

**June 2000**

**The New Electricity Trading  
Arrangements: Proposed Licence  
Conditions**

**Ofgem/DTI Conclusions Paper**

## Executive Summary

In order to introduce the new electricity trading arrangements (NETA) in England and Wales, it is necessary to make changes to the electricity transmission, generation and supply licences. These changes will be introduced as soon as the Utilities Bill currently before Parliament receives Royal Assent. Some of the new provisions will be brought into force on the Go Active<sup>1</sup> date others on the Go Live<sup>2</sup> date, but all will be superseded by the new Standard Licence Conditions when they are introduced in 2001.

The proposed changes to the transmission, generation and supply licences were consulted upon in the Ofgem/DTI document "The New Electricity Trading Arrangements, proposed licence conditions", published in February this year. This document highlights the key NETA licence issues raised by industry participants in response to that document, and sets out Ofgem/DTI's conclusions on these issues. Final NETA licence conditions reflecting Ofgem/DTI's conclusions are annexed to this document.

Ofgem/DTI received 28 responses to the February licence consultation document. The majority of respondents were generally supportive of most of the licence conditions proposed. However several key issues were raised. These are outlined below.

### *Transmission licence*

#### *The modification procedure*

Nine respondents commented on the modification procedure, expressing the view that the Director General should not have a unilateral power to propose and direct change and seeking clarity on the circumstances under which the Director General would 'direct' NGC to step in if the Panel fail to progress a modification. Ofgem/DTI reiterate that, post Go Live, there will be no power in the enduring arrangements for the Director General 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.

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<sup>1</sup> 'Go Active' is taken to mean when the BSC is established.

<sup>2</sup> 'Go-Live' is taken to mean when trading begins under the BSC.

### *The Director General's transitional powers*

Of the 15 respondents who commented on this issue all but one respondent agreed with Ofgem/DTI's proposal in the February document that during the period of transition between Go Active and Go Live circumstances may arise that require the BSC to be modified within a very short timescale and, as such, it was sensible for the Director General to have a temporary power to direct change to the BSC. However they all stressed that it is essential that every effort be made to consult with interested parties prior to any directed change, and several advocated a streamlined process of consultation during this time. Ofgem/DTI agree with the industry on both these points.

Although the February document proposed that this power to direct should be available only during the transitional period between Go Active until Go Live DTI and Ofgem believe that temporary arrangements are required for ensuring that necessary amendments to the BSC can be made quickly and effectively in the period immediately following Go Live. Ofgem/DTI propose that the most effective way of ensuring that a suitable modification were proposed to address any serious and urgent problem which might occur is for the Director General to be able to request that the BSC Panel consider what modification could cure or mitigate any substantial disruption that had occurred.

The ability of the Director General to make such a request would be limited to the circumstances defined by the criteria outlined below and so would be strictly constrained, and would be limited in duration to 12 months from Go Live. This approach will ensure that in urgent situations an appropriate modification will be proposed. As with other emergency modifications, there would be an ex post evaluation of the modification proposed by the Panel if it were approved by the Director General for implementation. If the Panel, on consideration, believed that the BSC was not at fault and that, in consequence, no modification was needed, then they could advise the Director General so.

The criteria for invoking the interim reserve modifications arrangements would be: substantial disruption to the operation of the new electricity trading arrangements as initially put in place by the Secretary of State resulting from matters inherent in the BSC; and urgent action is necessary to prevent continued substantial disruption continuing.

This issue should be viewed in the context of interactions with the Implementation Scheme (copies of which appear on the Ofgem web site – [www.ofgem.gov.uk](http://www.ofgem.gov.uk)) and as

such comments can be submitted with responses to the Implementation Scheme consultation.

#### *Enduring change co-ordination*

The main issue that arose was Ofgem/DTI's assertion in the February document that licensees should be required to use their best endeavours to secure change to core industry documents necessary to implement a BSC modification. The industry emphasized that 'reasonable endeavours' (rather than best) was an adequate test for facilitating changes. Having taken note of respondents views, Ofgem/DTI acknowledge that it would be appropriate that licensees should be required to take all reasonable measures to secure change to core industry documents necessary to implement a BSC modification rather than best endeavours as proposed in February.

#### *NGC's obligation to operate the system efficiently*

The industry generally welcomed the insertion of a clause requiring NGC to operate its transmission system in an efficient, economic and co-ordinated manner. NGC argues that there is no need for such a condition when it is subject to an incentive scheme. Ofgem/DTI continue to believe that this condition necessary.

#### *Non-discrimination Obligation*

All five respondents who commented on the insertion of a non-discrimination obligation on NGC in the procurement and use of balancing services supported its introduction. Ofgem/DTI agree that NGC should be subject to this condition.

#### *NGC purchasing energy*

Although the majority of participants were opposed to allowing NGC to acquire electricity, Ofgem/DTI still maintain that NGC should be allowed to acquire electricity to enable it to operate the system and/or operate it economically and efficiently. However a number of measures are being introduced in order to limit the extent to which NGC acquires electricity and, to further alleviate participants' fears, NGC will be obliged to make information available on the balancing services that it has procured.

### *Balancing procurement statements before and after Gate Closure*

All 11 respondents who commented on this issue agreed that, since NGC was to be given increased discretion in its purchasing of balancing services, an annual balancing procurement statement was necessary. Ofgem/DTI agree that NGC should be required to produce and publish a procurement statement, at twelve-monthly intervals. In addition Ofgem/DTI conclude that it is appropriate that NGC release information on balancing services at the day ahead stage. NGC should outline, in its Procurement Guidelines statement, the exact nature of the information that it will provide to other market participants, e.g. the resolution of data, the timing at which it will be released each day and where exactly the information will be published.

### *Contract payments feeding into the Cash-out price*

Ofgem/DTI consider that, in order to make the imbalance prices more cost reflective, it is necessary for contract payments for certain balancing services to be fed into these calculations. Further detail on this issue was set out in the April transmission services consultation document. Ofgem/DTI have concluded that a Balancing Services Adjustment Data Methodology needs to be established in order to specify exactly how contracts (and indeed which contracts) will be used. NGC will be responsible for producing and updating this Balancing Services Adjustment Data Methodology.

### *Balancing Principles statement*

All eight respondents who commented on this issue agreed that a statement of broad principles for the operation of balancing activities would be useful. NGC will be required to produce a Balancing Principles statement, the form and content of which will require the prior approval of the Director General and which will be subject to annual review. In addition NGC will be required to provide an annual, audited assessment of its level of compliance with the principles laid out in the statement.

### *Involuntary Instruction*

Respondents' views were mixed as to whether NGC should have to use all bids and offers available in the Balancing Mechanism or be allowed to resort to involuntary instruction under certain circumstances. Ofgem/DTI conclude that there could be circumstances in which NGC may resort to involuntary action rather than exhausting all

available Balancing Mechanism bids and offers, as long as these circumstances are sufficiently well defined within the Balancing Principles statement.

### ***Generation and Supply Licences***

#### *Market Abuse*

Seven respondents commented on the need for a market abuse condition with the majority contending that such a condition was unnecessary, given existing levels of competition. Ofgem/DTI feel that it is inappropriate to comment substantively on the market abuse condition at this time, given the present Competition Commission reference.

#### *Price Data*

Views were evenly split as to whether the Director General should reserve a power to obtain contract price data for price reporting purposes. However, given the evidence that price reporting is now emerging, Ofgem/DTI conclude that such a power is not necessary.

#### *Generation Unit Availability*

Certain generators are currently subject to an obligation to provide information about generating unit availability, planned outages, fuel types and proposed temporary or permanent plant closures. Half of the respondents, mostly generators, commented on this issue expressing little support for preserving the condition on information provision under NETA. Notwithstanding the comments made by respondents Ofgem/DTI remain of the view that there is merit in preserving the condition.

#### *Non Discrimination in Electricity Sales Contracts*

Public electricity suppliers and certain generators<sup>3</sup> 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. Ofgem/DTI felt that in the new arrangements, opportunities for harmful price discrimination by licensees may exist in

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<sup>3</sup> For information, the following generators were subject to the condition as at Aug 98: First Hydro (AES), Magnox Electric, National Power, Nuclear Electric (BE), Scottish Nuclear (BNFL) and PowerGen.

forwards, future and derivative markets and therefore suggested maintaining and updating the current licence condition. The majority of respondents felt that this condition was unnecessary. However, for NETA implementation Ofgem/DTI believe that, as with the generating unit availability clause, the non-discrimination in electricity clause should remain in those licences in which it already exists, with the wording modified to reflect the new trading environment under NETA. Post NETA, it will be necessary to determine the scope and coverage of this condition in the drafting of standard licence conditions for generators and suppliers. This will need to be considered further in the light of the outcome of the Competition Commission's findings on the market abuse condition.

### ***Implementation***

18 respondents commented on implementation, and in particular, the Implementation Scheme. Over half stated that an Implementation Scheme should be issued as soon as possible for consultation. In addition a large majority felt that the Implementation Scheme should focus only on those matters necessary to introduce the new trading arrangements. A number of respondents were of the view that the Secretary of State's powers to apply conditions in respect of NETA should be time expired. Ofgem/DTI agree with respondents that an Implementation Scheme is critical in order to ensure all the complex and interrelated matters necessary for Go Live are carried out by all participants in a timely and orderly manner. A draft of parts A to C of the Implementation Scheme was placed in the public domain, on the NETA website, on 14 June. Comments were invited, to be received by 3 July. The remaining sections will be published on the Ofgem website in conjunction with this document. Comments on the Implementation Scheme are invited by 10 July.

Ofgem/DTI recognise the level of concern about late changes and/or potentially costly changes to the Implementation Scheme. As such, changes to the scheme will only be made out of necessity. In addition the power to make and amend the Implementation Scheme will be time-limited to a two year period, consistent with the Secretary of State's NETA implementation power under the Utilities Bill.

### ***Next Steps***

Subject to the Utilities Bill receiving Royal Assent in July 2000, the Secretary of State will designate the NETA licence conditions in August 2000. The licence conditions will oblige licensees to comply with the Implementation Scheme and the BSC. Licensees will shortly receive a letter outlining the steps they will need to take to put the necessary legal framework in place.



