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1. Introduction and Executive Summary

- 1.1 New wholesale electricity trading arrangements (NETA) for England & Wales will be introduced later this year. The governance arrangements that will support NETA include the establishment of a Balancing and Settlement Code (“BSC”, or “Code”), a Panel to oversee the implementation of the Code and to progress modifications to it, and a company, BSCCo¹, to provide or procure a range of operational and administrative services, both directly and through contracts with service providers.
- 1.2 The proposals embodied in the draft BSC reflect the culmination of an intensive programme of work, under Ofgem² and DTI direction and involving all interested parties, which has taken place since November 1998. The introduction of the BSC is an important step in the process of reform which began in October 1997 when the then Minister for Science, Energy and Industry invited the then Director General of Electricity Supply (The Director General) to consider how a review of electricity trading arrangements might be undertaken. The Director General implemented an extensive and open process of consultation and the valuable input made by interested parties was taken into account in drawing up proposals for reform.
- 1.3 In July 1998, the Director General published a report suggesting the introduction of market-based trading arrangements focused on bilateral trading between generators, suppliers, traders and customers. This was accepted by the Government in October 1998 in its White Paper on Energy Policy. Since then OFFER and the DTI have jointly led the NETA Programme, assisted by a Development and Implementation Steering Group (DISG) representing all interested groups within the industry including customers, an advisory Programme Management Board, and Expert Groups. Public seminars have been held to discuss progress.
- 1.4 Key milestones in this process included the publication by Ofgem of a detailed set of proposals in July 1999 for public consultation, followed by an Ofgem/DTI conclusions report in October 1999. In February 2000 Ofgem/DTI published their proposals for changes to licences in transmission, generation, distribution and supply, and to the Scottish licences, that are required to implement NETA

¹ BSCCo has been renamed as ELEXON, however this document will continue to refer to BSCCo as this is the term that was used in the Consultation version of the BSC.

in England and Wales. This document also provided an indicative outline of the Balancing and Settlement Code.

- 1.5 Finally, on 31 May 2000, Ofgem/DTI issued a version of the draft Balancing and Settlement Code for consultation (“the Consultation version”)³. The consultation process and the draft timetable were described in a letter from the NETA Programme Director’s Office to all interested parties published on the Ofgem website on 26 May 2000. The requirement for the timetable was indicated in a paper (DISG30/01) presented to the DISG on 9 May 2000.
- 1.6 On 5 June, a seminar was held for interested parties to provide an overview of the framework of the BSC, to describe the thinking behind the draft Code and the consultation process, and to allow participants to gain an understanding of their role during the consultation process.
- 1.7 The letters A-X represents the Sections of the BSC. The table below provides the title of each BSC Section.

BSC Section	Title
A	Parties and Participation
B	The Panel
C	BSC Co
D	BSC Cost Recovery and Participation Charges
E	BSC Agents
F	Modification Procedures
G	Contingency Arrangements ⁴
H	General
I	[not used]
J	Party Agents
K	Classification and Registration of Metering Systems and BM Units
L	Metering
M	Credit Cover and Credit Default
N	Clearing, Invoicing and Payment
O	Communications
P	Energy Contract Volumes and Metered Volume Reallocations
Q	Balancing Mechanism Activities
R	Collection and Aggregation of Metered Data from CVA Metering Systems
S	Supplier Volume Allocation

² Formerly OFFER (prior to June 1999)

³ The draft BSC and associated documents can be accessed at the NETA area within the Ofgem website at <http://www.ofgem.gov.uk>.

⁴ Section G of the BSC is to be the subject of further consultation and will be developed after Go-active and incorporated as a modification to the BSC prior to NETA Go-live.

T	Settlement and Trading Charges
U	Provisions Relating to Settlement
V	Information and Reporting to Parties
W	Trading Queries and Trading Disputes
X	Definitions and Interpretation

- 1.8 The BSC consultation process was based on the principles set out in DISG30/01, but was enhanced so as to allow participants and others a variety of options to enable them to manage better their resources devoted to the task. The process has been structured to accommodate both the invitation of written comments and the holding of consultation meetings involving Ofgem, DTI, NETA Programme advisors and nominees from a wide range of interested parties. Written and oral comments were received and assessed and the approach taken was to understand and review the comments and to seek Ofgem/DTI decisions on the issues that emerged.
- 1.9 Throughout the process of consulting upon the BSC the DTI and Ofgem have sought to provide continual feedback to interested parties on their responses to issues that have been raised, either orally at seminars and consultation meetings, or in writing. This document serves to report back further on the main issues that arose during the consultation process. Together with other comments and drafting suggestions that have been taken on board, these issues will, where applicable, be incorporated into a revised draft of the BSC. Revised drafts of Sections A, B, C, E, F and H of the BSC and the Framework Agreement were placed on the Ofgem website on 24th July 2000 and represent additional feedback by way of comments that have been incorporated into the Legal & Governance aspects of the Code. Further revised drafts of the outstanding sections of the BSC will be published on the Ofgem website on 31st July 2000. It should be noted that this revised draft Code (published in two parts on 24th and 31st July) contains Ofgem/DTI's conclusions on the issues raised and this document should be read as additional background explanation.
- 1.10 The Legal and Governance consultation group meetings were held during the week commencing 12 June 2000 to review Sections B, C, E, F, H and parts of A and W of the BSC and the Framework Agreement. A number of written comments were also received on these sections of the Code.

- 1.11 A number of broad legal issues emerged which the NETA Programme undertook to consider further. To this end, a 'lawyers' technical forum' was organised, consisting of many of the lawyers who attended the Legal and Governance consultation sessions. The purpose of the meeting was to give the Programme and interested parties an opportunity to explore the legal issues and views in more detail and to consider various proposals and alternatives. Ofgem/DTI issued a subsequent consultation document⁵ on the outstanding Legal and Governance issues and on the main options considered by the Legal and Governance consultation group and, subsequently, by the lawyers' technical forum. These issues related to six main areas of concern. These were: Confidentiality; Liability of BSCCo; Relationship between BSC parties; Central enforcement; Trading disputes and Performance Assurance Board.
- 1.12 Written comments were invited on BSC sections A, D, G and all sections from J to X (excluding W). Written comments have been received from a wide variety of organisations (listed in Appendix 1). Copies of non-confidential written responses to the BSC consultation have been placed in the Ofgem library.
- 1.13 A one day seminar was held on 26 June 2000 to enable Ofgem/DTI to update the participants on the progress of the BSC consultation process, to provide feedback on the Legal and Governance review meetings and on the main issues arising from the written comments, and to provide a forum for discussion on the remaining elements of the consultation process.
- 1.14 Consultation group meetings on the Trading and Metering & Registration sections of the Code were then held for three weeks commencing on 27 June 2000 until 13 July 2000, with an additional feedback day on 18 July 2000. These meetings discussed potential changes to the BSC identified by Ofgem/DTI as a consequence of their review of the written comments received and discussed other issues raised in the meetings. The Metering and Registration consultation group considered BSC Sections J, K, L, O, R, S, V, X and part of A and W while the Trading consultation group working in parallel considered Sections D, M, N, P, Q, T and U. Appendix 1 lists the members of the consultation groups.

⁵ Further consultation on certain issues arising from the Legal and Governance Review published on 4th July 2000.

- 1.15 The BSC also refers to a number of 'subsidiary documents', including BSC Procedures (BSCPs). Where possible Ofgem/DTI have published drafts of these documents in order that interested parties have visibility of the full suite of BSC and supporting documentation.
- 1.16 This document sets out Ofgem/DTI's decisions relating to the main issues raised during the Balancing and Settlement Code Consultation process. Where a particular section of the BSC has not been detailed in this document, this is because the comments arising on it were generally of a lower level and nature and these comments, where relevant, will be reflected in a revised version of the BSC.
- 1.17 The remainder of this document is in five parts. Chapter 2 summarises the proposals for new wholesale electricity trading arrangements in England and Wales⁶ and briefly describes the Balancing and Settlement Code and its functions. Chapters 3, 4 and 5 detail Ofgem/DTI's decisions on the main issues arising during the Code consultation process and provide rationale for those decisions. Chapter 3 discusses the Legal and Governance issues; Chapter 4 discusses the Trading issues and Chapter 5 the Metering and Registration issues. Chapter 6 concludes the document.

⁶ The arrangements have been described in detail in various OFFER/Ofgem reports, such as The Review of Electricity Trading Arrangements, Proposals, OFFER July 1998, The New Electricity Trading Arrangements, Ofgem July 1999 and The New Electricity Trading Arrangements Ofgem/DTI Conclusions Document, Ofgem/DTI October 1999. Copies of these documents are available on the Ofgem web-site.

2. Background

Wholesale Trading Arrangements

2.1 In summary, the Utilities Act 2000, which received Royal Assent on 28 July 2000, contains powers to replace the existing mandatory Pool, established through the Pooling and Settlement Agreement, with new trading arrangements designed to be more efficient and to provide greater choice to market participants, while maintaining the operation of a secure and reliable electricity system. The new arrangements will include:

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

Balancing and Settlement Code

2.2 The arrangements for the Balancing Mechanism and the Settlement Process will be contained in the Balancing and Settlement Code. The initial Code is to be designated by the Secretary of State; any subsequent modifications will require the consent of the Director General of Electricity Supply.

2.3 The Code will be maintained by NGC under a new condition in its transmission licence.⁷ Licensees, and those other parties who choose to participate, will enter into a short multilateral Framework Agreement giving the BSC contractual force.

⁷ The New Electricity Trading Arrangements: proposed Licence conditions, Ofgem/DTI conclusions paper, 23 June 2000.

2.4 In summary, the terms of the balancing mechanism and imbalance settlement arrangements and their related governance, which have been developed in the NETA programme and are set out in the Code, are as follows:

Balancing Mechanism

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

Imbalance Settlement

- (iv) Generators and suppliers (and persons trading over interconnectors, and others) can enter into bilateral contracts for sale and purchase of electricity in any settlement period. These contracts are formed outside the BSC;
- (v) Parties to the BSC may notify under the BSC the contract volumes for any settlement period under such contracts;
- (vi) The imbalance, for each party, between its metered generation or demand (or allocated metered flows at interconnectors) and its net aggregate contract position, adjusted to take account of accepted bids or offers in the balancing mechanism, is determined for each settlement period and cashed-out at an imbalance price calculated under the BSC. The imbalance price reflects the weighted average cost of accepted bids or offers, according to whether the imbalance is positive or negative (but excluding bids and offers assumed to have been accepted to manage transmission constraints), in the balancing mechanism for the relevant settlement period.

BSC Panel and Company

- 2.5 The Code establishes a body, known as the Panel, as the executive body of the BSC. The Code provides for its constitution including the basis and terms of appointment of its members and its procedural rules; and sets out its general powers, functions and duties.
- 2.6 The Panel will be established to supervise the management of the Code rules. This Panel will be tasked with ensuring that the Code is effectively and efficiently managed, and that appropriate revisions to the trading arrangements are secured in a robust and timely manner. The Panel may appoint a number of standing sub-committees to assist it in its work.
- 2.7 The Panel will be charged with supervising a variety of procedures in relation to the new trading arrangements, such as the modifications process and the resolution of disputes. BSCCo will provide the secretariat and other advice, support and resource required by the Panel for this purpose.
- 2.8 BSCCo will have to undertake a number of functions in support of the new trading arrangements. These include:
- ◆ entering into contracts with service providers;
 - ◆ providing a range of resources to support the modifications process;
 - ◆ providing information on the Balancing Mechanism and Imbalance Settlement to Ofgem and to participants generally;
 - ◆ providing other secretariat functions to the Panel;
 - ◆ managing new entry processes;
 - ◆ facilitating functions such as the resolution of disputes.

3. Legal and Governance

Introduction

- 3.1 During the week commencing 12 June 2000 the Legal and Governance consultation group meetings were held in order to review the following sections of the BSC: Section B: The Panel, Section C: BSCCo, Section E: BSC Agents, Section F: Modification Procedures, Section H: General and the Framework Agreement. Section A: Parties and Participation and Section W: Trading Queries and Trading Disputes were also discussed in part in the Legal and Governance consultation group meetings, to the extent that those sections contained legal and governance provisions.
- 3.2 A number of broad legal issues emerged during the Legal and Governance consultation group meetings which the NETA Programme undertook to consider further. To this end, a 'lawyers' technical forum' was organised, consisting of many of the lawyers who attended the Legal and Governance consultation sessions. The purpose of the meeting was to give the Programme and interested parties an opportunity to explore the legal issues and views in more detail and to consider various proposals and alternatives.
- 3.3 Ofgem/DTI also issued a subsequent consultation document⁸ on the outstanding Legal and Governance issues considered in this forum. These issues related to six main areas of concern. These were: Confidentiality; Liability of BSCCo; Relationship between BSC Parties; Central enforcement; Trading disputes; and the Performance Assurance Board. This document presents the conclusions on these issues, as well as on a number of other issues raised during the Legal and Governance group meetings and via written submission. Where an issue has generally been accepted by Ofgem/DTI, reference should be made to the redrafted sections of the BSC placed on the Ofgem website for the detailed response to such issues, reflected in the revised Code drafting.

