expressed concern that a reserve power for the Director General to prohibit its use of certain markets conflicts with Ofgem's expectation that NGC will adopt and develop innovative approaches to trading and contracting. NGC would also prefer a simpler safeguard such as a prohibition on NGC holding a generation or supply licence.

Ofgem/DTI's Views

Ofgem/DTI believe that Condition 2 of NGC's licence prohibiting NGC from acquiring electricity for sale should be replaced with a prohibition on acquiring electricity for purposes other than to operate the system and/or operate it economically and efficiently. The purpose of this prohibition is to prevent NGC from abusing its position as owner and operator of the transmission system.

For example, NGC should not be entitled to undertake speculative trading for its own commercial gain. Ofgem/DTI would regard speculative activities as including actions taken in order to profit from the specific directional price move of a futures or options contract, or energy contract. Nonetheless, it will be important to ensure that NGC retains flexibility over where and how to purchase balancing services.

Given the intended discretion for NGC with regard to deciding where and how to purchase balancing services, Ofgem/DTI do not believe that it would be appropriate to include a reserve power that would enable the Director General to prevent NGC from using certain markets. As NGC have argued, a prohibition from acquiring electricity for sale might prevent it from developing innovative approaches to trading and contracting. Ofgem/DTI believe that the concerns expressed by participants about the influence NGC might have over energy markets and the potential distortions its activities might introduce have been addressed through the inclusion of a prohibition on activities intended to bring about speculative gains.

However, Ofgem will clearly monitor the effect of NGC's actions in particular markets and would consider what actions may be needed to remedy any adverse effects.

Separate Businesses

December Licence Consultation Document

The December licence consultation document referred to the conclusion in the October Conclusions Document that, in view of the new incentive arrangements, it would no longer be necessary to maintain the Ancillary Services Business as a Separate Business. Procurement and use of balancing services would be part of the Transmission Business.

Respondents' Views

Several responses expressed concern regarding the proposed cessation of the Ancillary Services Business as a separate business. One supplier noted this was counter to Ofgem's principles of full business separation of monopoly activities from competitive activities, as evidenced by recent proposals with regard to PESs and Transco.

Ofgem/DTI's Views

NGC, as a monopsonist purchaser of balancing services, will be incentivised to minimise the overall costs of balancing the system, consistent with its licence and

statutory duties. The exact details of the incentive arrangements have yet to be finalised. Ofgem is planning to issue an initial proposals document on this issue in March.

However, subject to putting these arrangements in place, Ofgem/DTI see no reason to maintain the Ancillary Services Business as a separate business and, indeed, such an approach would be inconsistent with the aim of aligning the TO (network) price control and the system operator incentives to ensure overall efficiency.

PSA Run-Off

December Licence Consultation Document

The December consultation document highlighted the need for a licence condition on NGC, and all generators and suppliers who were Pool Members immediately prior to BSC 'go-live', requiring them to comply with the Pooling and Settlement Agreement for the purposes of 'run-off'.

It remains to be decided whether the Pooling and Settlement Agreement would continue as a stand-alone agreement for final settlement and reconciliation or whether it would be terminated and the rules needed for 'run-off' purposes subsumed into a schedule of the BSC. In the latter case, the requirement on all licensees to comply with the BSC would ensure that those BSC parties who were Pool Members prior to BSC 'go-live' remained bound by their Pool run-off obligations.

Respondents' Views

Respondents recognised the need for arrangements in this respect. One respondent observed that where the obligation lies will be determined by who will have responsibility for reconciliation and disputes during the period in question and whether the service provider(s) contract under the BSC will extend to run-off requirements.

Ofgem/DTI's Views

Ofgem/DTI agree with respondents' views that this requirement is needed.

Work is in hand within the NETA Programme and within the Pool to determine the arrangements (governance, service provision, dispute resolution etc.) for the purposes of run-off and to determine the most appropriate 'home' for the rules.

3.3 Generation and Supply Licences

The discussion under section 3.2 of this chapter relating to BSC compliance, enduring change co-ordination and PSA run-off applies equally to generation and supply licences, which would contain equivalent provisions.

Market Abuse

Ofgem's December licence consultation document discussed a proposal for a condition to prohibit the abuse of substantial market power by generators and suppliers in balancing services markets and in the new wholesale trading markets close to real time. Ofgem suggested that a condition aimed at preventing abuse of substantial market power and conduct likely to prejudice the efficient balancing of the system should be placed in the licences of all generation and supply licensees.

The December document also referred to the recent Ofgem investigation into Pool prices and the proposal to modify the licences of certain generators to prohibit abuse of a position of substantial market power. Since then, some generators have accepted, whilst others have rejected, the Director General's licence proposals. In relation to those who have rejected the proposals, the Director General intends to refer the question to the Competition Commission.

In the light of this development, it is felt that it is not appropriate to consult on the detail of any similar standard condition. However, Ofgem continues to be of the view that such a condition is necessary in order to be able to prevent market abuse that could fall outside the scope of both the Competition Act 1998 and relevant financial markets regulation. Ofgem intends to consult on the market abuse licence condition in the light of the Competition Commission's findings.

Price Data

December Licence Consultation Document

The December licence document invited views on whether the Director General should reserve powers to call for contract price data from generators and suppliers in order to facilitate price reporting in the markets pre-Gate Closure.

Respondents' Views

Views were mixed on whether there should be an obligation on licensees to provide information of this sort to the Director General. Some respondents were opposed to such a condition, stating that it could constrain the natural development of the market. Others viewed it as unnecessary (having faith that comprehensive price reporting will emerge), whilst some respondents felt a reserve power for the Director General was essential.

Several respondents questioned the value of such a condition, noting that the non-standard nature and form of the contracts might make meaningful observations difficult. One respondent observed that it would be inappropriate to impose an obligation on licensees to obtain information from market operators, given that there would be no contractual obligation on the market operator to comply with the request.

Ofgem/DTI's Views

In the light of the responses received, Ofgem/DTI believe it is not necessary to reserve a power to obtain contract price data for price reporting purposes. Ofgem/DTI accept the view of many respondents that price reporting will evolve naturally in response to market needs and recognise the dampening effect a power of this sort could have on the natural development of such reporting. Indeed, there is clear evidence that it is already emerging in anticipation of NETA.

Removal of Central Despatch

December Licence Consultation Document

The December consultation document proposed that current central despatch obligations would be removed from all generation licences but generators would nonetheless continue to be bound under their licences by the Grid Code. The Grid Code would contain arrangements for notifying NGC of intended physical positions, for accepting Balancing Mechanism bids and offers, for calling off ancillary services and for issuing instructions in the event of emergencies.

Respondents' Views

Generator respondents supported the proposed removal of the central despatch provision, accepting that NGC will still need the ability to issue instructions under emergency conditions.

NGC's preference was for a licence obligation on generators to require compliance with NGC's instructions in the case of emergencies. NGC also believe a similar obligation will be necessary for suppliers in relation to balancing services.

Ofgem/DTI's View

Ofgem/DTI agree that it will be important to ensure that the Grid Code contains suitable obligations to ensure that NGC can take appropriate action in the case of emergencies. However, Ofgem/DTI do not accept that this kind of obligation needs to be underpinned by a separate licence condition, in addition to the requirement to comply with the Grid Code.

Generating Unit Availability

December Licence Consultation Document

Certain generators are currently subject to an obligation to submit information to the Director General and, in some instances, to anyone requesting information about generating unit availability, planned outages, fuel types and proposed temporary or permanent plant closures. Views were invited as to whether this condition, duly amended to reflect the NETA environment, should be placed in all generation licences, with a power to switch the condition off if appropriate.

Respondents' Views

Generator respondents were generally opposed or saw little value in the retention of this condition. There was a consensus view that, if retained, it should appear in all generation licences. The proposed 'switch on/switch off' provision is unpopular, with a view that if included it should be switched 'on' for all licensees in the first instance. One generator stated that the criteria under which the condition would be capable of being switched on/off must be established at the outset.

Suppliers supported the retention of the condition and would like to see it widened in scope to include all generators.

Ofgem/DTI's Views

Ofgem/DTI believe there is value in preserving this condition, as a means of monitoring the short and longer term availability of larger generators. Ofgem/DTI regard the provisions relating to plant closure as an important safeguard and the Director General

expects generators to comply with requirements to give notice of proposed closures as early as possible. Further consideration is required to adapt this condition to the NETA environment. However, Ofgem/DTI believe, in principle, that it should refer to generators' availability to the market as a whole, not just availability in the Balancing Mechanism.

For the purposes of implementing NETA, it is likely that this condition (duly amended to reflect the NETA environment) would be retained in those licences where it currently exists and would not be extended to all generation licences. However, Ofgem will be recommending to the Secretary of State that this condition should become a standard licence condition in generation licences when the power to determine standard licence conditions is exercised. At that point, Ofgem believe it may be appropriate to simplify the information requirements. In addition, the condition would contain a 'switch on/switch off' provision, under which the Director General could disapply or reapply the condition as appropriate. For example, further consideration might be given as to whether the condition might be 'switched off' for smaller licensed generators.

In addition to some proposed changes to the existing licence condition in order to adapt it to the NETA environment, Annex 2 therefore also includes a possible new form of wording for a standard licence condition. This would simplify the generator's obligation to producing an annual statement of its intentions as regards outages/withdrawals of plant at larger power stations, together with an obligation to provide a comparison of its actual performance against those stated intentions after the end of the relevant year.

Generation Security Standard

December Licence Consultation Document

The December consultation document confirmed Ofgem/DTI's conclusion set out in the October Conclusions Document that the generation security standard requirements in supply licences would be removed.

Respondents' Views

Five respondents made specific comments on the proposed removal of the Generation Security Standard. Two respondents believed the condition should be retained. Three supported its removal. One respondent expressed disappointment that the continuity of supply provisions will apply to small consumers only.

Ofgem/DTI's Views

The NETA proposals anticipate that market participants will contract in advance in order to meet most of their requirements, in preference to buying electricity from the system within each half hour. Ofgem/DTI believe the retention of an explicit requirement on suppliers to contract up to a pre-specified level is inconsistent with the underlying principles of NETA.

Discrimination in Electricity Sale Contracts

Public electricity suppliers and certain generators are currently subject to a licence condition which prohibits the licensee and its affiliates and related undertakings from price discrimination, after taking into account relevant circumstances, in selling or offering to sell electricity under electricity sale contracts. Electricity sale contract is defined to include a contract for differences by reference to Pool prices (but excludes supply to premises, which is covered by a separate non-discrimination condition).

In Ofgem/DTI's view, the ability for parties to contract under NETA means that there is no reason to retain the specific definition, capturing contracts for differences, of electricity sale contract. On the other hand Ofgem/DTI consider that, in the new arrangements, opportunities for harmful price discrimination by licensees may exist in forward, future and derivative markets. The draft conditions in Annex 2 and 3 seek to extend electricity sales to include financial contracts accordingly.

In addition, the drafting has sought to capture the underlying wrong which the prohibition is seeking to address. In other words, it is where the price discrimination has as its object or effect the prevention, restriction or distortion of competition, to an appreciable extent, that it is prohibited.

It is for consideration whether this condition should be extended to all generators (and, possibly, also all suppliers). Ofgem/DTI's initial view is that this prohibition should be placed in all generation licences, but with provision to switch the condition on or off. The PES licences would also retain this prohibition, duly amended as set out above. Second tier supply licences would not include such a condition. As and when standard licence conditions are introduced, this would mean that this condition would become a standard licence condition for generation licences but not for supply licences (whereas the separate non-discrimination obligation as regards supply to premises, which is

currently contained in PES and second tier supply licences, would be a standard licence condition for supply licences). Ofgem/DTI would welcome views on these issues.

3.4 *Scottish Licences*

BSC conditions equivalent to those outlined for generation and England and Wales supply licences would be placed in the general part of each Scottish composite licence. It is for consideration whether some of the other licence conditions envisaged for generation licences (for example, the Generating Unit Availability condition) should be placed in the Scottish composite licences as well.

4. NETA Implementation

4.1 *Licence Modifications*

As noted earlier, the new trading arrangements will be implemented by modification of licence conditions. Clause 56 of the Utilities Bill inserts a new section 15A into the Electricity Act 1989, of which sub-section (1) provides:

"The Secretary of State may, in accordance with this section, modify:

- (a) the conditions of any licence granted under section 6; or
- (b) any standard conditions of licences of any type,

where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the effective operation of, new arrangements relating to the trading of electricity."

The licence modifications described in this document will be made using this power.

4.2 *Implementation Scheme*

December Licence Consultation Document

The December consultation document noted the need for a number of steps, in addition to adoption of the BSC and signature of the Framework Agreement, to be taken by parties in order to ensure, both legally and practically, that trading can begin under the BSC.

The December consultation document proposed that:

- ◆ a new condition would be placed in each licence requiring the licensee to comply with a 'NETA implementation scheme', designated by the Secretary of State;
- ◆ the scheme would set out steps, to be taken by licensees (and their subsidiaries) which the Secretary of State considers appropriate to give full and timely effect to the other NETA licence modifications (in particular to allow the BSC to be given effect);

- ◆ the scheme would cover, among other things, changes to 'Core Industry Documents', migration of resources from the Pool to the BSC, BSC entry processes, implementation of enduring BSC governance arrangements, the countdown to BSC 'go-live', and possibly limitation of liability (eg in testing and trialling new systems) and/or dispute resolution under the scheme. These would be primarily one-off measures to implement NETA;
- ◆ the scheme would not address amendment of private (non-core) agreements, voluntary participation under the NETA programme in BSC development or testing and trialling, or steps to be taken by parties to place their internal systems and processes in readiness for BSC trading; and
- ◆ in addition, licensees would be required to use their best endeavours to do such things as are necessary to implement NETA.

Respondents' Views

Responses to the proposals for an implementation scheme were generally supportive, although one company said that the proposal was inappropriate and that parties would have sufficient incentives naturally to implement the new arrangements. Another said that the proposal was inappropriate because there had not been discussion of the changes which would be required by the scheme.

Other comments included:

- ◆ the implementation scheme should be confined to matters required to implement NETA;
- ◆ the scheme should not impose requirements on parties which are outside their control;
- ◆ parties should have an opportunity to participate in decision-making via robust change control processes and the implementation timetable should be realistic;
- ◆ the scheme should only be capable of amendment, once in force, for manifest error;
- ◆ the scheme should not override established procedures for changes to other industry documents;
- ◆ there should be a time-limit on the ability of the Secretary of State to make or amend the scheme; and
- ◆ views were mixed on whether the scheme should have contractual as well as regulatory force.

Ofgem/DTI's Views

Ofgem/DTI continue to believe that an implementation scheme will be needed. The steps which will need to be taken are too complex and interrelated to be left to parties without regulatory supervision and a mechanism to ensure co-ordination and avoid delays.

Ofgem/DTI agree that the scheme should not impose obligations which would be inherently outside the licensee's ability to comply. The implementation scheme will not impose the same obligations on all parties. The obligations imposed on each party will reflect that party's role in relation (for example) to the modification of an industry document.

Ofgem/DTI do not intend that the implementation scheme would be used to introduce change beyond the scope of what is necessary or expedient for introduction of the new trading arrangements. All of the matters specifically mentioned in the draft licence condition are considered to fall within this scope.

Ofgem/DTI believe that the power to make and amend the implementation scheme should be time-limited in the same way as the Secretary of State's NETA implementation power under the Utilities Bill, currently proposed to be for a two year period from that part of the Bill coming into force.

Ofgem/DTI accept that the power to modify the scheme, after it has been designated, should be limited; and propose that any such modification should be made only in order to give fuller and more timely effect to the purposes of the scheme (as set out in the licence condition).

As far as change procedures for other documents are concerned, the NETA implementation timetable and the need for co-ordinated change imply that it may not be practicable to work under the usual change procedures of those documents. The scheme will therefore, where appropriate, set out the steps to be taken by parties to secure change without using those procedures. To the extent of any conflict with other licence conditions which may prescribe other change procedures, the licence condition on NETA implementation will prevail.

Concerning the development of the required changes to core industry documents, however, it is intended that the owners of those documents should, so far as practicable, use existing fora for consulting on the required changes, in order to advise the NETA Programme on the suggested changes. For example, NGC is consulting with the Grid Code Review Panel on NETA changes to the Grid Code.

Ofgem/DTI intend that parties should have an opportunity to comment on the details of the implementation scheme. A draft of the scheme will be made available for comment, probably in the same timescales as a draft of the BSC itself.

As far as the question of contractual force is concerned, at least some parts of the scheme will need to have contractual force, for example the agreement by which Pool resources are transferred to BSCCo (see below).

Proposals – Implementation Scheme

It is currently intended that the implementation scheme will come into force on the same day (referred to as the 'go-active' date) as the NETA licence conditions are introduced; and that the BSC would also come into force at the same time. This would bring the BSC governance arrangements into force, with Pool resources transferred to BSCCo at the same time or as soon as possible afterwards. There would follow a period, currently expected to be some three months, before BSC trading commences (ie 'go-live'), during which all necessary remaining steps for NETA implementation would be taken (including completion of testing and trialling and of the implementation scheme).

The implementation scheme will be in a number of parts. One part will address changes to core industry documents. It will list the relevant documents, set out or refer to the textual changes to be made, and set out any necessary steps to be taken by relevant parties (eg. signatories to a contract, or the owner of a code) in order to effect those changes. Where certain disputes arise as to the exact change which is to be made, the Director General will have power to settle the terms of the required change.

A part of the scheme will contain an agreement between Pool Members and BSCCo for the transfer of assets, personnel, contracts and other resources of the Pool to the BSCCo, and the assumption by the BSCCo of related liabilities.

There is current litigation (in which certain Pool Members and NGC are defendants) concerning allegations of breach of confidence in respect of information relating to the development of certain of the settlement arrangements in the Pool. Pool Members believe that these claims, brought by Optimum Solutions Limited, are without foundation and the action is being strenuously defended.

Part of the scheme will set out arrangements and requirements for participation in testing and trialling of NETA systems, in conjunction with other systems, and for streamlined and co-ordinated entry processes for BSC parties and their agents (which may include 'grandfathering' some existing agents' entries). The scheme may provide some limitation of liability in respect of loss incurred by participants in such testing and trialling.

A part or parts of the scheme will deal with a number of transitional issues, arising in the period from go-active to go-live, including:

- ◆ the status and governance of the Pool from go-active to go-live (in particular the role of the BSCCo, which will then hold the Pool resources needed to support Pool activity in this period);
- ◆ the basis for the NETA Programme to continue to manage and direct the implementation of NETA, and the necessary co-operation of BSCCo (and perhaps the BSC Panel);
- ◆ the power of the Director General to make modifications to the BSC, without going through the normal modification procedures, which are needed in the transitional period, for example as a result of testing or trialling; and
- ◆ the transition (or 'cut-across') from trading under the Pool to trading under the BSC, at go-live.

Appendix 3 to this document contains a description of the NETA Implementation Scheme.

5. Connection and Use of System

5.1 Introduction

This chapter discusses the proposed revision of connection to, and use of, NGC's transmission system raised in the system operator incentives and related issues consultation paper published by Ofgem in December 1999.⁸ In that document Ofgem consulted, amongst other things, on the need to develop a new regime for transmission access. The main interactions between devising such a regime and the current contractual and regulatory regime for connection to, and use of, NGC's system are summarised below. The remainder of this chapter describes responses to this document in relation to the development of CUSC with revised governance procedures and Ofgem/DTI's subsequent proposals. The development of a new transmission access regime consistent with market principles will be discussed in a consultation paper expected to be published in April 2000.

5.2 Background

Master Connection and Use of System Agreement

Presently, rights and obligations associated with the use of, and connection to, NGC's transmission system are set out in the Master Connection and Use of System Agreement (MCUSA) and its bilateral Supplemental Agreements. These documents contain commercial conditions for connection to and use of the transmission system including the calculation and payments terms for connection and use of system charges, and also contain the contractual obligation to comply with the Grid Code. Broadly, almost all parties ('users') requiring connection to or use of NGC's transmission system are signatories to the MCUSA.⁹ There are separate Supplemental Agreements (in one of six standard forms annexed to the MCUSA) for each connection site (and for each embedded user who wishes to use the system). These Agreements contain specific charging and equipment details for each User at each connection site.

⁸ NGC System Operator Incentive, Transmission Access and Losses under NETA, Ofgem Consultation Document, December 1999.

⁹ Ofgem is aware that there are a few parties connected to or using NGC's system who are not signatories to the MCUSA such as some small embedded generators and some directly connected customers

NGC considers the MCUSA as the main vehicle by which it achieves compliance with its obligations under the Electricity Act 1989 and the Transmission Licence not to discriminate in the provision of connections or in the terms it offers for use of its transmission system. These obligations are designed to prevent abuse of NGC's position as the monopoly provider of transmission services in England and Wales. If NGC was to discriminate in the provision of these services there could be a detrimental effect on the development of competition in the generation and supply of electricity.