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# 1. Introduction

- 1.1 In February 2000, Ofgem published a document entitled "The New Electricity Trading Arrangements, Proposed licence conditions."<sup>4</sup> This contained proposals for licence changes that are required to the transmission, generation and supply licences for the new electricity trading arrangements in England and Wales (NETA). These proposals built on a previous consultation issued in December 1999,<sup>5</sup> which was underpinned by the policy decisions outlined in Ofgem/DTI's conclusions for NETA set out in their October 1999 Conclusions Document.<sup>6</sup>
- 1.2 The changes to licences being introduced for NETA will be introduced as soon as the Utilities Bill currently before parliament receives Royal Assent. Some of the new provisions will be brought into force on the Go Active<sup>7</sup> date others on the Go Live<sup>8</sup> date, but all will be superseded by the new Standard Licence Conditions when they are introduced in 2001. The Standard Licence conditions were issued for consultation in February of this year, in "Utilities Bill: Standard Licence Conditions". It is anticipated that a further draft will be issued for comment in the Autumn.
- 1.3 This document highlights the key NETA licence issues raised by industry participants in response to the February document, and sets out Ofgem/DTI's conclusions on these issues. Final NETA licence conditions reflecting Ofgem/DTI's conclusions are annexed to this document. However, some respondents also commented on issues that are specific to the Standard Licence conditions, and these views have also been captured in this document.
- 1.4 28 responses were received in total. The majority of respondents were generally supportive of most of the licence conditions proposed. However several key issues were raised.
- 1.5 With respect to the proposed changes to the transmission licence the following issues were raised:

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<sup>4</sup> Henceforth this shall be referred to as "The February document".

<sup>5</sup> The New Electricity Trading Arrangements and Related Transmission Issues – Proposals on licence changes, Ofgem Consultation Document, December 1999. This shall be referred to as the December document.

<sup>6</sup> The New Electricity Trading Arrangements, Ofgem/DTI Conclusions Document, October 1999.

<sup>7</sup> 'Go Active' is taken to mean when the BSC is established.

<sup>8</sup> 'Go-Live' is taken to mean when trading begins under the BSC.

- ◆ the modification procedure, in particular Ofgem's powers to "direct" NGC to step in to progress a modification;
- ◆ the Director General's powers to propose and direct change to the BSC between Go Active and Go Live;
- ◆ enduring change co-ordination and the obligation to use best endeavours to ensure change to key documents;
- ◆ NGC's new obligation to operate the system efficiently and economically;
- ◆ NGC's non-discrimination obligation in the procurement and use of balancing services;
- ◆ NGC's ability to purchase energy to operate the system economically and efficiently;
- ◆ The information that NGC would provide with respect to balancing services it had procured;
- ◆ How balancing services contract payments would feed into the cash-out mechanism;
- ◆ NGC's Balancing Principles statement; and
- ◆ the circumstances under which NGC would be permitted to effect involuntary instruction.

1.6 With respect to generation and supply licences the following key issues were raised:

- ◆ the introduction of a market abuse condition;
- ◆ the necessity for the Director General to reserve a power to obtain contract price data for reporting purposes;

- ◆ the retention of the generator unit availability condition; and
- ◆ the retention (and possible extension) of the non-discrimination provisions in electricity sales contract condition.

1.7 In addition, most respondents commented on the need for a draft of the Implementation Scheme to be issued for consultation as soon as possible.

1.8 The rest of this document examines these key issues in more detail, outlining the February 2000 Ofgem/DTI proposals, respondents' views, and Ofgem/DTI's conclusions for each issue. Chapters two and three outline the main issues raised with respect to NGC's transmission licence, and are specifically concerned with BSC modifications and the role of the System Operator (SO) respectively. Chapter four focuses on issues that were raised relating to generation and supply licences. Chapter five outlines the development of the Implementation Scheme. Chapter six summarises other issues that were raised such as PSA run off and Scottish issues. Chapter seven concludes. In addition Appendix one lists those participants who responded to the February document. Appendices two, three, and four contains the NETA licence conditions for transmission, generation and supply.

## 2. BSC Modifications

### *The modification procedure*

#### **February Document**

- 2.1 The February document reiterated that the enduring arrangements for modifications to the Balancing and Settlement Code (BSC) would require the prior approval of the Director General but that the Director General would not have a unilateral power to propose and direct change without the modification procedures having been followed.
- 2.2 However the Director General would have a power to direct NGC to step in and progress a modification (following its approval in accordance with the procedures in the BSC) and to implement it, if the BSC Panel or BSCCo<sup>9</sup> failed to act in accordance with their duties under the BSC. This is a prudent safeguard for the protection of the industry and consumers since the DG would have no direct regulatory control over the BSC Panel or BSCCo.

### *Respondents' Views*

- 2.3 Nine respondents commented on the modification procedures outlined in the February document. Four agreed that the Director General should not have a unilateral power to propose and direct change. One said that this would lead to BSC parties being subject to more regulatory uncertainty which conflicted with the concept of the principle of predictable regulation as set out in the Utilities Bill.
- 2.4 Five respondents commented on the power that the Director General would have to 'direct' NGC to step in should the Panel fail to progress a modification. The majority sought clarification on the exact circumstances under which this could occur. In addition it was stated that when Ofgem intervenes the reasons for such an intervention should be transparent. One respondent believed that

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<sup>9</sup> Note that the BSCCo has now been named Elexon. However, in this document we continue to refer to it as the BSCCo.

such a condition was unnecessary as it was unlikely that the BSCCo would fail to comply with the procedures, given that Director General appointed the independent Chairman of the BSCCo and Panel. NGC commented that since it will be obliged to step in when the BSCCo and Panel have failed to comply with the modification process, the relevant licence condition should contain adequate provisions to enable the Director to authorise the recovery of costs incurred by NGC.

#### *Ofgem/DTI's Conclusions*

- 2.5 Ofgem/DTI reiterate that, post Go Live there will be no power in the enduring arrangements for the Director General to make unilateral changes to the BSC which have not been proposed and developed in accordance with the modification procedures laid down in the Code.
- 2.6 Ofgem/DTI believe that it is unlikely that the Director General's power to direct NGC to intervene in the modifications process will ever be used but it is an important safeguard should the BSC Panel and company fail to perform.

*These provisions are set out in Condition 7A of the Transmission Licence, found in Appendix 2.*

#### ***The Director General's transitional powers***

##### **February Document**

- 2.7 The February document outlined that the Director General would have the power to propose and direct change during the transitional period between Go Active and Go-Live. The circumstances under which this power could be used would be set out in the Implementation Scheme, currently being consulted upon. The document also stated that where possible in the time available, the Director General would seek to consult in advance on the changes required prior to Go-Live.

#### *Respondents' Views*

- 2.8 Half of respondents commented on this issue. Only one respondent felt that this condition was unnecessary. The rest agreed that during the period of transition between Go Active and Go Live circumstances may arise that require the BSC to

be modified within a very short timescale and as such it was sensible for the Director General to have a temporary power to direct change to the BSC.

- 2.9 However they all stressed that it is essential that every effort be made to consult with interested parties prior to any directed change. Several respondents suggested that a more streamlined process of consultation be implemented during this time, with one respondent suggesting that 48 hours would be a reasonable amount of time. In addition, two stated that it is essential that the Director General undertakes an industry impact assessment of all proposed changes since the changes may, in fact, cause implementation difficulties for market participants which could delay the Go Live date or increase implementation risks. Others argued that it is essential that any changes made by the Director General in this period can be reviewed after the event in cases where there has been no consultation.
- 2.10 Two respondents also commented on the time period during which this power would be open to the Director General. One stated that it should be made clear that the Director's ability to direct modifications is only to be used during the transitional period. Another commented that although the Director cannot impose a change after the Effective Time,<sup>10</sup> there is considerable flexibility in the definition such that the Secretary of State could extend the Effective Time beyond NETA implementation which would automatically extend the power of the Director to impose change even after what might commonly be considered NETA Go Live.

#### *Ofgem/DTI's Conclusions*

- 2.11 Ofgem/DTI believe that it is essential that the Director General has the power to direct change during the period between Go Active and Go Live. The circumstances under which this power will be used will be set out in the Implementation Scheme, but in general it is envisaged that it will only be used to undertake changes necessary to take account of problems encountered during the testing and trialling process and other urgent changes necessary for NETA implementation.

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<sup>10</sup> Where the Effective Time means the start of the first period for trading under the BCS as defined by the Secretary of State.



- 2.12 Ofgem/DTI recognise the industry's concern with regard to consultation on these changes, and believe that a streamlined consultation process would be useful. Therefore a consultation will be undertaken for these interim modifications, but in view of the need for a streamlined process, the consultation period may only be 48 hours.
- 2.13 The February document proposed that this power to direct should be available only during the transitional period between Go Active and Go Love and not after this period. However, there is a risk that there may be events, not foreseen in the first version of the BSC, which require very quick and effective changes to the rules to correct the situation. There is also a concern that the source of any problem which arises may not be immediately obvious, and that the framing of any modification effectively correcting the problem may require specialised skills and resource which may not be immediately available among market participants in short timescales, particularly during the early months of the new NETA market. This may prevent individual companies from proposing appropriate modifications quickly, or could add significant delay. This may undermine the effectiveness of the emergency modifications procedure. Thus Ofgem/DTI suggest that the most effective way of ensuring that a suitable modification were proposed to address any serious and urgent problem which might occur is for the Director General to be able to request that the BSC Panel be asked to consider what modification could cure or mitigate any substantial disruption.
- 2.14 Ofgem/DTI believe that this route should only be taken in extreme circumstances and if the rules required urgent rectification. In any other circumstances Ofgem/DTI consider that the normal modifications process should be followed. Further, the risk of such circumstances arising is low and there would be much less risk of them arising in a properly functioning market once it has settled down and market participants have become more familiar with the market arrangements. Therefore the need for an interim reserve modification arrangement would be time limited. The duration of the interim reserve modification arrangements would need to last for the shortest time possible, but should not expire before market participants can be confident that no circumstances are likely to arise which cannot be dealt with through the enduring modifications process. The seasonal nature of the electricity market

suggests that 12 months may be the longest period that the interim arrangements are needed. Therefore Ofgem/DTI believe that the interim reserve modification arrangements should apply for 12 months from Go-Live, and that this period should not be open to extension.