Section A: Parties and Participation

⁸ Further consultation on certain issues arising from the Legal and Governance Review, dated 4th July 2000.

Admission Criteria

- 3.4 It was suggested that there should be certain minimum admission criteria that a party would be required to meet before being allowed to accede to the Code. It was proposed, for example, that a party would be required to prove its intention to take up one of the active capacities under the Code. There was some support for this among the Legal and Governance Group.

Ofgem/DTI Conclusions

- 3.5 Ofgem/DTI believe that it is not appropriate to include explicit admission criteria to the Code at the outset, as the arrangements are intended to be open and accessible. If this is abused it will be possible, for those eligible to do so, to seek to introduce criteria by proposing a future modification to the Code. However, non-licensed parties that accede to the Code and then do not take any additional steps towards fulfilling one of the active capacities within a certain period of time will be automatically excluded from the Code (although the Panel will have discretion to extend the grace period). The relevant tests will be based around registration of metering systems, submission of energy contract volume notifications or metered volume reallocation notifications and in relation to interconnectors, appointment as Interconnector Administrator or Interconnector Error Administrator.

Energy Accounts and BSC Agents

- 3.6 It was suggested that BSC Agents should not hold Energy Accounts. It was felt that if a BSC Agent were also a Trading Party then it would be against good industry practice for that Party to be expected to meet both sets of (possibly conflicting) obligations placed on Trading Parties and BSC Agents under the Code.

Ofgem/DTI Conclusions

- 3.7 Ofgem/DTI agree that BSC Agents should not hold Energy Accounts. It is appropriate to prohibit BSC Agents from holding Energy Accounts as it could, as suggested, lead to conflicts of interest for a BSC Agent when fulfilling its role as BSC Agent under the Code.

Section B: The Panel

Priority of Panel Objectives

- 3.8 It was suggested that the Code should assign a priority between the Panel Objectives set out in Section B. In particular, it was suggested that the objective that "...the Code is given effect as economically and efficiently as is reasonably practicable..." be promoted to be the primary objective, and the others made subordinate.
- 3.9 There was a range of views put forward on this point. A counter argument was made in favour of having the Panel take a view on how to balance the objectives in each individual case.

Ofgem/DTI Conclusions

- 3.10 Ofgem/DTI consider it preferable not to prescribe a particular priority between the objectives and that it is preferable that the Panel be given the discretion to weigh up the objectives in each case where they are to be applied. The objectives are likely to require different priorities depending upon the matter in hand, and a set of priorities appropriate to all particular matters would be very difficult to devise. It should also be noted that no priority is prescribed among the relevant objectives for the Code set out in the proposed new Condition 7A of the Transmission Licence.

Panel Responsibility for Delegated Decisions

- 3.11 A number of members of the Legal and Governance Group suggested that where the Panel delegates decisions to a Panel Committee, the Panel should remain responsible for those decisions, and any issues of substance should be brought back to the Panel for decision. It was also suggested that delegation should only be allowed where there is unanimous agreement among Panel Members.

Ofgem/DTI Conclusions

- 3.12 Ofgem/DTI feel it is appropriate that the Panel should not delegate business lightly, therefore the required level of support to constitute a Panel Committee and to delegate decisions to that committee will be raised, such that unanimity is required. The requirement for unanimity will focus the Panel Members on the their decision making responsibility and the appropriateness of delegation in each case.

Participation in Panel Meetings

- 3.13 One respondent suggested that the objective to ensure that "... there is transparency and openness in the conduct of the business of the Panel and BSCCo" should be reworded to make clear that transparency of conduct of the Panel's business is the primary objective, and that observers should therefore be permitted to be present at all Panel meetings, not just where modifications are being considered.

Ofgem/DTI Conclusions

- 3.14 Due to the special nature of Modifications business, the Code provides for observers to attend Panel meetings when modifications are being discussed. However it is considered more conducive to conducting other general Panel affairs effectively where such business is held in closed session.

Exclusion from Panel Meetings

- 3.15 It was suggested that consideration should be given to whether the Panel should have the ability to exclude a person that had the right to attend Panel meetings, but was not a full voting Panel Member, from certain parts of Panel meetings. This issue was raised both at the Legal and Governance Group and in written responses.

Ofgem/DTI Conclusions

- 3.16 Ofgem/DTI do not believe the Panel should have this ability. Ofgem/DTI are of the opinion that excluding such a person from certain parts of the Panel meeting would be wrong in principle and therefore are not minded to accept such a suggestion.

Panel Consultation

- 3.17 It was suggested that consideration should be given to whether there should be a requirement for the Chairman to consult the Panel upon whether to fill the sixth industry seat and, if the decision is taken to fill the sixth industry seat, to consult upon the appropriate person to fill that seat.

Ofgem/DTI Conclusions

- 3.18 Ofgem/DTI have decided not to include such an obligation in the Code, as it is difficult to imagine that the Chairman would not consult upon the issues associated with the sixth industry seat, by discussing the matter with Panel colleagues and others. It is felt unnecessary to formalise a requirement for the

Chairman to do this in the Code and more appropriate to leave this to the Chairman's discretion.

Removal of Panel Members

- 3.19 It was suggested that the grounds for removal of a Panel Member were too narrow and that other specified grounds should be included, for example, serious misconduct. It was also suggested that Panel Members should then be capable of removal on such grounds, subject to a special majority vote of the Panel and approval of the Authority. These suggestions were supported by a number of participants at the Legal and Governance Group.

Ofgem/DTI Conclusions

- 3.20 Ofgem/DTI endorse the suggestion that other specified grounds should be included for removal of Panel members and the test of 'serious misconduct' is appropriate for inclusion.
- 3.21 Ofgem/DTI also agree with the suggestion that a Panel Member should only be capable of being removed on such specified grounds subject to a special majority vote of the other members of the Panel and the approval of the Authority, given the gravity of such a decision. The required majority will be defined as the number of Panel Members minus the member in question minus one. This will apply equally to the Chairman as well as all other Panel Members (including appointees). In the case of the Chairman the Panel would recommend to the Authority that the Chairman be removed.

Chairman's Impartiality

- 3.22 It was suggested that the Chairman should not be entitled to represent and act with regard to the interests of the body that appointed him/her, especially since other Panel Members are restricted from doing so. A number of participants in the Legal and Governance consultation meeting expressed this view.

Ofgem/DTI Conclusions

- 3.23 On the basis of views expressed by participants, and taking into account the requirement that other Panel Members should not be representative of, or act

without undue regard to the particular interests of, the body or person or persons who appointed them as Panel Member, Ofgem/DTI agree that it is appropriate that this 'non-representation' provision be extended to the Chairman.

Right to Raise Matters

- 3.24 Concern was raised that there was no automatic right for Parties to raise matters for consideration by the Panel. In addition, it was suggested that the obligation on the Panel to give fair hearing to points raised by Parties is not defined. The respondent believed that the solution is to give Parties the rights to raise issues directly with the Panel and for the Panel to be obliged to consider them. A similar issue raised was whether any Party should be entitled to require the Panel Chairman to call a special Panel meeting.

Ofgem/DTI Conclusions

- 3.25 Ofgem/DTI think it would be inappropriate to give Parties the rights to raise issues directly with the Panel and for the Panel to be obliged to consider them. The role of the Panel is to ensure the successful operation of the processes and procedures defined in the Code. Panel Members are entitled to raise issues to the extent that it is relevant to the role of the Panel and the fulfilment of their duties as Panel Members. The Panel has not therefore been designed as the kind of body to which it would be appropriate to raise any issue for consideration. The Panel's business is limited to the business provided for it under the Code. Panel Members are entitled to call a special Panel meeting to the extent that their duties and objectives under the Code require it. Ofgem/DTI believe that it would be inappropriate to allow any Party to require the Panel Chairman to call a special Panel meeting as this would mean that the business of the Panel could potentially be extended to matters beyond the proper locus of the Panel.

Panel Members' Impartiality

- 3.26 One respondent suggested that a new provision should be placed in the Code stating that there should be a Register of Panel Members' interests (the provisions of which could match the equivalent provision for those for the Trading Disputes Committee in Section W).

Ofgem/DTI Conclusions

- 3.27 Ofgem/DTI do not think it is appropriate that there should be such a Register of Panel Members' interests. Section B places various requirements on Panel Members to act impartially and to provide written undertakings to ensure that their obligations as a Panel Member prevail over other duties or responsibilities that they might have. It is therefore considered unnecessary to require that they register their interests, as their duties as a Panel Member should prevail over such interests in any event.

Vote of the Chairman

- 3.28 A number of members of the Legal and Governance Group suggested that the Panel Chairman should not have both a casting vote and a normal Panel Member vote.

Ofgem/DTI Conclusions

- 3.29 Ofgem/DTI agree that the Chairman should have only a casting vote. The argument in favour of giving the Chairman a normal vote was to engage him as a full member of the Panel in all deliberations. However, it is recognised that effectively giving the Chairman two votes is unusual. A casting vote is considered necessary to avoid deadlock on Panel business.

Inclusion in Panel Committees

- 3.30 One respondent commented that the Panel should be obliged to consider any person nominated by any Trading Party for inclusion on any Panel Committee.

Ofgem/DTI Conclusions

- 3.31 Although Ofgem/DTI agree with the sentiment, it is not considered appropriate to place an obligation on the Panel to do this. It is unlikely that the Panel would not consider any person nominated by a Trading Party for inclusion on any Panel Committee as a matter of course. It is therefore considered unnecessary to include an obligation to do so in the Code.

Attendance at Annual Meetings

- 3.32 One party questioned whether attendance by alternates of Panel Members would be acceptable at the Annual BSC Meeting. It was also suggested that the Panel and CEO of BSCCo should be bound to attend the annual meeting and required to address matters of concern to participants that are brought to

their attention. It was argued that the annual meeting could provide an opportunity to express confidence or no confidence in the Panel Members, potentially triggering the election process.

Ofgem/DTI Conclusions

- 3.33 Ofgem/DTI agree that attendance by alternates instead of Panel Members at the Annual BSC Meeting would not be acceptable. The Panel Members themselves should have to attend. Both the Panel and Board members will be required to attend the annual meeting and to address questions set down in writing in advance where possible. The timing of the annual meeting will also be synchronised with the Panel elections process every year after this first year. Ofgem/DTI believe that the annual meeting should not be a voting forum for parties. However, in the interests of transparency and accountability, it is felt desirable to require issues to be addressed and to link the meeting to the elections process.

Panel Election Process

- 3.34 One respondent suggested that an obligation should be included to ensure that the Panel election process is as transparent as possible and that BSCCo should be required to report to all Parties on the process. Furthermore it should be clear who nominated and voted for whom.

Ofgem/DTI Conclusions

- 3.35 Ofgem and the DTI agree with the objective of transparency and believe that this is provided for in the election rules.
- 3.36 Section B, Annex B-2 requires BSCCo to circulate a list of all nominated candidates to Parties. This list shall specify the Trading Party by whom each candidate was nominated. It is not, however, considered appropriate to disclose actual voting, as this part of the voting process is traditionally kept confidential under accepted elections practice.

Section C: BSCCo

Choice of BSCCo Directors

- 3.37 It was suggested by a number of members of the Legal and Governance Group that the Panel should have a greater role in endorsing the Panel Chairman's choice of BSCCo Directors.

Ofgem/DTI Conclusions

It will be for the Panel to resolve upon the identity of the two Directors that are also Industry Panel Members. Furthermore, the Chairman will be obliged under the Code to consult the Panel on the further Board appointments. Ofgem/DTI do not therefore believe that it is necessary or appropriate for the Panel to endorse the Panel Chairman's selection of the BSCCo Board Members that are not also Panel Members. Consequently it is felt unnecessary to extend the role of the Panel in this area.