Transmission Access

Ofgem/DTI's work on NETA has identified likely interactions between the energy balancing and transmission access regimes. Ofgem's July NETA consultation paper highlighted a need for a review of the existing regime for the trading of transmission capacity. This paper pointed to deficiencies in the existing system. Of particular concern was the lack of short run price signals for transmission charging. Although NGC's annual transmission network use of system charges are calculated on a zonal basis, they only reflect the long run costs of constructing and maintaining the network. Without short-term locational signals the alleviation of transmission constraints has to be centrally administered by the System Operator. In the July NETA consultation document, Ofgem considered it appropriate to undertake analysis on more enduring options for transmission access and pricing that would provide a market-based solution, including tradable access rights. The introduction of this type of transmission access regime would be consistent with the general approach adopted for NETA.

Although the costs of transmission constraints have fallen over recent years, a number of parties have expressed concerns that this trend may be halted or even reversed under NETA without the introduction of an appropriate transmission access regime. One consequence of NETA may be a change in the pattern of generation and demand, which could, in turn, affect both the volume and frequency of constraints on the transmission system.

In addition, transmission rights are currently defined under the P&SA which enables generators to receive compensation in circumstances when the SO instructs a plant scheduled to generate not to generate, and which provides payments to plant which is required, but not scheduled, to run. These payments are known as 'constrained off' and 'constrained on' respectively. The introduction of NETA will result in the termination of

the P&SA and with it one aspect of how transmission rights are presently defined. Ofgem's December 1999 consultation paper on system operator incentives and related issues set out different options for a new regime for transmission access that would offer appropriate long and short-term economic signals in respect of transmission access. Ofgem expects to publish a further consultation on the high level principles of this regime in late April 2000.

Need for Changes to the MCUSA

Ofgem's December 1999 document on system operator incentives and transmission issues highlighted certain problems with the MCUSA. The most notable of these were the difficulties regarding the governance arrangements for the MCUSA. For example, variations can only be made with agreement of all parties (of whom there are more than 100), or where the Director General requires a change to be made as a result of (i) a change to NGC's licence, (ii) the making of an order or direction under the Electricity Act or a licence or (iii) the Director General settling (under Condition 10C of NGC's transmission licence) the terms of a Supplemental Agreement. The same methods apply for changes to Supplemental Agreements.

These variation provisions are very restrictive and inflexible and have proved cumbersome in practice. There is no established procedure enabling changes to be proposed or evaluated. The nature and extent of the Director General's power to procure change to all the Supplemental Agreements and the MCUSA is far from clear.

In contrast, arrangements for changing the Network Codes in the gas industry are more flexible. Similarly, proposed change arrangements for the BSC and existing change arrangements for the Grid Code are more flexible in practice than those for the MCUSA and Supplemental Agreements. (As far as gas is concerned, the position is more straightforward since Transco's network code contains in one document much of what is contained in different documents in electricity – ie. Grid Code, P&SA, MCUSA and Master Registration Agreement and other documents).

The lack of flexibility in the arrangements to vary the MCUSA and Supplemental Agreements may not only frustrate the timely reform of the transmission access regime, but could also be a significant impediment to future market developments. One of the objectives of NETA is to provide electricity trading arrangements which are capable of

responding to changing circumstances. Failure to reform the governance of the MCUSA and Supplemental Agreements in accordance with NETA could result in a failure to realise the full benefits of the new electricity trading arrangements. In addition, a change to the governance arrangements for the MCUSA, to bring them into line with those presently in place in gas, will facilitate developments within the gas and electricity industries in the light of their increasing convergence. This is particularly important in the light of a significant amount of gas-fired generation capacity in England and Wales.

In the December paper on transmission issues, Ofgem proposed that the MCUSA and Supplemental Agreements should be replaced by a 'Connection and Use of System Code' (CUSC). One objective of the CUSC would be to introduce more flexible governance procedures than presently apply to the MCUSA. Models of the governance procedures that could be considered include those used in the network code (of public gas transporters) or those proposed for the BSC.

At present, the exact form and content of the CUSC is not clear. However, in outline the CUSC would contain many of the generic clauses presently in the Supplemental Agreements to the MCUSA. As there will be a continuing need for Users and NGC to specify site specific information and details of charges it is appropriate for the CUSC to have bilateral arrangements to meet these requirements. The possible need for licence conditions relating to the development and implementation of CUSC was raised in the December licence consultation.

5.3 December 1999 Consultation on NGC's System Operator Incentives, Transmission Access and Losses

CUSC/Governance Issues

In its December document on system operator incentives and related transmission issues, Ofgem proposed that a Connection and Use of System Code with more flexible governance procedures should replace the MCUSA and its Supplemental Agreements.¹⁰

Respondents' Views

The majority of respondents who commented on this area, recognised that there was a need for change to the MCUSA to allow more flexible governance of the agreement.

¹⁰ This was also proposed in the December licence condition document. Responses to this document relating to CUSC are included in the summary of responses.

Twenty-four respondents commented on the desirability of change to the MCUSA. Twenty-two respondents accepted that some change was desirable and of these twelve supported the development of the CUSC (although one of these did not support any change to the governance regime). Some respondents including NGC, argued that, as the CUSC will predominately deal with transmission issues, it was appropriate for the governance structure to recognise and establish a more direct role for NGC in the governance and implementation of the CUSC than that envisaged in the BSC. It was suggested that the governance regimes of the Grid Code or the network codes of public gas transporters would be appropriate models.

Six respondents, whilst recognising the need for more flexible governance of the MCUSA, stated that it would be more appropriate to bring this about through changes to the MCUSA governance rather than by way of the introduction of CUSC. In particular, some respondents thought that more flexible governance would be achieved if the requirement for agreement on changes was changed from the requirement of unanimity to that of majority voting. Some respondents felt that the proposal to implement a CUSC could result in considerable resources being employed where changes to MCUSA could deliver the same results for less time and effort.

There was also concern expressed by some respondents that the proposed changes could shift the balance of power too strongly in the regulator's favour. Some respondents expressed the opinion that a governance structure which confers more power to the regulator was inappropriate whereas others were only concerned that appropriate checks and balances on the regulator's power should be put in place.

Only two respondents stated that there was no need to change the existing connection and use of system arrangements. One of these respondents agreed that the MCUSA and Supplemental Agreements were difficult to change but argued that the change processes had worked successfully on occasions in the past. It was suggested that the long term nature of investments in electricity connections required stability of terms and that continuous change to the MCUSA could prevent people from investing in electricity connections.

Ofgem/DTI's Views

After due consideration of the responses, Ofgem/DTI propose to introduce a licence condition requiring NGC to 'establish a connection and use of system code' (CUSC) and 'to only enter into connection and use of system arrangements which conform with the CUSC'. A condition will also be placed on all licensed generators and suppliers to 'be party to a CUSC Framework Agreement and comply with the CUSC'. Ofgem/DTI intend to include these licence conditions with the licence modifications proposed to be made under the power granted to the Secretary of State allowing him to modify conditions of any licence where it is necessary or expedient to do so to implement or facilitate the effective operation of NETA.

The DTI are also considering the potential need to attach conditions relating to CUSC to exemptions granted under the Electricity Act 1989.

Ofgem/DTI agree that, because the CUSC is dealing with transmission issues, it is appropriate for NGC to play a more direct role in its implementation and modification. Therefore, Ofgem/DTI propose that the modification rules of the CUSC are more like those in place for network codes of public gas transporters.¹¹ These rules, described below, are broadly similar to the proposed BSC rules except that the gas transporter is responsible for the running of the modification process.

Under Standard Condition 7 of the Public Gas Transporter's (PGT) Licence, gas transporters are required to develop a network code, which sets out their transportation arrangements. This condition also requires the gas transporter to establish and operate procedures for the modification of the network code. Under the condition these procedures must include:

- ◆ allowance for proposals for modifications from all parties who have signed the code;
- ◆ allowance for sufficient publicity of any proposal;
- ◆ a requirement for the seeking of the Director General's view in relation to any proposal;

¹¹ Ofgem is intending to consult on the effectiveness of the governance regime in place in relation to Transco's network code. It may be useful to consider the results of this consultation in relation to the governance of CUSC as, and when, such results are available.

- ◆ allowance for the consideration of any representations relating to such proposals by any party who has signed the code, or is likely to be materially affected if the proposal was to be accepted; and
- ◆ allowance for the exclusion, acceleration or other variation of any procedural steps which would normally be followed as agreed by the Director General, in relation to any modification proposal that the Director General deems to be urgent.

In response to this obligation Transco¹² has developed modification rules for its Network Code. These set out detailed procedures for the modification of the Network Code, which allows for considerable consultation on modifications where appropriate.

The PGT licence provides for the modification rules of network codes to be contained in a separate document. However, it is proposed that the modification rules should sit inside the CUSC to enable CUSC signatories (and other interested parties who have input in the modification procedure of the CUSC) to have greater input into the development/modification of these rules.

Ofgem/DTI do not think it is appropriate to bring about these changes by modifying the MCUSA and Supplemental Agreements. This is because of the desirability of codifying many of the generic provisions contained in the Supplemental Agreements of the MCUSA. It is Ofgem/DTI's intention that the CUSC will contain many of the provisions of the MCUSA and the generic conditions of the Supplemental Agreements and many of these clauses will be based on prevailing provisions. There will be an additional need for bilateral arrangements containing site specific information. It is believed that this codification will increase transparency and flexibility.

Ofgem/DTI note the concerns expressed about the additional influence of the regulator inherent in the proposed governance arrangements. However, Ofgem/DTI believe that there will be sufficient checks and balances on the regulatory influence as there are in respect of the network codes of public gas transporters and the BSC. For example, the regulator cannot propose changes to the codes, only has observer (non-voting) status on panels and associated workgroups considering modification proposals, and must consider the effect of the proposed modification on the relevant objectives of the

¹² Independent public gas transporters have also modification rules in place in relation to their network codes.

relevant Code when deciding whether or not to accept a modification proposal. The Utilities Bill also contains a provision requiring the Director General to give reasons for directions issued pursuant to provisions in licence conditions.

We consider CUSC governance in more detail during the discussion of the appropriate licence conditions below.

Dispute Resolution

The December document stated that the MCUSA disputes resolution mechanisms were unclear and that there is the potential for disputes involving broad regulatory principles to be decided through an arbitration procedure that focuses narrowly on the interpretation of contractual terms. It was suggested that the CUSC should clearly define those issues that have a regulatory impact and therefore require determination by the Director General, and those that are contractual and hence can be resolved through arbitration.

Respondents' Views

Few respondents commented on this area. Of those who did there were mixed responses. Some felt that it was important to clarify this distinction whilst others felt that such clarity was inappropriate or very difficult to achieve.

Ofgem/DTI's Views

Ofgem/DTI believe that there is a need to distinguish in the CUSC between issues that can be resolved through referral to an arbitrator and those that should be referred to the regulator. This issue is discussed briefly below. Ofgem/DTI are planning to issue a further consultation paper on the contents of CUSC and the mechanisms for developing the code in March 2000. The issue of disputes resolution will be considered further in that document.

Other Points Raised by Respondents

Interaction of CUSC with BSC/Grid Code

Respondents' Views

A number of respondents expressed the opinion that there was a need to consider the effect of the CUSC, and modifications to the CUSC, on other inter-locking agreements. One respondent suggested that there was a need for a hierarchy to be established

between the codes in relation to particular issues, so that the CUSC takes precedence in some areas and the BSC takes precedence in others.

Ofgem/DTI's Views

Ofgem/DTI accept that there is a need for the effect of modification proposals on related industry documents to be identified and discussed as part of the modification procedure. It is our view that this can be considered during the process of developing the CUSC and need not be reflected in the licence conditions. This issue will be discussed further in Ofgem/DTI's March CUSC consultation.

Consolidation of Electricity Codes

Respondents' Views

Three respondents suggested that it was undesirable to have three electricity codes (CUSC, BSC and Grid Code) with somewhat different governance structures in place in each. It was felt that merging some or all of the codes could offer efficiency savings since they could then be administered by the same panel.

Ofgem/DTI's Views

Ofgem/DTI have considered the issue of combining some or all of the BSC/CUSC/Grid Code. It is not considered desirable at this stage, for the BSC and the CUSC to be in the same document. This is due to the differences envisaged in NGC's role in the governance of the two codes.

Ofgem/DTI considers that there may be some merit in combining the Grid Code and the CUSC. The governance procedures envisaged for the CUSC are similar to those in place for the Grid Code and it is accepted that there may be some efficiency savings gained from the merging of these codes. However, there is likely to be considerable change to the Grid Code to facilitate the implementation of NETA. As a result it has been decided that it is not appropriate from a logistical perspective to merge these codes at this time. This decision will be reviewed at a later date.

Connection and Use of System Split

Respondents' Views

Some respondents favoured a split between the location of provisions relating to connection and those relating to use of system. They argued that although there was

value in a generic use of system code, arrangements for connection to NGC's system should remain in bilateral agreements. Other respondents supported the rationalisation of those generic aspects of Supplemental Agreements relating to connections.

Ofgem/DTI's Views

Ofgem/DTI are of the view that there may be benefits in separating out the connection and use of system activities of NGC whilst incorporating both within the CUSC. This would enable different classes of parties to be bound by different sets of provisions (for example, some of the provisions relating to use of system may not be applicable to electricity distributors and therefore it would not be appropriate for them to be bound by these provisions.)

Ofgem/DTI propose that most of the generic elements of connection agreements could be contained within the main body of the CUSC, but accept there will be a continued need for bilateral arrangements containing site specific information and details of charges.

Ofgem/DTI therefore propose that the CUSC should contain generic terms applicable for connection and use of system activities. However, consideration will be given to splitting these two activities within the CUSC at the time of its drafting. Ofgem/DTI intend to discuss this issue further in the March CUSC consultation paper.

5.4 Licence Issues

NGC's Licence Condition

Ofgem/DTI's initial proposals on the licence condition proposed for inclusion within NGC's licence is set out in Annex 4 to this document. It contains an obligation on NGC to establish a Connection and Use of System Code and prohibits NGC from entering into arrangements for connection to, and use of, its system other than through the CUSC. Further consideration needs to be given, in particular, to the proposed matters to be provided for by the CUSC and the interaction of the CUSC with existing conditions in NGC's licence.

The licence condition requires the CUSC to contain procedures for the making of modifications to the CUSC and sets out what the procedures should provide for. A discussion of some key areas of these requirements is set out below.

Modification Procedures

It is intended that the modification procedures will provide for proposals for the modification of the CUSC to be made by the Licensee (ie. NGC) and parties to the CUSC. Consideration needs to be given to the extent to which, if at all, it is appropriate for non-CUSC parties, eg. customer representatives, to propose modifications to the CUSC.

The licence condition will also require the modification procedures to provide for the bringing of proposals to the attention of CUSC parties and any other relevant parties (including customers or their representative). This will allow proper evaluation of whether the proposal furthers the relevant objectives of the CUSC and of any representations made on the proposal. The procedures will also need to deal with the development of alternative modifications, which may better facilitate the achievement of the CUSC's objectives. It is envisaged that the modification procedures will provide for the production of a report. The report will set out the proposal, any alternative proposal, and any representations made. It will evaluate the proposal(s), assess whether the proposal(s) better facilitate the objectives, and indicate the impact of the proposal(s) on Core Industry Documents. Finally, the report would set out a timetable of implementation for the proposed modification or alternative modification.

NGC would be able to modify the CUSC pursuant to a direction of the Director General following the modification procedure or pursuant to a consent to modify given by the Director General. It is intended that this second route to modification would be used either where minor modifications are required to make the text of the CUSC sensible or intelligible or where the urgency/necessity of the need for a modification precludes use of the normal modification procedures. It is not proposed to use this second route other than in these two instances.

Consequential Change to Licence Condition 10 of NGC's Licence

Ofgem/DTI consider that there will need to be consequential changes to Condition 10 of NGC's licence¹³ to recognise the development of a CUSC. One aim of these changes is to include references to Condition 10 and the CUSC in both the licence conditions

¹³ Condition 10 of NGC's licence relates to the basis of charges applied by NGC for use of its system and connection to its system. It places an obligation on NGC to prepare statements setting out the basis upon which charges for use of system and charges for connection to the licensee's transmission system will be made. The condition sets out requirements that the charging statement should fulfil.

and the CUSC. These licence modifications will take place simultaneously with the implementation of the CUSC. Consideration is also being given to other changes which will be needed to NGC's licence.

Ofgem/DTI also consider there is merit in changing the parts of Condition 10 relating to NGC's charging obligations. At the moment NGC is obliged by Appendix E of each of its Supplemental Agreements to notify Users by the end of October of the intended basis of its charges for the following financial year. By the end of November, NGC must confirm the basis of those charges. Finally, by the end of January NGC must give Users written notice of any revisions to their charges for the following financial year.

Ofgem/DTI propose to modify Condition 10 so as to require NGC to publish its basis of charging statements within the timescales that are presently set out in Appendix E of the Supplemental Agreements. The modification would also enable NGC to vary this notification timetable under certain circumstances. For example, if NGC needed to modify its charges or methodology for charging during a financial year it should be able to introduce such charges subject to the consent of the Director General.

Ofgem/DTI believe that this may also help provide clarity over the appropriate place for referrals of disagreements regarding the interpretation of charging statements. There has been some confusion and uncertainty regarding the application of the existing dispute resolution procedures in the MCUSA.

Ofgem/DTI intend to consult on the wording of the proposed modifications to licence condition 10 in the March CUSC consultation paper.

Licence Condition for Generators and Suppliers

The proposed licence condition on generators and suppliers is also attached in Annex 4. It is intended that this condition should simply require the licensees to sign a CUSC Framework Agreement and comply with the CUSC.

5.5 Content of CUSC

As set out above, it is envisaged that the CUSC will contain many of the provisions included in the MCUSA and Supplemental Agreements. The generic provisions of the Supplemental Agreements to the MCUSA will be incorporated into the main body of the

CUSC but the CUSC will also provide for NGC and users to enter into bilateral arrangements (in a form specified in the CUSC) containing site or user specific details. It will provide for disputes in respect of specified matters to be determined by the Director General.

Also as noted above, Ofgem is separately seeking the development of a new market-based regime for transmission access. Proposals for such a new regime would be implemented under the new governance structure through modifications to CUSC. Ofgem/DTI does not intend that the initial CUSC will have significant changes to the commercial regime for connection and use of system presently contained in the MCUSA and Supplemental Agreements (although it may be necessary to make some adjustments to achieve consistency with NETA).

An outline of Ofgem/DTI's initial proposals on the contents of CUSC is included as Appendix 5. The Ofgem/DTI March consultation will look in more detail at the contents of CUSC, the views of respondents on the issues surrounding the contents of CUSC and its development, and the process for taking this issue forward. This document will consider a number of issues including the extent to which it is appropriate for the generic terms of contracts for ancillary services to be incorporated within the CUSC, the need for differences in treatment of conditions relating to connections and those relating to use of system within the CUSC and whether it is appropriate for arrangements for any future developments for targeting the costs of losses should be located within the CUSC or the BSC. The March consultation paper will not discuss the development of the new transmission access regime, which will be the subject of a separate consultation paper expected to be published in April 2000.

5.6 Implementation

There is a need to develop a process for taking forward the development of CUSC. Ofgem/DTI is concerned to ensure that all interested parties are fully consulted and involved in this process. The March consultation on CUSC will make proposals for the process of developing the Code and will also invite comments from parties.

The Secretary of State's powers under the Utilities Bill may be used on more than one occasion. The modification of licences to implement the other NETA conditions referred to in this document is expected to take place in August 2000. It is likely that

the CUSC will be implemented through a further use of the Secretary of State's NETA power. In the March CUSC consultation document, more consideration will be given to the timescales envisaged for the implementation of the CUSC.

6. Related Matters

For ease of reference, Appendix 6 of this document contains a list of recent and forthcoming Ofgem, DTI and/or Ofgem/DTI consultation documents which are referred to in this document and are related to the new trading arrangements in England and Wales. These related matters are summarised below.

6.1 *NETA Incentive Arrangements*

As mentioned earlier, Ofgem published a consultation document in December with initial proposals for the incentive arrangements which will apply when NETA is implemented. Ofgem is considering the responses received to that consultation and will be issuing an initial proposals document in March.

6.2 *Other Transmission-related Matters*

In addition to the NETA incentive scheme and proposals for reform of the governance of NGC's connection and use of system arrangements, the December consultation on 'NGC System Operator Incentives, Transmission Access and Losses under NETA' addressed a number of other matters connected with the wholesale trading arrangements. These included possible new rules for the allocation and pricing of transmission access rights, the allocation of liabilities for transmission losses and the allocation of liabilities for distribution constraints.

Ofgem intends to issue a document summarising the responses received on these other matters in April.

The December consultation document on transmission issues also raised issues concerning NGC's procurement and use of Balancing Services. Some of these issues have been addressed in earlier chapters of this document. The NETA Programme is also carrying out an initial assessment of ways in which the contract costs of certain Balancing Services (particularly reserve) can be fed through into calculation of the imbalance cash-out price under the BSC.

6.3 Exemptions

The December licence consultation document referred to the DTI's consultation on proposed changes to the class exemptions for generation and supply.

The DTI intends to publish a further consultation in due course, taking account of the responses received. The DTI also intends to consult shortly on the proposed criteria for exemption from the requirement to hold a distribution licence.

6.4 Other Utility Reforms

The December licence consultation referred to the proposal to introduce standard licence conditions for all types of electricity licence, under powers to be granted in the Utilities Bill. In addition, some licences would contain certain special conditions (eg. price control provisions).