- 2.15 The ability of the DG to make such a request would be limited to defined circumstances and would be strictly constrained. The criteria for invoking the interim reserve modifications arrangements (both of which must be met) would be:
- ◆ substantial disruption to the implementation or operation of the new electricity trading arrangements as initially put in place by the Secretary of State resulting from matters inherent in the BSC; and
  - ◆ urgent action is necessary to prevent such substantial disruption continuing.
- 2.16 If the Director General believed that a problem were so serious and urgent that it met the above criteria, he could request the Panel to come forward quickly with an appropriate modification to correct the BSC. If the Panel, on consideration, believed that the BSC was not at fault and that, in consequence, no modification was needed, then it could advise the Director General so.
- 2.17 In proposing a modification, the Panel would follow, to the extent appropriate, the emergency modifications procedure in the Code, and the procedure would be approved by the Director General. The procedure would allow for consultation to be undertaken to the extent possible in the time available. As with other emergency modifications, there would be an ex post evaluation of the modification proposed by the Panel if it were approved by the Director General for implementation.
- 2.18 Ofgem/DTI believe that if there were to be a serious and urgent problem the above proposal would ensure that it was swiftly and efficiently rectified. These proposals should be viewed in conjunction with the Implementation Scheme (discussed in Chapter 5), which is under consultation. Any views with respect to this procedure should be addressed as part of the response to the Implementation Scheme consultation.

*These provisions are set out in Condition 7A of the Transmission Licence, found in Appendix 2.*

### ***Enduring change co-ordination***

#### **February Document**

- 2.19 The February document reiterated the need for a licence obligation to facilitate change to other central industry documents, where change was appropriate to give full effect to and in consequence of approved changes to the BSC.
- 2.20 The proposed change co-ordination condition was intended to ensure, as far as possible, that the powers of the Director General in relation to BSC modifications cannot be frustrated or undermined by licensees, where a modification is dependent on change being made to other central industry documents. It ensures that, to the extent that licensees have a role to play in the change process of another document, they do not hinder implementation of approved BSC modifications or seek to deliberately undermine the new governance arrangements of the BSC.
- 2.21 It was stated that if a modification is approved licensees should be required to use their best endeavours to secure change to core industry documents necessary to implement a BSC modification.

#### *Respondents' Views*

- 2.22 12 respondents commented on change co-ordination.
- 2.23 Two stated that a change co-ordination condition is unnecessary and completely impractical to interpret and therefore to enforce. They felt that the key to getting co-ordinated changes to the various industry codes and agreements lies in the governance of those agreements themselves and in the promoter of any new concept promoting that concept in all the appropriate fora in a co-ordinated manner. They asserted that if there was a matter of principle that went across various agreements/codes to be decided then it should not be beyond the various governing bodies to organise a joint working group to consider the arguments. If there was no agreement within these groups then in the majority

of cases the recourse is an appeal to Ofgem to resolve the matter so there should be no case of conflicting decisions.

- 2.24 Another respondent stated that a voluntary approach to change co-ordination is preferable. It argued that all proposals need to be subjected to evaluation and review by market participants as the complexity of the inter relationship between industry documents requires careful consideration. Four respondents stated that it is important to recognise participants' rights and obligations in related documents.
- 2.25 One Scottish generator stated that the obligation as drafted is too open-ended and licensees cannot be expected to follow such a procedure without having regard to the implications on both customers and the market. It said that this is particularly true for customers in Scotland where the arrangements are covered by a separate suite of agreements. It argued that licensees cannot agree to a condition where the scale of their requirement is undefined and they know they may be expected to act against the best interests of their company and customers.
- 2.26 Nine respondents commented on Ofgem/DTI's proposals that licensees should be required to use their best endeavours to secure change to core industry documents necessary to implement a BSC modification. Only one agreed that best endeavours should be used to support the condition on change co-ordination. All others asserted that 'reasonable endeavours' (rather than best) is an adequate test for facilitating changes to other industry documents.

#### *Ofgem/DTI's Conclusions*

- 2.27 Ofgem/DTI recognise participants' rights and obligations under related documents and reiterate that it is not the intention to circumvent the procedures established under other documents or to require licensees to do things beyond their control. The obligation to facilitate change is solely intended to ensure that the new flexible governance arrangements of the BSC are not frustrated or unduly delayed due to interdependency of documents.
- 2.28 Given the fundamental importance of the BSC, it is essential that licensees do what they can to facilitate the change process. However, having taken note of respondents' views, Ofgem/DTI acknowledge that it would be appropriate that

licensees should be required to take all reasonable measures to secure change to core industry documents necessary to implement a BSC modification rather than best endeavours as proposed in the February consultation.

*Ofgem/DTI acknowledge that it would be appropriate that licensees should be required to take all reasonable endeavours to secure change. As well as this change being made in terms of change control, it has also been adopted throughout the Licences wherever "best endeavours" were originally recommended.*

### 3. Role of the System Operator

#### *NGC's obligation to operate the system efficiently*

##### February Document

- 3.1 In the December consultation Ofgem suggested that the economic purchasing obligation on NGC's Ancillary Services Business, should be reviewed under NETA, subject to an efficient incentive being in place on NGC. A number of respondents to this expressed concern that an incentive scheme alone would not be necessarily sufficient in all circumstances and therefore there should continue to be an obligation on NGC to procure and utilise balancing services efficiently.
- 3.2 In the February document, Ofgem/DTI expressed the view that, provided there is an appropriate incentive scheme in place, NGC should have discretion to procure balancing services via whatever route it considers fit, in order to fulfil its statutory duties and licence obligations. However Ofgem/DTI argued that NGC's system operation activities must be conducted in an open and transparent manner. In order to address industry concerns that an incentive scheme alone is not sufficient to ensure NGC operates the system efficiently in all circumstances, Ofgem/DTI proposed that NGC should be subject to a new licence obligation to operate its transmission system in an efficient, economic and co-ordinated manner.

##### *Respondents' Views*

- 3.3 Eight respondents to the February document commented on this issue. All except NGC welcomed the insertion of this new obligation. One respondent argued that there was a stronger case for NGC to be subject to a non-discrimination clause and 'good behaviour' clause than other licensed traders.
- 3.4 NGC stated its belief that an obligation to operate the system efficiently is not necessary if it has an efficient incentive scheme in place under NETA. NGC argued that under an all-encompassing incentive scheme, which aligns the interests of the SO with consumers, it will always be seeking to operate the system efficiently whilst ensuring operational security of supply.

3.5 NGC also argued that the existence of such a licence condition alongside an incentive scheme might potentially expose NGC to a double jeopardy situation should any relevant breach be proven. It feared that if it was demonstrated that it had not operated the system in an efficient, economic and co-ordinated manner (due perhaps to technical reasons) it would be under threat of an enforcement order for breach of the licence condition being made against it. It asked that the drafting of the licence condition (7B(1)) should clarify that the interaction of its obligation to operate the system in an efficient, economic and co-ordinated manner should be in accordance with, and be met by following the principles of, the Balancing Principles statement.

*Ofgem/DTI's Conclusions*

- 3.6 Ofgem/DTI continue to believe that NGC should be subject to a licence obligation to operate its transmission system in an efficient, economic and co-ordinated manner for a number of reasons.
- 3.7 First, Ofgem/DTI consider that the new licence condition acts to formalise terminology and objectives for NGC's System Operation function that both already exist within the current Transmission Licence and the Grid Code and which will exist within the BSC. Second, the proposed licence condition will provide consistency between relevant objectives in the BSC and objectives set out in the Transmission Licence. Moreover, there is a similar requirement on Transco, providing consistency with the gas regime.
- 3.8 Third, the acceptance by NGC of financial incentives to manage and control the costs of system operation, over which it has some control, is an explicit recognition of the influence it has in ensuring that the system is operated efficiently and economically. Thus, accepting financial incentives to operate the system efficiently is consistent with accepting the proposed licence condition. In this sense, the proposed licence condition is recognising and formalising an expectation of the way in which NGC carries out its SO function that is already implicit in its acceptance of a SO incentive scheme.
- 3.9 NGC has contended that such a condition is not necessary when an incentive scheme is in place. However given that the SO incentive scheme under NETA is likely to encompass a cap on the payments to NGC and a collar on the

payments by NGC, there could be instances when the SO incentive scheme no longer provides a further incentive e.g. when NGC has hit its cap or collar. In such instances the proposed licence condition will ensure that NGC continues to have an obligation to operate the system efficiently. Indeed, there may be other circumstances in which the financial incentives on NGC would not apply, for example, emergency situations, during which we would expect NGC to continue to operate efficiently. The proposed licence condition formalises this expectation. Thus it is the all-encompassing nature of this obligation which makes its inclusion essential. In summary the obligation to operate the system in an efficient, economic and co-ordinated manner would not be met simply on the basis of NGC following the principles set out in the Balancing Principles statement, as there are other duties involved in operating a system efficiently, which may go wider than a Balancing Principles statement.

- 3.10 Lastly the proposed condition should be seen as part of a package of measures, including the discretion to be given to NGC with respect to the procurement and utilisation of balancing services, which taken together represent a significant step towards defining the role and functions of the System Operator under NETA. More discretion for the SO in the way in which it operates the system means that participants will demand better information and increased transparency. The condition should be considered with the publication of Procurement Guidelines and Balancing Principles and greater information provision by NGC to the market.
- 3.11 Overall, Ofgem/DTI are firmly of the belief that a new licence condition on NGC to operate the system efficiently and economically is necessary under NETA. However, Ofgem/DTI do not believe that this condition should be used to evaluate NGC's actions when it is limited by time pressure or technical constraints to make decisions in operational timescales. Should NGC's actions be reviewed it will be in the light of the circumstances prevailing at the time when a particular action was taken, and of information available to it, or which ought properly to have been available at the time. It is intended to provide high level criteria for evaluating whether, with a range of options and a certain pool of information, NGC assessed its options correctly and followed an efficient and economic course of action.



*These provisions are set out in Condition 7B, Paragraph 1 of the Transmission Licence, found in Appendix 2.*

### ***NGC's Non-discrimination obligation***

#### **February Document**

- 3.12 The February document proposed that there should be an obligation on NGC not to discriminate in the procurement of balancing services (ahead of Gate Closure) or in the selection of Balancing Mechanism bids/offers and in the call-off of other balancing services in operational timescales.

#### *Respondents' Views*

- 3.13 Five respondents commented on the non-discrimination obligation in the procurement and use of balancing services. All supported its introduction. Participants argued that procurement and use of balancing services should be carried out in an open and transparent manner, with two arguing that it should be market based and one calling for this to be enforced by licence condition. Another respondent commented that NGC needs to utilise the demand side to the maximum economic extent.