Accountability of BSCCo

- 3.38 A number of parties, both within the Legal and Governance Group and via written submission, raised issues regarding the governance of BSCCo, the degree of autonomy afforded BSCCo and the accountability of the company. In particular participants requested that further consideration should be given to whether there should be additional controls on BSCCo activities that would be exercised by the Panel. Areas where participants thought such additional controls might be appropriate included:

- ◆ awarding BSC Agent contracts, setting contract principles in respect of major issues, acting within and terminating those contracts;
- ◆ financial control of BSCCo in circumstances where the Board is seen to be failing in this regard, with solutions ranging from the ability for the Panel to require replacement of the Chairman or Board members, to the Panel being able to require the Board to take specified steps to address the problem;
- ◆ taking major decisions and central action in relation to litigation on behalf of Parties;
- ◆ providing for the ability for participants to seek redress from BSCCo for disproportionate liability that the participant might face as a result of BSCCo actions;

- ◆ overseeing the implementation of Code modifications and instructing BSCCo to take appropriate action to avoid the application of the NGC 'step-in' power.
- 3.39 Some participants stated that they would be satisfied with a little more scrutiny of BSCCo decisions by the Panel whereas others wanted more decisions being taken by the Panel rather than BSCCo, albeit on the recommendation of BSCCo.
- 3.40 Related to this issue, there was also a view that where the Panel was required to take such decisions, the Panel should be required to consult Trading Parties as Trading Parties are the group that ultimately bear the costs associated with such decisions through their funding of BSCCo.

Ofgem/DTI Conclusions

- 3.41 In general, Ofgem/DTI are not inclined to change the nature of the Panel/BSCCo relationship. Although a number of parties called for greater control and scrutiny of BSCCo, views were also received that called for greater freedom and autonomy for BSCCo in its management and decision-making. There is a balance to be struck between giving BSCCo sufficient autonomy to be able to deliver services efficiently and effectively whilst giving comfort to parties that the company is operating in an efficient manner through additional scrutiny and control. The level of BSCCo discretion provided for by the Code is felt to be necessary and sufficient to allow a range of actions to implement the Code in the most efficient possible manner. However, as described in subsequent subsections of this chapter, some limited change in this area has been made with a view to increasing the accountability of, and incentives upon, BSCCo.

Exclusion of liability of BSCCo

- 3.42 A number of parties, both at the Legal and Governance Group and via written submission, expressed concern at provisions excluding liability of BSCCo. It was argued that there did not appear to be any recourse for Parties if BSCCo was failing to perform its obligations, or where BSCCo action had inflicted significant loss or damage on a party. It was recognised that there was no systematic reason why any individual party would be disproportionately affected by any BSCCo action, but it was suggested that provision should be

made for such an eventuality and that BSCCo should accept liability in such instances, albeit with a reasonable cap on that liability. It was argued that this would also place appropriate incentives on the management of BSCCo and increase the accountability of the company to participants.

Ofgem/DTI Conclusions

- 3.43 Due to the no profit/no loss status of BSCCo, any successful claims against BSCCo will ultimately be borne by Trading Parties and the general approach of excluding liability is to reflect the fact that, in most cases, any such claims would be matched by offsetting increases in BSCCo charges. However it is recognised that where there is significant individual loss suffered, it would be appropriate to allow a claim against BSCCo to be pursued in such exceptional circumstances. It is accepted that making BSCCo liable under these circumstances will place appropriate incentives and a level of accountability on the management of BSCCo.
- 3.44 After taking account of the responses to the consultation document on these issues⁹ Ofgem/DTI believe that provisions should be incorporated for BSCCo liability where a Party is unfairly and particularly prejudiced by BSCCo breach, subject to a de minimis level for any single claim. Although one participant argued that a de minimis level would disadvantage small players, Ofgem/DTI believe that, on the grounds of overall efficiency and stability in the market, it would not be in anyone's interests to lower this threshold. In addition it would be too complex to relate the level to any measure of size, such as trading volume.
- 3.45 The aggregate cumulative amount for which BSCCo may be liable to all Parties in respect of actionable breaches in any single year shall be £3,000,000. If the aggregate liability of BSCCo in a year exceeds that amount, the amounts for which BSCCo is liable to each Party shall be reduced pro rata. There will also be a limitation period, whereby claims must be submitted within 6 months of becoming aware of the breach.
- 3.46 BSCCo liability will remain excluded for certain activities, such as the approval of Credit Default notices, its obligations as the Performance Assurance Administrator and its obligations under the Code modification procedures.

⁹ New Electricity Trading Arrangements, Draft Balancing and Settlement Code: Further consultation on certain issues arising from the legal and governance review.

Termination of BSCCo

- 3.47 One respondent commented that Section C needed to address the termination of BSCCo: including the grounds for termination, who terminates and the consequences of termination. It was noted that the default provisions in Section H excluded BSCCo.

Ofgem/DTI Conclusions

- 3.48 The exclusion of provisions for the termination of BSCCo is deliberate. The termination of BSCCo would be a major decision and it is felt that the most appropriate way to deal with this, should it arise, would be through a modification to the Code, and therefore subject to the open and robust processes and procedures reserved for Code Modifications, including regulatory approval.

BSCCo as Central Enforcer

- 3.49 Concern was expressed at the proposal that the BSCCo should act as the central enforcer of legal obligations on behalf of Parties, thereby excluding the right of Parties to sue individually. It was suggested that parties should be able to opt out of this rule and revert to individual action, or avoid being involved in the proceedings altogether. There was also concern about the conduct of proceedings, the absence of a framework for BSCCo's decisions on conduct of any proceedings and as to what BSCCo's incentives would be in taking such decisions.
- 3.50 This view was expressed by a number of parties at the Legal and Governance Group and via written submission.

Ofgem/DTI Conclusions

- 3.51 Ofgem/DTI believe it is necessary to achieve an appropriate balance between what might amount to removing the rights of parties to choose whether and how rights are enforced, and the potential for many cross-actions where parties pursue each other non-centrally, which might undermine the workability of the Code. The Panel and BSCCo objective of ensuring that the Code is given

effect may make central enforcement desirable in some cases. Ofgem/DTI believe that where a Party is in breach, the Panel should instruct BSCCo to take proceedings if the Panel considers that such proceedings are appropriate to give effect to the Code in accordance with the objectives in Section B1.2.1.

- 3.52 In such a case the Panel will set terms of reference for BSCCo relating to the conduct, supervision (by the Panel or a committee) and reporting of the proceedings. Parties will be required to appoint BSCCo as agent for such proceedings, to allow BSCCo to conduct the proceedings under the terms of reference and not to commence proceedings themselves in respect of that breach. The Panel will decide whether to give such instruction to BSCCo within a reasonable period after being requested to do so by another Party.
- 3.53 In any other case BSCCo would not take proceedings and it would be for Parties individually to do so.
- 3.54 These arrangements would not prevent BSCCo or Parties from seeking interim relief (such as an injunction) where this is needed as a matter of urgency to protect the interests of any Party or Parties.
- 3.55 Thus Ofgem/DTI believe that in the case of a non-financial breach, the BSCCo should enforce centrally, if instructed by the Panel, in cases that affect operation of the Code. In addition, the BSCCo should enforce centrally any claims against BSC Agents, as laid out in Section E of the Code, but subject to Panel approval if the amount subject to any such proceedings is greater than a threshold level to be set by the Panel from time to time. In the case of a financial breach (other than BSCCo charges) the provisions as they currently stand in Section N should be retained, whereby the Panel decides whether to instigate proceedings against the defaulting party, but the time available for making that decision should be reduced from 40 days to 28 days. With respect to financial breaches concerned with BSCCo charges, the provisions as they currently stand in Section D will be retained.

Transparency of Requests by the Authority for Information

- 3.56 Concern was expressed by a number of members of the Legal and Governance Group that it would not be transparent to parties when the Authority had requested information from BSCCo about a particular named individual party.

Ofgem/DTI Conclusions

- 3.57 Ofgem/DTI believe that, in the interests of transparency, the BSCCo should publish information on each such request for information, unless the Authority indicates to the contrary. In such cases, BSCCo or the Authority will inform only the individual parties in respect of which information has been requested.

Section F: Modification Procedures

Powers of the Authority

- 3.58 The Code is currently drafted such that the modification procedures set out in Section F are not explicitly linked to the power to modify the Code provided in the Transmission Licence. Concern was expressed that, as a result, the Authority could seek to change the Code without following the prescribed procedures within the Code. There was similar concern that the Authority may seek to use the urgent modification procedures to circumvent the normal procedures in a significant number of cases where the industry would prefer to follow the standard route.
- 3.59 Concern was also expressed over the power for the Authority to overturn or redirect a number of BSC Panel decisions on how to progress modifications. The Authority is entitled to direct the Panel not to amalgamate modification proposals, to accord a different priority to a proposal and to amend the timetable for progressing a particular modification. This was regarded by some as an unacceptable level of interference, as it was likely to undermine the status of the Panel.
- 3.60 Parties also commented on the proposal that the Panel should be entitled to consult with the Authority during the life of a modification on whether to incur significant costs and whether the findings of a Modification Group at any time were consistent with the Authority's latest thinking on a particular matter. There was a view that this could provide a route to 'short circuit' a modification before the procedure was completed. It was noted that the intention of these provisions is to provide comfort to the Panel that it is acting efficiently at all times in incurring costs and that the Panel is not legally obliged to alter its approach in light of the views of the regulator.

Ofgem/DTI Conclusions

- 3.61 Ofgem/DTI feel that these aspects of the modifications process should remain unchanged for a number of reasons which are outlined below.
- 3.62 The actions of the Authority will be guided by reference to the relevant statutory obligations placed upon it and it would not be appropriate for the Code to seek to constrain the Authority in this regard.
- 3.63 Urgent modifications can only be proposed by BSCCo or the Transmission Company, not the Authority. The Authority's involvement in the urgent modifications process is limited to:
- ◆ approving whether or not to treat a modification proposal as urgent, once it has been proposed as such; and
 - ◆ approving the procedure and timetable associated with addressing the urgent modification proposal.
- 3.64 The ability for the Authority to redirect certain Panel decisions during the course of the modification process and the ability for the Panel to seek the Authority's views on certain aspects of that process has been designed into the process in order to make it speedier and more efficient. If this flexibility were not provided there is a danger that the Panel could authorise unnecessary expenditure on consideration of a modification proposal or spend too much time on certain aspects of the modification process for a particular modification proposal (again with adverse consequences for costs). Ofgem/DTI believe that these provisions provide an important stimulus to the efficient processing of modifications.

Role of NGC in Modification Process

- 3.65 It was proposed that the Authority should be able to direct NGC to step in and take over the modification procedures where it is the Authority's opinion that there is likely to be a failure i.e. the power should be prospective as well as reactive.

Ofgem/DTI Conclusions

- 3.66 Ofgem/DTI agree that this should be the case. This is consistent with normal licence enforcement powers and will be important in allowing swift and effective

action to avoid a failure of the arrangements. The decision to take such a step will be subject to the Authority's statutory and public law duties.

Interactive Nature of Modifications

- 3.67 There was concern that the Code should take into account the interactive nature of modifications, particularly where consideration is being given by the Panel or Authority as to whether modification proposals should be amalgamated. It was noted that the Code should recognise that certain modifications may be exclusive and ought not to be amalgamated.
- 3.68 It was also noted that, at present, certain minor modifications to the P&SA and to subsidiary documents are developed and then stored awaiting an opportunity to implement the change in conjunction with a more significant change or a batch of minor changes. It was suggested that including this approach to amalgamation would prove a pragmatic solution.

Ofgem/DTI Conclusions

- 3.69 Ofgem/DTI do not consider it necessary to make specific amendments to address the above points for the following reasons.
- 3.70 Any interactivity between modification proposals should be made known by the Panel when they are providing their reasons for organising modification proposals in the way that they have in the Monthly Progress Report.
- 3.71 The various combinations of modification proposals will be considered by the Panel when they are organising their modifications business. The Panel can only consider and organise modifications that have been proposed to them. The Panel should be managing the modifications process such that modification reports go to the Authority at the same time, or with common effective dates, if modifications could be efficiently implemented simultaneously.

Prioritisation of Modifications

- 3.72 One respondent stated that the criteria for prioritisation of modification proposals should be established and should be explicit, otherwise Panel Members may find it difficult to agree on the relevant priorities of modification

proposals. The respondent further stated that this is something that the gas industry has never been able to do despite repeated attempts.