Ofgem (on behalf of the DTI) recently published a consultation paper¹⁴ on the Utilities Bill: Standard Licence Conditions, together with draft standard licence conditions for each of the types of electricity and gas licence. This paper followed an earlier consultation¹⁵ last November on initial proposals for standard licence conditions.

The February paper confirmed that it is anticipated that NETA-related draft standard licence conditions will closely reflect the proposed changes to existing licence conditions being taken forward under the NETA provisions of the Utilities Bill (ie. the proposed changes set out in this document).

As far as CUSC is concerned, it is again anticipated that CUSC draft standard licence conditions would closely reflect the proposed conditions annexed to this document (together with the other changes highlighted in Chapter 5).

As described in Ofgem's February paper on standard licence conditions, it is envisaged that the BSC- and CUSC-related licence conditions for generation and supply licences would become standard licence conditions for all generation, distribution and supply

¹⁴ Utilities Bill – Standard Licence Conditions: A Consultation Paper, Ofgem, February 2000

¹⁵ Initial Proposals on Standard Licence Conditions: A Consultation Paper, Ofgem, November 1999.

licences (with any consequential changes necessary to 'standardise' them). This would probably include the following conditions:

- ◆ BSC and CUSC compliance;
- ◆ P&SA run-off;¹⁶
- ◆ Enduring change co-ordination; and
- ◆ Programme implementation agreement.

In addition, it is currently envisaged that:

- ◆ the licence condition on generating unit availability (as described in Chapter 3) would become a standard licence condition for generation licences; and
- ◆ the prohibition on non-discrimination in electricity sale contracts would become a standard licence condition for generation licences (with a switch on/switch off provision).

Ofgem has proposed that NETA-related conditions would become standard licence conditions on a GB-wide basis. However, both the BSC and the CUSC will be England and Wales documents. Consideration is being given to the way in which to address this question. The intention would probably be to make them applicable if the licensee is operating (or trading) in England and Wales.

As far as transmission licences are concerned, the February paper explained that there will be a small number of general (GB-wide) standard conditions, coupled with a number of supplementary standard conditions for Scotland and, separately, for England and Wales and some special conditions for each licence. It is currently envisaged that the NETA and CUSC licence conditions outlined in this document for NGC's licence would become supplementary standard licence conditions for the transmission licence applying to England and Wales.

¹⁶ Unless the P&SA is subsumed into the BSC – see earlier notes.

6.5 Scottish Trading Arrangements

Ofgem intends to publish a further paper shortly following an assessment of the responses received to its October consultation 'Review of Scottish Trading Arrangements'.

Appendix 1 List of Respondents

NETA and Related Transmission Issues – Proposals On Licence Changes

Responses

Company

Barking Power

BNFL Magnox *

British Energy

Centrica

Cleveland Waste Management Ltd

Dynegy

Edison Mission Energy

EIUG

Enron Europe

EPFAL

ESIS

Lakeland Power

London Electricity

Medway Power

MEUC

National Power

NECC

Northern Electric & Gas

NGC

PowerGen

Scottish & Southern Energy

Scottish Electricity Settlements

ScottishPower

SEEBOARD

Sheffield Heat & Power

Teesside Power Limited

Transco

TXU Europe

Western Power Distribution

Yorkshire Electricity (distribution)

Yorkshire Electricity (supply)

***NGC System Operator Incentives, Transmission Access And Losses Under Neta
Additional Responses On CUSC Issues***

Company

Association of Electricity Producers

BOC Gases

British Gas Trading

Corus

Elf Gas and Power

ILEX

Norweb Energi

* Confidential

Appendix 2 Summary of NETA Responses

NGC's Transmission Licence

Establishment and Scope of BSC

There was general support for the proposed scope of the BSC and the proposals for its establishment and on-going maintenance. One respondent felt the scope of the BSC should not extend to the inclusion of a new losses scheme.

BSC Objectives

About a third of respondents commented on the proposed 'high level' objectives for the BSC. Some respondents supported them, whilst others (including NGC) felt they were too closely aligned to the existing functions and responsibilities of NGC. Several respondents felt the objectives were too broad and needed to be supplemented by a more prescriptive set of objectives.

NGC commented that the objectives did not seem to reflect fully the position of the BSC under the new trading arrangements and appeared to overlap with the objectives of the Grid Code.

Views were mixed as to whether any weighting should be attached to the objectives. Several respondents believed a hierarchy was desirable, whilst others felt it was unnecessary.

BSC Compliance

Most respondents agreed that the proposals in this respect were sensible. One respondent commented that the case for extending the jurisdiction of the BSC to network operators was not fully proven. Another respondent observed that the obligation on NGC to comply with the BSC goes beyond that required under Condition 7 of the Public Gas Transporter's Licence held by Transco. Compliance with the Code should, in their view, be a matter of contract and the courts.

One supplier raised the issue as to whether the BSC would have disciplinary powers over BSC participants. This could give rise to a two-tier disciplinary system: via the regulatory regime for licence holders and via the BSC for non-licensed BSC signatories.

BSC Modification – DG's Powers

Concern was expressed regarding the proposed power for the Director General to direct NGC to make modifications. Several respondents questioned whether this was necessary given that the Director General will be appointing the BSC Chairman. One respondent said a definition of the circumstances under which the Director General could direct NGC to 'step in' was required.

BSC Modification Procedures

There was general support for the inclusion of a timetable as part of the modification report. One respondent commented that the modification process needed to distinguish between urgent and non-urgent modifications. A consensus existed amongst respondents that the Director General should be required to justify his decisions in respect of BSC modifications.

There was general support that the BSC should facilitate the adoption of similar arrangements in Scotland with a view to ensuring the co-ordinated consideration of modifications in both markets.

NGC observed that it would be essential to distinguish clearly NGC's role in the on-going maintenance of the BSC from the roles of the BSCCo or BSC Panel.

Enduring Change Co-ordination

The majority of responses were opposed to the proposed requirement on licensees to secure and implement changes to other industry documents. Concerns existed that it would undermine the existing contractual framework and give precedence to the BSC. Several respondents observed that individual licensees should not be held accountable for the action of others through a licence obligation, given the collective responsibility attached to the majority of existing documents and agreements. One respondent noted that many of the industry documents and agreements contain their own legal rights, obligations and procedures that an individual participant or regulator cannot override.

There was a view that the condition should be softened to 'reasonable endeavours'.

There was general support for the concept of impact assessments, though a consensus emerged that this should be the responsibility of the BSCCo/BSC Panel rather than a responsibility on individual parties.

Most respondents did not favour the proposal that the governance of the key existing industry documents be changed to align with the BSC. This was generally deemed unnecessary and not fully justified.

Scope of Balancing Services

There was a strong view that the operation of the Balancing Mechanism should be based on market principles and should, therefore, include NGC's own reactive power compensation equipment.

One respondent stated that emergency support from external grid operators should not be viewed as a normal balancing service. Another said that the contribution to balancing services from inter-system support should be fully acknowledged.

NGC commented that care would be needed in defining balancing services. It argued that, in the light of the present regulatory arrangements governing NGC's procurement and use of reactive power, its own compensation equipment should not be viewed as a balancing service. Nor did NGC believe it appropriate for emergency support from external grid operators to be viewed as a balancing service.

System Operation

There was a general recognition that NGC should be allowed freedom of action to procure balancing services, subject to those actions being visible to, and understood by the market (although there was concern regarding NGC contracting in the forwards markets in this respect).

About half of respondents agreed with the principle that the most efficient way of minimising costs was to allow NGC the freedom to operate under the umbrella of an appropriate incentive scheme designed to promote overall efficiency rather than on individual cost components. A counter view which was expressed was that it would be extremely difficult to optimise incentives without clearly distinguishing between NGC's various roles, particularly in respect of its SO and TO activities. Some responses called

for the early and formal separation of these functions (i.e. separate licensing) or, at the very least, the conceptual separation of these functions.

Support existed for the proposal that NGC should be obliged to match inputs and offtakes and to continue accepting all relevant Balancing Mechanism bids and offers. However, one generator noted that this would require a clear statement of the security standard against which NGC provides a reserve of generation via the Balancing Mechanism.

Whilst recognising that it would be wrong to place an artificial cap on prices (and thus accepting that it will be purchasing very high priced bids and offers at times), NGC does not believe a condition obliging them to accept all relevant offers and bids is appropriate. It points out that technical factors may result in the unavoidable initiation of involuntary demand or generation reductions under certain circumstances.

About a fifth of respondents expressed reservations regarding the proposed removal of the economic purchasing obligation on NGC.

Respondents generally agreed that interconnector bids should be treated in exactly the same way as bids from other parties for balancing purposes.

***Policy Statement on Procurement of Balancing Services and Operational Guidelines
(Balancing Principles Statement)***

Virtually all respondents viewed the proposed statements as essential, though two respondents questioned the value of having both. Similarly, strong support existed for the proposed reports that would flow from these documents, particularly in relation to the reporting of involuntary demand or generation reduction events and the impact on cash-out prices of NGC's actions in purchasing balancing services ahead of Gate Closure.

Views were mixed as to whether the statements should be confined to broad principles. Some respondents acknowledged this was necessary so as not to fetter NGC's discretion, whilst others believed a more detailed and prescriptive approach was necessary.

NGC views the proposed Balancing Principles statement as inappropriate because of concerns that it could restrict its operational flexibility (and thus impact its ability to operate the system at minimum cost). It also views the proposed procurement policy statement as unnecessary given the development of more transparent and market based mechanisms for the procurement and use of balancing services and the Director General's ability to review actions post event.

Prohibited Activities

Virtually all the responses that commented on this issue expressed concern that the prohibition on NGC acquiring electricity should not apply to its purchase of balancing services (in pre-Gate Closure timescales). Concerns focused on the impact of NGC's actions, particularly in respect of market foreclosure and reductions in market liquidity.

NGC expressed concern regarding the proposed reserve power for the Director General to prohibit its use of certain markets. They stressed the importance of being able to purchase balancing services in appropriate timescales to ensure operational security of supply. NGC also argued that the proposed power conflicts with Ofgem's expectation that it should adopt and develop innovative approaches to trading and contracting. They would prefer a simpler safeguard such as a prohibition on NGC holding a generation or supply licence.

Non-Discrimination

The proposals in this respect were mostly supported, with a broad consensus that the provisions should be extended to cover NGC's actions in constraint management.

NGC recognise the appropriateness of such a condition, but believe it should be targeted to their procurement of services rather than the use of such services in operational timescales.

Separate Businesses

Several respondents expressed concern regarding the proposed cessation of the ASB as a separate business. One supplier noted this was counter to Ofgem's principles of full business separation of monopoly activities from competitive activities, as evidenced by recent proposals with regard to PESs and Transco.

PSA Run-Off

Respondents recognised the need for arrangements in this respect. One respondent observed that where the obligation lies will be determined by who will have responsibility for reconciliation and disputes during the period in question and whether the service provider(s) contract under the BSC will extend to run-off requirements.

Generation and Supply Licence Changes

Price Data

Views were mixed on whether there should be an obligation on licensees to provide information to the Director General. Some respondents were categorically opposed to such a condition, stating that it could constrain the natural development of the market. Others viewed it as unnecessary (having complete faith that comprehensive price reporting will emerge), whilst some respondents felt a reserve power for the Director General was essential.

Several respondents questioned the value of such a condition, noting that the non-standard nature and form of the contracts might make meaningful observations difficult. One respondent observed that it would be inappropriate to impose an obligation on licensees to obtain information from market operators, given that there would be no contractual obligation on the market operator to comply with the request.

Removal of Central Despatch

Responses from generators generally supported the proposed removal of the central despatch provision, accepting that NGC will still need the ability to issue instructions under emergency conditions.

NGC believes that it is necessary to retain an obligation on generators to submit to NGC's instructions and that a similar obligation will be necessary for suppliers in relation to balancing services.

Generating Unit Availability

Generator respondents were generally opposed or see little value in the retention of this condition. There was a consensus view that if retained, it should appear in all generation licences. Objections were raised to the proposed 'switch on/switch off' provision, with a view that if included it should be switched 'on' for all licensees in the

first instance. One generator stated that the criteria under which the condition would be capable of being switched on/off must be established at the outset.

Suppliers supported the retention of the condition and would like to see it widened in scope to include all generators.

Generation Security Standard

Five respondents provided specific comments on the proposed removal of the Generation Security Standard. Two respondents believed the condition should be retained. Three supported its removal. One respondent expressed disappointment that the continuity of supply provisions will apply to small consumers only.

Implementation

Just under half of the responses commented on this issue. There was a general recognition of the need for arrangements in this respect.

One respondent believed an implementation condition to be inappropriate given that there will be an inherent incentive on market participants to implement the new trading arrangements in a timely fashion.

Another respondent observed that it will be essential for market participants to be given adequate opportunity to participate in the decision-making process via robust change control procedures. This respondent expressed concern at the suggestion that market participants should override existing procedures.

A generator noted that it will be important for parties to remain in control of their ability to comply and that they should not be exposed to factors over which they have little or no control.

NGC supports the introduction of an implementation scheme that has both regulatory force and is contractually binding between the parties (to address obligations and liabilities that may arise between those parties), a view supported by a second respondent.

A counter view was expressed by a supplier who saw little benefit in giving the scheme contractual force in addition to or instead of regulatory force. They note that this may be counter-productive to the general co-operation that will be required to implement NETA, and may increase uncertainty in the steps that they, and other parties, may be required to take.

Connection and Use of System - Governance Arrangements

The majority of respondents who commented on this area recognised that there was a need for change to the MCUSA to allow more flexible governance of the agreement. In all, some 20 respondents commented on the desirability of change to the MCUSA. 17 respondents felt that some change was desirable and, of those, 11 supported the development of the CUSC.

Some respondents (including NGC) argued that, as CUSC would predominantly be dealing with transmission issues, it would be appropriate for the governance structure to recognise and establish a more direct role for NGC than that envisaged for the BSC. It was suggested that the governance regimes of the Grid Code or the Network Codes of public gas transporters would be appropriate models.

Five respondents, whilst recognising the need for more flexible governance of the MCUSA, stated that it would be more appropriate to bring this about through changes to the MCUSA governance rather than by way of the introduction of CUSC. In particular, some respondents thought that more flexible governance would be achieved if the requirement for agreement on changes was changed from the requirement of unanimity to that of majority voting. Some respondents felt that the proposal to implement a CUSC could result in considerable resources being employed where changes to MCUSA could deliver the same results for less time and effort.

There was also concern expressed by some respondents that the proposed changes could shift the balance of power too strongly in the regulator's favour. Some respondents expressed the opinion that a governance structure which confers more power to the regulator was inappropriate whereas others were only concerned that appropriate checks and balances on the regulator's power should be put in place.

Only three respondents stated that there was no need to change the existing connection and use of system arrangements. One of these respondents agreed that the MCUSA and Supplemental Agreements were difficult to change but argued that the change processes had worked successfully on occasions in the past. It was suggested that the long term nature of investments in electricity connections required stability of terms and that continuous change to the MCUSA could prevent people from investing in electricity connections.

Appendix 3 NETA Implementation Scheme - Outline

Background

The proposed new electricity trading arrangements for England and Wales ('NETA') will include:

- ◆ establishment of a Balancing Mechanism whereby participants can make, and the System Operator (NGC) can accept, offers to increase generation or decrease demand and bids to decrease generation and increase demand on the system in order to assist NGC in balancing the system;
- ◆ arrangements to determine and allocate financial liability for energy imbalances, being the difference between the volume of energy which participants have contracted to buy or sell in advance and the amount (adjusted to take account of Balancing Mechanism activities and system losses) which they have actually delivered or taken from the system.

The rules and procedures for the Balancing Mechanism and Imbalance Settlement will be contained in a new Balancing and Settlement Code (the 'BSC') with which all participants licensed under the Electricity Act 1989 will be obliged to comply. Others can voluntarily choose to join the new arrangements.

The BSC will replace the Pooling and Settlement Agreement ('P&SA'). The P&SA is a multilateral industry agreement which currently governs the wholesale trading of electricity in England and Wales (undertaken through the Electricity Pool).

The P&SA is part of a much wider body of central industry documents, all of which are interdependent in a number of ways. For example:

- ◆ the Grid Code records the technical arrangements for connection to and use of NGC's transmission system, including the technical rules for scheduling and despatch of generation;

- ◆ the Master Connection and Use of System Agreement (MCUSA) and the Supplemental Agreements which sit under it contain the commercial arrangements for connection to and use of NGC's transmission system, including the arrangements for provision of Ancillary Services; and
- ◆ the Master Registration Agreement governs the provision by distributors of a meter point registration service to all those suppliers supplying premises in their distribution area.

Implementation

The new electricity trading arrangements are to be implemented by way of modification to existing Electricity Act licences (principally by replacing the obligation to comply with the P&SA with an obligation to comply with the BSC).

It is expected that the licence modifications will be made by the Secretary of State under statutory powers introduced in the Utilities Bill for that purpose – the “NETA power”. The Secretary of State may also consider the possibility of exercising his power to attach conditions to certain exemptions under the Electricity Act in order to facilitate NETA.

In addition to signing the BSC (or, more accurately, the framework agreement by which the BSC is made contractually binding), participants will need to take a number of key steps in order to ensure that the new trading arrangements can be given effect (both legally and practically). These steps include changes to other central industry documents connected with the wholesale trading arrangements, the migration of assets and liabilities from the existing Electricity Pool to the BSC, the co-ordination and testing and trialling of new IT systems and processes, and the establishment of arrangements to ensure the smooth transition from the Pool to the BSC.

The Secretary of State and the Director General of Electricity Supply ('Director General') will want to be satisfied in advance that these steps will be taken in a timely and co-ordinated fashion.

It is therefore proposed to include a condition in each Electricity Act licence requiring the licensee to comply with a scheme (the 'Implementation Scheme') to be designated by the Secretary of State. The Implementation Scheme will contain those obligations which the Secretary of State considers appropriate in order to give full and timely effect

to the licence modifications introduced under the NETA power (and matters envisaged by those licence modifications).

The Implementation Scheme will therefore provide a mechanism by which to oblige licensees to co-operate in the implementation process and to prevent them from frustrating or unduly delaying the introduction of NETA.

A somewhat similar device was used to introduce the so-called '1998 arrangements', when supply competition was extended to all electricity customers. Under the 1998 arrangements, a condition was placed in the licences of all (public electricity supply and second tier) supply licences requiring licensees to sign up to a Programme Implementation Agreement approved by the Director General. In the event and with the knowledge of this condition in the background, the industry agreed a Memorandum of Understanding and the condition was not used. However, bearing in mind the scope and proposed timetable for the introduction of NETA, negotiation of a voluntary industry agreement is not considered an adequate route here.

In order to provide licensees with sufficient certainty about their obligations, it is envisaged that the NETA Implementation Scheme would set out in some detail the steps which they are expected to take. It is for this reason that it is intended to place these obligations in a scheme designated under each licence, rather than on the face of the licence itself.

The Director General has already consulted on the proposal to employ a scheme as a means of co-ordinating changes and the steps required to introduce NETA. It is anticipated that the Secretary of State and the Director General will consult interested parties further on the content and wording of the Implementation Scheme prior to designation.

The Implementation Scheme will take effect as soon as (or very shortly after) the licence modifications have been made by the Secretary of State. It is envisaged that the BSC will come into force at the same time as the Implementation Scheme. However, trading will only begin under the BSC once the necessary implementation steps have been completed. The date for trading to commence (the 'go-live date') will be determined by the Secretary of State or the Director General. The working assumption is that this date

will be some three months after the Implementation Scheme and the BSC become effective. However, this will depend on a number of factors, including the results of testing and trialling of IT systems.

The Implementation Scheme will be mandatory for licensees. However, steps will also need to be taken by exempt and non-authorised¹⁷ parties in order to implement NETA. In some cases, the ability of licensees to take certain steps will be dependent on the co-operation or consent of other parties. This will need to be recognised in the Implementation Scheme. It is for consideration how other industry participants will be brought within the ambit of the Scheme (for example attaching a condition to exemptions and/or ensuring co-operation with the Scheme via the BSC). Thus, compliance with the Implementation Scheme may well be a requirement of the BSC.

It is likely that the Secretary of State will have the power to amend the Implementation Scheme in defined circumstances (for example, to address systems difficulties which emerge after the Implementation Scheme is designated).

Content of the Implementation Scheme

The Implementation Scheme will address those matters which need to be undertaken by the industry in a co-ordinated fashion in order to allow the new trading arrangements to 'go live'. The Scheme will not address consequential changes which participants will have to make to their own internal systems and processes or their own commercial arrangements. Participants will be expected to make their own arrangements to ensure that they are ready to start trading under the new market rules when they come into effect.

It is anticipated that the Implementation Scheme will cover:

- ◆ changes to core industry documents connected with the wholesale electricity trading arrangements (the changes will be annexed to or referenced in the Scheme and the Director General will have power to determine certain disputes arising in connection with these changes);

¹⁷ That is, those industry participants who do not fall within the regulatory framework at all, for example EdF.