#### *Ofgem/DTI's Conclusions*

- 3.14 Ofgem/DTI continue to advocate that there should be an obligation on NGC not to discriminate in the procurement and use of balancing services. NGC's Balancing Procurement statement (discussed in sections 3.9 to 3.11) and Balancing Principles statement (discussed in sections 3.15 to 3.17) will outline how NGC will procure balancing services and the method by which it will use them.

*These provisions are set out in Condition 7B, Paragraph 2 of the Transmission Licence, found in Appendix 2.*

### ***NGC purchasing energy***

#### **February Document**

- 3.15 In the February document Ofgem/DTI stated 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. It was considered that this prohibition provided sufficient flexibility for NGC while preventing it from abusing its position as owner and operator of the transmission system. It would mean that, for example, NGC would not be entitled to undertake speculative trading<sup>11</sup> for its own commercial gain.

- 3.16 In addition Ofgem/DTI did 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, although Ofgem would monitor the effect of NGC's actions in particular markets.

*Respondents' Views*

- 3.17 Almost all participants commented on whether NGC should be allowed to acquire electricity, with the majority opposing this proposal. They argued that in practice Ofgem will find it impossible to limit NGC's trades to purchases necessary to 'operate the system and/or operate it economically or efficiently'.
- 3.18 A number of respondents argued that there is a fundamental inconsistency between:
- ◆ subjecting NGC to a broad incentive scheme given that the whole point of the incentive scheme is to provide NGC with incentives to make money in return for delivering certain services;
  - ◆ allowing NGC to buy and sell physical energy and options on that energy (under the umbrella of balancing services) since it will only buy or sell energy in advance if it were going to make a commercial gain; and
  - ◆ preventing speculative trading on the part of NGC (since every decision to buy or sell in the context of the incentive scheme is speculative).

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<sup>11</sup> defined as including actions taken in order to profit from the specific directional price move of a futures or options contract, or energy contract.

- 3.19 They argued that the prohibition is unenforceable. In addition one respondent argued that the current drafting is too loose and could be interpreted to mean that NGC could purchase energy for any purpose at all and could always argue that it was trading energy in order to procure balancing services. Another stated that rewards in the Balancing Mechanism, if allowed to operate freely, should be sufficient to attract suppliers of reserve power.
- 3.20 Several respondents expressed the concern that allowing NGC to be responsible for 'long term' energy balancing will remove any incentive on other parties to balance their positions leading to a reduction in liquidity and distortion in markets. One respondent contended that this could ultimately lead to centralised single buyer energy purchasing.
- 3.21 Only four respondents, one of which was NGC, expressed any support for this proposal. However those who supported it (with the exception of NGC) called for more transparency in NGC's purchasing actions as well as the need for Ofgem to monitor the effect of NGC's actions in particular markets. One respondent stated that it would prefer procurement of electricity to be on a far more formal basis, rather than allowing NGC to buy ancillary services ad hoc just ahead of the balancing period.
- 3.22 NGC stated that it was important for it to have discretion in the purchase of balancing services on the understanding that the activities are conducted in an open and transparent manner and assuming an appropriate incentive scheme is in place. In this way it considers that it can find the most effective way of ensuring that the overall costs of balancing the system are minimised for the benefit of all its customers.
- 3.23 NGC also maintained that having the freedom to contract and purchase required balancing services in appropriate timescales is crucial to it being able to ensure operational security of supply under the new trading arrangements. It also acknowledged Ofgem's concerns that it should not be entitled to undertake speculative trading.
- 3.24 One respondent commented that if the prohibition on trading is dispensed with Ofgem should retain the flexibility to re-impose that restriction should experience demonstrate that NGC does not need to procure electricity or that

speculative trading is becoming a problem. Another stated that the proposed draft giving the Director the power to change the extent to which NGC can purchase electricity should only be used in order to further restrict NGC's energy purchasing actions and not to widen them.

*Ofgem/DTI's Conclusions*

- 3.25 Although Ofgem/DTI note respondents' views on this issue we still maintain that NGC should be allowed to acquire electricity in order to operate the system and/or operate it economically and efficiently.
- 3.26 Experience has shown that manipulation by large participants is much more likely to damage liquidity in contract markets than NGC's ability to trade energy, particularly if NGC is made less reactive by being given less discretion to balance the system in a cost effective manner. If it were to prove necessary a licence modification could be proposed if in practise the right balance was not being achieved between the amount of discretion afforded to NGC and the effect it had on the system
- 3.27 Three measures are being introduced in order to limit the extent to which NGC acquires electricity. First it will be subject to a licence condition which ensures it operates the transmission system economically and efficiently. Second there will be a new SO incentive scheme under NETA. Finally there will be a licence condition which will explicitly prohibit NGC from acquiring electricity for purposes other than to operate the system economically and efficiently. This package of measures should ensure that NGC's new freedom to acquire energy will not be abused.
- 3.28 However, to further alleviate participants' fears, NGC will be obliged to make information available on the balancing services that it has procured and to explain how such contracts were used. This is discussed further in the next section.

*These provisions are set out in Condition 2A, Paragraph 2 of the Transmission Licence, found in Appendix 2.*

## ***Balancing procurement statements before and after Gate Closure***

### **February Document**

- 3.29 The NETA licence consultation in February stated that, in order 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, NGC should be required to produce and publish a procurement statement, probably at twelve-monthly intervals, outlining the kinds of balancing services it is interested in purchasing in the coming year and the mechanisms by which it intends to do so. It was proposed that this statement should give a general indication of NGC's proposed purchasing requirements and the method of procurement and that its form would require prior regulatory approval. NGC would be required to issue a revised version if its intentions changed after the statement was published.
- 3.30 Ofgem/DTI also stated that NGC should provide the market with information on an annual basis about the contracts it has actually concluded, ahead of Gate Closure, for the provision of balancing services.

### *Respondents' Views*

- 3.31 11 respondents commented on the need for a balancing procurement statement. All agreed that, since NGC was to be given increased discretion in its purchasing of balancing services, a balancing procurement statement was necessary. Seven respondents stated that the statement should demonstrate how NGC intends to meet its non-discrimination requirements as well as its evaluation criteria. Several felt that Ofgem should be required to approve not only the form but also the content of the statement following full consultation with interested parties.
- 3.32 NGC stated that as market participants had indicated that a procurement statement would be useful, it accepted the need for a statement giving a general indication of its proposed purchasing requirements. However it went on to say that in the longer term, as more transparent and market based mechanisms for the procurement of balancing services develop, the procurement guidelines may have limited value.

- 3.33 The majority of respondents commented on the requirement for NGC to provide the market with details of contracts that it has actually concluded annually. Eight respondents considered that given the significance of contract information, Ofgem should oblige NGC to release this information more frequently than annually. A few argued for monthly/weekly, but half argued that details of contracts called and energy purchased should be available on the same time-scale as Balancing Mechanism reports. It was asserted that full transparency of all NGC activities that impact on the energy markets is essential. A number of participants asserted that a requirement to release this information more frequently than annually would in no way interfere with Ofgem's desire for NGC to retain flexibility in contracting for these services but it would improve market participants' understanding of NGC's approach to balancing services. Two participants stated that all NGC's policies and procedures regarding scheduling and despatch should be made public unless particular procedures relate to the confidential affairs of a specific market participant.

*Ofgem/DTI's Conclusions*

- 3.34 Ofgem/DTI recognise the need for information on the types of balancing services that NGC is interested in purchasing. Therefore NGC will be required to produce and publish a procurement statement, at twelve-monthly intervals. This statement will give a general indication of NGC's proposed purchasing requirements and the method of procurement. Its form will require prior regulatory approval. As previously outlined, NGC will be required to issue a revised version if its intentions changed after the statement is published.
- 3.35 Ofgem/DTI have noted participants' comments regarding the need for information on contracts that NGC has actually concluded, and that this should be provided more frequently than on an annual basis. We understand that more frequent information would be instrumental in alleviating participants' fears with respect to NGC purchasing energy in advance of Gate Closure. Therefore Ofgem/DTI conclude that it is appropriate that NGC release information on balancing services at the day ahead stage. Participants would then be able to assess the position that NGC holds in the market before formulating their own strategies for participation in forwards markets, the power exchanges and the Balancing Mechanism.

- 3.36 It would not be appropriate for NGC to provide a very fine resolution of information on the services or contracts it had agreed. However half-hourly contract information relating to specific types of balancing services, whether the service can be called outside or inside of the Balancing Mechanism, total volumes purchased or held and the average capability/option and utilisation prices should provide sufficient comfort for other participants.
- 3.37 Ofgem/DTI believe that NGC should outline the exact nature of the information that it will provide to other market participants, e.g. the resolution of data, the timing at which it will be released each day and where exactly the information will be published. We would expect to see this outline published in the Procurement Guidelines, and NGC has given an undertaking to Ofgem that this will be the case.
- 3.38 One such vehicle for reporting this information might be the Balancing Mechanism Reporting Service (BMRS) although it is for consideration whether this is the most appropriate method of publication. Ofgem/DTI believe that it might be possible to use another transparent public site on which to publish such information such as NGC's Website (as NGC does for the periodic reports on balancing services tenders). Other options include a daily e-mail service to subscribing parties or publication on one of the power exchanges now emerging.

*These provisions are set out in Condition 7B, Clause 3 and 4 of the Transmission Licence, found in Appendix 2.*

### ***Contract payments feeding into the Cash-out price***

#### **February Document**

- 3.39 The February document stated that the NETA Programme was looking at ways in which the contract payments for certain balancing services (particularly reserve) might feed into the calculation of the energy imbalance charges.

#### *Respondents' Views*

- 3.40 No respondents commented specifically on this issue.

### *Ofgem/DTI's Conclusions*

- 3.41 Ofgem/DTI consider that in order to make the imbalance prices more cost reflective, it is necessary for contract payments for certain balancing services to be fed into these calculations. In the April document entitled "NGC systems operations under NETA: transitional arrangements. A consultation document" Ofgem/DTI consulted in detail on the exact methodology that NGC should adopt, e.g. how option fees/capability payments should be allocated across periods; the treatment of contracts for bundled services (such as reserve and delivered energy) and system services; and data provision. The conclusions of this consultation will be issued shortly.
- 3.42 Whatever the detail, a Balancing Services Adjustment Data Methodology needs to be established, and a party made responsible for its update. NGC will be responsible for producing and updating this methodology. To underpin this arrangement Ofgem/DTI believe that it is appropriate that NGC has a licence condition to establish this balancing services adjustment methodology.