Ofgem/DTI Conclusions

- 3.73 Ofgem/DTI recognise the desirability to give some guidance to Panel Members on the way in which priorities should be assigned, but do not consider this to be workable in practice.
- 3.74 It is considered too difficult to establish specific criteria for prioritisation of modification proposals that would always be suitable regardless of the modification proposal in question. Instead the general objectives applying to the Panel in paragraph 1.2.2 of Section F and the general Panel objectives in Section B provide an appropriate decision-making framework.

Publicity of Reasons for Decisions

- 3.75 One respondent commented that, whilst the Panel is likely to give reasons for its decisions in relation to modification proposals, in most cases provision should be made for the Panel not to publish reasons where it considers that appropriate.

Ofgem/DTI Conclusions

- 3.76 Ofgem/DTI do not think it is appropriate that such a provision should be made. In the interests of transparency in its decision-making processes, Ofgem/DTI consider it necessary that the Panel be required to publish its reasons for deciding to prioritise, amalgamate, reject etc. certain modification proposals. It is also noted that the Panel's modification business will be conducted in open session.

Allocation of Modification Costs

- 3.77 One respondent suggested that there may be circumstances where NGC should pay all or some of the costs of progressing a modification where instructed by the Authority to 'step in' when the Panel or BSCCo was failing to comply with the Code.

Ofgem/DTI Conclusions

- 3.78 Ofgem/DTI do not think it would be appropriate for NGC to bear some or all of the costs of the modification in such circumstances. These are costs that are

incurred by the Transmission Company through fulfilment of a role provided for it under the Code, the occurrence of which cannot be estimated or provided for.

Short Notice Proposals

- 3.79 One respondent commented that the Panel should be able to consider proposals at short notice and that it may therefore be prudent to give the Panel the opportunity to consider proposals that have been submitted after the Day-5 deadline. The Panel may wish to vote on whether these could be considered and may develop criteria by which to judge the value of consideration at short notice.

Ofgem/DTI Conclusions

- 3.80 Ofgem/DTI believe that the Day-5 deadline should be retained, as it instils a good discipline to submit modification proposals in sufficient time to meet such deadlines. However, there is flexibility in the Code to place late matters on agendas or to hold extra Panel meetings if the prescribed timetable proves to be insufficient in certain circumstances.

Consultation Process

- 3.81 There was concern that, whilst consultation is key to transparency, excessive use could slow down the progress of modification proposals. It was suggested that there should only be 2 compulsory consultations: (i) on receipt of a proposal; and (ii) at the report phase; the former focusing on identifying the high level support for and impact of a proposal, the latter to give confirmation of support for the detailed proposal. All other consultations should be voluntary and only where justified.

Ofgem/DTI Conclusions

- 3.82 Ofgem/DTI believe that it is necessary to provide for a sufficient level of consultation on modification proposals as ultimately the decision to approve a modification proposal is one that is governed by public law requirements and it is necessary to ensure that such a decision has been supported by the appropriate level of due process and consultation. Therefore there will be the option of consultation provided for at every key stage of a modification proposal. However the nature of this consultation and the length of time

necessary to support it can be tailored by the Panel and Modification Groups to suit the particular modification proposal in question.

Appointments to Modification Groups

- 3.83 One respondent commented that Trading Parties should be given the opportunity to appoint members to the Modification Groups.

Ofgem/DTI Conclusions

- 3.84 Ofgem/DTI do not consider that this addition is necessary. The Code already provides for the Panel to establish and maintain a standing list of persons who may be willing to be members of a Modification Group and Parties and interested third parties may submit suggestions to the Panel for suitable candidates to be included on such a list. Trading Parties will have the opportunity to propose nominees onto this standing list.

Legal drafting for Modifications

- 3.85 One respondent commented that detailed legal drafting required to give effect to a modification proposal should only be commissioned once the Authority had approved the Modification in question, otherwise money would be wasted.

Ofgem/DTI Conclusions

- 3.86 Ofgem/DTI believe that it is necessary to commission legal drafting before a modification can be approved. Should the Authority be minded to approve a modification, it can only do so if the legal text has been prepared, as it is the act of approving the text itself that constitutes the Authority's approval of a modification.

Alignment with Scottish trading arrangements

- 3.87 One respondent questioned whether similar arrangements as those included to ensure alignment with equivalent Scottish trading arrangements were needed in respect of other systems that are interconnected to the Transmission System. The respondent noted in particular that there was a developing electricity market in France.

Ofgem/DTI Conclusions

- 3.88 Ofgem/DTI do not consider it appropriate to include specific provisions relating to other interconnected electricity markets, other than Scotland, at present. When proposals to develop other electricity markets in interconnected countries are sufficiently advanced, the need more explicitly to recognise their existence can be accommodated through a Code Modification.

Section H: General

Commercially Sensitive Information

- 3.89 Some members of the Legal and Governance consultation group expressed concerns that there were insufficient controls in the BSC on the disclosure of commercially sensitive information by the Panel and BSCCo. They also suggested that the objective of 'transparency' (as one of the objectives of the Panel and BSCCo in discharging their functions) should be qualified, in order to recognise the countervailing need to keep certain information confidential (for example, in relation to litigation).
- 3.90 In addition to general concerns about the disclosure of what might be considered commercially sensitive information, specific concerns were raised about the publication of information on the BSC Website or Balancing Mechanism Reporting Service or otherwise. In particular, there were concerns that this may result in the loss of intellectual property rights inadvertently or may create a potential risk of defamation claims.

Ofgem/DTI Conclusions

- 3.91 Ofgem/DTI believe that, in general, transparency should be the overriding objective. However, the industry has raised a number of concerns regarding the disclosure of certain types of information and in light of the concerns raised, Ofgem/DTI considered ways in which the issues could be addressed without restricting the Panel or BSCCo unduly in the conduct of their business and without compromising the general policy objective of ensuring greater transparency and openness under NETA. The NETA Programme presented a number of proposals at the feedback seminar on 26 June 2000. Ofgem/DTI support the introduction of these proposals on the basis that together they form a package of principles, which strikes an appropriate balance between the interests of individual Parties and the wider interests of Parties collectively and of third parties (particularly customers).

- 3.92 The proposals do not address the reporting and publication of trading data, which has been the subject of a number of separate papers and is captured in a separate section of the BSC specifically on reporting (Section V).
- 3.93 The Panel and BSCCo are required to exercise their powers and discharge their functions with a view to achieving, among other things, transparency and openness in the conduct of their business. However, this objective would not be applied where to do so would, in the Panel's opinion, substantially prejudice the interests of all Parties collectively or a class of Parties (for example, Suppliers) collectively. It was felt that this exception might apply in the case of, for instance, certain litigation matters.
- 3.94 As far as information affecting an individual Party's interests were concerned, it was considered that a slightly different test should apply to ensure a proper balance was struck between the interests of individual Parties and the interests of the wider community. The Panel and BSCCo will be permitted to use and disclose data obtained under the Code, for example in compiling reports and analyses which they are required to prepare and publish under the Code. However, where the data relates to the affairs of an individual Party and is, in the Panel's view, commercially sensitive, the Panel/BSCCo may not disclose it unless the Panel form the view that disclosure should be made to facilitate fulfilment of their duties. If they do form that view, they would be required as far as possible to notify the affected party in advance of disclosure.
- 3.95 Obviously, this restriction would not apply if the information was already in the public domain, or if the Panel/BSCCo were obliged to disclose as a result of a legal requirement or other similar exceptions.
- 3.96 In addition, the Code contains a number of more specific requirements on the Panel and BSCCo to disclose or publish certain specific information (for example, in relation to Code modifications). The Code also provides that, where information (other than settlement reports and other such reports) is circulated to all Parties, it should also be made available to any third party on request and the Panel has discretion to place that information on the BSC website if it considers it appropriate to do so.
- 3.97 In addition to these proposals, Parties will not be required to produce documents to the Panel or BSCCo that they could not be compelled to produce

in civil proceedings in the court or to supply information which they could not be compelled to give in evidence in any such proceedings.

- 3.98 Ofgem/DTI do not feel it is necessary to add a right of appeal to the Authority where the Panel decides to disclose commercially sensitive information and such matters should be resolved among the parties concerned.
- 3.99 Ofgem/DTI believe that confidentiality provisions on Parties other than BSCCo should remain broadly as they are, although the Panel will have the right to add to the list of Nominated Agreements.

Validation Process

- 3.100 It was suggested that the Code should include a validation process whereby the BSCCo would determine whether all the specified exit criteria had been complied with before a Party would be entitled to exit the Code.

Ofgem/DTI Conclusions

- 3.101 Ofgem/DTI do not believe that the Code need include such a validation process, as the exit criteria are all objective and it is not necessary to place additional procedure around these on the face of the Code. The BSCCo will administer the exit arrangements as a matter of good practice and due diligence.

Suspension

- 3.102 It was proposed that there should be an interim suspension step before a party is excluded from the Code, in order to ensure that accrued obligations and liabilities are fulfilled.

Ofgem/DTI Conclusions

- 3.103 Ofgem/DTI do not believe that an interim suspension step is required as this is effectively delivered by the power of the Panel to suspend certain rights of a party that is in default. Expulsion will be an extreme step in cases where it is clear that there is no benefit in keeping a party within the Code for the purposes of enforcement of debts etc. The Panel will be expected to use its best judgement in each individual case.

Right to Reapply

- 3.104 Clarification was sought as to whether a party that has previously been expelled from the Code should be barred from reapplying under the BSC accession arrangements.

Ofgem/DTI Conclusions

- 3.105 Ofgem/DTI do not believe that a party that has previously been expelled from the Code should be barred from reapplying under the BSC accession arrangements. Such an arrangement would be extremely difficult to enforce in practice, as it would require investigation into the corporate details of each applicant. It is not considered appropriate for this to be a BSCCo or Panel function.

Force Majeure

- 3.106 Clarification was sought on Force Majeure, for example, where a BSC Agent or other Party has failed to comply with its obligations under the Code, should this lead to a relaxation of obligations on Parties where a breach would otherwise flow from the failure of the other Party?

Ofgem/DTI Conclusion

- 3.107 The principal obligations on Parties under the Code are to make payments in respect of settlement liabilities. This should not be subject to any kind of force majeure relief. In most other cases (non-payment default), there is no financial liability for breach under the Code. The main exception to this is the exposure to Supplier Charges under Annex S-1 of the Code. In relation to these Charges, there already exists provision for force majeure relief in certain circumstances. In other words, the BSC has largely replicated the Pooling and Settlement Agreement in this matter. The general consensus in the consultation was to maintain the existing approach as far as possible and Ofgem/DTI have accepted this view. Therefore, we do not consider it is appropriate to include further force majeure provision in the Code.

Relationship Between the Code and the Grid Code

- 3.108 Clarification was sought as to whether the Code needed to take precedence over the Grid Code in cases of conflict or inconsistency. In addition it was suggested that the Code needed to address the situation where some Parties

comply with the conflicting Grid Code terms and others with the BSC, yet neither is in breach of either document as a result.

Ofgem/DTI Conclusions

- 3.109 Ofgem/DTI believe that the Code does not need to take precedence over the Grid Code in cases of conflict or inconsistency nor does it need to address the situation where some parties comply with the conflicting Grid Code terms and others with the BSC, yet neither is in breach of either document as a result. In the event that conflicts or inconsistencies occur, these should be resolved on a case-by-case basis as appropriate as they arise. If a conflict arises that makes the arrangements unworkable, this could be remedied by an urgent modification under either the BSC or the Grid Code.

Financial Threshold

- 3.110 It was suggested that the financial threshold for determining when a party is in default should be set at zero.

Ofgem/DTI Conclusions

- 3.111 Ofgem/DTI agree that the financial threshold for determining when a party is in default should be set at zero. Ofgem/DTI believe that this is reasonable given that parties effectively have 31 days credit under the BSC arrangements and is consistent with the current treatment under the P&SA.

Test for Default

- 3.112 It was proposed that there should be a test for default in cases of repeated (non financial) breaches of the Code.

Ofgem/DTI Conclusions

- 3.113 Ofgem/DTI agree with the suggestion that a test for default in cases of repeated (non financial) breach of the Code will be included in the Code. A party can be held in default in the case of any repeated material breach within 12 months.

Suspension of Rights

- 3.114 It was suggested that the menu of rights that may be suspended at the discretion of the Panel in cases of default should be expanded to include suspension of the right to propose Code modifications, but subject to the approval of the Authority. There was broad support for this at the Legal and Governance Consultation meeting.