- ◆ changes to the P&SA (including the arrangements for 'run-off' of the P&SA to allow for settlement and reconciliation of financial obligations accruing prior to BSC 'go-live');
- ◆ the transfer of Pool assets and liabilities from Pool Members to the BSC Co;
- ◆ establishment of the enduring governance arrangements of the BSC (for example, the appointment of directors of the new corporate vehicle, the BSCCo, which will assist in the administration and operation of the new arrangements);
- ◆ arrangements for the transitional period leading up to the start of trading under the BSC and the end of trading under the P&SA (including a more flexible governance and change regime to cope with the special circumstances of this shadow period, the process by which the decision to start trading under the BSC will be taken and the rules to ensure a smooth 'cut-over' from the Pool to the BSC); and
- ◆ rules for the release, submission or migration of data and for the testing and trialling, and accreditation, of systems and processes.

An indicative outline of the Implementation Scheme is provided overleaf.

NETA Implementation Scheme - Indicative Outline

Part I – Introduction

This section will establish the purpose and scope of the Implementation Scheme to assist those bound by it in understanding their obligations. It will also set out the criteria and procedures by which the Implementation Scheme can be amended.

Part II – Changes to Core Documents

This section will contain the obligations of each party (or type of party) in relation to changes to core documents. The changes will be set out in an annex to, or otherwise identified in, the Implementation Scheme.

For those documents where the co-operation or consent of third parties is not required, the Implementation Scheme will record the fact that the relevant agreement is to be amended in accordance with the annex with effect from a date to be specified.

For those documents where external co-operation or consent is required, the Scheme will set out the steps which parties are required to take in order to achieve amendment of the relevant agreement (including using reasonable endeavours to obtain the necessary external consents).

It is anticipated that the documents covered by the Implementation Scheme will include:

- ◆ Grid Code;
- ◆ MCUSA and Supplemental Agreements;
- ◆ Mandatory Ancillary Services Agreements;
- ◆ Master Registration Agreement;
- ◆ Data Transfer Services Agreement;
- ◆ Distribution Codes;
- ◆ Distribution Use of System Agreements;
- ◆ Distribution Connection Agreements;
- ◆ Settlement Agreement for Scotland;

- ◆ British Grid Systems Agreement; and
- ◆ Interconnector Agreements

Part III – The Pool

This section will set out the arrangements for:

- ◆ amendment of the P&SA (to recognise the demise of the Pool, to allow for 'run-off' of the Pool rules, to authorise the transfer of Pool assets and liabilities to the BSC and to address interactions between the Pool¹⁸ and the BSC during the 'run-off' period);
- ◆ migration of Pool assets and liabilities to the BSC (this will include contracts, staff, intellectual property rights, equipment and leases – it is anticipated that a Transfer Document will form part of the Implementation Scheme, which parties to the Scheme will be obliged to sign and which will set out the terms upon which assets and liabilities are to transfer to the BSC); and
- ◆ (possibly) amendment and termination of certain Pool contracts or matters connected with amendment/termination.

Part IV – BSCCo

The BSC will set out the governance structure which will apply to the new trading arrangements. Among other things, it will provide for the establishment of a company ('BSCCo') to act as a corporate vehicle to hold key service provider contracts and employ administrative staff, in order to give effect to the Balancing Mechanism and Imbalance Settlement rules. It is anticipated that BSCCo will be a subsidiary of NGC but it will be contractually bound by the BSC and will be funded by, and act on behalf of, industry participants.

Since key service provider contracts have to be let well in advance of the time when the new arrangements come into effect (in order to allow sufficient time for software to be developed), a company has already been set up to hold those contracts. This company (BSCC Limited) is a subsidiary of NGC.

¹⁸ It is possible that Pool Members will decide to terminate the P&SA as a separate stand-alone agreement, and the trading and governance rules for run-off (ie. effectively all of what is currently in the P&SA) will be incorporated into a schedule of the BSC. In that event, the BSC will need to address the relationship between those BSC participants who were Pool Members and all other BSC participants (for example, in respect of the allocation of costs).

When the BSC is introduced, it will be necessary to change the structure of this company in order to conform with the new governance arrangements (for example, change of name, change of directors, change of Memorandum and Articles of Association). The Implementation Scheme may need to set out steps which NGC will be required to take in order to effect these changes.

Part V – Transitional Arrangements

This section will capture the transitional arrangements which will govern the winding down of trading under the Pool and the lead-up to commencement of trading under the BSC.

It may also include the special arrangements which are likely to govern the BSC during the period between signature and commencement of trading. These may cover, for example, the relationship between the NETA Programme and the BSCCo during this period and the basis upon which the NETA Programme would continue to manage the testing and trialling and implementation process in the lead-up to full trading under the BSC. It is anticipated that the Director General will have powers to amend the BSC to correct errors or address any problems which emerge during this period (for example, as a result of the testing and trialling process).

Transitional arrangements might therefore include:

- ◆ the governance arrangements for the BSC during the period prior to 'go-live' (ie. when trading begins);
- ◆ the governance arrangements for the Pool during the period prior to BSC 'go-live' (the BSC governing bodies may take over responsibility for administering the Pool once key staff have moved over to the BSC);
- ◆ the co-ordination of activities at the time of hand-over from the old to the new trading rules; and
- ◆ the procedure to assist in deciding when trading can begin under the BSC.¹⁹

¹⁹ The decision to commence trading under the BSC (ie. to 'go live') will rest with the Secretary of State or the Director General.

Part VI – Testing and Trialling and Entry Processes

The BSC will contain technical requirements which a party must fulfil if it wishes to become a trading party under the BSC once the new arrangements are up and running. However, the process of moving from the existing to the new arrangements will require a more co-ordinated approach.

This section will deal with the testing and trialling of new systems, the migration and submission of data necessary to run the new settlement systems, the accreditation and certification of systems and processes (and, in some cases, the 'grandfathering' or automatic acceptance of existing systems) and other technical requirements.

The Implementation Scheme may also contain limitation of liability provisions for those participating in testing and trialling. For example, the Scheme may annex a form of agreement which participants would be expected to sign.

Appendix 4 **Indicative Outline of Balancing and Settlement Code**

Introduction

This paper sets out current proposals for the Balancing and Settlement Code ('BSC' or 'code') which licensees will be required to comply with under new 'NETA' licence conditions.

The BSC will be a code, maintained in force by NGC under a new condition in its transmission licence. Licensees and other parties who choose to participate will enter into a short multilateral Framework Agreement giving the BSC contractual force.

The BSC will set out the terms of the balancing mechanism and imbalance settlement arrangements, and related governance, which have been developed in the NETA programme. These arrangements are explained in detail elsewhere, but in very rough summary they are as follows:

Balancing Mechanism

- (i) Generators and suppliers (and persons trading over interconnectors) can submit bids and offers to NGC as system operator, to increase or decrease their levels of production or consumption at different points in any half-hour settlement period;
- (ii) NGC can accept such bids and offers, in order to balance generation and demand, or manage constraints on the system;
- (iii) A party submitting a bid or offer which NGC accepts will pay or be paid the bid or offer price for the quantity of electricity which was accepted;

Imbalance Settlement

- (iv) generators and suppliers (and persons trading over interconnectors, and others) can enter into bilateral contracts for sale and purchase of electricity in any settlement period. These contracts are formed outside the BSC;
- (v) parties to the BSC may notify under the BSC the contract volumes for any settlement period under such contracts;

- (vi) the imbalance, for each party, between its metered generation or demand (or allocated metered flows at interconnectors) and its net aggregate contract position, adjusted to take account of accepted bids or offers in the balancing mechanism, is determined for each settlement period and cashed-out at an imbalance price calculated under the BSC. The imbalance price reflects the weighted average cost of accepted bids or offers, according to whether the imbalance is positive or negative (but possibly excluding bids and offers assumed to have been accepted to manage transmission constraints), in the balancing mechanism for the relevant settlement period.

This paper sets out a provisional outline of the main sections of the BSC. For each section, this paper gives an outline of the scope of the section, and a brief explanation of the proposals which will be covered by the section. In areas which are conventional for any contract (such as miscellaneous legal 'boiler-plate') this paper does not provide any detail.

The outline of the BSC sections is indicative only, and the final BSC may be organised differently. Equally the details of the arrangements are under development and may evolve from what is described in this document.

The BSC will contain provisions for dealing with various forms of emergency, including contingencies for systems failures, terms to apply in respect of fuel security periods under the Fuel Security Code, and possible cases of force majeure. The location of these provisions in the BSC has not been decided and so the outline does not specifically refer to these provisions.

There may be further parts of the BSC relating to Pool run-off or other transitional matters. This paper addresses the enduring provisions of the BSC.

Part I – Governance

Section A - Parties and Participation

This section will identify the classes of parties to the code and describe the capacity in which they participate; the accession procedures for admission of new parties (including a right of appeal on rejection to Director General); the basis on which a party may

withdraw or be expelled as a party; and other matters relating to participation in the BSC.

Parties to the code will include licensed and exempt generators, licensed suppliers, 'non-physical' trading parties, NGC as system operator, distribution network operators (currently holders of Public Electricity Supply licences), the Balancing and Settlement Code Company (BSCCo – see below) and parties who wish to trade across interconnectors or participate in the interconnector trading arrangements. Only licensed persons will be obliged to be parties to the code; others may choose to become parties. Parties who hold energy accounts, entitling them to notify contract volumes (see below), are referred to as 'trading parties'.

The entry procedures for the admission of new parties will detail the process that has to be followed and the criteria that have to be met for admission to the BSC. This will include data and registration requirements and any conditions to be satisfied by the entrant. This section will also detail appeal rights (to the Director General) for applicants in the event that their application is rejected.

Exit procedures will also be specified; in particular the conditions, procedures and rules governing voluntary withdrawal from the BSC and the grounds upon which a forced withdrawal from the BSC might be required.

Other matters relating to participation in the BSC will also be detailed in this section, including general principles as to joint/several liability and the proportionate basis of trading parties' liabilities for the central costs of operating the BSC and other non-trading costs and liabilities.

Section B - BSC Panel

This section will establish a panel, known as the BSC Panel, as the governing body of the BSC; provide for its constitution including the basis and terms of appointment of its members and its procedural rules; and set out its general powers, functions and duties. Specific functions of the BSC Panel will be provided in many other sections.

The BSC Panel will be established to supervise the management of the BSC rules and to operate the BSC modification process (see below). This Panel will be tasked with

ensuring that the BSC is effectively and efficiently managed, and that appropriate revisions to the trading arrangements are secured in a robust and timely manner. The Panel will appoint a number of standing sub-committees to assist it in its work.

The Panel will consist of ten or eleven voting members, composed of an independent Chairman (appointed by the Director General); five industry-elected members (but with discretion for the Chairman to appoint a sixth industry member); two consumer representatives (probably appointed by the Gas and Electricity Consumer Council); and two independent members (appointed by the Chairman). A further member of the Panel will be appointed by NGC as system operator (but will not vote on BSC modifications – see below). The basis on which industry members of the Panel will be elected is currently under consideration by the industry.

Others will be entitled to attend, or nominate representatives to attend, meetings of the Panel (and to speak but not vote at such meetings), including a representative of distribution network operators; a representative from Ofgem; and the Chief Executive of the BSCCo (see below).

The BSC will set out the terms and duration of appointment of Panel members and the basis on which they may be removed from office. The procedural rules of the Panel will be set out in the BSC, such as notice requirements for convening meetings, and quorum and voting arrangements.

The Panel will be required to discharge its functions so as to secure that the BSC is given effect in a way which achieves specified objectives, which will include the objectives set for the BSC in NGC's licence.

Section C – BSCCo

This section will provide for the existence and role of a limited liability company (Balancing and Settlement Code Company or BSCCo); provide for its constitution, including the composition of its Board, and requirements on NGC to exercise its rights as shareholder of BSCCo consistent with the BSC; set out the powers, functions and responsibilities of BSCCo; and address the relationship and liability of BSCCo to BSC parties. An annex will contain the form of the Memorandum and Articles of Association of BSCCo.

The basic function of the BSCCo is to procure and provide services and resources, required under the terms of the BSC or by the Panel, for the delivery, implementation, operation and development of the trading arrangements under the BSC.

The shares of BSCCo will be owned by NGC, but it will be funded on a no-profit/no-loss basis by BSC trading parties. BSCCo's constitutional documents (Memorandum and Articles of Association) will provide appropriately limited objectives for BSCCo so as to minimise any scope for its directors to owe duties to NGC (as shareholder) which would conflict with decisions appropriate to implement the BSC.

BSCCo's functions will include acting as the contracting party in respect of service providers (see below) to the BSC arrangements, employing any individuals involved in management of the BSC and providing secretariat and resources to the BSC governance arrangements.

The Chairman of the Panel will act as Chairman of BSCCo. There will be four other directors of BSCCo, two drawn from the industry appointed Panel members, and two independent persons appointed by the Chairman (who need not necessarily be the same as the two independent persons on the BSC Panel).

Section D – Financial Arrangements Relating to BSCCo

This section will set out any necessary requirements as to accounting and tax arrangements for BSCCo and the basis on which BSCCo may raise finance; provide for the preparation, approval and amendment of BSCCo's business plans and budgets; and specify the basis on which BSC parties are to fund BSCCo.

BSCCo will work to an annual business plan, setting out the activities which are expected to be required of BSCCo. BSCCo will prepare an annual budget based on this plan, which will be subject to amendment in the year. BSCCo will be funded by trading parties, in proportion to electricity volumes traded over specified periods (the precise details of these arrangements are yet to be defined). Funding is likely to be quarterly or monthly in advance, based on the annual budget and estimates of trading parties' contributing proportions, with appropriate adjustments to reflect outturn expenditure and trading volumes.

BSCCo may be able to raise finance by borrowing (the costs of the debt service being funded by trading parties as above), in which case the BSC will set out appropriate limits and other terms for such borrowings.

Section E – BSC Agents

This section will provide for the requirement for BSCCo to procure under contract the core settlement and other systems and services necessary for implementation of the BSC; it will refer to identified elements of the BSC and subsidiary documents by which such services are specified; and set out the principles on which BSCCo is to procure and manage these contracts.

A number of computer systems and services are required to support implementation of the balancing mechanism and imbalance settlement under the BSC, including Balancing Mechanism Reporting, Settlement Administration, Central Registration, Central Data Collection, Energy Contact Volume Aggregation, Technical Assurance (of meters) and Funds Administration, as well as Supplier Volume Allocation. (The last of these - Supplier Volume Allocation - is effectively the same as Initial Settlement and Reconciliation in the existing stage 2 operations under the Pooling and Settlement Agreement - see below).

All of these services will be provided under contract to BSCCo, which will manage and enforce these contracts for the benefit of BSC parties. BSCCo will pay the charges of the service providers and recover the costs from trading parties under the funding arrangements described above. The providers of these central services are referred to as BSC Agents (and are to be distinguished from Party Agents, who act as agents of individual parties to meet the obligations of those parties under the BSC – see below).

The existing contract for Initial Settlement and Reconciliation (with an agent known as ISRA) is expected to be transferred from the Pool to BSCCo (see separate appendix on proposed Implementation Scheme). All of the other contracts are currently being procured by NGC and the NETA programme. Design work has already commenced under these contracts.

Section F - Modification Procedures

This section will set out the procedures for modification of the BSC, including for proposing, consulting on, developing, evaluating and reporting to the Director General on modifications.

The Panel will be charged with supervising these procedures. BSCCo will provide the secretariat and other advice, support and resource required by the Panel for this purpose.

All BSC parties, NGC and certain customer and other (eg. exempt generator) representative bodies will be entitled to submit modification proposals (these bodies might be designated by the Director General or, in the case of customer bodies, by the Gas and Electricity Consumer Council). A consumer or non-signatory industry party (eg. exempt generator) wishing to propose a modification would channel this through one of the eligible representative bodies.

When a modification proposal is submitted, the Panel will set a timetable for progressing the proposal through the modification procedures. The first step will be to circulate the modification proposal to a wide group of interested parties, who will be invited to submit representations. The Panel will normally set up a working group to consider representations and develop the modification proposal. An alternative proposal may be developed.

At the end of the process, the Panel will be required to prepare a report to the Director General. The report will set out the proposal (and any alternative), the impact of the proposal on different parties and systems, a proposed timetable for implementing the modification (if approved) and various other matters prescribed in the BSC. The Panel will provide its own recommendation on whether to make the modification. All interested parties' submissions on a proposal will be forwarded to the Director General with the report.

The Director General will approve or veto all proposed modifications to the BSC. In considering whether to approve a proposed modification, the Director General will have regard to his statutory duties and the objectives set out in NGC's licence.

If the Panel fails to progress a modification proposal in accordance with the procedures, then the Director General will have power (under the BSC condition in NGC's licence) to direct NGC to take over the procedure for that proposal.

There will be separate processes for modifying various documents subsidiary to the BSC – see below.

Section G - Dispute Resolution

This section will provide appropriate general dispute resolution arrangements, such as expert decision or arbitration or the jurisdiction of the courts. There will be a separate specific process for trading disputes – see below.

Section H - Legal and General

This section will deal with matters such as the indefinite duration of the BSC; the priority between the BSC and other documents such as the Grid Code; confidentiality obligations and the ownership of data generated under the BSC; central audit requirements under the BSC (such as operational and development audits); limitation of liability of parties; events of default and remedies; force majeure; notice provisions and miscellaneous legal 'boiler-plate'.

This section will also provide for the status and governance of certain classes of document subsidiary to the BSC, including documents known as 'BSC Procedures' (which set out detailed procedures for implementing different parts of the BSC) and Metering Codes of Practice which set out standards and requirements for meter installations. These subsidiary documents will be subject to modification under the control of the Panel (unlike the BSC itself for which the Director General's approval is required for any modification).

Section I – General Interpretation

This section will contain general defined terms and rules of interpretation for the BSC. Algebraic and technical terms used only in specific settlement rules will be contained in a separate section on technical interpretation (see below).

Part II - Operations

Section J - Party Agents

This section will set out the general basis on which individual parties (of certain classes) are required to appoint agents for certain purposes; arrangements for the accreditation of such agents and certification of their systems; and other terms intended to provide assurance as to the performance by such parties and their agents of their functions.

Certain requirements necessary for operations under the BSC are to be provided by parties individually (rather than centrally procured by the BSCCo from BSC Agents). Parties are required to secure the delivery of these requirements by accredited agents known as 'Party Agents'.

The types of Party Agents include Meter Operation Agents, Data Collection Agents, Data Aggregation Agents, Credited Energy Percentage Notification Agents and Energy Contract Volume Notification Agents (see below for each type).

The BSC will provide for certain measures (known as performance assurance measures) to be applied, where appropriate, to parties and their agents, inter alia by monitoring and reporting against a set of performance standards.

The measure will include requirements for certain Party Agents to be accredited, and their systems certified. The accreditation and certification process will be detailed in a BSC Procedure. This will cover the entry process of each agent, registration in an appropriate system and also de-registration.

Section K – Production and Consumption – Classification and Registration

This section will provide a classification of the points at which electricity is delivered to and taken off the combined transmission and distribution systems; definition of meter points and other units (consisting of such points) by reference to which the trading rules are framed; and the registration of such units in the names of the particular generators or suppliers (or interconnector parties) that are to be responsible for metering at such points and to whom such energy is (in the first instance) to be allocated in settlement.

Classes of points at which electricity is delivered to and taken from the combined transmission and distribution systems will include the points at the interface between

generation or demand and the high voltage transmission system, points (grid supply points) at the interface between the high voltage transmission system and the distribution network, and points at the interface between distribution networks and generators or demand directly connected to them.

The BSC will address the relationship between points at which energy flow is measured and points where electricity production and consumption occur, and will define the characteristics of an electricity production or consumption unit for the purposes of participation in the Balancing Mechanism. On this basis, a 'BM Unit' will be defined as the basic unit for trading under the BSC.

Registration of meter points, BM Units, etc is needed in order to track which trading parties are responsible (in settlement) for generation and demand at each such point. (The responsible parties are 'lead parties' – see below as to different allocation by way of CEPs.) The BSC Agent for Central Registration (CRA) will provide a service for registering certain meter points, BM Units and related matters (as well as details of trading parties and other details). Generally this register will cover all generating sets (other than certain exempt embedded generation), customers' premises directly connected to the transmission system and some other large customers. These are sometimes referred to as 'centrally registered'.

For meter points which are registered in the Meter Point Administration Service operated by each PES under the Master Registration Agreement (established by PESs under their licences as part of the '1998 trading arrangements'), the BSC will rely on that registration (the arrangements for these meter points are referred to in the P&SA as 'stage 2' arrangements and for convenience the same term is used here).

Registration arrangements will also allow for certain forms of aggregation under which exempt generators may assign their output to a BSC trading party as an 'aggregator' for imbalance settlement purposes.

Section L – Production and Consumption Metering – Standing Obligations of Parties

This section will set out the obligations of parties to ensure there is appropriate settlement metering at specified points on the system for which they are responsible; and (except in cases where metered data are collected by the BSC Agent for Central

Data Collection) to ensure that the required agents (including data collector and aggregators) are appointed.

The party registered in respect of each meter (or other) point will be responsible for ensuring that there is installed, maintained and operated appropriate settlement metering equipment, in compliance with the Codes of Practice for positioning, accuracy, and testing of metering equipment.

Parties will be required to appoint Meter Operation Agents to install and operate the metering equipment for which they are responsible, and to meet certain performance levels for the services to be provided by these agents. For stage 2 metering, parties are likewise required to appoint Data Collection and Data Aggregation Agents.