*These provisions are set out in Condition 7B, Clause 6 of the Transmission Licence, found in Appendix 2.*

### ***Balancing Principles statement***

#### **February Document**

- 3.43 In the February document Ofgem/DTI expressed the view that NGC should be required to provide a statement of broad principles for the operation of balancing activities. This 'Balancing Principles' statement 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 statement would require the prior approval of the Director General and would be subject to annual review. In addition NGC would be required to report annually on its compliance with these Principles and to provide an auditor's assessment of its level of compliance. These reports would be made publicly available.



### *Respondents' Views*

- 3.44 Eight respondents commented on the need for a Balancing Principles statement, and all agreed that a statement of broad principles for the operation of balancing activities would be useful. Three respondents felt that industry participants should be given the opportunity to comment on the proposed statement. One stated that NGC should not be allowed to dictate its content.
- 3.45 One respondent felt that a statement confined to 'broad principles for the operation of balancing services' does not provide sufficient transparency on NGC's balancing activities. It felt that a detailed and definitive statement of how NGC will use balancing services can be made consistent with retaining NGC discretion by identifying those areas where discretion is retained. Another respondent wanted Ofgem to approve both the form and the content of the document.
- 3.46 Two respondents commented on the compliance with the Balancing Principles Statement. One felt that compliance statements should be provided monthly. Another stated that it is essential that the auditor who assesses NGC's compliance with the Balancing Principles is independent of NGC to increase the credibility of the audit.
- 3.47 NGC agreed to provide a Balancing Principles statement as the industry had indicated that it would be useful. However it went on to say that in the longer term, as more detailed information is published on the processes by which NGC assesses and selects services offered the principles statements may have limited value.

### *Ofgem/DTI's Conclusions*

- 3.48 NGC will be required to produce a Balancing Principles statement, the form and content of which will require the prior approval of the Director General and will be subject to annual review. A first draft of the Balancing Principles Statement was attached to the April document on "NGC systems operations under NETA: transitional arrangements", and as such was open to consultation from industry participants. The statement is being reviewed in the light of that consultation and a further draft will be issued shortly.

- 3.49 NGC will be required to provide an annual, audited assessment of its level of compliance with the principles laid out in the statement. This report will be made available to all interested parties.

*These provisions are set out in Condition 7B, Paragraph 5 of the Transmission Licence, found in Appendix 2.*

### ***Involuntary Instruction***

#### **February Document**

- 3.50 In its December consultation document Ofgem discussed the proposal that NGC should be obliged to accept all available, relevant Balancing Mechanism bids and offers before resorting to involuntary instructions on generation and demand in order to 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. In its February consultation Ofgem/DTI acknowledged that there may be circumstances under which involuntary action could be permitted (in preference to accepting available Balancing Mechanism bids and offers). It was stated that these circumstances should be defined in the Balancing Principles statement rather than in the licence.

#### *Respondents' Views*

- 3.51 Eight respondents commented on the issue of involuntary actions. Two argued that NGC should have to use all Bids and Offers available in the Balancing Mechanism. One stated that if NGC is given too much flexibility to ignore high price offers and bids at the expense of supply security the incentive on suppliers to cover reserve requirements in the bilateral markets will be reduced. It went on to say that the approach taken should be 'contract fully or pay high balancing charges'. The other respondent stated that NGC should be under a duty to accept balancing mechanism bids and offers before resorting to involuntary reductions.
- 3.52 The majority of respondents agreed that NGC may resort to involuntary instruction under certain circumstances, as long as these circumstances are sufficiently well defined. Almost all respondents agreed that the issue of

involuntary instructions is best dealt with in the Balancing Principles statement. However one recommended that the obligation on NGC should be incorporated in a licence condition, for example, 'The licensee will utilise all available Balancing Mechanism offers and bids before resorting to the instruction of involuntary actions other than in the circumstances described in the Balancing Principles statement.'

*Ofgem/DTI's Conclusions*

- 3.53 Ofgem/DTI believe that there could be circumstances in which NGC may resort to involuntary action rather than exhausting all available Balancing Mechanism bids and offer. Such circumstances need to be sufficiently well defined. We believe that issue is best dealt with in the Balancing Principles statement.
- 3.54 Responses to the February licence consultation were submitted in March 2000. As previously mentioned Ofgem issued its consultation document entitled "NGC systems operations under NETA: transitional arrangements" in April. A draft Balancing Principles statement was appended to this document. Section four of this draft outlined the circumstances under which NGC may need to take actions that will involve the involuntary reduction of generation or demand before all relevant Balancing Mechanism bid and offers have been accepted. These are as follows:
- ◆ where the call off of available offers would lead to an erosion of the system response holding below the required level. (It should be noted that an instantaneous generation loss occurring at a time of depleted response holding could lead to a frequency deviation outside of statutory limits. In extreme cases the system frequency could fall below the trigger point for automatic low frequency demand disconnection – a minimum level of 6% of total system demand);
  - ◆ where automatic curtailment measures have been initiated in response to an incident;
  - ◆ where the call off of relevant bid/offers would lead to the depletion of reactive reserves below the required levels; and

- ◆ where communication problems preclude the instruction of relevant bid/offers.

3.55 However Ofgem/DTI would also wish to see a further level of detail in the next draft of the Balancing Principles statement which would set out when exactly NGC would and would not log acceptances.

3.56 Ofgem/DTI believe that this should provide respondents with sufficient clarity as to the circumstances under which NGC will be allowed to resort to involuntary instructions.

*This is set out in Section 4 of the current draft of the Balancing Principles Statement.*

## 4. Generation and Supply Licences

### *Market Abuse*

#### **February Document**

- 4.1 Ofgem/DTI's December licence consultation document discussed a proposal for a condition to prohibit abusive behaviour by generators and suppliers in balancing services markets and in the new wholesale trading markets close to real time and that such a condition should be placed in the licences of all generation and supply licensees. However after the referral to the Competition Commission on the market abuse clause it was not considered appropriate to consult on the detail of any such condition in the February document. However Ofgem did express the view that it continues to believe 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.

### *Respondents' Views*

- 4.2 Seven respondents commented on the market abuse condition. Only one submitted that such a condition was a necessary addition to existing competition legislation and that market abuse conditions should apply to all generators and suppliers.
- 4.3 The other respondents stated that a market abuse condition was unnecessary. Two respondents argued that the Competition Act provides adequate safeguards from anti-competitive practices and abuse of market power. It was felt that it is undesirable for the licence and the Act to provide separate routes for grievances about the same event to be pursued. Another respondent stated that the good behaviour and market abuse clauses do not fall into the category of changes that are necessary or expedient for the introduction of NETA and that the proposed insertion would give too much discretionary power to the regulator.
- 4.4 One respondent argued that even if the Competition Commission recommend that the interim good market behaviour condition is included in the licences of the major generators, this is a separate issue from whether such a condition

should be imposed in perpetuity post-NETA as a standard licence condition in all generators' licences.

#### *Ofgem/DTI's Conclusions*

- 4.5 Given the ongoing referral to the Competition Commission regarding this issue, Ofgem/DTI feel that it is inappropriate to comment substantively on the market abuse clause at this time, or any similar standard condition. However, Ofgem continues to be of the view that certain forms of market abuse could fall outside the scope of both the Competition Act 1998 and relevant financial markets regulation, and therefore a market abuse condition is necessary. Ofgem will consult on the market abuse licence condition in the light of the Competition Commission's findings.

#### ***Price Data***

##### **February Document**

- 4.6 In light of the responses received to the December licence consultation document Ofgem/DTI stated in the February document that there was no need for the Director General to reserve a power to obtain contract price data for price reporting purposes.

#### *Respondents' Views*

- 4.7 Views were evenly split as to whether the Director General should reserve a power to obtain contract price data for price reporting purposes. Four respondents stated that it would be appropriate for the Director General to possess a reserve power to oblige licensees to provide contracting information in the event that effective price reporting does not evolve naturally. One argued that the provision of contract price data, even on an interim basis, would help smaller players to establish some benchmark for their output ahead of required negotiation. Another stated that the power to obtain price information is particularly useful to ensure that contracts to supply electricity between licensed entities of the same vertically integrated company are done close to prevailing wholesale market price.
- 4.8 However four respondents argued that there was no need for such a power as price reporting is developing naturally, and has existed in the market for some

time. One respondent argued that as liquidity grows, there is no reason to suppose that this will not continue.

#### *Ofgem/DTI's Conclusions*

- 4.9 Ofgem/DTI have always maintained that price reporting would emerge, and indeed there is sufficient evidence in the market currently that there is no need for the Director General to reserve a power to obtain contract price data for price reporting purposes.
- 4.10 If in the future, for some reason, price reporting ceases to develop, a licence modification could be proposed to enable the Director General to undertake a price reporting role. However, at the outset of NETA, Ofgem/DTI believe that it is unnecessary to implement such a condition.
- 4.11 With regard to vertically integrated companies, it is worth noting that existing licence conditions pertaining to internal sales of electricity will continue to apply under NETA.

#### ***Generation Unit Availability***

##### **February Document**

- 4.12 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. In the February document Ofgem/DTI stated that there was value in preserving this condition, as a means of monitoring the short and longer term availability of larger generators. Ofgem/DTI stated that the provisions relating to plant closure are an important safeguard and the Director General expects generators to comply with requirements to give notice of proposed closures as early as possible. Therefore for NETA implementation Ofgem/DTI proposed that this condition (duly amended to reflect the NETA environment) would be retained in those licences where it currently exists but would not be extended to all generation licences.
- 4.13 However, it was also stated that Ofgem will be recommending to the Secretary of State that this condition should become a standard licence condition, with a

'switch on/switch off' provision' 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 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.

#### *Respondents' Views*

- 4.14 Over half of the respondents commented on this issue. Almost all were generators. There was little support for preserving the condition on information provision. Almost all respondents contended that such reporting requirements should no longer be required under NETA. Four respondents argued that the new markets will have no mechanistic test on reserve plant value and there will be no price impact on the market of the withdrawal of plant that is not contracted or able to sustain a regular income in the balance mechanism.
- 4.15 Several respondents also commented on the longer term proposals for standard licence conditions. One respondent asserted that there is no case for applying the condition in the licences of small portfolio generators or in particular in the licences of single station independent power producers. One Scottish generator argued that it is not necessary to extend this condition to the Scottish licences since the vast majority of Scottish generation is used in Scotland and given the limited influence this generation can have on the England and Wales price, such information on Scottish generators will have no impact on the smooth running of NETA.
- 4.16 One respondent argued that the same effect could be achieved by making some data collected under the Grid Code publicly available with more detailed data disclosed to the Regulator. Another suggested that such information could be procured using the "Provision of Information" condition.
- 4.17 One respondent asked that the Director General make it clear at the outset what criteria will be used in determining whether this licence condition is switched on or off. It stated that it is highly inappropriate to simply continue to apply the condition to those generators that currently have it within their licence. The



starting position should be that it is contained and activated in all generation licences, and only in truly exceptional circumstances are they disapplied.