Ofgem/DTI Conclusions

- 3.115 The 'right' to propose Code modifications is not, in nature, the same as the other contractual rights under the Code. It should be seen more in the regulatory context of the document and forms part of its constitution. Hence, a wider constituency of people (including customer representatives) are entitled to propose changes to the Code. With this in mind, Ofgem/DTI does not believe suspension of this 'right' is an appropriate sanction for breach of trading or other such obligations under the Code.

Costs of Default Process

- 3.116 It was suggested that a party in default should be liable for the costs of administering the default process.

Ofgem/DTI Conclusions

- 3.117 It is considered inappropriate to make a party in default liable for the costs of administering the default process. Ofgem/DTI believe that such a provision, while reasonable and desirable, would not be capable of practical implementation. It would not be possible to identify separately the relevant costs and would be difficult to impose these costs upon a party who is likely to be in financial default.

Ownership and Use of Certain Intellectual Property

- 3.118 Some concern was expressed at the scope and nature of the provisions governing the ownership and use of certain intellectual property (e.g. BSCCo materials). It was suggested that each Party, together with its affiliates and consultants, should be granted a licence in respect of BSCCo materials. It was also suggested that the restriction should not apply worldwide.

Ofgem/DTI Conclusions

- 3.119 Ofgem/DTI believe it would be unreasonable to extend the geographic limit on BSCCo materials beyond GB-wide. The BSCCo will have the rights to BSCCo

materials only within the geographical limits of Great Britain. The Code already provides for a licence back to participants for the purposes of fulfilling their obligations under the Code.

Disputes

- 3.120 It was suggested that where a dispute arises between BSCCo and/or the BSC Clearer and any other Party, that the dispute should be referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association, as opposed to being resolved via the courts. There was broad support for this proposal among the attendees at the Legal and Governance Group.

Ofgem/DTI Conclusions

- 3.121 The Code will be amended, such that disputes between BSCCo and/or the BSC Clearer and any other Party shall be referred to arbitration.
- 3.122 It had previously been thought more appropriate that disputes involving BSCCo should be resolved via the courts, in order that precedents could be established and any judgements made transparent, given the central position of the company in the arrangements. However, it is noted that it is now possible under the terms of the Arbitration Act and by agreement to make arbitration decisions widely available.
- 3.123 Ofgem/DTI also accept that it would be difficult to define issues that related solely to BSCCo, such that the majority of disputes would most likely be referred to arbitration in any event.

Section W: Trading Queries and Trading Disputes.

Trading Disputes

- 3.124 During the consultation sessions, it was suggested that the rules and procedures relating to trading disputes should not be written into the Code. It was felt that the current arrangements worked well precisely because they were not subject to very much formality or legal precision. It was recognised that, without this precision, Parties would be free to refer a trading dispute immediately to arbitration if they so chose, but it was argued that Parties would have no incentive to do so, if the arrangements for resolving trading disputes 'in-house' continued to operate effectively.

3.125 During the further consultation on legal and governance issues, views were invited on these issues and, in particular, on:

- ◆ whether a mechanism for the resolution of trading disputes should be mandatory or voluntary under the Code;
- ◆ what should constitute a 'trading dispute' and how should disputes as to what is and is not a trading dispute be resolved;
- ◆ whether the procedures relating to the resolution of trading disputes should be written into the Code (and only capable of change with the approval of the Director General) or into some subsidiary document under the governance of the Panel.

Ofgem/DTI Conclusions

3.126 Ofgem/DTI believe that the 'mandatory' provisions for Trading Disputes should be retained in the Code (i.e. a Party must follow the defined procedure for Trading Disputes in the first instance, before proceeding to arbitration). However, it is felt that some of the detail on the constitutional and process aspects of the Trading Disputes Committee should be relegated to Code Subsidiary Document level. The arrangements will then be more flexible, being capable of redefinition by the BSC Panel. It is also felt that it is appropriate that the Panel act as final arbiter of whether a dispute is a Trading Dispute.

Settlement Day disputes

3.127 The draft BSC provides that no Trading Dispute may be raised in respect of a Settlement Day after the second anniversary following that Settlement Day. This is on the basis that most errors of any materiality emerge well before the Final Reconciliation Run. A reasonably strict time limit would encourage Parties to monitor their data and avoid the cost (to all Trading Parties) and the uncertainty associated with disputes long after the event.

3.128 Most members of the Legal and Governance consultation group felt there was merit in seeking to limit the time within which trading disputes could be raised. However, there was a feeling that 2 years was too short and should be extended to 3 years after the Settlement Day in question.

Ofgem/DTI Conclusions

- 3.129 Ofgem/DTI accept that the time limit for raising disputes regarding matters constituting Trading Disputes should be extended to 3 years from the relevant Settlement Day.

Framework Agreement

Amendment of the BSC Framework Agreement

- 3.130 Members of the Legal and Governance group suggested that provision should be made for the BSC Framework Agreement to be amended following its initial execution.

Ofgem/DTI Conclusions

- 3.131 The Framework Agreement is merely a vehicle to give contractual force to the Code. It should not be doing any more than that. In principle, therefore, it should not be necessary to amend it and, indeed, Parties would doubtless be concerned if it could be easily amended, to extend or alter the nature of their obligations under the Code. Ultimately, the Framework Agreement could be amended with the consent of all Parties, but the Secretary of State's approval would also be required under relevant licence conditions.

- 3.132 Ofgem/DTI do not believe it is necessary to provide for amendment of the Framework Agreement beyond that described above.

Other Governance Issues

Governance of Parameters

- 3.133 It was noted that there are a number of parameters identified within the Code for which it is necessary to determine their governance, their initial value, and their definition. Views were sought on the appropriate governance of each of the parameters during the consultation process.

Ofgem/DTI Conclusions

- 3.134 Ofgem/DTI's proposed approach to each parameter is set out in Appendix 2. In summary:

- ◆ Panel governance of the level of Main Specified Charges has been accepted as appropriate in the consultation process.

- ◆ For the Credit Assessment Price (CAP), Panel governance has been accepted as appropriate. In many cases, the use of over prescriptive definitions has been avoided (for example in the definition of CAP), because it is believed that this would prevent the Panel from exercising judgement in determining these values. The BSC Panel will be required to set CAP between Go Active and Go Live.
- ◆ The Panel will be provide guidance as to the basis on which values of Credit Assessment Load Factor are to be assigned to BM Units of different types. These guidelines will be made generally available to Parties.

Where a Party registers a BM Unit, BSCCo will (by reference to the guidance established by the Panel) determine a value of Credit Assessment Load Factor the BM Unit.

The Lead Party of a BM Unit may request the Panel to re-determine the value of CALF applying for a BM Unit. Details of the Credit Assessment Load Factor for applying to any BM Unit will be made available to any Trading Party upon request.

- ◆ The levels proposed for the BSC Clearer Credit Facility were generally accepted in the Trading Consultation Group discussions (i.e. £4m initially with Panel discretion to set the value up to £10m).
- ◆ The proposed values of α , TLF_{ij} and IIP_j have been the subject of a number of previous Ofgem consultations and their initial values are set out in the BSC (Appendix 2 refers). A modification to the Code would be required to change these values.

3.135 It is proposed that values of BRL_j are set annually (and thereafter updated) by the Panel, subject to the approval of the Authority. The unique governance arrangement proposed for BRL_j is felt to be necessary as the value or values of BRL_j are likely to require regular review, and this parameter is of particular importance because of the direct impact that it has on Energy Imbalance Prices. Again, a non-prescriptive approach to the definition of BRL_j is proposed.

4. Trading

- 4.1 For a period of three weeks from 27 June 2000 Trading Consultation group meetings were held to review the following sections of the BSC: Section D: BSC Cost Recovery and Participation Charges, Section M: Credit Cover and Credit Default, Section N: Clearing, Invoicing and payment, Section P: Energy Contract Volumes and Metered Volume Reallocations, Section Q: Balancing Mechanism Activities, Section T: Settlement and Trading Charges and Section U: Provisions relating to Settlement.
- 4.2 In addition, changes to many of the core documents for which textual changes are being designated for NETA by the Secretary of State - the Grid Code, MCUSA & Supplemental Agreements, Ancillary Services Agreements, Distribution Code and British Grid Systems Agreement - were all reviewed for consistency with the BSC in the Trading group sessions. The Balancing Codes of the Grid Code were also reviewed separately alongside Section Q in the Trading Consultation meetings.
- 4.3 Following these Consultation group meetings, a seminar was held on 18 July 2000 at which feedback was given on the main points that arose in the meetings and those made in written submissions.

Section D – BSC Cost Recovery and Participation Charges

- 4.4 Ofgem/DTI issued a consultation document on charging and cost recovery arrangements in April 2000, the conclusions¹⁰ of which were published along with the draft of Section D at the beginning of June.

Transparency and Auditing of Funding Shares

- 4.5 The level of public reporting of the data use to calculate Funding Shares was questioned, primarily on the basis of further information being needed to assist all Parties in the identification of manifest errors.
- 4.6 Some confidentially concerns were raised relating to the public reporting of such information and the requirements for audit. A limited release of data would require an audit of the calculation to confirm that the calculations for all Parties were correct. If more data were available to Parties there would be less

requirement for an audit, although the burden for checking would now be transferred to individual Parties, which some consultation participants viewed as inefficient.

Ofgem/DTI Conclusions

4.7 With regard to publication of information on Funding Shares the following broad options were identified:

- ◆ release all data on funding shares, or
- ◆ release only the outcome all calculations to all Parties, or
- ◆ issue to Parties only their own data.

4.8 Ofgem/DTI consider it appropriate that the various monthly funding shares for all Trading Parties should be published and that this should be sufficient for Parties to undertake a reasonable level of validation of their charges. However, all of the supporting information will not be released and therefore the calculation will need to be audited by the BSC Auditor. The BSC Auditor's terms of reference will include a requirement to provide assurance that the relevant funding share and payment calculations are correct.

4.9 This is consistent with the extent of reporting arrangements for the equivalent charges under the terms of the Pooling & Settlement Agreement. Publication of the various monthly funding shares for each Trading Party will allow all Trading Parties to undertake a reasonableness check of the figures and an assessment of the liability in the case of default.

4.10 Whilst confidentiality concerns may apply were half-hourly data to be released, there does not appear to be a strong rationale for withholding party specific monthly aggregate values.

The Calculation of Annual Funding Share

4.11 One participant commented that the calculation of Annual Funding Share uses an average of averages across the year, which in its view was incorrect. It was proposed that the calculation should be volume weighted so that higher proportions of costs are allocated to months with higher levels of production

¹⁰ "The New Electricity Trading Arrangements: The Balancing and Settlement Code – Funding Arrangements, Ofgem/DTI Conclusions Paper", June 2000

and consumption. This proposal was opposed by others at the Consultation Meeting.

Ofgem/DTI Conclusions

- 4.12 Ofgem/DTI are of the opinion that no compelling arguments have been presented for making the suggested arrangements to the calculation of Annual Funding Share, therefore propose no amendment to the weighted average charging methodology, which allocates costs equally by month, rather than reflecting the total over the year.

Value of Charges

- 4.13 No interested parties considered that it was inappropriate to levy the charges listed under Main Specified Charges in Appendix D3. However, four parties raised concerns about the value of charges presented.
- ◆ It was suggested that the Base Monthly Charge should be increased from £250/month to £1000/month to reflect better the fixed nature of the costs and to discourage applications of a frivolous nature.
 - ◆ The charge for Central Volume Allocation (CVA) Metering Systems was considered too high and not cost reflective.
 - ◆ Regarding the charge for CVA BM Units (£100/BM Unit/month), concern was expressed that exempt generators are forced to have two BM Units per station whereas other small stations that are licensed only have one BM Unit.
 - ◆ The cost of a dedicated communications link to the central systems was felt to be too high at £2000/month compared to that used for similar applications in other markets such as gas. Participants commented that this cost was not competitive and that much cheaper communications services were available.
 - ◆ The set-up cost for the TIBCO software (the user software required to handle BMRS data over a high level line) was seen as too high.
 - ◆ There were conflicting views regarding the 0.0025 £/MWh charge per contract volume. Physical participants argued the charge should be increased whilst traders argued the charge should be reduced.

- ◆ It was felt that the requirement for a resigning Supplier to pay full charges for Supplier Volume Allocation (SVA) BM Units for 14 months was unfair and represented a barrier to exit.
- ◆ The charge for additional SVA BM Units (£200/BM Unit/GSP Group/month) was seen as too high, and not equitable with that for CVA BM Units (£100/BM Unit/month).