Section M - Credit Cover Arrangements

This section will set out the basis on which parties are required to provide security or other credit cover for their credit exposure under the trading rules; the calculation of the cover requirements; the acceptable forms of credit cover; and the basis for suspending certain trading rights and enforcement of security in case of a breach of credit limits or payment obligations.

Credit cover is required from trading parties who are potential debtors within the Balancing Mechanism and Imbalance Settlement. A trading party is a debtor primarily where he has an energy imbalance for which he is liable to make a payment. There will be rules for determining the level of credit cover to be provided by each trading party under the BSC. This will be based on the amount of accrued but unpaid or un-invoiced indebtedness (expected to be 28 days), together with an estimate of the potential short-term future increase in indebtedness through energy imbalances.

Specified types of security or credit cover will be acceptable and can be provided by trading parties. There will be a procedure for monitoring credit cover, and processes and rules to be followed in the event that a party's credit cover or security is insufficient, using predictive techniques to warn the relevant party where possible. In the event of credit default, various remedies will be provided, including the suspension of the defaulting party's right to submit contract volumes (see below).

The credit cover arrangements will be operated by the BSC Agent for Funds Administration.

Section N - Invoicing and Payment

This section will set out the arrangements for invoicing settlement debts; the payment and collection of funds; and provisions relating to the administration of these arrangements by a central service provider.

This function of invoicing and payment will be undertaken by the BSC Agent for Funds Administration (FAA). The FAA will be responsible for establishing and maintaining an annual payments calendar and calculating payments including tax and interest charges for each trading party based upon credits and debits notified by the Settlement Administration Agent for balancing action taken, imbalance settlement and any non-delivery charges (see below).

The FAA will manage the arrangements for funds transfer by and to trading parties, and will open and hold various bank accounts for this purpose. All funds received by the FAA will be held on trust, generally for trading parties according to their entitlements to be paid.

The FAA will administer provisions of the BSC relating to the failure of a trading party to make payment, including calling credit cover (as mentioned above).

Section O - Communications and Systems

This section (or more probably a subsidiary document which may refer to an 'interface specification') will set out the basis on which parties and others (such as agents and service providers) are entitled and obliged to send and receive communications electronically, including technical interface requirements and rules as to deemed receipt of communications.

Rules will define when communications have to be sent by electronic means and where paper or fax-based alternatives are permissible. For electronic communications it will define the specification of data formats needed, and the interface protocols required.

The transmission and reception of communications employed in the new arrangements are generally time critical. Rules will be defined for adopting previous or fixed data should no communication be received in time, or if it is incomplete or corrupted.

Section P – Contract Volumes and CEPs

This section sets out the arrangements for parties (by their agents) to notify energy contract volumes, and metered volume allocations, for imbalance settlement; and for the validation and acceptance or rejection of such notifications.

Trading parties may notify contract volumes for each settlement period (half-hour) to either a production or consumption energy account. Trading parties, if notifying contract volumes, will do so through an Energy Contract Volume Notification Agent chosen by them.

Contract volumes will be notified to the BSC Agent for Energy Contract Volume Aggregation (ECVAA). Rules will specify the process for notifying contract volumes, the data that have to be submitted, the form in which such data have to be submitted and the timescales in which such data have to be submitted. The ECVAA will validate the data that have been submitted, and will follow specified procedures and apply specified default rules in the event that the data are not valid.

Notified contract volumes may be rejected in certain cases, particularly where one of the notifying parties is in breach of its credit obligations. There will be a set process for such rejections.

The lead party for a BM Unit will be able to split (and allocate to other trading parties) the metered volume associated with the BM Unit over a settlement period, for the purposes of imbalance calculation. This will enable customers to contract with more than one supplier, for example, without themselves becoming a supplier. Trading parties wishing to establish an allocation among themselves of the metered volume at a BM Unit will do so by submitting, through a Party Agent, a notice of the allocation to the ECVAA. This is provisionally referred to as a notice of Credited Energy Percentages (CEP) (and the Party Agent is provisionally a Credited Energy Percentage Notification Agent).

Rules will specify the process for notifying CEPs, the data that have to be submitted, the form in which they have to be submitted and the timescales in which they have to be submitted. These will include in particular the requirements to identify lead and subsidiary trading parties associated with the relevant BM Unit, including the responsibility to submit data on the proportions or amounts of the metered volumes to be allocated to subsidiary parties.

Rules will be defined for validating CEP data and procedures to be followed in the event of non-valid data submission, and associated default rules. Notified CEPs may be rejected in certain cases, particularly where one of the notifying parties is in breach of its credit obligations. There will be a set process for such rejections.

Section Q – Balancing Mechanism Activities

This section sets out the rules for balancing mechanism participation, including the submission by parties to NGC of dynamic data, FPNs and bids and offers, and the acceptance by NGC of such bids and offers.

Participation in the balancing mechanism will be voluntary. Trading parties who choose to participate will do so through the submission of bids and/or offers into the balancing mechanism for a particular half hour settlement period. This section will describe the rules to be followed, the type and form of data to be provided and the manner in which it should be provided, if a Trading Party wishes to participate in the balancing mechanism.

Rules will cover or refer to the submission of data to NGC as System Operator, including final physical notifications (FPNs) specifying the party's intended level of production or consumption for the settlement period, bid data, offer data and dynamic data. There will be rules for validating such data and checking that it is consistent, and rules to be applied in the event that data are invalid or inconsistent.

The form of acceptance of bids or offers by NGC will be specified, including the means by which trading parties will be notified of the acceptance of bids or offers.

Certain of these provisions as to the submission and acceptance of balancing mechanism bids and offers and related data may be included in the Grid Code rather than the BSC.

Section R – Production and Consumption Periodic Data – Central Registration

This section contains provisions for the collection, validation and aggregation of metered data for each settlement period from centrally registered meters.

The metering systems covered by this section are those maintained in the central register (see above) - primarily but not exclusively those that are connected to the transmission system.

The collection, validation and aggregation activities described in the section will be performed by the BSC Agent for Central Data Collection and Aggregation (CDCA). The CDCA will receive half-hourly metered data relating to power stations, grid supply point (GSP) groups and interconnector metering systems.

The CDCA will also receive technical meter details from parties' Meter Operation Agents as required for use in processing and validating metered data.

There will be specified processes and rules for data collection, data validation and cases where non-valid data are received, and for the aggregation of metered data from meters which comprise a single BM Unit (and other relevant units – see above).

Section S – Production and Consumption Periodic Data – 'Stage 2'

This section contains provisions for the determination of energy consumption at meter points which are not centrally registered (ie. half hourly and non-half hourly meters in 'stage 2' – see above), including the refinement of such determinations over time as metered data become available; and will refer to the functions of the relevant central service provider and agents of individual parties.

The activities described in this section will be performed by Party Agents (eg. for meter registration, data collection and aggregation) and the BSC Agent for Supplier Volume Allocation (SVAA).

This section will set out the rules (for suppliers, their agents and the SVAA) for data collection and data aggregation and supplier volume allocation by GSP group. It will provide for the periodic reconciliation of allocated supplier volumes for non-half-hourly meters on the basis of updated meter readings (obtained over periods up to several months). It will broadly replicate the existing stage 2 arrangements under the P&SA, except that the output of these processes will be energy volumes, input to the calculation of each supplier's energy imbalance.

Section T – Settlement Calculations

This section will set out the detailed settlement rules, including the determination of transmission losses, Balancing Mechanism acceptance volumes and payments, information imbalance volumes and payments, energy imbalance volumes and prices, credited energy volumes for each BM Unit, energy imbalances for each energy account, energy imbalance cashflows, rules on non-delivery (of Balancing Mechanism acceptances), amounts payable by or to NGC as system operator, residual cashflow allocations among participants and amounts payable in respect of administration costs of BSCCo.

In particular this section will describe the step by step process for calculating liabilities and credits owed to or by trading parties under the BSC for a half hour settlement period. Using data that have been submitted (by BSC Agents or Party Agents) under rules specified in other sections of the BSC, the BSC Agent for Settlement Administration (SAA) will be responsible for applying these settlement rules. The rules will cover amongst other things:

- ◆ the determination of transmission losses and the adjustments to be made to metered volumes in respect of them;
- ◆ the calculation of volumes of energy for which bids and offers were accepted by NGC (as system operator) in the balancing mechanism, and the monies owed to or from parties in respect of such acceptances;
- ◆ the determination of information imbalance volumes (comparing FPNs with metered volumes and thereby assessing accuracy of FPNs) and associated information imbalance payments;

- ◆ the calculation of the system buy and system sell prices (based on weighted average prices of bids and offers accepted in the balancing mechanism, but possibly excluding bids and offers assumed to have been accepted to manage transmission constraints);
- ◆ the determination of credited energy volumes for each BM Unit, the determination of energy imbalance volumes for each energy account and the associated energy imbalance amounts calculated at the system buy or sell prices;
- ◆ the definition of a 'non-delivery rule' to be applied in the event of the non-delivery (in whole or in part) by a trading party of an accepted balancing mechanism bid or offer, and the calculation of the non-delivery charge to be applied; and
- ◆ the rules for allocating cash surpluses or deficits generated by the above terms, and for determining the net amounts payable by or to NGC.

Section U – Settlement Processes and Payments

This section will provide for the carrying out of initial and reconciliation settlement runs.

Payments for accepted balancing mechanism bids and offers, energy imbalances and non-delivery charges are determined initially to allow invoices to be issued and payments to be made and cleared within 28 days of the day in which the energy was produced or consumed. The BSC Agent for Settlement Administration (SAA) will calculate the initial payments based on the above settlement rules and will inform the BSC Agent for Funds Administration (FAA) of the payments to be made.

The initial settlement will be based on estimated consumption data for non-half hourly meters in stage 2 (see above). A series of reconciliation settlement calculations will be performed to redistribute over- and under-payments to trading parties, as accurate metering data are collected (see reference to stage 2 above). This will be performed to a defined settlement calendar.

Section V – Information and Reporting to Parties

This section will specify the information which is to be made available to parties in connection with the Balancing Mechanism, and settlement reporting requirements.

The BSC Agent for Balancing Mechanism Reporting (BMRA) will provide a balancing mechanism reporting service (BMRS) that will provide, on a continuous basis,

information associated with the balancing mechanism that is considered useful for market participants. In particular it will report on matters such as the forecast level of national and, possibly, zonal demand and availability of generation on a zonal, half hour by half hour basis, and might also include details of bids and offers into the balancing mechanism and acceptances by NGC. This section will specify the data to be provided on the BMRS and the frequency with which they must be reported.

Reporting requirements will also be placed on the BSC Agent for Settlement Administration in respect of the results of the settlement calculations undertaken in each half hour. This section will specify the data that should be reported, the means by which they should be reported and the parties to which they should be reported.

There may also be requirements for balancing mechanism, settlement and derived data to be submitted to Ofgem.

Section W - Trading Disputes

This section will provide the basis on which disputes can be raised in respect of any calculation that has been performed as part of the settlement process (for example disputes on data accuracy). It will describe the process to be followed in raising such disputes, the parties to be notified, the process by which such disputes are to be resolved and the process and timescales for making any resulting adjustments to the settlement amounts.

Section X – Technical Interpretation

This section will provide definitions and interpretation of a technical nature that are used in or in relation to the detailed settlement rules.

Appendix 5 Indicative Outline of the Connection and Use of System Code

This Appendix contains initial proposals of a high level outline of the contents of CUSC.

- ◆ Definitions and Interpretation
Drawing on existing MCUSA and Supplemental definitions to reflect NETA/CUSC changes
- ◆ CUSC Panel and its membership
Constitution/election/functions
- ◆ CUSC Modification Procedures
Details relating to raising of modification proposals, their publication, evaluation, impact assessment and implementation
- ◆ Disputes
There may be a need to distinguish in the CUSC between issues that can be resolved through referral to an arbitrator and those that should be referred to the regulator. We will be consulting on this issue in more detail in the March Consultation Paper on CUSC
- ◆ Connection Sites
Commercial terms for offering new connections and modifications to existing terms, including provisions for interactive offers
- ◆ Connection rights
Right to connect, be energised and be operational to the NGC Transmission System in relation to generation/demand. The connection site and size of demand/generation will be specified in bilateral arrangements
- ◆ Use of System rights
Right to use the NGC Transmission System to transport power from/to connection sites. (This right may be subsequently modified or deleted as part of the Transmission Access Review referred to in the consultation papers).
- ◆ Obligation on User to enter into a site specific bilateral arrangements where required
It would be necessary to ensure that changes to charging principles, within the CUSC, could effectively be reflected in the bilateral arrangements

- ◆ Charging principles
Appendix E to the current Supplemental Agreements would be incorporated into the CUSC. (Interactions with the LC10 statement will be considered in the March consultation paper on CUSC)
- ◆ Invoicing and Payment terms
Obligation to pay Connection and Use of System Charges. Credit policy will also need to be included in CUSC
- ◆ Events of default under CUSC
Consideration will be given to separating out Events of Default relating to Use of System from Connection. Consideration of interactions with BSC
- ◆ De-energisation, disconnection and decommissioning
This would cover partial disconnections (reduction in Registered Capacity) as well as full disconnections. It would also cover emergency de-energisation
- ◆ Obligations of Users who own or operate Distribution Systems, for energisation and de-energisation of generating plant
This would cover obligations in relation to exempted generators for CUSC
- ◆ Principles of Ownership
Required to be specified but may be varied by agreement and defined in the appropriate bilateral (site-specific) arrangements
- ◆ Metering
Consent of Users to NGC having access to all data for Trading and Operational Metering. Compliance with the BSC Codes of Practice
- ◆ Compliance with the Grid Code/Distribution Code
Parties agree to be bound by such provisions
- ◆ Interface Agreements
Site specific provisions which cover land, assets and services. Could remain a requirement of the bilateral arrangements or incorporated within
- ◆ Nuclear Installations (as per current MCUSA)
- ◆ Safety rules and joint system incidents
- ◆ Mandatory ancillary services for generators
Addressing the provision of terms relating to and payment for Mandatory Ancillary Services. There would be an obligation on Users to provide and NGC to pay for services required pursuant to Grid Code CC8.1, as set out in [Schedule for mandatory Ancillary Services]. This would in the first instance include reactive

power (as per the current schedule 5 to the MCUSA) and frequency response. Further legal provisions may appear in the schedule to set out the payment procedure for the services. (This issue will be considered in more detail in the March consultation paper on CUSC)

◆ Other Services

The CUSC could indicate that NGC and Users to enter into arrangements for other ancillary services.

Boiler Plate Provisions

Drawing on existing MCUSA provisions to include, for example:-

- ◆ Limitation of liabilities (as per the current MCUSA)
- ◆ Confidentiality
- ◆ Intellectual Property
- ◆ Force Majeure
- ◆ Waiver
- ◆ Notices
- ◆ Counterparts
- ◆ Jurisdiction
- ◆ Governing Law
- ◆ Severance of Terms
- ◆ Language
- ◆ Duration and Termination
- ◆ Transfer and subcontracting

Contents of Site Specific Arrangements

- ◆ Site specific assets and charges
- ◆ Site specific technical conditions
- ◆ Generation capacity and / or demand site capacity
- ◆ Any other site specific details

Construction agreements could remain part of the bilateral arrangement or be treated as a separate agreement, which falls away on completion of the works.

Appendix 6 List of Relevant Consultations

Recent and future Ofgem, DTI and/or Ofgem/DTI publications referred to in this consultation document:-

Recent Publications

- ◆ The New Electricity Trading Arrangements, Ofgem Consultation Document, *July 1999*
- ◆ The New Electricity Trading Arrangements, Ofgem/DTI Conclusions Document, *October 1999*
- ◆ Review of Scottish Trading Arrangements, Ofgem Consultation Document, *October 1999*
- ◆ Initial Proposals on Standard Licence Conditions, Ofgem Consultation Document, *November 1999*
- ◆ Electricity (Class Exemptions from the Requirement for a Licence) Order 1997 - Proposed Amendments, DTI Consultation Document, *November 1999*
- ◆ The New Electricity Trading Arrangements & Related Transmission Issues – Proposals on Licence Changes, Ofgem Consultation Document, *December 1999*
- ◆ NGC System Operator Incentives, Transmission Access & Losses under NETA, Ofgem Consultation Document, *December 1999*
- ◆ Utilities Bill – Standard Licence Conditions, Ofgem Consultation Document, *February 2000*

Forthcoming Publications

- ◆ Connection and Use of System Code Governance Arrangements, *estimated publication: March 2000*
- ◆ NGC System Operator Incentives, Initial Thoughts Document, *estimated publication: March 2000*
- ◆ Transmission Access and Losses under NETA, Longer Term Vision, *estimated publication: April 2000*
- ◆ Modification to Exemption Order in connection with NETA, *estimated publication: Spring 2000*
- ◆ Distribution – criteria for exemption, *estimated publication: Spring 2000*

- ◆ Governance arrangements for the Network Code, *estimated publication: Spring 2000*
- ◆ Review of Scottish Trading Arrangements, Further Consultation Document, *estimated publication: Spring 2000*

Annex 1

NGC'S TRANSMISSION LICENCE

PROPOSED LICENCE CONDITIONS TO BE INTRODUCED BY THE SECRETARY OF STATE UNDER SECTION [15A] OF THE ELECTRICITY ACT 1989 TO IMPLEMENT NETA

Condition 1A: Interpretation (Additional Definitions)

1. In the Conditions unless the context otherwise requires:

"Balancing Mechanism" means the mechanism for the making and acceptance of offers and bids pursuant to the arrangements contained in the BSC and referred to in paragraph 2(a) of Condition 7A.

"Balancing Services" means:

- a. Ancillary Services;
- b. offers and bids made in the Balancing Mechanism, and
- c. other services available to the Licensee which serve to assist the Licensee in operating the Licensee's Transmission System in accordance with the Act or the Conditions and/or in doing so efficiently and economically.

"BSC Framework Agreement" means the agreement of that title, in the form approved by the Secretary of State, by which the BSC is made binding between the parties to that agreement, as from time to time amended.

"BSC" means the balancing and settlement code provided for in paragraph 1 of Condition 7A, as from time to time modified.

"Core Industry Documents"

means those documents which

- a. in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the BSC or the balancing and settlement arrangements and
- b. have been designated for the purposes hereof by the Secretary of State on the date Condition 1B comes into force as meeting the description set out in (a).

"Effective Time"

means the start of the first trading period in respect of which the BSC is fully and unconditionally effective as determined by the Secretary of State.

"Information"

includes any documents, accounts, estimates (whether relating to the past or the future), returns, records and reports and data in written, verbal or electronic form and information in any form or medium whatsoever (whether or not prepared specifically at the request of the Director).

["Total System"

means the Licensee's Transmission System and the transmission system and Distribution System of all Authorised Electricity Operators which are located in England and Wales.]²⁰

"Transmission Business"

means the Authorised business of the Licensee or any Affiliate or Related Undertaking in the planning, development, construction and maintenance of the Licensee's Transmission System (whether or not pursuant to directions of the Secretary of State made under Section 34 or 35 of the Act) and the operation of such system for the transmission of electricity, including the Transmission Services Activity, and any business in providing connections to the Licensee's Transmission System, but shall not include (i) any other Separate Business (ii) any business of the Licensee or any Affiliate or Related Undertaking in the provision of settlement services in connection with the BSC or the Pooling and Settlement Agreement or (iii) any other business (not being a Separate Business) of the Licensee or any Affiliate or Related Undertaking in the provision of services to or on behalf of any one or more persons.

²⁰ This definition is the same as the current definition in Condition 1. However, it is included here, for the sake of completeness, as it will need to be reviewed carefully in the context of supply/distribution separation.

2. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Condition 1B: Power to Bring Conditions into Effect

1. The Conditions to which this paragraph applies shall not come into effect until the Secretary of State has made a direction specifying a date on which they come into effect and served a copy of the direction on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
2. The Secretary of State may make more than one direction under paragraph 1, and may bring different Conditions or parts of Conditions into force at different times.
3. The Conditions to which paragraph 1 applies are:
 - Condition 1A (Definitions)
 - Condition 2A (Prohibited Activities)
 - Condition 7A (Balancing and Settlement Code)
 - Condition 7B (Licensee's procurement and use of Balancing Services)
 - Condition 7C (NETA Implementation)
 - Condition 8A (Grid Code)
 - Condition 15A (Pooling and Settlement Agreement Run-off).²¹
4. The Conditions to which this paragraph applies (or parts of them) shall cease to have effect on such date as is specified in a direction made by the Secretary of State pursuant to this paragraph, a copy of which has previously been served on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
5. The Secretary of State may make more than one direction under paragraph 4, and may direct that different Conditions or parts of Conditions cease to have effect on different dates.

²¹ Paragraph 1 of this condition will not be required if the P&SA is terminated and the provisions of the P&SA subsumed into the BSC for the purposes of run-off.

6. The Conditions to which paragraph 4 applies are:

Condition 1 (Definitions)

Condition 2 (Prohibited Activities)

Condition 6 (Economic Purchasing of Ancillary Services)

Condition 7 (Central Dispatch, merit order and settlement system)

Condition 8 (Grid Code)

Condition 15 (Requirement to enter Certain Agreements).