- 4.18 Of those expressing support for retaining the condition one respondent suggested that it should be extended to (at least) those mid-merit generators operating divested plant. It also contended that Ofgem should consider strengthening the condition to require generators to offer to sell plant that they plan to close (or to sell tolling capacity in plant closed on a temporary basis). In this way Ofgem could support scrutiny of closure decisions with direct regulatory powers to mitigate the effects of unwarranted plant closure. Another expressed support for the condition but with some reservations. It suggested that generators which are currently subject to the condition continue to be subject to it. It also stated that there should be a centralised method for allocating maintenance periods until the capacity regime is sorted out.
- 4.19 Ofgem's efforts to reduce the burden of reporting information that is of little value was welcomed by several respondents. Although one cautioned that it is important to guard against the condition becoming more onerous because of differing interpretations of what constitutes a material change. Material should mean changes that relate to the closure of units or the withdrawal from service of a unit for periods of greater than one month.

#### *Ofgem/DTI's Conclusions*

- 4.20 Notwithstanding the comments made by respondents Ofgem/DTI remain of the view that there is merit in preserving the condition on information provision. For NETA implementation the condition will be retained in those licences where it currently exists, but will not be extended to all generators' licences. Retention is required for market surveillance purposes, as reconciliation data is not made available via any other condition. However, for NETA there will be an adapted replication of the existing condition to ensure that it is consistent with NETA terminology. In particular the condition will refer to generators' availability to the market as a whole, not just availability in the Balancing Mechanism.
- 4.21 Going forward Ofgem continues to be of the view that this condition should become a standard licence condition, with a 'switch on/switch off' provision' in standard generation licences and will be recommending its extension to the

Secretary of State. Ofgem/DTI do not consider that this information gathering and reporting will be a burden to participants, particularly in its simplified form, as this type of analysis is already likely to be undertaken by a prudent operator.

*These provisions are set out in Condition 9D of the Generation Licence, found in Appendix 2.*

### ***Non Discrimination in Electricity Sales Contracts***

#### **February Document**

- 4.22 Public electricity suppliers and certain generators<sup>12</sup> 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 (CfD) by reference to Pool prices (but excludes supply to premises, which is covered by a separate non-discrimination condition). In the February document Ofgem/DTI expressed the view that the ability for parties to contract under NETA means that there is no reason to continue to define electricity sale contracts as specifically including a CfD by reference to Pool prices. However it was also felt that in the new arrangements, opportunities for harmful price discrimination by licensees may exist in forwards, future and derivative markets. Thus Ofgem/DTI proposed extending electricity sales to include other contracts accordingly.
- 4.23 Ofgem/DTI also stated that it was for consideration whether this condition should be extended to all generators (and, possibly, also all suppliers). The initial view expressed was that this prohibition should be placed in all generation licences, but with provision to switch the condition on or off and that the PES licences would also retain this prohibition, duly amended as set out above. Second tier supply licences would not include such a condition.
- 4.24 Ofgem/DTI considered that when standard licence conditions are introduced this condition should become a standard licence condition for generation licences but not for supply licences (whereas the separate non-discrimination

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<sup>12</sup> For information, the following generators were subject to the condition as at August 98: First Hydro (AES), Magnox Electric, National Power, Nuclear Electric (BE), Scottish Nuclear (BNFL) and PowerGen.

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).

#### *Respondents' Views*

- 4.25 13 respondents commented on this issue. Only two respondents expressed support for this condition. They stated that the non-discrimination provisions provide valuable protection to competition in the presence of on going market power. They also felt that there is no reason to dilute this prohibition on the grounds of materiality or to limit it to discrimination on price terms alone.
- 4.26 The majority of respondents felt that this condition was unnecessary. One argued that the proposals which introduce additional control of the generation and sale of electricity do not reflect the commercial framework of NETA and are not consistent with protecting the interests of customers and are unduly onerous. It felt that the consultation document gives virtually no weight to the consumer protection safeguards provided by competitive markets or how regulation ostensibly aimed at consumer protection may, in fact, compromise consumers' interests. It went on to say that Ofgem has not made any cost benefit case for the inclusion of such a licence condition as a standard condition in addition to general competition law and that non discrimination clauses may well distort competition.
- 4.27 Another respondent argued that generators must be free to develop innovative competitive strategies that best suit their asset base and give an acceptable return to shareholders and that they should be encouraged to offer the best deal they can to a customer in a fast changing market without being restrained by concerns about potential claims of discrimination. It also felt that fundamental changes in market structure make such a provision unworkable.
- 4.28 One respondent sought clarification of the areas of discrimination which are not already covered by the Competition Act 1998 and the FSA which the condition seeks to cover. Another stated that it would appear more appropriate that if any decision about which licensees should be subject to non-discrimination provisions should be based on the ability to exercise market power and subject to general competition law rather than any arbitrary rule.

- 4.29 Another respondent stated that it is debatable whether the condition on non discrimination in electricity sale contracts has much value going forward as NETA will cure the failings of the old regime that made such a condition necessary. However it also suggested that perhaps there is a case for rolling it forward, for transitional purposes, with a 'switch off' provision.
- 4.30 Three respondents commented on the fact that second tier suppliers would be excluded from the applicability of this condition. It was pointed out that this is completely at odds with the principle generally adopted by Ofgem to align the obligations of all suppliers. One said that, given the size of some of the second tier suppliers in the market, it was difficult to understand how Ofgem could justify imposing the obligation only on PES licences.

*Ofgem/DTI's Conclusions*

- 4.31 For NETA implementation, Ofgem/DTI believe that, as with the generating unit availability clause, the non-discrimination in electricity clause should remain in those licences in which it already exists. However, it will be necessary to modify the condition to reflect the new trading environment under NETA. Thus the specific reference to electricity sales contracts being defined to include a contract for differences by reference to Pool prices will be updated with a wider definition to encompass other types of contracts that will replace CfDs post NETA.
- 4.32 Going forward it will be necessary to determine the scope and coverage of this condition in the drafting of standard licence conditions for generators and suppliers. This will need to be considered in light of the outcome of the Competition Commission's findings on the market abuse condition, which is currently the subject of a referral. If the Competition Commission considers that it is appropriate to modify the licences of British Energy and AES, Ofgem has indicated that it would request the Secretary of State to introduce the market abuse licence condition as a standard condition, following the necessary consultation. If the market abuse licence condition becomes a standard condition on all generators and suppliers then Ofgem does not believe that a non-discrimination condition will be needed,<sup>13</sup> as the type of behaviour a non-

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<sup>13</sup> Note that the non discrimination condition for supply to premises is the subject of a forthcoming Ofgem consultation.

discrimination condition seeks to prohibit would be encompassed under a market abuse condition.

*These provisions are set out Condition 3A, of the Generation Licence, and 4C of the PES, both found in Appendix 2.*

## 5. Implementation

### *The Implementation Scheme*

#### **February Document**

- 5.1 The December consultation document noted the need for a number of steps, in addition to adoption of the BSC and signing of the Framework Agreement, to be taken by parties in order to ensure, both legally and practically, that trading can begin under the BSC. It was 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, which would set out steps, to be taken by licensees which are in the Secretary of State's opinion, appropriate to give full and timely effect to the other NETA licence modifications.
- 5.2 In the February document Ofgem/DTI reiterated the need for an Implementation Scheme, as outlined above. It was stated that the scheme should not impose obligations which would be inherently outside the licensee's ability to comply. Nor would it be used to introduce change beyond the scope of what is necessary or expedient for the introduction of the new trading arrangements. Ofgem/DTI stated their belief 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. Ofgem/DTI also stated that the power to modify the scheme after it had been designated should be limited.
- 5.3 As outlined the scheme would also set out the steps to be taken by parties to secure change to other documents without using the usual change procedures, should it not be practicable to work under the usual change procedures. To the extent of any conflict with other licence conditions which may prescribe other change procedures, the licence condition on NETA implementation would prevail. Ofgem/DTI also stated that a draft of the scheme would be made available for comment.

### *Respondents' Views*

- 5.4 18 respondents commented on this issue. Over half stated that an Implementation Scheme should be issued as soon as possible for consultation.
- 5.5 12 respondents agreed that the Implementation Scheme should focus only on those matters necessary to introduce the new trading arrangements.
- 5.6 A number of respondents agreed that the Secretary of State's powers to apply conditions in respect of NETA should be time expired. One suggested that the duration of the Secretary of State's powers to modify licence conditions to ensure the successful implementation of NETA should be limited to one year from the Utilities Bill coming into force. Another respondent was concerned that if the Secretary of State could impose a late change it could significantly impact in the cost and ability of the industry to be operational for NETA.
- 5.7 Four respondents felt that it is important that the constituent parts of the Implementation Scheme are subject to meaningful and timely consultation so that the concerns of principle and practicality raised by parties to all relevant industry documents are taken into account.
- 5.8 Three respondents argued that changes to the Implementation Scheme should be on the basis of necessity and should not allow Ofgem/DTI total discretion. It was further argued that there should be a requirement for prior consultation and there should be restrictions on changes entailing undue cost, other liabilities or disruption to other licensees (unless fairly compensated for).
- 5.9 One respondent was concerned at the suggestion that some exemptions from the requirement to hold a licence may have a condition requiring the exempt body to become a signatory to the Code. The same respondent stated that there would appear to be a problem with the governance and dispute resolution if some signatories are obliged to comply with the Code by licence and others by order. In respect of the licensees, Ofgem will be the authority to resolve disputes. For exempt signatories the Code would have to have a mechanism to resolve the dispute. The only way to have a single system would be for all disputes to be resolved internally and for Ofgem to have no authority in respect of the Code. In addition it asserted that obligations under the Code should only apply to signatories who are trading.