Ofgem/DTI Conclusions

4.14 Ofgem/DTI propose to implement the following changes:

- ◆ The charge for CVA Metering Systems will be reduced to £50/per month. The original rationale for this charge was to provide a strong incentive not to migrate from SVA to CVA as originally envisaged, however such migration is not now permitted under the Code and therefore this incentive is not required. Accordingly this charge is reduced;
- ◆ A single charge will be levied for each pair of CVA BM Units (£100/BM Unit/ month) provided to an exempt generator. Charging exempt generators for each pair of BM Units is consistent with the charging approach for SVA Base BM Units;
- ◆ The charges per SVA BM Unit will be reduced to £100 in line with CVA charges. The relatively high cost of an Additional SVA BM Unit compared to a CVA BM Unit reflects what was intended, which was to provide an incentive on Suppliers to create additional SVA BM Units only where absolutely vital. However, Ofgem/DTI are mindful of the strong views that SVA and CVA BM Units should be charged on a consistent basis.

4.15 Ofgem/DTI consider that the remaining charges should not be adjusted for the following reasons:

- ◆ Base Monthly Charge – increasing this charge to £1000/month is felt to be excessive and Ofgem/DTI are mindful of the impact on smaller trading parties;

- ◆ Cheaper communications services are available (i.e. the Internet service carries no extra charge), but the service agent does not guarantee the standard of service or integrity of the link, which could be essential for those participating in the Balancing Mechanism. The charges are cost-reflective and represent a straight pass through of charges to the service agent by its service provider. The minimum period for the provision of this service will be 12 months;
- ◆ The TIBCO set-up charges are cost reflective;
- ◆ The 0.0025 £/MWh figure for notified contract volumes was set to recover around 5% of costs and can be varied in future years and is consistent with the Funding Arrangements Conclusions Paper.
- ◆ BM Units belonging to resigning Suppliers have to be processed for 14 months after the Supplier has ceased trading to ensure reconciliation is complete. The extent of processing of the SVA BM Units is the same whether they are active or dormant and therefore continued collection of the charges seems appropriate.

Section M – Credit Cover and Credit Default

Enhanced Reporting Arrangements

- 4.16 Comments received proposed the following enhancements to the reporting arrangements in section M:
- ◆ a requirement on the Energy Contract Volume Aggregation Agent (ECVAA) to publish a notice if a Credit Default Rejection Period occurs;
 - ◆ a requirement on the Funds Administration Agent (FAA) to give notice to a Party 20 business days before the expiry date of any of its Letters of Credit;
 - ◆ a requirement on the FAA to report Energy Credit Cover values to each Party as well as to the ECVAA.

4.17 Many parties also expressed the view that:

- ◆ Energy Indebtedness and Credit Cover percentage should be reported immediately after Gate Closure; and
- ◆ an additional report should be sent at the end of each Settlement Day detailing the Energy Contract Volume Notifications notified to (and not refused by) the ECVAA which apply to Settlement Periods in the next 30 days.

4.18 On the first point in 4.17, participants pointed out the Code appeared to be inconsistent with the stated ECVAA software functionality. The draft Code states that Parties are informed of Credit Cover Percentage “as soon as practicable after Gate Closure” and notified of Energy Indebtedness “as soon as reasonably practicable after the end of the Settlement Day”. However, the ECVAA URS specifies that reports of these variables are not sent to Parties until after the end of the Settlement Day.

4.19 A further apparent discrepancy between the Code and the URS is that according to the BSC, Level 1 and Level 2 Credit Default warnings are reported to the BMRA by the ECVAA. In the URS, any warning is reported to BSCCo only, and additional arrangements are required for the BSCCo to arrange for the information to be placed on the BMRS.

Ofgem/DTI Conclusions

4.20 Ofgem/DTI acknowledge the benefits to Trading Parties of having as much information as possible in the context of Energy Contract Volume Notifications and credit checking and hence inclusion of the additional reporting functionality and the resolution of apparent inconsistencies will be progressed on the basis that appropriate details will be available either by Go-live or as soon as possible thereafter. The precise details are presently under discussion with the relevant service provider. Inclusion of the appropriate functionality for Go-live will be contingent upon the outcome of a full impact assessment which the NETA Programme is currently progressing. However although desirable, this functionality is not considered a pre-requisite for Go-live.

Compensation for ECVAA Errors

4.21 Various interested parties suggested that, in the event that the Energy Indebtedness of a Party is erroneously determined by the ECVAA,

compensation should be available to reflect the costs of additional credit cover and/or contract volume rejection.

- 4.22 It was also argued that the ECVAA should be given an equivalent incentive to prevent any such errors.

Ofgem/DTI Conclusions

- 4.23 Ofgem/DTI agree with the principle that compensation for errors in the determination of Energy Indebtedness should be provided for. When such an error is made, the Party whose indebtedness was incorrectly determined would be able to claim a payment from BSCCo. This payment would be a BSC Cost and would accordingly be recovered from all Trading Parties.

- 4.24 Incentives for the ECVAA arise from its contract with BSCCo, and Ofgem/DTI do not consider it appropriate to specify those terms of that contract in the BSC. However, to the extent that any service credits are due by the ECVAA under that contract, they would offset the costs to BSCCo and therefore to all Trading Parties of paying compensation to the Trading Party in respect of which an error was made.

Notice of CAP and CALF Changes

- 4.25 Participants in the Consultation meetings commented on the need for a notice period to apply for revised values of Credit Assessment Price (CAP) and Credit Assessment Load Factor (CALF).

Ofgem/DTI Conclusions

- 4.26 Ofgem/DTI are of the view that it would be appropriate to apply a minimum notice period of 20 business days for new values of CAP and CALF. Twenty business days allows time for the provision of additional credit cover, or for a reduction in the level of credit cover provided. The proposed notice period is also comparable with the 29 calendar days over which Energy Indebtedness is assessed. Furthermore, the Panel may give longer notice if it considers this to be appropriate.

Transparency of CALF values

- 4.27 It was proposed that CALF values should be available to Trading Parties and that BSCCo should provide the value of the Credit Assessment Load Factor of any BM Unit to any Trading Party upon request.

Ofgem/DTI Conclusions

- 4.28 Ofgem/DTI concur with the arguments that CALF values should be accessible to all Trading Parties as this is consistent with the policy of transparency under NETA, and therefore agree that this should be included within the Code.

Syndicated Letters of Credit

- 4.29 It was proposed that Syndicated Letters of Credit should be permitted as acceptable forms of letters of credit under the BSC.

Ofgem/DTI Conclusions

- 4.30 Ofgem/DTI believe that because the existing BSC Drafting provides for the Panel to agree alternative forms of Letters of Credit as they see fit, provision to permit the use of Syndicated Letters of Credit already exists in the BSC, and no changes to the existing drafting are needed in this area. It would be for the Panel to determine whether they believed such forms should be accepted after Go-Active.

Section Q and the Balancing Codes – Balancing Mechanism Activities

- 4.31 As noted previously, the Balancing Codes of the Grid Code were reviewed along with Section Q in the Trading Consultation meetings. Following the Trading Consultation meetings discussion of these documents, redrafts of Section Q and BC 1 and BC 2 were issued on 14 July 2000 and a further meeting held on 18 July 2000 to review those redrafts.

Inclusion of Quiescent Physical Notifications

- 4.32 For practical reasons it has been proposed that the use of Quiescent Physical Notifications will not be facilitated for Go-live.

Ofgem/DTI Conclusions

- 4.33 Ofgem/DTI recognises these practical limitations and that the functionality to accommodate Quiescent PNs will not be included in NGC software from Go-Live. It is therefore proposed that BSC and Grid Code drafting will continue to support the submission and treatment of Quiescent FPNs, but that an initial restriction will be incorporated into the Grid Code preventing their use from Go-Live.

Delivery of Energy Outside the Balancing Mechanism

- 4.34 The Consultation Draft of BC 2 states:

“Any anticipated variation in input or output from the Final Physical Notification Data (except for variations arising from the issue of Bid-Offer Acceptances or instructions by NGC) for any BM Unit post Gate Closure must be notified to NGC without delay by the relevant BM Participant (or the relevant person on its behalf).”

- 4.35 Two interested parties questioned whether or not this meant that NGC could instruct the delivery of energy post gate closure outside the Balancing Mechanism from those BM Units that had submitted Final Physical Notifications, or whether all such energy would be delivered through the Balancing Mechanism.

Ofgem/DTI Conclusions

- 4.36 Ofgem/DTI are of the view that the objective of the Grid Code wording and other provisions within the Grid Code and the BSC are to ensure, as far as possible, that Trading Parties follow their FPN unless instructed to do so by NGC through the issuance of a Bid-Offer Acceptance or an Emergency Instruction. This means that where a BM Unit has submitted an FPN, under normal circumstances, any changes in output resulting from Balancing Services contracts will be delivered via Bids and Offers in the Balancing Mechanism.

Section T – Settlement and Trading Charges

Default System Buy and Sell Prices

- 4.37 System Buy Price is determined as the total cost of accepted offers (plus the ‘Buy Price Cost Adjustment from NGC) divided by the total volume of accepted

offers (including the 'Buy Price Volume Adjustment' from NGC). In this calculation, the accepted offers used are only those that have not been 'Arbitrage Accepted' or that have not been 'Trade Tagged' (i.e. in the case of Trade Tagging, excluding those that have been identified as accepted for System Balancing purposes).

4.38 Similarly System Sell Price is determined as the total payment for accepted bids (plus the "Sell Price Cost Adjustment from NGC) divided by the total volume of accepted bids (including the "Sell Price Volume Adjustment' from NGC). In this calculation, the accepted bids used are only those that have not been 'Arbitrage Accepted' or that have not been 'Trade Tagged'.

4.39 Interested parties commented that a default arrangement is required in instances where:

- ◆ In the case of System Buy Price, the volume of accepted Offers (not Arbitrage Accepted and not Trade Tagged) plus the Buy Price Volume Adjustment is zero.
- ◆ In the case of System Sell Price, the volume of accepted Bids (not Arbitrage Accepted and not Trade Tagged) plus the Sell Price Volume Adjustment is zero.

4.40 As drafted in Section T, the Consultation version stated that the default System Sell Price or System Buy Price in such circumstances should be an average of the values of that price over the previous 336 Settlement Periods.

4.41 Further options discussed by interested parties were:

- i) the average of the relevant price in the corresponding Settlement Period over the previous seven Settlement Days;
- ii) in the case of System Buy Price, the price of the lowest-priced offer that has not been wholly accepted , and in the case of System Sell Price, the price of the highest priced Bid that has not been wholly accepted; or
- iii) in the case of System Buy Price, ten percent above the System Sell Price; and in the case of System Sell Price, ten percent below the System Buy Price.

- 4.42 The solution as drafted in the Consultation version of the Balancing and Settlement Code was more complex to implement than (ii) or (iii) (as these latter options are not dependent on data outside the relevant Settlement Period).
- 4.43 During the consultation no strong views were expressed in respect of any particular solution, although there was one objection to (i) on the grounds that the imbalance prices in previous Periods are related to the imbalances in those periods and may bear little relation to prices in the current Period.

Ofgem/DTI Conclusions

- 4.44 Ofgem/DTI are of the view that it would be appropriate to adopt option (ii), on the grounds that it will generate prices that are most relevant to the prevailing market conditions. This is in addition to it being simpler to implement than the current solution as drafted (and option (i)). Option (iii) is not considered to be a suitable solution as it presupposes the spread in energy imbalance prices.

General Trading Issues

Manifest Error Provisions

- 4.45 A number of interested parties suggested that provisions for dealing with manifest errors in relation to the operation of the Balancing Mechanism should be incorporated into the BSC.
- 4.46 It was proposed that there are two 'types' of potential manifest error as follows:
- ◆ Type 1 - The Transmission Company has erroneously accepted either a Bid that has a price that is very low (including negatively priced), or an Offer that is very highly priced.
 - ◆ Type 2 - A party has submitted a Bid-Offer Pair with a price which is manifestly 'erroneous' i.e. the Offer price is low or negative, or the Bid Price is very high, and the offer or bid has been accepted by the Transmission Company.
- 4.47 The 'error' may therefore be the submission of a certain Bid or Offer by the Party (which only matters if the Bid or Offer is accepted), or the acceptance of certain Bids or Offers by the Transmission Company.