[Note: the following text will be introduced at the end of each of the conditions mentioned in paragraph 6: "This Condition or parts of it shall cease to have effect on the date specified in a direction to that effect made pursuant to paragraph 4 of Condition 1B".]

Condition 2A: Prohibited Activities

1. The purpose of this Condition is to prevent abuse by the Licensee of its position as owner and operator of the Licensee's Transmission System.
2. The Licensee shall not and shall procure that any Affiliate or Related Undertaking of the Licensee shall not, on its own account (or that of the Licensee or of any Affiliate or Related Undertaking of the Licensee as the case may be), purchase or otherwise acquire electricity for the purpose of sale or other disposition to third parties except
 - (a) pursuant to the procurement or use of Balancing Services in connection with operating the Licensee's Transmission System and/or doing so economically and efficiently; or
 - (b) with the consent of the Director.
3. Paragraph 2 shall not apply in respect of the purchase of electricity under a supply agreement dated 9th February 1983 (as from time to time amended) and vested in the Licensee pursuant to the Transfer Scheme, for the acquisition and sale of electricity from Kielder hydro-electric generating station.
4. In paragraph 2, the reference to the purchase or other acquisition of electricity shall include entering into or acquiring the benefit of a contract conferring rights or obligations (including rights or obligations by way of option) in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time.
5. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Condition 7A: Balancing and Settlement Code

1. The Licensee shall at all times have in force a BSC, being a document
 - (a) setting out the terms of the balancing and settlement arrangements described in paragraph 2;
 - (b) designed so that the balancing and settlement arrangements facilitate achievement of the objectives set out in paragraph 3;
 - (c) including the modification procedures required by paragraph 4 and the matters required by paragraphs 6 and (where applicable) 10; and
 - (d) approved for the purpose of this Condition by the Director;

and the Licensee shall comply with this paragraph by adopting as the BSC in force with effect from the date this Condition comes into effect the document designated by the Secretary of State for the purpose of this Condition and by modifying such document from time to time in accordance with the provisions of paragraphs 4 and 5.

2. The balancing and settlement arrangements are
 - (a) arrangements pursuant to which BSC Parties may make, and the Licensee may accept, offers or bids to increase or decrease the quantities of electricity to be delivered to or taken off the Total System at any time or during any period so as to assist the Licensee in operating and balancing the Licensee's Transmission System; and for the settlement of financial obligations (between BSC Parties, or between BSC Parties and the Licensee) arising from the acceptance of such offers or bids; and
 - (b) arrangements:
 - (i) for the determination and allocation to BSC Parties of the quantities of electricity delivered to and taken off the Total System, and

- (ii) which set, and provide for the determination and financial settlement of, obligations between BSC Parties, or (in relation to the operation of the Licensee's Transmission System) between BSC Parties and the Licensee, arising by reference to the quantities referred to in sub-paragraph (i), including the imbalances (after taking account of the arrangements referred to in sub-paragraph (a)) between such quantities and the quantities of electricity contracted for sale and purchase between BSC Parties.

3. The objectives referred to in paragraph 1(b) are:

- (a) the efficient discharge by the Licensee of the obligations imposed upon it by this licence;
- (b) the efficient, economic and co-ordinated operation by the Licensee of the Licensee's Transmission System;
- (c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) without prejudice to paragraph 10, promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2.

4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide (without prejudice to any procedures for modification of the BSC set out in the programme implementation scheme provided for in Condition 7C or in the BSC by reference to the programme implementation scheme):

- (a) for proposals for modification of the BSC to be made by the Licensee, BSC Parties and such other persons or bodies as the BSC may provide;
- (b) where such a proposal is made,

- (i) for bringing the proposal to the attention of BSC Parties and such other persons as may have an appropriate interest in it;
- (ii) for proper consideration of any representations on the proposal;
- (iii) for properly evaluating whether the proposed modification would better facilitate achieving the Applicable BSC Objective(s), provided that so far as any such evaluation requires information which is not generally available concerning the Licensee or the Licensee's Transmission System, such evaluation shall be made on the basis of the Licensee's proper assessment (which the Licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraphs 3(a) and (b);
- (iv) for development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the Applicable BSC Objective(s);
- (v) for the preparation of a report
 - setting out the proposed modification and any alternative,
 - evaluating the proposed modification and any alternative,
 - assessing the extent to which the proposed modification or any alternative would better facilitate achieving the Applicable BSC Objective(s),
 - assessing the impact of the modification on the Core Industry Documents and the changes expected to be required to such documents as a consequence of such modification,
 - setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and
- (vi) for the submission of the report to the Director as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs (i) to (v);

- (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Director has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Director; and
 - (d) for empowering the Licensee to secure, if so directed by the Director in circumstances specified in the BSC,
 - (i) that the modification procedures are complied with in respect of any particular modification in accordance with the terms of the direction; and
 - (ii) that, where a modification has been made but not implemented in accordance with its terms, all reasonable steps are taken to implement it in accordance with the terms of the direction.
5. (a) If a report has been submitted to the Director pursuant to the procedures described in paragraph 4(b)(vi), and the Director is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the Applicable BSC Objective(s), the Director may direct the Licensee to make that modification.
- (b) The Licensee shall have power (by executing an appropriate instrument) to modify the BSC, and shall so modify it in accordance with any direction of the Director pursuant to sub-paragraph (a), or paragraph 7 of Condition 7C, but shall not exercise that power in any other circumstance.
- (c) Only the Licensee shall have power to modify the BSC.
6. The BSC shall provide for:
- (a) a copy of the BSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy;

- (b) there to be referred to the Director for determination such matters arising under the BSC as may be specified in the BSC;
- (c) Information about the operation of the BSC and the balancing and settlement arrangements
 - (i) to be provided to the Director and/or
 - (ii) to be published,

and for the Licensee to be empowered to secure compliance with these requirements if so directed by the Director.

- 7. The BSC may include:
 - (a) arrangements to facilitate or secure compliance with the programme implementation scheme designated pursuant to Condition 7C or matters envisaged thereunder, and
 - (b) arrangements for final settlement and reconciliation of liabilities arising under or in connection with the Pooling and Settlement Agreement in respect of settlement periods prior to the Effective Time.²²
- 8. The provisions of paragraphs 6, 7, 10 and 12 shall not limit the matters which may be provided for in the BSC.
- 9. The Director may direct the Licensee to procure the provision to him of, or the publication of, such Information about the operation of the BSC and/or the balancing and settlement arrangements as is referred to in paragraph 6(c) and specified in the direction.
- 10. (a) The BSC shall provide for arrangements pursuant to which, if sub-paragraph (b) has effect

²² There are two options for dealing with 'run-off' under the P&SA. One is to incorporate the residual parts of the P&SA which set out the terms required for run-off as a separate part of the BSC (in which case the P&SA would from the BSC go-live date be terminated). The alternative is to retain the P&SA as a separate agreement for run-off. Under the first option this paragraph 7(a) would apply, and Condition 15A paragraph 1 on run-off would not be required.

- (i) modifications proposed in respect of one Code shall (in so far as applicable thereto) be proposed in respect of the other Code,
- (ii) the modifications procedures under each Code may so far as practicable be co-ordinated, and
- (iii) rights in respect of computer systems used in support of the implementation of the BSC may be made available to support the implementation of the other Code on terms approved by the Director.

- (b) This sub-paragraph shall have effect if any licence authorising the transmission of electricity in an area in Scotland includes a condition pursuant to which there are or are to be arrangements equivalent to the BSC applying in Scotland or part of it.
- (c) In this paragraph, "Code" means the BSC and any equivalent arrangements applying in Scotland or part of it and approved by the Director for the purpose of this Condition.

11. The Licensee shall comply with

- (a) the BSC; and
- (b) any direction to the Licensee made pursuant to this Condition.

12. (a) The Licensee shall be a party to the BSC Framework Agreement.
- (b) The BSC and/or the BSC Framework Agreement shall contain provisions:
- (i) for persons to be admitted as additional parties to the BSC Framework Agreement by either
 - the Licensee acting on behalf of all parties to it, or
 - a representative (who need not be a BSC Party) appointed thereunder to act on behalf of all parties to it;

- (ii) for admitting as additional parties to the BSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the BSC) on which accession to the BSC Framework Agreement is offered; and
 - (iii) for referring for determination by the Director any dispute which shall arise as to whether a person seeking to be admitted as a party to the BSC Framework Agreement has fulfilled any accession conditions; and if the Director determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the BSC Framework Agreement.
 - (c) If, following a determination of the Director as referred to in sub-paragraph (b)(iii), the representative referred to in sub-paragraph b(i) fails to act on behalf of all parties to admit such person, the Licensee shall act on behalf of all parties to admit such person if directed to do so by the Director.
13. The Licensee shall use its best endeavours to secure and implement (consistent with the procedures applicable under or in relation to such documents), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC.
14. For the avoidance of doubt, paragraph 13 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 13 which the Director may have.
15. In this Condition in the expression "sale and purchase of electricity", sale excludes sale by way of assumption of an imbalance under the BSC and sale by way of supply to premises, and purchase shall be construed accordingly and

"Applicable BSC Objective(s)"

means:

- a. in relation to a proposed modification of the modification procedures, the requirements of paragraph 4 (to the extent they do not conflict with the objectives set out in paragraph 3); and
- b. in relation to any other proposed modification, the objectives set out in paragraph 3.

"BSC Party"

means any Authorised Electricity Operator which is party, and (unless the context otherwise requires) any other person which is party, to the BSC Framework Agreement, other than the Licensee and any person which is such a party for the purposes only of administering and/or facilitating the implementation of the BSC.

16. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Condition 7B: Licensee's Procurement and Use of Balancing Service

1. The Licensee shall operate the Licensee's Transmission System in an efficient, economic and co-ordinated manner.
2. Having taken into account relevant price and technical differences, the Licensee shall not discriminate as between any persons or classes of persons in its procurement or use of Balancing Services.
3. The Licensee shall before the Effective Time and thereafter at 12 monthly intervals (or such longer period as the Director may approve) prepare a statement in a form approved by the Director setting out the kinds of Balancing Services which it may be interested in purchasing in the period until the next statement is due and the mechanisms by which it would envisage purchasing them, and the Licensee shall revise such statement during any such period if its intentions change during that period.
4. Within one month after the date on which each statement (other than the first one) is due to be published pursuant to paragraph 3, the Licensee shall prepare a report in a form approved by the Director in respect of the Balancing Services which the Licensee has bought or acquired (other than Balancing Services which the Licensee has acquired through the mere acceptance of an offer or bid in the Balancing Mechanism, provided such offer or bid was not made pursuant to any prior agreement) in the period of 12 months (or such longer period as the Director may approve) ending on the date referred to above.
5. The Licensee shall before the Effective Time prepare a statement approved by the Director setting out (consistently with the Licensee's duty under paragraph 2 and consistently with its other duties under the Act and the Conditions) the principles and criteria by which the Licensee will determine, at different times and in different circumstances, which Balancing Services the Licensee will use to assist in the operation of the Licensee's Transmission System (and/or to assist in doing so efficiently and economically), and when the Licensee would resort to measures not involving the use of Balancing Services.

6.
 - (a) As soon as practicable after 1 April in each year, the Licensee shall, in respect of each period of 12 months ending on 1 April (save that the first period shall begin at the Effective Time and end on the subsequent 1 April) prepare a report on the manner in which and the extent to which the Licensee has, during that period, complied with the statement prepared pursuant to paragraph 5 and whether any modification should be made to that statement to reflect more closely the practice of the Licensee.
 - (b) The report shall be accompanied by a statement from the Auditor that he has carried out an investigation the scope and objectives of which shall have been established by the Licensee and approved by the Director, and given his opinion as to the extent to which the Licensee has complied with the statement prepared pursuant to paragraph 5.

7.
 - (a) The Licensee shall if so directed by the Director but in any event at least once a year review the statement prepared pursuant to paragraph 5 in consultation with BSC Parties and other interested persons likely to be affected thereby.
 - (b) Following such review, the Licensee shall send to the Director:
 - (i) a report on the outcome of the review;
 - (ii) any revision to the statement proposed (having regard to the outcome of the review) by the Licensee in order to ensure that the statement remains consistent with the Licensee's duties under the Act and the Conditions; and
 - (iii) any written representations or objections from BSC Parties and other interested parties, including proposals for revision not accepted by the Licensee, arising during the consultation and subsequently maintained.
 - (c) The Licensee may revise the statement only in accordance with any revision within sub-paragraph (b)(ii), and only if the Director consents to such revision.

8. The Licensee shall take all reasonable steps to comply with the statement for the time being in force pursuant to paragraph 5.
9. The Licensee shall send to the Director a copy of each of the statements and reports prepared pursuant to paragraphs 3, 4, 5 and 6 and of all revisions to any such statement.
10. The Licensee shall:
 - (a) publish (in such manner as the Director may approve) the statements prepared pursuant to paragraph 3 and each revision thereof, and
 - (b) send a copy of each statement and report prepared pursuant to paragraphs 4, 5 and 6 or the latest revision of any such statement to any person who requests the same, provided that the Licensee shall exclude therefrom, so far as is practicable, any matter which relates to the affairs of any person where the publication of that matter would or might seriously and prejudicially affect his interests,

and, for the purposes of paragraph (b), the Licensee shall refer for determination by the Director any question as to whether any matter seriously and prejudicially affects the interests of any person (unless the Director consents to the Licensee not doing so).

11. The Licensee may make a charge for any copy of a statement, report or revision sent pursuant to paragraph 10(b) of an amount reasonably reflecting the Licensee's reasonable costs of providing such a copy which shall not exceed the maximum amount specified in directions issued by the Director for the purpose of this Condition.
12. The Licensee shall, unless the Director otherwise consents, maintain for a period of six years:
 - (a) particulars of all Balancing Services offered to it;
 - (b) particulars of all contracts (other than those in the Balancing Mechanism) for Balancing Services which it entered into;

- (c) records of all Balancing Services called for and provided; and
- (d) records of quantities of electricity imported and exported across each Interconnector.

13. The Licensee shall provide to the Director such Information as the Director shall request concerning the procurement and use of Balancing Services.
14. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Condition 7C: NETA Implementation

1. The Licensee shall comply with the programme implementation scheme established in accordance with paragraph 2, as modified from time to time in accordance with paragraph 4.
2. The programme implementation scheme shall be a scheme designated by the Secretary of State setting out the steps, including without limitation steps as to the matters referred to in paragraph 3, to be taken (or procured) by the Licensee (and/or by Authorised Electricity Operators) which are, in the Secretary of State's opinion, appropriate in order to give full and timely effect to:
3.
 - (a) the modifications made to this licence and to the licences of Authorised Electricity Operators by the Secretary of State pursuant to the power vested in him under section [15A] of the Act;
 - (b) any conditions imposed by any exemption from the requirement to hold any such licence; and
 - (c) the matters envisaged by such modifications and conditions.
4. The programme implementation scheme may include provisions, *inter alia*,
 - (a) to secure or facilitate the amendment of any of the Core Industry Documents;
 - (b) to secure that any systems, contracts, persons or other resources employed in the implementation of the Pooling and Settlement Agreement may be employed in the implementation of the BSC;
 - (c) for the giving of indemnities against liabilities to which parties to the Pooling and Settlement Agreement may be exposed;
 - (d) for securing the co-ordinated and effective commencement of implementation of and of operations under the BSC, including the testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by Authorised Electricity Operators and others in connection with such operations;

- (e) for co-ordinating the administration and implementation of the BSC and the Pooling and Settlement Agreement;²³
 - (f) for the settling by the Director and/or the Secretary of State of disputes, as to matters covered by the scheme, between persons who are required (by conditions of their licences or exemptions) or who have agreed to comply with the scheme or any part of it.
4. (a) The Secretary of State may at any time direct in accordance with the provisions of the programme implementation scheme, that the programme implementation scheme be modified in the manner set out in the direction, in order to give (or continue to give) full and timely effect to the matters described in paragraph 2.
- (b) The Secretary of State shall serve a copy of any such direction on the Licensee, and thereupon the Licensee shall comply with the scheme as modified by the direction.
5. If there is any conflict between the requirements contained in the programme implementation scheme pursuant to paragraph 3(a) and imposed on the Licensee by paragraphs 1 and 4 of this Condition, and those imposed on the Licensee by any other Condition, the provisions of this Condition shall prevail.
6. Without prejudice to paragraph 1, the Licensee shall use its best endeavours to do such things as may be requisite and necessary in order to give full and timely effect to the modifications made to this licence by the Secretary of State pursuant to the power vested in him under section [15A] of the Act (and to give full and timely effect to the matters envisaged by such modifications).
7. (a) The Director may, in the circumstances specified in the programme implementation scheme, direct the Licensee to modify the BSC in the manner indicated in the direction.
- (b) The Director shall not make any such direction after the Effective Time.
8. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

²³ This paragraph should include a reference to Run-off if Condition 15A(1) is retained.

Condition 8A: Grid Code

The text of this condition will be the same as that of existing condition 8, except that paragraph 5(d) (scheduling and despatch code) will be deleted and replaced by:

"a balancing code specifying, among other matters, information to be submitted by Authorised Electricity Operators to the Licensee for the purposes of, and the making of offers and bids in, the Balancing Mechanism, and the issuing by the Licensee of instructions by way of acceptance of such offers."

Condition 15A: Pooling and Settlement Agreement Run-off

1. [The Licensee shall continue to be a party to the Pooling and Settlement Agreement in its capacity as grid operator and Ancillary Services provider and will comply with that Agreement for the purposes of Run-off.]²⁴

2. The Licensee shall maintain for a minimum period of six years such records in respect of the period before the Effective Time of:
 - (a) generation sets and interconnector transfers available or declared as available;
 - (b) offer prices (including separate elements thereof) of generation sets and interconnector transfers declared as available;
 - (c) generation sets and interconnector transfers scheduled for despatch or despatched;
 - (d) Ancillary Services called for by the Licensee and provided;
 - (e) kilowatt hours of electricity taken from the Total System by any purchaser of electricity under the Pooling and Settlement Agreement; and
 - (f) imports and exports of electricity across any Interconnector

as shall be reasonably necessary to give effect to the settlement system operated under the Pooling and Settlement Agreement.

3. The Licensee shall give or send to any person requesting the same, but in each case only in respect of any 28 day period before the Effective Time:
 - (a) the bid prices (showing separately prices for start up, no-load heat and incremental heat rates) of each generation set and interconnector transfer offered in each period for which prices are bid over the preceding 28 days for despatch by any Authorised Electricity Operator;

²⁴ Paragraph 1 will apply only if the P&SA remains as a separate agreement – see footnote to Condition 7A(7)(b).

- (b) declared (and, where different, actual) availability of generation sets (on a set-by-set basis) or interconnector transfers offered for despatch over the preceding 28 days by any Authorised Electricity Operator; and
 - (c) the Pool Selling Price and the Pool Purchase Price as derived in respect of any period over the preceding 28 days pursuant to the terms of the Pooling and Settlement Agreement.
4. The Licensee may make a charge for the information given or sent pursuant to paragraph 3 to any person not otherwise entitled to the same under the terms of the Pooling and Settlement Agreement of an amount which shall not exceed the maximum amount specified in directions issued by the Director for the purposes of this Condition.
 5. The Licensee shall provide to the Director such Information as the Director shall request concerning the merit order system or any aspect of its operation.
 6. The obligations of the Licensee under this Condition in relation to the period before the Effective Time shall continue notwithstanding any termination of the Pooling and Settlement Agreement on or after the Effective Time.
 7. In this Condition:

"available"	in relation to any generation set or interconnector transfer means a generation set or interconnector transfer which is both (a) available in accordance with the Grid Code and (b) declared as available for the generation of electricity in accordance with the provisions of the Pooling and Settlement Agreement, and
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"interconnector transfer"	means electricity generating capacity of an amount not exceeding the maximum capacity specified in any contract for use of the relevant interconnector as may at any time be available to generate electricity for transfer across the interconnector to [the Total System].
"merit order system"	means a system applying in the period before the Effective Time and establishing economic precedence of electricity from available generation sets or interconnector transfers to be delivered or transferred to [the Total System] (subject to other system needs).
["Run-off"	means the determination and settlement (including by way of reconciliation) of amounts due and the discharge of all other obligations arising under or in connection with the Pooling and Settlement Agreement in relation to settlement periods up to and including the settlement period immediately prior to the Effective Time.]

8. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1B.

Annex 2

GENERATION²⁵ LICENCES

PROPOSED LICENCE CONDITIONS TO BE INTRODUCED BY THE SECRETARY OF STATE UNDER SECTION [15A] OF THE ELECTRICITY ACT 1989 TO IMPLEMENT NETA

²⁵ It is anticipated that Conditions 1B, 9A and 9B would appear in the general part of the Scottish composite licences. Condition 9C will replace the existing obligation in the Scottish composite licences in relation to the P&SA. It is for consideration whether the Generating Unit Availability Condition will also be included in the Scottish licences.