*Ofgem/DTI's Conclusions*

- 5.10 Ofgem/DTI agree with respondents that an Implementation Scheme is critical in order to ensure all the complex and interrelated matters necessary for Go Live are carried out by all participants in a timely and orderly manner. Ofgem/DTI also recognise that industry participants will wish to comment on such a central document. A draft of parts A to C of the Scheme was placed in the public domain, on the NETA website, on 14 June. Comments were invited, to be received by 3 July. The remaining sections will be published in conjunction with this document, with comments on the Scheme invited by 10 July.
- 5.11 Ofgem/DTI recognise the level of concern about late changes and/or potentially costly changes to the Implementation Scheme. As such, changes to the scheme will only be made out of necessity. In addition the power to make and amend the Implementation Scheme will be time-limited to a two year period, consistent with the Secretary of State's NETA implementation power under the Utilities Bill.
- 5.12 In addition the scheme invites comments on the proposal that the Director General be given permission to modify the BSC for a limited period after Go Live as previously discussed in Section 2.6.

*These provisions are set out in Condition 9A, 15A and 7C of the Generation, PES and Transmission licences respectively. These are all found in Appendix 2.*



## 6. Other Issues

- 6.1 In addition to the issues discussed below, other issues were addressed in the February document such as incentives, the new transmission access regime, CUSC and the exact nature and appeals mechanism for the treatment of losses. Comments were received on these issues. Since these subjects are currently the subject of other consultations, or will be consulted upon shortly, the issues raised will be addressed in the appropriate documents.

### *PSA Run off*

#### **February Document**

- 6.2 The December consultation document highlighted the need for a licence condition on NGC, and a licence condition on 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'. The need for this requirement was again reiterated in the February document.

#### *Respondents' Views*

- 6.3 Five respondents commented on PSA run off. Two stated that the implementation of the BSC at Go Active may conflict with the Pool related documents that will still be legally binding. They also feared that diverting resources from the Pool to BSCCo before Go Live may leave the Pool under-resourced for up to three months. One respondent stated that Pool members' views should be respected in the management of the changeover process from Pool to BSC. Another felt that uncertainty surrounding Pool run off deters new entrants some of whom may have a very limited time of operation in the Pool and it would be unfair and onerous for them to share in historic liabilities resulting from Pool run off. One respondent stated that it awaited clarification on how this will occur.

#### *Ofgem/DTI's Conclusions*

- 6.4 Ofgem/DTI support 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 continue being a party to, and to comply with, the Pooling

and Settlement Agreement for the purposes of 'run-off' until the relevant provisions of the BSC become effective.

*These provisions are set out in Condition 9C of the Generation Licence, 15A of the Transmission Licence and 15C of the PES Licence. These are all found in Appendix 2.*

## **Scotland**

### **February Document**

- 6.5 The February document stated that BSC conditions equivalent to those outlined for England and Wales generation and supply licences would be placed in the general part of each Scottish composite licence. It was 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.

### *Respondents' Views*

- 6.6 Three respondents commented on this issue. One respondent stated that the Scottish licences should, as far as possible, be identical to those applicable in England and Wales. It also asserted that there should be one GB wide transmission company.
- 6.7 One Scottish respondent argued that there are distinct advantages in having Scottish licences, where appropriate, as similar as possible to those in England and Wales and for the BSC conditions to be included in the Scottish composite licences. It said licences must also recognise the unique features of the Scottish market and if standard licence conditions are adopted which contain a switch on/switch off provision then separate provisions should be applied to Scotland such that conditions would only apply to Scotland if there was a demonstrable need. Another Scottish respondent felt that it would be inappropriate to pre-empt the outcome of the Scottish Trading Arrangements review by placing equivalent conditions into the Scottish licences at this time.

*Ofgem/DTI's Conclusions*

- 6.8 Ofgem/DTI are of the view that BSC conditions equivalent to those outlined for generation and England and Wales supply licences should be placed in the general part of each Scottish composite licence. As far as is practicable Ofgem/DTI envisage that the conditions would be identical to those applicable in England and Wales.

## 7. Conclusions

7.1 This document outlines a number of changes to the transmission, generation and supply licences. These licence conditions are all necessary for the introduction of the new electricity trading arrangements later this year. A summary of all the key points presented within the document is given below.

7.2 With respect to the Transmission licence:

- ◆ the Director General will have no enduring power to make unilateral changes to the BSC. However he will have the power to direct NGC to progress a modification if the BSC Panel or BSCCo fail to act in accordance with their duties under the BSC;
- ◆ in the interim period between Go Active and the Go Live, the Director General can, within limits, direct change. It is envisaged that there will be a streamlined consultation process during this period;
- ◆ temporary arrangements will be put in place to ensure that the necessary amendments to the BSC can be made quickly and effectively during the period after Go Live, should urgent action be necessary to prevent substantive disruption to the market as a result of the new rules;
- ◆ respondents will be expected to use reasonable endeavours to secure change to core industry documents necessary to implement a BSC modification;
- ◆ NGC will be subject to a licence duty to operate its transmission system in an efficient, economic and co-ordinated manner;
- ◆ There will be an obligation on NGC not to discriminate in the procurement and use of balancing services;
- ◆ NGC will be allowed to acquire electricity in order to operate the system and/or operate it economically and efficiently;

- ◆ NGC will be required to produce and publish a Procurement Guidelines statement, at twelve-monthly intervals. NGC will be required to issue a revised version if its intentions change after the statement is published. In addition NGC will provide ex ante information to other participants regarding its balancing services contract position, the resolution and form of which would be specified in the Procurement Guidelines;
- ◆ NGC will establish a Balancing Services Adjustment Data Methodology;
- ◆ NGC will be required to produce a Balancing Principles statement; and
- ◆ NGC will be allowed to effect involuntary instructions under conditions laid out in its Balancing Principles statement.

7.3 With respect to generation and supply licences:

- ◆ the Director General will not reserve a power to obtain contract price data for price reporting purposes;
- ◆ the Generator Unit Availability condition will be preserved in those licences in which it already exists; and
- ◆ the non-discrimination in electricity sales contracts condition will be preserved in those licences in which it already exists.

### ***Next Steps***

7.4 Subject to the Utilities Bill receiving Royal Assent in July 2000, the Secretary of State will designate the NETA licence conditions in August 2000. The licence conditions will oblige licensees to comply with the Implementation Scheme and the BSC. Licensees will shortly receive a letter outlining the steps they will need to take to put the necessary legal framework in place.

# Appendix 1 Responses to the February 2000 Consultation Document

AES Barry Limited

Association of Electricity Producers

British Energy

Centrica

CHPA

Corus

Dynegy

Edison Mission Energy

Enron Europe Limited

Entergy

GPU Power UK

London Economics

Major Energy Users Council

National Electricity Consumers Council

National Power

NGC

Norweb

Northern Electric

PowerGen

ScottishPower

Scottish and Southern Energy

SEEBOARD

Slough Heat & Power

Teesside Power

TXU Europe Ltd

Western Power Distribution

Yorkshire Electricity Distribution

Yorkshire Electricity Supply Business

## Appendix 2 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 contractually binding between the parties to that agreement, as from time to time amended with the consent of the Secretary of State.

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

"Core Industry Documents"	<p>means those documents which</p> <ol style="list-style-type: none"> <li>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</li> <li>b. have been so designated by the Secretary of State.</li> </ol>
"the Director"	<ol style="list-style-type: none"> <li>a. until both section 1(1) and section 3(1) of the Utilities Act 2000 are brought into force, the Director General of Electricity Supply, but</li> <li>b. thereafter the Authority established by section 1(1) of the Utilities Act 2000.</li> </ol>
"Effective Time"	<p>means the start of the first period for trading under the BSC as determined by the Secretary of State.</p>
"Information"	<p>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).</p>

"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.

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).
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 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 and to the extent 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 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 be taken to 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 directed by the Director;
  - (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;
    - (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 and
    - (iii) that the Licensee can recover its reasonable costs and expenses properly incurred in complying with 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 in accordance with any direction of the Director pursuant to sub-paragraph (a), or paragraph 7 of Condition 7C, and shall modify it in accordance with every such direction; but it shall not have power to modify the BSC 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) the Licensee to refer to the Director for determination, whether of its own motion or as provided in the BSC, 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.
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
    - (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) all reasonable steps are taken to secure that rights in respect of computer systems used in support of the implementation of the BSC are 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 admitting as an additional party 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;

- (ii) for the Licensee to refer to the Director for determination, whether of its own motion or as provided in the BSC 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.
- (iii) for persons to be admitted as additional parties to the BSC Framework Agreement by either
  - a representative (who need not be a BSC Party) appointed thereunder to act on behalf of all parties to it, or
  - if there is no such representative or if the representative fails to act, the Licensee acting on behalf of all parties to it.
- (c) If, following a determination of the Director as referred to in sub-paragraph (b)(ii), the representative referred to in sub-paragraph b(iii) 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 take all reasonable measures to secure and implement (consistently 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 Services**

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) This paragraph applies where the BSC provides that any Imbalance Price is to be determined (in whole or in part) by reference to the costs and volumes of Relevant Balancing Services.
- (b) Where this paragraph applies the Licensee shall:
  - (i) before the Effective Time, establish a Balancing Services Adjustment Data Methodology approved by the Director;
  - (ii) from time to time thereafter, when the Licensee first buys, sells or acquires any Relevant Balancing Services of a kind or under a mechanism which is not covered by the prevailing Balancing Services Adjustment Data Methodology, promptly seek to establish a revised Balancing Services Adjustment Data Methodology approved by the Director which covers that kind of Balancing Services or mechanisms for buying, selling or acquiring them;
  - (iii) prepare a statement of the prevailing Balancing Services Adjustment Data Methodology as approved by the Director; and
  - (iv) at all times determine and provide (for use under the relevant provisions of the BSC) the costs and volumes of Relevant Balancing Services in compliance with the prevailing Balancing Services Adjustment Data Methodology, which are to be taken into account in determining Imbalance Price(s) under the BSC.
- (c) Except where the Director directs otherwise, before revising the Balancing Services Adjustment Data Methodology the Licensee shall:
  - (i) send a copy of the proposed revisions to the Director and to any person who asks for one;
  - (ii) consult BSC Parties and allow them a period of not less than 28 days in which to make representations;
  - (iii) submit to the Director a report setting out
    - the revisions originally proposed,
    - the representations (if any) made to the Licensee,
    - any change to the revisions, and



- (iv) where the Director directs that sub-paragraphs (i), (ii) and (iii) or any of them shall not apply, comply with such other requirements as are specified in the direction.
- (d) The Licensee shall not revise the Balancing Services Adjustment Data Methodology:
  - (i) Where sub-paragraph (c)(iv) applies, before the day (if any) specified in the direction made pursuant to that sub-paragraph;
  - (ii) Where there is no such direction, or no date is specified in such direction, until the expiry of 28 days from the date on which the Director receives the report referred to in sub-paragraph (c)(iii); or
  - (iii) If the Director directs the Licensee not to make the revision.
- 7. (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.
- 8. (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.
9. The Licensee shall take all reasonable steps to comply with the statement for the time being in force pursuant to paragraph 5.
10. The Licensee shall send to the Director a copy of each of the statements and reports prepared pursuant to paragraphs 3, 4, 5, 6 and 7 and of all revisions to any such statement.
11. The Licensee shall:
- (a) publish (in such manner as the Director may approve) the statements prepared pursuant to paragraphs 3 and 6 and each revision thereof, and
  - (b) send a copy of each statement and report prepared pursuant to paragraphs 4, 5, 6 and 7 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).