Ofgem/DTI Conclusions

- 4.48 Ofgem/DTI agree that the application of minimum provisions for manifest error treatment would be appropriate, as set out below.
- 4.49 If the Transmission Company and relevant Lead Party both agree that, a manifest error was made either by the Lead Party in submitting a Bid or Offer that was accepted, or by the Transmission Company in submitting an acceptance, then, they may request the Panel to consider whether it agrees that a manifest error has occurred.
- 4.50 Either the Transmission Company or the Lead Party must pay a non-refundable fee of £5000 in order for the matter to be considered by the Panel, and the request must be made by the close of the business day after the day the error was made.
- 4.51 If the Panel agree that a manifest error has occurred, then the accepted Bid or Offer will be disregarded for the purposes of Settlement (including imbalance price calculation).
- 4.52 This proposal was presented to the Trading Consultation group and met with broad support.
- 4.53 Ofgem/DTI are aware that a number of parties have argued for wider provisions for manifest error provision. However, there are a number of arguments against widening such provisions:
- ◆ Manifest error provisions weaken the incentive on parties to undertake their BSC related activities with due care.
 - ◆ Broad manifest error provisions are likely to be either very subjective, or require pre-specified price and/or volumes to be set against which to test whether manifest errors are 'deemed' to have occurred. Both these approaches are considered undesirable. A high degree of subjectivity undermines the 'firmness' of the trading arrangements, and pre-specified prices and/or volumes may act as an artificial cap on legitimate market behaviour.

Interconnector Arrangements

- 4.54 Two key issues were raised with reference to external interconnectors. The first relates to whether or not the Interconnector Capacity Entitlements are enforced (i.e. that they comply with the notified transfer programmes) through the BSC and the NGC Grid Code. The second is whether the Interconnected System Operator should be required by the BSC to act as Interconnector Administrator (IA) and/or Interconnector Error Administrator (IEA) as a default option in the event no other IA or IEA has been appointed.

Ofgem/DTI Conclusions

- 4.55 On the first issue Ofgem/DTI are of the view that Interconnector access arrangements will be expected to provide the mechanism for the enforcement of Interconnector Capacity Entitlements, without interference from the trading arrangements in England & Wales. As a consequence, there is no requirement to refer to Interconnector Capacity Entitlements in either the BSC or the NGC Grid Code.
- 4.56 On the second issue, Ofgem/DTI believe that it is appropriate that the BSC should require the relevant Interconnected System Operator (NGC in the case of the French and Scottish Interconnectors) to act as the default Interconnector Error Administrator (IEA) or otherwise de-energise the interconnection in the event that there is no IEA appointed.
- 4.57 On the issue of default IA, Ofgem/DTI are of the view that in the event that there is no IA appointed, then the BM Unit Metered Volumes for the Interconnector BM Units for the relevant Interconnector will be set to zero and any Interconnector transfer would then be attributed to the BM Unit of the Interconnector Error Administrator.
- 4.58 The above arrangements are intended to provide Interconnector Users with an incentive to ensure that an IEA and IA are in place to facilitate the treatment of the interconnector in the BSC, whilst at the same time providing a backstop default arrangement whereby the Interconnected System Operator takes on default responsibility for residual flows across the interconnector.

5. Metering and Registration

- 5.1 For a period of three weeks from 27 June 2000 Metering and Registration consultation group meetings were held to review the following sections of the BSC: Section J: Party Agents, Section K: Classification and Registration of Metering Systems and BM Units, Section L: Metering, Section O: Communications, Section R: Collection and Aggregation of Metered Data from CVA Metering Systems, Section S: Supplier Volume Allocation, Section V: Information and Reporting to Parties and Section X: Definitions and Interpretation. Section A: Parties and Participation and Section W: Trading Disputes were also discussed in part in the Metering and Registration Consultation group meeting.
- 5.2 In addition, changes to the Master Registration Agreement (MRA) required as a consequence of the introduction of the BSC were reviewed for consistency with the BSC. Changes to the other core documents for which textual changes are being designated for NETA by the Secretary of State have been referred to in Chapter 4.
- 5.3 Following these Consultation group meetings, a seminar was held on 18 July 2000 at which feedback was given on the main points that arose in the meetings and those made in written submissions.

Section J – Party Agents

Accreditation and Certification of ECVNAs and MVRNAs

- 5.4 The principal comments on Section J were that Energy Contract Volume Notification Party Agents (ECVNAs) and Metered Volume Reallocation Notification (MVRNAs) Party Agents should be Accredited based on a Certification; existing drafting stated that they should be Accredited but not Certified. However it was not clear to those who commented how Accreditation could be awarded without Certification.
- 5.5 A further concern expressed at the consultation meeting was that if an ECVNA/MVRNA submitted incorrect data it could lead to a Party going into Credit Default. In extreme cases it was suggested that in such circumstances it might be the case that other Parties could, as a consequence, also go into credit default.

Ofgem/DTI Conclusions

- 5.6 Ofgem/DTI's view is that Accreditation and Certification of ECVNAs and MVRNAs need not be a requirement in the new arrangements for the reasons set out below.
- 5.7 The general principles underlying Accreditation and Certification are:
- ◆ Accreditation is based on Certification;
 - ◆ Accreditation and Certification seeks to provide Performance Assurance on process compliance;
 - ◆ Accreditation and Certification (along with other measures) helps to counter potential incentives for inputs to be incorrect.
- 5.8 The suggested Accreditation of ECVNAs/MVRNAs in the BSC would not have been based on Certification.
- 5.9 There are no process obligations placed on ECVNAs/MVRNAs by the BSC since there are no rules in the BSC for such agents therefore process compliance cannot be verified. Furthermore, Parties have a natural and strong incentive to ensure that ECVNAs and MVRNAs submit correct numbers.
- 5.10 There are rules for the Energy Contract Volume Aggregation Agent (a BSC Agent), which describe the data boundary with ECVNAs and MVRNAs. Moreover, Section O describes the entry process with regard to communicating with central BSC systems with which ECVNAs and MVRNAs will be required to comply. This package of measures is considered to deliver sufficient performance assurance in respect of these Party Agents.

Section K – Classification and Registration of Metering Systems and BM Units

Multiple Supplier IDs and Base BM Units

- 5.11 It was noted during consultation that Parties may have one Party Id and in some circumstances some Parties (if they are Suppliers) may have more than one Supplier Id. It was unclear how many Base BM Units such a Party would have i.e. one for each Party Id per GSP Group, or one for each Supplier Id per GSP Group.
- 5.12 The concern expressed was that Parties with multiple Supplier Ids could find themselves being charged for a large number of Base BM Units, which were not actually of any significance to the Party.

Ofgem/DTI Conclusions

- 5.13 The relationship between Supplier, Base BM Units and Supplier Id is as follows:-
- ◆ A Party which is a Supplier can have more than one Supplier Id (although it is only obliged to have one) and will only have one Party Id
 - ◆ A Supplier can have more than one Base BM Unit for a GSP Group (one for each Supplier Id)
 - ◆ Base BM Units are allocated per Supplier Id in 'batches' of 12 (one for each GSP Group).
- 5.14 To alleviate the potential cost burden on Parties with more than one Supplier Id and, more generally, to alleviate the cost burden of a Supplier being allocated 12 Base BM Units, Ofgem/DTI consider it appropriate that Base BM Unit charging should be £100 per month for 'batches' of 12 (one for each GSP Group). As described previously in Chapter 4, Section D will be modified to this effect.

Decisions Regarding BM Unit Configurations

- 5.15 One participant suggested that it should be possible to refer an application to approve the configuration of a BM Unit to the Authority in the event that it is rejected by the Panel. The Code currently states that the decision of the Panel is final and binding.

Ofgem/DTI Conclusions

- 5.16 After evaluating the proposal Ofgem/DTI are of the view that the arrangements concerning the approval of BM Unit configuration should remain as currently drafted.
- 5.17 The decision to approve a particular configuration of a BM Unit is based around a technical interpretation of Code requirements. It is considered that the Authority would be unable to add any further technical input than that provided by the Panel.

Determination of Generation Capacity and Demand Capacity

- 5.18 In the consultation draft of the BSC, Generation Capacity (GC) and Demand Capacity (DC) were broadly a forecast of the maximum and minimum values respectively of QMij¹ for the BM Unit for the relevant BSC Year (converted into a MW value from MWh by dividing by half an hour). The Consultation version of the Code requires Trading Parties to make and register their estimate ahead of the start of the BSC Year. Trading Parties are then required to update that estimate for the remaining portion of the year in the light of experience, but the Code is not specific about maintaining the accuracy of the estimate or the frequency with which this needs to be done.
- 5.19 Concerns were therefore raised that the BSC gave no guidance as to the accuracy and frequency requirements for self-estimation of GC and DC. The majority of participants supported the concerns raised. It was suggested that any proposal would need to:
- ◆ avoid opening opportunities for persistent under-estimation of GC or DC;
 - ◆ not place an undue administrative burden on Parties, BSCCo, BSC Agents or the BSC Panel;
 - ◆ be symmetrical for both the estimation of GC and DC; and
 - ◆ not result in over burdensome credit requirements (i.e. not require Suppliers to lodge credit all year round to cover their maximum annual take).

Ofgem/DTI Conclusions

5.20 Ofgem/DTI agree that it would be appropriate to revise the definition of GC and DC to include the following principles:

- ◆ Parties should have to submit values of GC and DC on a seasonal basis rather than on an annual basis. This will require the addition of a definition of the BSC Seasons.
- ◆ A party must submit a revised estimate of GC for a particular BSC Season if, for any Settlement Period within the relevant BSC Season, the value of QM_{ij}^{11}/SPD exceeds (or the party believes it will exceed) GC by more than the minimum of either 0.5MW or 1% of GC.
- ◆ A Party must submit a revised estimate of DC for a particular BSC Season if, for any Settlement Period within the relevant BSC Season, the value of QM_{ij}^{11}/SPD is less than (note DC is negative) (or the party believes that it will be less than) DC by the greater of either 0.5MW or 1% of DC.
- ◆ Parties' revised estimates must be submitted as soon as reasonably practicable after the criteria for re-estimation are met.
- ◆ Re-estimates will be processed in accordance with the relevant BSC Procedure.
- ◆ Re-estimates of GC and DC would not apply retrospectively.
- ◆ The proposed BSC seasons are:

BSC Spring:	01 Mar to 31 May
BSC Summer:	01 June to 31 August
BSC Autumn:	01 September to 30 November
BSC Winter	01 December to 28 February (or 29 February as appropriate)

5.21 Ofgem/DTI consider that the proposed solution strikes a balance between the four objectives for GC and DC listed above. It is recognised that the definition above may provide incentives for generators that are Production BM Units and that do not pay Transmission Network Use of System charges to overstate their

values of GC, in order to reduce the required level of credit provision. Ofgem/DTI are therefore of the view that it is acceptable to keep this issue under review, and that no additional provisions are needed to cater for this for Go-live.

Configuration of Trading Units

- 5.22 It was suggested that it should be possible for Supplier BM Units in the same GSP Group to be linked together into Trading Units. It was felt that the benefits from combining more than one BM Unit into the same Trading Unit come from the resultant net treatment in certain areas of the BSC. This issue primarily concerns the treatment of embedded generation that is handled through the Supplier Meter Registration Service as an extension to the arrangements for exempt embedded generation that is registered in Central Volume Allocation (CVA).

Ofgem/DTI Conclusions

- 5.23 It is Ofgem/DTI's view that the provisions relating to Trading Units were intended to permit netting arrangements to apply to certain embedded generators. It was not intended to apply to extensive collections of GSP group take. Consequently it is not proposed to extend the Trading Unit arrangements at this time.
- 5.24 It would be possible to limit the facility to a Supplier combining only its own BM Units into a Trading Unit in the GSP Group. Suppliers already have the ability to achieve a similar effect by assigning all their meters in the GSP Group to the same BM Unit. Such an option would require further thought and development and would therefore best be considered post Go-live.

Section R – Collection and Aggregation of Metered Data from CVA Metering Systems

Access to Communication Links

- 5.25 Under the proposed NETA arrangements, Registrants of CVA Metering Systems are responsible (through their Meter Operator Agents) for providing the Communication Links which will enable the Central Data Collection Agent

¹¹ It is proposed that in order to facilitate response to Emergency Instructions, any change in BM Unit Metered Volume produced in response to an Emergency Instruction be excluded from the value of QM_i

(CDCA) to collect metered data from Outstations associated with these Metering Systems. However, the CDCA is subsequently responsible for the ongoing operation and maintenance of these Communication Links after the Metering System has been accepted into Settlement.