Condition 1: Interpretation

[Note that the definition of "electricity purchase contract" and "electricity sale contract" will be deleted]

Condition 1A: Power to Bring Conditions into Effect

1. The Conditions to which this paragraph applies shall not come into effect until the Secretary of State has made a direction specifying a date on which they come into effect and served a copy of the direction on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
2. The Secretary of State may make more than one direction under paragraph 1, and may bring different Conditions or parts of Conditions into force at different times.
3. The Conditions to which paragraph 1 applies are:
 - [Condition 3A (Prohibition on cross-subsidies and on discrimination in selling electricity)]
 - Condition 9A (Balancing and Settlement Code and NETA Implementation)
 - Condition 9B (Change Co-ordination for NETA)
 - Condition 9C (Pooling and Settlement Agreement Run-off)
 - Condition 9D (Generating Unit Availability)
4. The Conditions to which this paragraph applies (or parts of them) shall cease to have effect on such date as is specified in a direction made by the Secretary of State pursuant to this paragraph, a copy of which has previously been served on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
5. The Secretary of State may make more than one direction under paragraph 4, and may direct that different Conditions or parts of Conditions cease to have effect on different dates.

6. The Conditions to which paragraph 4 applies are:

Condition 1 (Definitions)

[Condition 3 (Prohibition on cross-subsidies and on discrimination in selling electricity)]

Condition 9 (Central Dispatch, merit order and settlement system)

[Condition 9E *Suggest existing condition 9A in relevant licences is renumbered as 9E, to avoid confusion*]

[Note: the following text will be introduced at the end of each of the conditions mentioned in paragraph 6: "This Condition or parts of it shall cease to have effect on the date specified in a direction to that effect made pursuant to paragraph 4 of Condition 1A".]

Condition 3A: Prohibition on cross-subsidies and of discrimination in selling electricity

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. *Note: This condition will replace the existing condition In those licences which currently have such a condition. It will amend the existing condition 3 in the same way as the proposed condition 4C of the PES licence (See annex C) (except for the exclusion of supply to premises in the definition of selling), but will retain the existing paragraph (5) dealing with NFFO and pre-1990 contracts and the disapplication procedure (paragraphs 6 to 10).*

[Note: it is envisaged that this condition would be placed in all generation licences but with provision to switch on/switch off. If this route is adopted, the proposed switch on/switch off language would be as follows²⁶:-

1. *Where the Director has issued to the Licensee a direction in accordance with this Condition, the Licensee shall be obliged to comply with the requirements of paragraphs [/].*
2. (a) *The Director may issue a direction providing that the requirements of paragraphs [/] of this Condition shall apply to the Licensee.*
(b) *A direction issued pursuant to paragraph (a) may:*
 - (i) *be subject to such matters as the Director may think fit;*
 - (ii) *be issued at any time from the coming into force of this Condition;*
 - (iii) *be revoked by the Director at any time on 28 days' notice given to the Licensee.]*

²⁶ In Ofgem's recent consultation document on standard licence conditions ('Utilities Bill: Standard Licence Conditions, February 2000'), it is proposed that this condition would become standard for all generation licences in GB but with provision to switch the condition on and off. The 'switch on/switch off' language set out above reflects the drafting contained in the draft standard licence conditions for electricity generation licences published on Ofgem's website in conjunction with that consultation.

Condition 9A: Balancing and Settlement Code and NETA Implementation

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall be a party to the BSC Framework Agreement and shall comply with the BSC.
3. The Licensee shall comply with the programme implementation scheme established in accordance with paragraph 4, as modified from time to time in accordance with paragraph 6.
4. The programme implementation scheme shall be a scheme designated by the Secretary of State setting out the steps, including without limitation steps as to the matters referred to in paragraph 5, to be taken (or procured) by the Licensee (and/or by Authorised Electricity Operators) which are, in the Secretary of State's opinion, appropriate in order to give full and timely effect to:
 - (a) the modifications made to this licence and to the licences of Authorised Electricity Operators by the Secretary of State pursuant to the power vested in him under section [15A] of the Act;
 - (b) any conditions imposed by any exemption from the requirement to hold any such licence; and
 - (c) the matters envisaged by such modifications and conditions.
5. The programme implementation scheme may include provisions, *inter alia*,
 - (a) to secure or facilitate the amendment of any of the Core Industry Documents;
 - (b) to secure that any systems, persons or other resources employed in the implementation of the Pooling and Settlement Agreement may be employed in the implementation of the BSC;
 - (c) for the giving of the indemnities against liabilities to which parties to the Pooling and Settlement Agreement may be exposed;

- (d) for securing the co-ordinated and effective commencement of implementation of and operations under the BSC, including the testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by Authorised Electricity Operators and others in connection with such operations;
 - (e) for co-ordinating the administration and implementation of the BSC and the Pooling and Settlement Agreement; and
 - (f) for the settling by the Director and/or the Secretary of State of disputes, as to matters covered by the scheme, between persons who are required (by conditions of their licences or exemptions) or who have agreed to comply with the scheme or any part of it.
6. (a) The Secretary of State may at any time direct in accordance with the provisions of the programme implementation scheme, that the programme implementation scheme be modified in the manner set out in the direction, in order to give (or continue to give) full and timely effect to the matters described in paragraph 4.
- (b) The Secretary of State shall serve a copy of any such direction on the Licensee, and thereupon the Licensee shall comply with the scheme as modified by the direction.
7. If there is any conflict between the requirements contained in the programme implementation scheme pursuant to paragraph 5(a) and imposed on the Licensee by paragraphs 3 and 6 of this Condition, and those imposed on the Licensee by any other Condition, the provisions of this Condition shall prevail.
8. Without prejudice to paragraph 3, the Licensee shall use its best endeavours to do such things as may be requisite and necessary in order to give full and timely effect to the modifications made to this Licence as determined by the Secretary of State pursuant to the power vested in him under section [15A] of the Act (and to give full and timely effect to the matters envisaged by such modifications).

9. In this Condition:

"BSC" means the balancing and settlement code required to be in place, pursuant to the Transmission Licence granted to the Transmission Company, as from time to time modified.

"BSC Framework Agreement" means the agreement of that title, in the form approved by the Secretary of State, by which the BSC is made binding between the parties to that agreement, as from time to time amended.

"Core Industry Documents" mean those documents which

- (a) in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the BSC or the balancing and settlement arrangements, and
- (b) have been designated for the purpose of this Condition by the Secretary of State on the date on which Condition 1A comes into force as meeting the description set out in (a).

Condition 9B: Change Co-ordination for NETA

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall use its best endeavours to secure and implement (consistent with the procedures applicable under or in relation to those documents as modified or replaced from time to time), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC.
3. In paragraph 2, Core Industry Documents has the meaning given in paragraph 9 of Condition 9A.

Condition 9C: Pooling and Settlement Agreement Run-off²⁷

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall continue to be a party to and a pool member under, and shall comply with, the Pooling and Settlement Agreement for the purposes of Run-off.
3. This Condition shall apply to the extent that the Licensee was party to and a pool member under the Pooling and Settlement Agreement immediately prior to the Effective Time.
4. In this Condition:

"Run-off" means the determination and settlement (including by way of reconciliation) of amounts due and the discharge of all other obligations arising under or in connection with the Pooling and Settlement Agreement in relation to settlement periods up to and including the settlement period immediately prior to the Effective Time

"Effective Time" means the start of the first trading period in respect of which the BSC is fully and unconditionally effective as determined by the Secretary of State.

²⁷ This condition will be needed if the P&SA remains as a separate stand-alone agreement for the purposes of run-off, rather than being subsumed into the BSC.

Condition 9D: Generating Unit Availability

[Note: This condition is divided into two parts. Part A indicates the changes which are proposed to the Generating Unit Availability condition on the introduction of NETA for those licensees who currently have such a condition in their licence. Part B suggests a simplified form of wording, together with a switch on/switch off provision, which may be more appropriate for inclusion as a standard licence condition in generation licences in due course. These drafting proposals should be read in conjunction with the explanation in Chapter 3.]

Part A

1. The purposes of this Condition are:
 - (a) to enable the Director to keep under review the behaviour of the Licensee to ascertain whether the Licensee is pursuing a course of conduct in making or declining (whether temporarily or permanently) to make available [Generating Units] owned or operated by the Licensee which is intended to have or is likely to have the effect of restricting, distorting or preventing competition in the generation or supply of electricity ; and
 - (b) to enable information (in accordance with paragraphs 2, 4 and 6) to be made available to persons interested in the operation of the electricity market.

2. The Licensee shall within 2 months [of this Condition becoming effective] prepare a statement, for approval as to form by the Director, specifying in reasonable detail the criteria upon which the Licensee will, for the purpose of planning the availability of [Generating Units]:
 - (a) determine the duration and timing of planned outages of [Generating Units];
 - (b) estimate the loss of [availability] through unplanned outages caused by technical breakdown, opportunistic maintenance or circumstances not within the control of the Licensee;

- (c) determine which hours of the day and days of the week a [Generating Unit] which is not subject to a planned or unplanned outage will be sufficiently manned to be capable of being [made available] under the Grid Code;
- (d) determine its policy to make available [Generating Units] which are not subject to planned or unplanned outages;
- (e) determine its policy regarding the closure, whether permanent or temporary, of any [Generating Units]; and
- (f) determine its policy regarding the reduction in capacity of any [Generating Units],

and shall not change the criteria until it shall have complied with paragraph 10.

3.1 The Licensee shall provide to the Director not later than 15 March in each year a written forecast (being its best estimate acting as a reasonable and prudent operator) in respect of the next following year commencing on 1 April for each [Generating Unit] expected to be operated during that year of:-

- (a) the means by which the [Generating Unit] will normally be fuelled or driven and, in respect of any Unit having a dual firing capability, any alternative means;
- (b) the [Registered Capacity];
- (c) the planned outage programme;
- (d) the statistical expectation of unplanned outages;
- (e) any factors known to the Licensee which are likely to cause actual unplanned outages to be fewer or more numerous than the statistical expectation;
- (f) any planned or expected operational or manning limitations which may prevent the [Generating Unit] from being [available]; and
- (g) other circumstances known to the Licensee which may materially affect [availability].

3.2 The Licensee shall provide to the Director not later than 15 September in each year a statement showing any changes from the forecast submitted under subparagraph 3.1 with respect to the six months commencing on 1 October in that

year and, where the Licensee is then aware of matters (other than any which have been already notified under paragraph 7) which would or might reasonably be expected to cause the statement to be prepared by the next following 15 March to be different in a material respect, a summary of such matters.

- 4.1 The Licensee shall not later than 15 March in each year prepare a statement, to be approved by the Director having regard to the information provided to it under paragraph 3, specifying in relation to the Relevant Categories of Power Stations in respect of the next following year commencing on 1 April
- (a) the names of the Power Stations in each Relevant Category;
 - (b) in respect of each [Generating Unit] at that Power Station:
 - (i) the [Registered Capacity] of the [Generating Unit]; and
 - (ii) the means by which it can be fuelled or driven (and where more than one, indicating the normal primary means);
 - (c) in respect of each Relevant Category –
 - (i) the summation of the capacity which would be available during the year if each [Generating Unit] at the Power Stations in that category was made available for all [Settlement Periods] [at the Registered Capacity] stated in paragraph 4.1 (b)(i) above;
 - (ii) its best estimate of the summation of the actual capacity which will be made available by those [Generating Units] that year; and
 - (iii) its best estimate of the proportion of the difference between (i) and (ii) above which will be attributable to –
 - (aa) planned outages (including manning arrangements and planned changes in available capacity from the [Registered Capacity] stated in paragraph 7.1(b)(i)); and
 - (bb) unplanned outages (including unplanned changes in the available capacity from the [Registered Capacity] stated in paragraph 7.2 (b)(i)); and

- (cc) other circumstances known to the Licensee which may materially affect the availability of those Units.

- 4.2. The Licensee shall, not later than 15 September in each year, prepare a statement to be approved by the Director showing any changes from the statement prepared under sub-paragraph 4.1 with respect to the six months commencing on 1 October in that year and, where the Licensee is then aware of matters (other than any which have been already notified under paragraph 7) which would or might reasonably be expected to cause the statement to be prepared by the next following 15 March to be different in a material respect, a summary of such matters.
5. The Licensee shall provide to the Director not later than 6 weeks after 31 March in each year in respect of which a forecast has been provided under paragraph 3, a statement of the [availability] of each [Generating Unit] during that year including a reconciliation with the forecast of each of the matters referred to in sub-paragraphs (a) to (g) of paragraph 3.1 as varied under paragraph 3.2 and the reasons for any significant divergence from the forecast.
6. The Licensee shall provide to the Director not later than 6 weeks after 31 March in each year in respect of which a forecast has been provided under sub-paragraph 4.1, a reconciliation with the forecasts made under sub-paragraphs 4.1 and 4.2 and the reasons for any significant divergence from the forecasts.
7. (a) The Licensee shall give notice to the Director of the date upon which it is intended:
 - (i) to close permanently or close temporarily any Power Station; or
 - (ii) to make a material reduction in the [Registered Capacity] of any Power Station,and shall use its reasonable endeavours to give that notice not less than six months prior to the date of the intended closure or reduction in capacity.

- (b) A notice under sub-paragraph (a) shall specify the Power Station to which it relates, the intended date of closure or reduction in capacity and, if in respect of sub-paragraph (a)(ii), shall also specify –
 - (i) the existing and proposed [Registered Capacity];
 - (ii) the expected duration of the reduction in capacity;
 - (iii) the reasons for the reduction in capacity; and
 - (iv) (if the reduction is as a result of the cessation of operation of a [Generating Unit or Units]) whether it would be practicable for that [Generating Unit or those Units] (on the assumption, if not the case, that it or they were operational) to be operated separately from the other [Unit or Units] of that station and, if not, the reasons therefor.

- (c) For the purpose of this paragraph –
 - (i) a reduction of more than 10 per cent in the [Registered Capacity] of an open cycle gas turbine [Generating Unit] is material;
 - (ii) subject to (i), a reduction in capacity is material if it will reduce the [Registered Capacity] of a Power Station by more than 25 megawatts or more than 10 per cent whichever is the lesser; and
 - (iii) "close temporarily" means to close or not to make available for a period greater than one year but not permanently.

- 8. (a) Within one month of delivery of a notice under paragraph 7, the Licensee shall provide to the Director a statement setting out in reasonable detail –
 - (i) (if in relation to any closure of a Power Station) the reasons for the decision referred to in the notice;
 - (ii) (if in respect of a temporary closure of a Power Station) the circumstances in which the Licensee expects to recommence operating the Power Station; and

- (iii) (if in respect of a permanent closure of a Power Station) the Licensee's proposals for use or disposal of the site and the plant, and alternative proposals considered and the reason for adopting the chosen proposal.
 - (b) The Licensee shall provide to such independent and competent assessor (if any) as may be appointed by the Director with approval of the Licensee (such approval not to be unreasonably withheld) such information (in addition to that contained in any notice under paragraph 7(a) or the statement under paragraph 8(a)) as the assessor may reasonably require to enable him to provide to the Director and the Licensee within two months of his appointment (or such longer period as the Director may approve) an assessment of whether the above decision process and result were reasonable, taking into account all the relevant circumstances and opportunities, identifying the direct and indirect financial implications for the Licensee, and the amounts if any which third parties have offered or would be likely to pay to purchase or lease the plant or site and associated facilities whether or not for use as an operating Power Station.
- 9. The Licensee may periodically revise the criteria set out in and, with the approval of the Director, the form of the statement prepared in accordance with paragraph 2.
- 10. The Licensee shall send to the Director a copy of the statement prepared in accordance with paragraph 2 and of each revision of such statement in accordance with paragraph 9 and shall not apply the criteria set out in any revision of the statement until 14 days after the date upon which the copy of that revision is sent to the Director.
- 11. The Licensee shall give or send a copy of the statement prepared in accordance with paragraph 2 or (as the case may be) the latest revision of such statement or a copy of any statement provided to the Director under paragraph 4 or 6 to any person who requests a copy of such statement or statements; provided that the Licensee may, with the prior consent of the Director, omit from any statement

prepared under paragraph 4 or 6 any information (other than information which the Director considers it is in the public interest to disclose) the disclosure of which would, in the view of the Director, seriously and prejudicially affect the commercial interests of the Licensee or any third party.

12. The Licensee may make a charge for any statement given or sent pursuant to paragraph 11 of an amount which shall not exceed the amount specified in the directions issued by the Director for the purposes of this Condition based on the Director's estimate of the Licensee's reasonable costs of providing a copy of such a statement.
13. [Paragraphs 1 to 12 of this Condition shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Director a disapplication request made in accordance with paragraph 14 below and :
 - (a) the Director agrees in writing to the disapplication request; or
 - (b) the application of those paragraphs (in whole or in part) is terminated by notice given by the Licensee in accordance with paragraph 16 or 17 below.
14. A disapplication request shall be in writing addressed to the Director, shall specify the paragraphs of this Condition (or any part or parts thereof) to which the request relates and shall state the date ("the disapplication date", being a date not less than 18 months after the date of delivery of the request) from which the Licensee wishes the Director to agree that the specified paragraphs (or the specified part or parts thereof) shall cease to have effect.
15. Save where the Director otherwise agrees, no disapplication request may be served earlier than 12 months after the date on which a report is delivered by the Competition Commission following a reference under paragraph 16 where the report of the Competition Commission did not entitle the Licensee to deliver a notice to the Director under paragraph 17.
16. If the Director has not made a reference to the Competition Commission under Section 12 of the Act relating to the modification of the paragraphs specified in

the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver a notice to the Director terminating the application of such of paragraphs 1 to 12 above (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.

17. If the Competition Commission makes a report on a reference made by the Director relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such paragraphs, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Director in accordance with section 13 of the Act deliver to the Director notice terminating the application of such paragraphs (or the part or parts thereof) with effect from the disapplication date or later.

18. (a) In this Condition:

"Relevant Category" means a group of [Generating Units] aggregated according to main fuel type and [Registered Capacity] of [Generating Units] as follows:

Category	Fuel Type and [Registered Capacity]
I	Coal, coal/oil and coal/gas fired Power Stations with [Generating Units] of 400 megawatts and larger.
II	Coal, coal/oil and coal/gas fired Power Stations with [Generating Units] of 150 megawatts to 399 megawatts.
III	Coal, coal/oil and coal/gas fired Power Stations with [Generating Units] of 149 megawatts and smaller.
IV	Oil or orimulsion fired Power Stations.
V	Gas fired Power Stations.
VI	Gas-oil turbines.

VII	Magnox
VIII	Advanced Gas-cooled Reactors
IX	Pressurised Water Reactors
X	Power Stations fuelled or driven otherwise than by a fossil fuel or nuclear fuel

or such other aggregation of Power Stations or [Generating Units] as the Director with the agreement of the Licensee (such agreement not to be unreasonably withheld and having regard to the confidentiality criteria referred to in paragraph 14) may from time to time direct, provided that the Licensee may, with the consent of the Director, omit from the Relevant Category a [Generating Unit] not fuelled or driven by nuclear fuel the operation of which is a condition of or is constrained by a condition of a nuclear site licence.

["Registered Capacity"	shall have the same meaning as in the Grid Code,
"Generating Unit"	but as if in relation to a Power Station the
"Power Station"]	Registered Capacity means the aggregate of the
	Registered Capacity of the [Generating Units]
	forming part of that Power Station; <i>[note: draft</i>
	<i>cannot be finalised until Grid Code changes for</i>
	<i>NETA are known]</i>

["available"]

means both:

- (a) [available in accordance with the Grid Code]; and
- (b) [*a definition of availability under NETA is required. One suggested approach is to refer to the capability to support an FPN showing generation at a level equal to Registered Capacity. An appropriate definition will be finalised once relevant BSC terminology has been developed*]

- (b) This Condition does not apply to any [Generating Unit] having a [Registered Capacity] of 10 megawatts or less.
- (c) [Unless the Director otherwise directs, any reference to [Generating Unit] or Power Station shall mean, respectively, each [Generating Unit] owned or operated by the Licensee forming part of a Power Station owned or operated by the Licensee which is capable of providing 100 megawatts or more to the total system, being the transmission and distribution systems of all authorised electricity operators which are located in England and/or Wales.]

19. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.

Part B

[Proposed Standard Licence Condition]

1. Where the Director has issued to the Licensee a direction pursuant to paragraph 2, the Licensee shall be obliged to comply with the requirements of paragraphs [3 to 18].

2.
 - (a) The Director may issue a direction providing that the requirements of paragraphs [3 to 18] of this Condition shall apply to the Licensee.
 - (b) A direction issued pursuant to paragraph (a) may:
 - (i) be subject to such matters as the Director may think fit;
 - (ii) be issued at any time from the coming into force of this Condition;
 - (iii) be revoked by the Director at any time on 28 days' notice given to the Licensee.]

3. The purpose of this Condition is to enable the Director to keep under review the behaviour of the Licensee to ascertain whether the Licensee is pursuing a course of conduct in making or declining (whether temporarily or permanently) to [make available] [Generating Units] owned or operated by the Licensee which is intended to have or is likely to have the effect of restricting, distorting or preventing competition in the generation or supply of electricity.

4. The Licensee shall, within [1] month of a direction being issued to the Licensee pursuant to paragraph 2 and thereafter at 12-monthly intervals, prepare a statement in a form approved by the Director setting out the Licensee's [intentions/policies] with regard to the matters listed in paragraph 5, in each case in respect of the succeeding 12-month period from the date such statement is prepared.