12. 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.
13. 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) particulars of all contracts for Balancing Services entered into by way of the acceptance of a bid or offer in the Balancing Mechanism where the bid or offer was made pursuant to a prior agreement;
  - (d) records of all Balancing Services called for and provided; and
  - (e) records of quantities of electricity imported and exported across each Interconnector.
14. The Licensee shall provide to the Director such Information as the Director shall request concerning the procurement and use of Balancing Services.
15. In this Condition:

"Imbalance Price"	means a price, in the BSC for charging for imbalances as referred to in paragraph 2(b)(ii) of Condition 7A;
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"Relevant Balancing Services"

means Balancing Services other than

- those which the Licensee has acquired through the mere acceptance of an offer or bid in the Balancing Mechanism, provided that such offer or bid was not made pursuant to any prior agreement, and
- those which the Director directs the Licensee not to treat as Relevant Balancing Services.

"Balancing Services Adjustment Data Methodology"

means a methodology to be used by the Licensee to determine what costs and volumes of Relevant Balancing Services are to be taken into account under the BSC for the purposes of determining in whole or in part the Imbalance Price(s) in any period, which methodology shall cover each of the kinds of Balancing Services which the Licensee buys, sells or acquires, and the mechanisms by which the Licensee buys, sells or acquires them, at the time at which the methodology is established.

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 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:
  - (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.
  
3. 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; and for dealing with Run-Off as defined in paragraph 7 of Condition 15A;
  - (f) for the Licensee to refer to the Director for determination, whether of its own motion or as provided in the scheme, 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; and
  - (g) for the Director, in the circumstances set out in the scheme, to require that consideration be given to the making of a proposal to modify the BSC and, if so, to require the making of such proposal in the manner set out in the scheme, such power to be exercisable at any time within the period of 12 months after the Effective Time.
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, other than provisions pursuant to paragraphs 3(g) and 7(a), 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, 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 all reasonable 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.

### **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 reference to such offers and bids."

In this Condition Authorised operator includes any person transferring electricity to or from England and Wales across an interconnector.



### 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 until the provisions of the BSC relating to Run-Off become effective.
  
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;
  - (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

"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 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 (including the resolution of disputes in respect thereof).

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.

## Appendix 3 Generation Licences<sup>14</sup>

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

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<sup>14</sup> 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.

## Condition 1: Interpretation

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

*"the Director"*

*means*

- (a) until both section 1(1) and section 3(1) of the Utilities Act 2000 are brought into force, the Director General of Electricity Supply, but*
- (b) thereafter the Authority established by section 1(1) of the Utilities Act 2000.*

### 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)]<sup>15</sup>
  - 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.

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<sup>15</sup> The words in square brackets apply to those licences into which Condition 3A will be inserted.

6. The Conditions to which paragraph 4 applies are:

Condition 1 (Definitions)

[Condition 3 (Prohibition on cross-subsidies and on discrimination in selling electricity)]<sup>16</sup>

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

Condition 9E (Generating Unit Availability)<sup>17</sup>

*[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".]*

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<sup>16</sup> The words in square brackets will apply to those licences which at present contain this Condition 3.

<sup>17</sup> Existing Condition 9A will be renumbered 9E to avoid confusion.

### **Condition 3A: Prohibition on 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. 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 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. For the purposes of paragraphs 1 and 2 of this Condition, there shall be disregarded:
  - (a) NFFO qualifying arrangements; and
  - (b) any contract for the supply of electricity (as from time to time amended on or before 30 September 1990 in accordance with its terms or to reflect changed circumstances involving the restructuring of the industry) vested in the Licensee under the transfer scheme.



5. Paragraphs 2 to 3 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 6 and :
  - (a) the Director agrees in writing to the disapplication request; or
  - (b) their application (in whole or in part) is terminated by notice given by the Licensee in accordance with paragraph 8 or 9.
  
6. A disapplication request shall be made in writing addressed to the Director, shall specify the paragraphs (or any part or parts thereof) to which the request relates and shall state the date from which the Licensee wishes the Director to agree that the specified paragraphs shall cease to have effect.
  
7. Save where the Director otherwise agrees, no disapplication following delivery of a disapplication request shall have effect earlier than that date ("the disapplication date") which is the later of:
  - (a) a date being not less than 18 months after delivery of the disapplication request; and
  - (b) the fifth anniversary of the date of grant of this Licence.
  
8. 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 written notice to the Director terminating the application of such of paragraphs 2 to 3 above (or any part or parts thereof) as are specified in the disapplication request with effect from the disapplication date or a later date.
  
9. 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 a cessation of such paragraphs, in whole or in part, operates or may be expected to operate against public interest, the licensee may within 30

days after the publication of the report by the Director in accordance with the section 13 of the Act deliver to him written notice terminating the application of such paragraphs with effect from the disapplication date or a later date.

10. 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 9A: Balancing and Settlement Code and NETA Implementation

1. The Licensee shall be a party to the BSC Framework Agreement and shall comply with the BSC.
2. The Licensee shall comply with the programme implementation scheme established in accordance with paragraph 3, as modified from time to time in accordance with paragraph 5.
3. 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 4, 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.
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, 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 Licensee to refer to the Director for determination, whether of its own motion or as provided in the programme implementation scheme, 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.
  - (g) for the Director, in the circumstances set out in the scheme, to require that consideration be given to the making of a proposal to modify the BSC and, if so, to require the making of such proposal in the manner set out in the scheme, such power to be exercisable at any time within the period of 12 months after the Effective Time (as defined in Condition 9C).
5. (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 3.
- (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.
6. If there is any conflict between the requirements contained in the programme implementation scheme pursuant to paragraph 4(a) and imposed on the Licensee by paragraphs 2 and 5 of this Condition, and those imposed on the Licensee by any other Condition, the provisions of this Condition shall prevail.
7. Without prejudice to paragraph 2, the Licensee shall use all reasonable 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).

8. 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 contractually binding between the parties to that agreement, as from time to time amended with the consent of the Secretary of State.

"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 so designated by the Secretary of State.

9. 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 9B: Change Co-ordination for NETA**

1. The Licensee shall take all reasonable measures to secure and implement (consistently 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.
2. In paragraph 1, Core Industry Documents has the meaning given in paragraph 8 of Condition 9A.
3. 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 9C: Pooling and Settlement Agreement Run-off

1. 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 until the provisions of the BSC relating to Run-Off become effective.
2. 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.

3. In this Condition:

"Run-off" means the determination and settlement (including by way of reconciliation) of amounts due 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 (including the resolution of disputes in respect thereof).

"Effective Time" means the start of the first period for trading under the BSC as determined by the Secretary of State.

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 9D: Generating Unit Availability

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 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. (a) 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:-
- (i) 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;
  - (ii) the Registered Capacity;
  - (iii) the planned outage programme;
  - (iv) the statistical expectation of unplanned outages;
  - (v) any factors known to the Licensee which are likely to cause actual unplanned outages to be fewer or more numerous than the statistical expectation;
  - (vi) any planned or expected operational or manning limitations which may prevent the Generating Unit from being available;  
and
  - (vii) other circumstances known to the Licensee which may materially affect availability.
- (b) 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 sub-paragraph 3(a) 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);
  - (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 (i) to (vii) of paragraph 3(a) as varied under paragraph 3(b) 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 11) 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  
"Settlement Period" Registered Capacity of the Generating Units  
forming part of that Power Station

"available" means:

*[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.

## Appendix 4 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 will be placed in the general part of the composite Scottish licences*

## Condition 1: Interpretation

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

*"the Director"*

*means*

- (a) until both section 1(1) and section 3(l) of the Utilities Act 2000 are brought into force, the Director General of Electricity Supply, but*
- (b) thereafter, the Authority established by section 1(1) of the Utilities Act 2000*

### 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 and to the extent 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. 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. The Licensee shall be a party to the BSC Framework Agreement and shall comply with the BSC.
2. The Licensee shall comply with the programme implementation scheme established in accordance with paragraph 3 as modified from time to time in accordance with paragraph 5.
3. 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 4, 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.
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, 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 Licensee to refer to the Director for determination, whether of its own motion or as provided in the programme implementation scheme, 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.
  - (g) for the Director, in the circumstances set out in the scheme, to require that consideration be given to the making of a proposal to modify the BSC and, if so, to require the making of such proposal in the manner set out in the scheme, such power to be exercisable at any time within the period of 12 months after the Effective Time (as defined in Condition 15C).
5. (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 3.
- (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.
6. If there is any conflict between the requirements contained in the programme implementation scheme pursuant to paragraph 4(a) and imposed on the Licensee by paragraphs 2 and 5 of this Condition, and those imposed on the Licensee by any other Condition, the provisions of this Condition shall prevail.



7. Without prejudice to paragraph 2, the Licensee shall use all reasonable 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).

8. 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 contractually binding between the parties to that agreement, as from time to time amended, with the consent of the Secretary of State.

"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 so designated by the Secretary of State.

9. 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 15B: Change Co-ordination for NETA**

1. The Licensee shall take all reasonable measures to secure and implement (consistently 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.
2. In paragraph 1, Core Industry Documents has the meaning given in paragraph 8 of Condition 15A.
3. 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 15C: Pooling and Settlement Agreement Run-off**

1. 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, until the provisions of the BSC relating to Run-Off become effective.
2. 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.

3. In this Condition:

"Run-off" means the determination and settlement (including by way of reconciliation) of amounts due 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 (including the resolution of disputes in respect thereof).

"Effective Time" means the start of the first period for trading under the BSC as determined by the Secretary of State.

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.