5. The matters referred to in paragraph 4 are, [in respect of each [Generating Unit] separately]:-
 - (a) the duration and timing of planned outages;
 - (b) the duration and timing of any other periods [in excess of [1]] when it is planned or expected that the [Generating Unit] would not be capable of operation;
 - (c) the duration, timing and extent of any planned reduction in capacity;
 - (d) any other circumstances known to the Licensee which may materially affect the [Generating Unit's] capability.

6. Each statement prepared by the Licensee pursuant to paragraph 4 shall contain the Licensee's best estimate (acting as a reasonable and prudent operator) of the matters referred to in paragraph 5.
7. The Licensee shall revise each such statement from time to time during the course of the 12-month period to which it refers if the Licensee's [intentions/policies] in respect of the matters referred to in paragraph 5 change in a material way during that period.
8. The Licensee shall send to the Director a copy of each statement prepared pursuant to paragraph 4 and any revision thereof prepared pursuant to paragraph 7 promptly upon production of such statement or revision.
9. Not later than [6 weeks] after the end of the period to which each statement relates, the Licensee shall provide to the Director a reconciliation, [in respect of each [Generating Unit] separately], comparing the [Generating Unit's] actual performance with the [policy] in respect of that [Generating Unit] contained in such statement (or revision, as the case may be).
10. (a) The Licensee shall give notice to the Director of the date upon which it is intended:
 - (i) to close permanently or close temporarily any Power Station; or
 - (ii) to make a material reduction in the [Registered Capacity] of any Power Station,and shall use its reasonable endeavours to give that notice not less than six months prior to the date of the intended closure or reduction in capacity.
- (b) A notice under sub-paragraph (a) shall specify the Power Station to which it relates, the intended date of closure or reduction in capacity and, if in respect of sub-paragraph (a)(ii), shall also specify –

- (i) the existing and proposed [Registered Capacity];
- (ii) the expected duration of the reduction in capacity;
- (iii) the reasons for the reduction in capacity; and
- (iv) (if the reduction is as a result of the cessation of operation of a [Generating Unit or Units]) whether it would be practicable for that [Generating Unit or those Units] (on the assumption, if not the case, that it or they were operational) to be operated separately from the other [Unit or Units] of that station and, if not, the reasons therefor.

(c) For the purpose of this paragraph –

- (i) a reduction of more than 10 per cent in the [Registered Capacity] of an open cycle gas turbine [Generating Unit] is material;
- (ii) subject to (i), a reduction in capacity is material if it will reduce the [Registered Capacity] of a Power Station by more than 25 megawatts or more than 10 per cent whichever is the lesser; and
- (iii) "close temporarily" means to close or not to make available for a period greater than one year but not permanently.

11. (a) Within one month of delivery of a notice under paragraph 10, the Licensee shall provide to the Director a statement setting out in reasonable detail –

- (i) (if in relation to any closure of a Power Station) the reasons for the decision referred to in the notice;
- (ii) (if in respect of a temporary closure of a Power Station) the circumstances in which the Licensee expects to recommence operating the Power Station; and
- (iii) (if in respect of a permanent closure of a Power Station) the Licensee's proposals for use or disposal of the site and the plant, and alternative proposals considered and the reason for adopting the chosen proposal.

- (b) The Licensee shall provide to such independent and competent assessor (if any) as may be appointed by the Director with approval of the Licensee (such approval not to be unreasonably withheld) such information (in addition to that contained in any notice under paragraph 10(a) or the statement under paragraph 11(a)) as the assessor may reasonably require to enable him to provide to the Director and the Licensee within two months of his appointment (or such longer period as the Director may approve) an assessment of whether the above decision process and result were reasonable, taking into account all the relevant circumstances and opportunities, identifying the direct and indirect financial implications for the Licensee, and the amounts if any which third parties have offered or would be likely to pay to purchase or lease the plant or site and associated facilities whether or not for use as an operating Power Station.
12. [Paragraphs 1 to 11 of this Condition shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Director a disapplication request made in accordance with paragraph 13 below and :
- (a) the Director agrees in writing to the disapplication request; or
 - (b) the application of those paragraphs (in whole or in part) is terminated by notice given by the Licensee in accordance with paragraph 14 or 15 below.
13. A disapplication request shall be in writing addressed to the Director, shall specify the paragraphs of this Condition (or any part or parts thereof) to which the request relates and shall state the date ("the disapplication date", being a date not less than 18 months after the date of delivery of the request) from which the Licensee wishes the Director to agree that the specified paragraphs (or the specified part or parts thereof) shall cease to have effect.

14. Save where the Director otherwise agrees, no disapplication request may be served earlier than 12 months after the date on which a report is delivered by the Competition Commission following a reference under paragraph 15 where the report of the Competition Commission did not entitle the Licensee to deliver a notice to the Director under paragraph 16.

15. If the Director has not made a reference to the Competition Commission under Section 12 of the Act relating to the modification of the paragraphs specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date, the Licensee may deliver a notice to the Director terminating the application of such of paragraphs 1 to 11 above (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.

16. If the Competition Commission makes a report on a reference made by the Director relating to the modification of the paragraphs (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of such paragraphs, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Director in accordance with section 13 of the Act deliver to the Director notice terminating the application of such paragraphs (or the part or parts thereof) with effect from the disapplication date or later.

17. (a)

["Registered Capacity"	shall have the same meaning as in the Grid Code, but as if in
"Generating Unit"	relation to a Power Station the Registered Capacity means the
"Power Station"]	aggregate of the Registered Capacity of the [Generating Units]
	forming part of that Power Station; <i>[note: draft cannot be</i>
	<i>finalised until Grid Code changes for NETA are known]</i>

 (b) This Condition does not apply to any [Generating Unit] having a [Registered Capacity] of 10 megawatts or less.

- (c) [Unless the Director otherwise directs, any reference to [Generating Unit] or Power Station shall mean, respectively, each [Generating Unit] owned or operated by the Licensee forming part of a Power Station owned or operated by the Licensee which is capable of providing 100 megawatts or more to the total system, being the transmission and distribution systems of all authorised electricity operators which are located in England and/or Wales.]

Annex 3

PUBLIC ELECTRICITY SUPPLY LICENCES

PROPOSED LICENCE CONDITIONS TO BE INTRODUCED BY THE SECRETARY OF STATE UNDER SECTION [15A] OF THE ELECTRICITY ACT 1989 TO IMPLEMENT NETA

[Notes:

With the exception of the non-discrimination condition (Condition 4C):

- *conditions equivalent to the conditions set out below for PES licences would be placed in all second tier supply licences*
- *it is envisaged that conditions equivalent to these conditions would be placed in the general part of the composite Scottish licences*
- *when the separation of supply and distribution takes place, conditions equivalent to these conditions would be placed in both supply and distribution licences.*

Condition 1: Interpretation

[Note that the definition of "electricity purchase contract" and "electricity sale contract" will be deleted]

Condition 1A: Power to Bring Conditions into Effect

1. The Conditions to which this paragraph applies shall not come into effect until the Secretary of State has made a direction specifying a date on which they come into effect and served a copy of the direction on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
2. The Secretary of State may make more than one direction under paragraph 1, and may bring different Conditions or parts of Conditions into force at different times.
3. The Conditions to which paragraph 1 applies are:
 - Condition 4C (Prohibition of cross-subsidies and of discrimination in selling electricity)
 - Condition 15A (Balancing and Settlement Code and NETA Implementation)
 - Condition 15B (Change Co-ordination for NETA)
 - Condition 15C (Pooling and Settlement Agreement Run-off)
4. The Conditions to which this paragraph applies (or parts of them) shall cease to have effect on such date as is specified in a direction made by the Secretary of State pursuant to this paragraph, a copy of which has previously been served on the Licensee (but the date so specified may be the same date as that on which this Condition comes into effect or if later that on which a copy of the direction is so served).
5. The Secretary of State may make more than one direction under paragraph 4, and may direct that different Conditions or parts of Conditions cease to have effect on different dates.

6. The Conditions to which paragraph 4 applies are:

Condition 1 (Definitions)

Condition 4 (Prohibition of cross-subsidies and of discrimination in selling electricity)

Condition 10 (Generation security standard)

Condition 15 (Pooling and Settlement Agreement)

[Note: the following text will be introduced at the end of each of the conditions mentioned in paragraph 6: "This Condition or parts of it shall cease to have effect on the date specified in a direction to that effect made pursuant to paragraph 4 of Condition 1A".]

Condition 4C: Prohibition of cross-subsidies and of discrimination in selling electricity

1. The Licensee shall procure that no Separate Business gives any cross-subsidy to, or receives any cross-subsidy from, any other business of the Licensee or an affiliate or related undertaking of the Licensee (whether or not a Separate Business).
2. The Licensee shall not, and shall procure that any affiliate or related undertaking of the Licensee shall not sell or offer to sell electricity to any one purchaser or person seeking to become a purchaser on terms as to price which are materially more or less favourable than those on which it sells or offers to sell electricity to comparable purchasers with the object or effect of preventing, restricting or distorting, to an appreciable extent, competition in the sale and purchase of electricity. For these purposes regard shall be had to the circumstances of the sale to such purchasers including (without limitation) volumes, load factors, conditions of interruptibility and the dates and durations of the relevant agreements.
3. For the purposes of paragraph 2, references to selling or sale of electricity:
 - (a) do not include sale by way of supply to premises;
 - [(b) include entering into or disposing of the benefit of a contract, [[which has (or taken together with any other arrangement has) the commercial effect of selling electricity, by]] conferring rights or obligations (including rights or obligations by way of option) in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time,and "purchaser", "purchasing" and "purchase" shall be construed accordingly.]
4. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.

Condition 15A: Balancing and Settlement Code and NETA Implementation

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall be a party to the BSC Framework Agreement and shall comply with the BSC.
3. The Licensee shall comply with the programme implementation scheme established in accordance with paragraph 4 as modified from time to time in accordance with paragraph 6.
4. The programme implementation scheme shall be a scheme designated by the Secretary of State setting out the steps, including without limitation steps as to the matters referred to in paragraph 5, to be taken (or procured) by the Licensee (and/or by Authorised Electricity Operators) which are, in the Secretary of State's opinion, appropriate in order to give full and timely effect to:
 - (a) the modifications made to this licence and to the licences of Authorised Electricity Operators by the Secretary of State pursuant to the power vested in him under section [15A] of the Act;
 - (b) any conditions imposed by any exemption from the requirement to hold any such licence; and
 - (c) the matters envisaged by such modifications and conditions.
5. The programme implementation scheme may include provisions, *inter alia*,
 - (a) to secure or facilitate the amendment of any of the Core Industry Documents;
 - (b) to secure that any systems, persons or other resources employed in the implementation of the Pooling and Settlement Agreement may be employed in the implementation of the BSC;
 - (c) for the giving of the indemnities against liabilities to which parties to the Pooling and Settlement Agreement may be exposed;

- (d) for securing the co-ordinated and effective commencement of implementation of and operations under the BSC, including the testing, trialling and start-up of the systems, processes and procedures employed in such implementation and employed by Authorised Electricity Operators and others in connection with such operations;
 - (e) for co-ordinating the administration and implementation of the BSC and the Pooling and Settlement Agreement; and
 - (f) for the settling by the Director and/or the Secretary of State of disputes, as to matters covered by the scheme, between persons who are required (by conditions of their licences or exemptions) or who have agreed to comply with the scheme or any part of it.
6. (a) The Secretary of State may at any time direct in accordance with the provisions of the programme implementation scheme, that the programme implementation scheme be modified in the manner set out in the direction, in order to give (or continue to give) full and timely effect to the matters described in paragraph 4.
- (c) The Secretary of State shall serve a copy of any such direction on the Licensee, and thereupon the Licensee shall comply with the scheme as modified by the direction.
7. If there is any conflict between the requirements contained in the programme implementation scheme pursuant to paragraph 5(a) and imposed on the Licensee by paragraphs 3 and 6 of this Condition, and those imposed on the Licensee by any other Condition, the provisions of this Condition shall prevail.
8. Without prejudice to paragraph 3, the Licensee shall use its best endeavours to do such things as may be requisite and necessary in order to give full and timely effect to the modifications made to this Licence as determined by the Secretary of State pursuant to the power vested in him under section [15A] of the Act (and to give full and timely effect to the matters envisaged by such modifications).

9. In this Condition:

"BSC" means the balancing and settlement code required to be in place, pursuant to the Transmission Licence granted to the Transmission Company, as from time to time modified.

"BSC Framework Agreement" means the agreement of that title, in the form approved by the Secretary of State, by which the BSC is made binding between the parties to that agreement, as from time to time amended.

"Core Industry Documents" mean those documents which

- a. in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the BSC or the balancing and settlement arrangements, and
- b. have been designated for the purpose of this Condition by the Secretary of State on the date on which Condition 1A comes into force as meeting the description set out in (a).

Condition 15B: Change Co-ordination for NETA

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall use its best endeavours to secure and implement (consistent with the procedures applicable under or in relation to those documents as modified or replaced from time to time), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC.
3. In paragraph 2, Core Industry Documents has the meaning given in paragraph 9 of Condition 15A.

[Condition 15C: Pooling and Settlement Agreement Run-off²⁸

1. This Condition or parts of it shall not come into effect until the date specified in a direction to that effect made pursuant to paragraph 1 of Condition 1A.
2. The Licensee shall continue to be a party to and a pool member under, and shall comply with, the Pooling and Settlement Agreement for the purposes of Run-off.
3. This Condition shall apply to the extent that the Licensee was party to and a pool member under the Pooling and Settlement Agreement immediately prior to the Effective Time.
4. In this Condition:

"Run-off" means the determination and settlement (including by way of reconciliation) of amounts due and the discharge of all other obligations arising under or in connection with the Pooling and Settlement Agreement in relation to settlement periods up to and including the settlement period immediately prior to the Effective Time

"Effective Time" means the start of the first trading period in respect of which the BSC is fully and unconditionally effective as determined by the Secretary of State.]

²⁸ See notes in draft transmission licence as to whether this condition required.

Annex 4

Part A

NGC'S TRANSMISSION LICENCE

Draft CUSC Licence Condition

Notes:

- 1. Other changes will be required to existing conditions of NGC's licence, notably Condition 10 and Condition 10C. The amendments to these conditions will be developed in parallel with the development of the CUSC itself to reflect the appropriate split between licence and CUSC provisions.*
- 2. This Annex 4 should be read in conjunction with Chapter 5, which highlights a number of licence issues for further consideration.*

CUSC Licence Condition

1. The Licensee shall establish connection and use of system arrangements in respect of matters other than those to which Conditions [7], [8] and [10] relate, which are calculated to facilitate the achievement of the following objectives:
 - (a) the efficient discharge by the Licensee of the obligations imposed upon it by this licence;
 - (b) the efficient, economic and co-ordinated operation by the Licensee of the Licensee's Transmission System; and
 - (c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity.

2. The Licensee shall prepare a Connection and Use of System Code²⁹ setting out [(together with the terms of any other arrangements which the Licensee considers it appropriate to set out in the document)]:
 - (a) the terms of the arrangements made in pursuance of paragraph 1; and
 - (b) the procedures established in pursuance of paragraph 6.

3. The Licensee shall only enter into connection and use of system arrangements which are in conformity with any relevant provisions of the CUSC.³⁰

4. The CUSC shall provide for:
 - (a) [the Licensee and each CUSC Party [to be contractually bound] insofar as is applicable by the terms of the Grid Code from time to time in force;]
 - (b) [the Licensee and each CUSC Party to enter into an agreement or agreements, supplemental to and in a form prescribed by the CUSC, setting out [site-specific details] in respect of each site at which the CUSC Party's electrical lines or electrical plant is connected to the [Licensee's Transmission System] [Total System]];

²⁹ See definition of CUSC.

³⁰ Interactions with Condition 10B to be considered.

- (c) there to be referred to the Director for determination such matters arising under the CUSC as may be specified in the CUSC; and
 - (d) a copy of the CUSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy.
- 5. The provisions of paragraph 4 shall not limit the matters which may be provided for in the CUSC.
- 6. The Licensee shall establish and operate procedures for the modification of the CUSC (including procedures for modification of the modification procedures themselves), so as to better facilitate achievement of the objectives set out in paragraph 1, which procedures shall provide:
 - (a) for proposals for modification of the CUSC to be made by either the Licensee or a CUSC Party;
 - (b) where such a proposal is made,
 - (i) for bringing the proposal to the attention of CUSC Parties and such other persons as may have an appropriate interest in it;
 - (ii) for proper consideration of any representations on the proposal;
 - (iii) for properly evaluating whether the proposed modification would better facilitate achieving the Applicable CUSC Objective(s);
 - (iv) for development of any alternative modification which may, as compared with the proposed modification, better facilitate achieving the Applicable CUSC Objective(s);
 - (v) for the preparation of a report –
 - setting out the proposed modification and any alternative;
 - evaluating the proposed modification and any alternative;

- assessing the extent to which the proposed modification or any alternative would better facilitate the Applicable CUSC Objective(s);
 - assessing the impact of the modification on the Core Industry Documents and the changes expected to be required to such documents as a consequence of such modification;
 - setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect; and
- (vi) for the submission of the report to the Director as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification) for the proper execution and completion of the steps in sub-paragraphs [(i) to (v)]; and
- (c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Director has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended with the consent of or as required by the Director.
7. (a) If a report has been submitted to the Director pursuant to procedures described in paragraph 6(b)(vi), and the Director is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the CUSC, better facilitate achieving the Applicable CUSC Objective(s), the Director may direct the Licensee to make that modification.
- (b) The Licensee shall have the power to modify the CUSC and shall modify the CUSC:

- (i) in order to comply with any direction of the Director pursuant to sub-paragraph (a); or
- (iii) with the consent of the Director

and shall furnish the Director with a copy of any modification made.

- (c) Only the Licensee shall have the power to modify the CUSC.
8. The Licensee shall prepare and publish a summary of the CUSC as modified or changed from time to time in such form and manner as the Director may from time to time direct.
 9. The Licensee shall maintain and be a party to the CUSC Framework Agreement by which the CUSC is made contractually binding between the parties to that agreement.
 10. The CUSC Framework Agreement shall contain provision—
 - (a) for admitting as additional parties to the CUSC Framework Agreement any person who accepts and fulfils conditions (each as specified in the CUSC) on which accession to the CUSC Framework Agreement is offered, and
 - (b) [for referring for determination by the Director any dispute which shall arise as to whether a person seeking to be admitted to the CUSC Framework Agreement has fulfilled any accession conditions; and if the Director determines that a person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the CUSC Framework Agreement.]³¹

³¹ Interaction with Condition10B to be considered.

11. The Licensee shall take all reasonable steps to secure and implement (consistent with the procedures applicable under or in relation to such documents as modified or replaced from time to time), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is a party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
12. For the avoidance of doubt, paragraph 11 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 11 which the Director may have.
13. The Licensee shall comply with any direction to the Licensee made pursuant to this Condition.
14. In this Condition –

"Applicable CUSC Objective(s)"

means:

- a. in relation to a proposed modification of the modification procedures, the requirements of paragraph 6 (to the extent that they do not conflict with the objectives set out in paragraph 1); and
- b. in relation to any other proposed modification, the objectives set out in paragraph 1.

"connection and use of system arrangements"

are [arrangements pursuant to which persons may have use of the Licensee's Transmission System and arrangements relating to the connection to the Licensee's Transmission System of the electrical lines and/or electrical plant of any person].

["Core Industry Documents"

means:

- a. those which in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the CUSC or connection and use of system arrangements; and
- b. have been designated by the Secretary of State on the date Condition 1B comes into force as meeting the description set out in (a).]

"CUSC"

means the Connection and Use of System Code provided for in paragraph [2] of this Condition, as from time to time modified.

"CUSC Party"

means any person which is party to the CUSC Framework Agreement, other than the Licensee.

15. [This Condition [or parts of it] shall not come into effect until the date specified in a direction to that effect made pursuant to [paragraph 1 of Condition 1B].]

Annex 4

Part B

GENERATION AND SUPPLY LICENCES

Draft CUSC Licence Condition

CUSC Licence Condition

1. The Licensee shall be a party to the CUSC Framework Agreement and shall comply with the CUSC.
2. The Licensee shall take all reasonable steps to secure and implement (consistent with the procedures applicable under or in relation to such documents), and shall not take any steps to prevent or unduly delay, changes to the Core Industry Documents to which it is a party (or in relation to which it holds rights in respect of amendment), such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the CUSC.
3. For the avoidance of doubt, paragraph 2 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the Core Industry Documents which the Director may have.

4. In this Condition –

“CUSC”

means the connection and use of system code required to be place pursuant to the Transmission Licence granted to the Transmission Company, as from time to time modified.

["Core Industry Documents"]

means those which:

- (a) in the Secretary of State's opinion are central industry documents associated with the activities of the Licensee and Authorised Electricity Operators, the subject matter of which relates to or is connected with the CUSC or connection and use of system arrangements; and
- (b) have been designated by the Secretary of State on the date Condition 1A comes into force as meeting the description set out in (a).]

"CUSC Framework Agreement"

means the agreement of that title, in a form approved by the [Secretary of State/Director General] by which the CUSC is made binding between the parties to that agreement, as from time to time amended.

5. [This Condition [or parts of it] shall not come into effect until the date specified in a direction to that effect made pursuant to [paragraph 1 of Condition 1A].]