- 5.26 Section R states that these Communication Links need not be dedicated exclusively to the provision of data to the CDCA for the purposes of Central Volume Allocation provided that any other use shall not interfere at any time with the operation of the Central Volume Allocation processes.
- 5.27 General concern has been expressed that the Code does not place an obligation on the CDCA to make these Communication Links available to other parties although Section L gives the Registrant of a Metering System the right to allow any person access to metered data. It should be noted that the P&SA allows for the Communication Links that are maintained by the SSA to be made available for other uses, but states that such access shall only be with the written consent of the SSA.

Ofgem/DTI Conclusions

- 5.28 Ofgem/DTI accept that it is necessary to re-draft the relevant paragraph of Section R to place an obligation on the CDCA to make the Communication Links available free of charge for other uses, provided the Registrant obtains the written permission of the CDCA. Such permission should not be unreasonably withheld. This modification aligns Section L with Section R (and aligns the Code with current P&SA arrangements).

Conditional Aggregation of Metering Systems

- 5.29 The Aggregation Rules supplied by BSC Parties to the CDCA (in both the CDCA URS and Section R) do not allow for conditional aggregation of meters whereas existing metering aggregation does. (In other words the CDCA Aggregation Rules only allow for the arithmetic operations of addition, subtraction, multiplication and division, whereas existing metering aggregation may use logical IF statements as well.)

used in the determination of GC and DC.

- 5.30 An example of where this could result in an issue is where an auxiliary GT can be connected through either a Unit Transformer or a Station Transformer at a Power Station. Since the BSC and CDCA URS allow for only one set of aggregation rules to be submitted to CDCA for a particular BM Unit, this means that if the GT output is connected to the Unit Transformer but the Aggregation Rules were supplied on the assumption that the GT output were connected to the Station Transformer, the output attributed to other BM Units in the station by Aggregation Rules would not match the output seen by NGC. This would potentially give rise to Non-Delivery payments or, in future, to Information Imbalances.
- 5.31 Another consequence of not being able to use logical statements is that parties could be in breach of their obligations under the Code. BSC Parties are currently required by the BSC to submit Aggregation Rules that at all times ensure that the volumes determined using such rules properly determine Metered Volumes for BM Units, etc. This will not be feasible if physical output is switched, e.g. following a genset failure, but the Aggregation Rules cannot reflect this change.
- 5.32 The issue was raised by one of the parties at the Consultation meeting on Section R and supported by other participants.

Ofgem/DTI Conclusions

- 5.33 It is Ofgem/DTI's opinion that the settlement impact on Parties in these circumstances is minor, for the following reasons:
- ◆ Typically, Energy Imbalances associated with any the BM Unit Metered Volumes that are established will cancel each other out in the imbalance calculations because the BM Units involved would be expected to form part of a Trading Unit, and associated BM Unit Metered Volumes would be allocated to the same Energy Account;
 - ◆ The information imbalance charge is initially set at zero and no such charges will accrue as a result of this issue;
 - ◆ Any non-delivery charges will be likely to be insignificant because, in the circumstances envisaged, any potentially affected BM Units will be unlikely to be participating in the Balancing Mechanism (because they are likely to be off-load or not actively traded) in the event that the

limitations associated with the lack of 'IF' functionality have any effect on the established BM Unit Metered Volumes.

- 5.34 Ofgem/DTI believe that Section R should be amended to reflect the limitation on the aggregation rules that can be used. The amendment to the BSC Section R will require participants to send in appropriate Aggregation Rules but will allow for the fact that the current format of Aggregation Rules does not allow for the inclusion of logical IF statements.

Distribution Line Loss Factors

- 5.35 One participant commented that the application of Distribution Line Loss Factors needs to be confirmed. It was suggested that Distribution Line Loss Factors needed to be applied at the meter register level and that different factors may need to be applied to exports and imports at the same connection point.

Ofgem/DTI Conclusions

- 5.36 Distribution Line Loss Factors are applied at the metering system level and appear in the aggregation rules at the metering subsystem level. It is therefore not possible to apply different line loss factors to exports and imports at the same point of connection.

Section V – Information and Reporting to Parties

ECVAA Reporting

- 5.37 It has been suggested that the reports from the Energy Contract Volume Aggregation Agent (ECVAA) should include a notification report at the end of each Settlement Period, not an aggregated report at the end of each day.
- 5.38 This would supplement the reports currently anticipated to be provided soon after each Gate Closure, detailing any contract rejections. Most participants supported this proposal.

Ofgem/DTI Conclusions

- 5.39 Ofgem/DTI accept the proposal in principle as a desirable improvement in reporting. However an impact assessment will be required in order to determine whether or not the functionality can be delivered for NETA Go-live.

Publication of Reports

- 5.40 An issue was raised relating to the consistency of the BSC and the design of the Central Systems. Section V gives all Parties the right to obtain certain reports. Unfortunately, the systems have not been designed to disaggregate one report from the others, so a Party requesting a specific report will have to take all similar reports covered by the same interface (as described in design documentation).

Ofgem/DTI Conclusions

- 5.41 Subject to final confirmation as to how data can be provided, Section V will be amended to remove the inconsistency to reflect the fact that when a Party requests a specific report they will receive all similar reports covered by the same interface.

Publication of Default Data

- 5.42 There was a general agreement that where default data is used by the BMRA, that data should be identified as such.

Ofgem/DTI Conclusions

- 5.43 Ofgem/DTI appreciate that this would be beneficial and agree the requirement in principle. However an impact assessment will be required to determine whether or not the functionality can be delivered for NETA Go-live. It should be noted however that the use of default data on the BMRS is limited to forecast information.
- 5.44 In this and in other comments on Section V, it is noted that in some instances it is unlikely to be possible to amend relevant URSs and associated software to enable Service Provider systems to deliver the requisite functionality to effect a proposed change by Go-live. It should be noted that relevant Parties have the ability to propose a modification to the Code thereafter. In the opinion of Ofgem/DTI, the absence of the additional reports proposed will not have a material impact on the ability to Go-live.

Publication of Forecast GSP Group Takes

- 5.45 It was suggested that the BMRA should provide a forecast of indicative GSP Group Takes ahead of Gate Closure, as this would be helpful information. There was general support for this proposal.

Ofgem/DTI Conclusions

- 5.46 It is not clear that meaningful forecasts of GSP Group Takes can be provided and certainly systems and process to produce and provide such information have not been contemplated. Ofgem/DTI also recognise that previous consideration has been given to the provision of initial GSP Group Take outturns (i.e. ahead of verified meter readings being available) using operational metering, for example. Whilst in principle this may be desirable it is again not clear that meaningful data can be produced, nor can such data be made available for Go-Live.

Publication of Data on the BMRA

- 5.47 It has been suggested that the BMRA should provide Physical Notification (PN) data (i.e. initial physical notifications, IPNs), in addition to the FPN data provided after Gate Closure.

Ofgem/DTI Conclusions

- 5.48 Ofgem/DTI recognise that the publication of such data might be of use to participants, however such a change to reporting requirements cannot be delivered for Go-live.

Publication of Balancing Services Adjustment Data

- 5.49 It was proposed that the BMRA should provide Balancing Services contract information including Indicative Balancing Service Adjustment Data (IBSAD) and Balancing Service Adjustment Data (BSAD). This proposal was widely supported.

Ofgem/DTI Conclusions

- 5.50 Ofgem/DTI believe that IBSAD and BSAD information should be provided. An impact assessment will be undertaken to consider how this information might be made available.

- 5.51 Ofgem/DTI consider that the cost and volume of energy purchases made by NGC will manifest themselves in the BSAD. Given that the BSAD are then used under the BSC as part of the calculation of imbalance cash-out prices it is accepted that this data should be reported. Similar arguments apply to the IBSAD (although the indicative data serves to facilitate the Balancing Mechanism rather than forming a part of settlement). However it is judged that the Balancing Principles and Procurement Guidelines provide sufficient background as to the form of contract and other aspects of NGC's actions in this context.
- 5.52 Ofgem/DTI suggest that in considering how this information will be provided for Go-Live, it may be more appropriate to use the NGC website (or possibly the BSC Website) rather than the BMRS.

Publication of Metered Data.

- 5.53 It was suggested that specific BM Units (directly connected large customer sites) should not have their FPN and Meter Data made available to any Party because of the risk of revealing market share or production-related information.
- 5.54 A further concern emerged, if the customer or a Third Party Generator are not themselves signatories to the Code, where there may be no opportunity for the responsible Party to seek agreement with the customer or Third Party Generator for such data to be made available. There was, however, recognition that where the BM Unit in question is to participate in the Balancing Mechanism such consent could be sought and the problem would be alleviated.
- 5.55 It was suggested that submission of FPNs could constitute participation in the Balancing Mechanism (on the assumption that such sites would otherwise fall below the de minimis level for FPN submission).

Ofgem/DTI Conclusions

- 5.56 Ofgem/DTI's previously stated views on the release of data continue to be valid: a policy paper on information and reporting under the BSC was published on the Ofgem website along with a revised draft (v1.1) of Section V on 30 June. Hence in general, BM Unit FPN and metered data should be made available as soon as is practical.

5.57 Ofgem/DTI recognise the sensitivity surrounding the publication of large directly connected customer's metered data and as a consequence explicitly sought the views of affected parties on this issue. No objections to the proposal to publish this data were received and one large customer positively supported the release of such data as it was viewed as increasing transparency and facilitating the market. On this basis, all FPN and BM Unit Metered Volumes will therefore be made available, as described in Section V of the Code.

General Access to Settlement Reports

5.58 It was proposed that the general public should be able to access Settlement reports to enable them to see real price data, given that the BMRA only provides indicative price data.

5.59 It was further suggested that the general public should also be able to have access to CVA and Supplier Volume Allocation (SVA) Registration data as this would be helpful in the understanding of BMRA reports (for example, by identifying the Parties responsible for particular BM Units).

5.60 There was general support for these proposals.

Ofgem/DTI Conclusions

5.61 Ofgem/DTI recognise that the quoted data items may be of general interest, and agree with the reasons for the suggestions. However, access to settlements may involve fulfilling obligations under the Code and settlement reporting is seeking to fulfil a particular function in enabling bills to be validated. Therefore, it is felt to be inappropriate (and unnecessary given the existence of the BMRA) to allow general access to settlement reports. Hence the decision is that other mechanisms should be sought to provide the data identified above.

5.62 Impact assessments will need to be undertaken in order to ascertain how the information might be made available given that it may not be possible to modify the BMRA arrangements to accommodate fully these requirements for Go-live.

Section X – Definitions and Interpretations

Definition of GSP Group and Distribution System

5.63 The BSC definition of GSP Group, as drafted in the Consultation version of the BSC is:

“GSP Group means a distinct electrical system, consisting of:

- a) all or part of a Distribution System which is connected to the Transmission System at one or more Grid Supply Points, and
- b) all or part of any Distribution System which:
 - i) is connected to the Distribution System in paragraph (a), or to any other Distribution System under this paragraph (b), and
 - ii) is not connected to the Transmission System at any Grid Supply Point”

5.64 And the definition of Distribution System is:

“any [Public Distribution System and] any other distribution systemfor which the condition is satisfied that all boundary points are [subject to registration] [registered] in SMRS pursuant to the provisions of the MRA; where ‘boundary point’ means a point at which electricity may flow on to or off such distribution system other than from or to the Transmission System or another Distribution System.”

5.65 Some concerns were raised that these definitions may not be adequate in that they contain an element of circularity. It was also noted that the equivalent definitions in the PSA were different. One proposal suggested that the definition of GSP Group should be couched in terms of an Authorised Area (specifically “a collection of Meter Points registered within a SMRS authorised Area”). However, it was suggested that this definition was also circular, and it was proposed to keep the definition of a Distribution System “physical”, and define GSP Groups around a collection of GSPs within a Distribution System.

5.66 It was further suggested that the draft BSC definition for a GSP Group need not reference connection to the Transmission System as this was contained within the definition of GSP, and that the reference to “any other Distribution System under this paragraph” will also cover private networks that have not agreed to be administered as part of the GSP Group (which was felt to be inappropriate).

5.67 On the basis of the above, the proposed definition from the meeting participants was that:

“*GSP Group* means a distinct electrical system, consisting of:

- a) all or part of a Distribution System which is supplied from one or more Grid Supply Points, and
- b) all or part of any Distribution System which is administered for Settlement as part of (a),

and for which the supply into, and demand from, can be determined in each half hour.”

5.68 The proposal for a definition of Distribution System, which follows from the above, was:

5.69 “*Distribution System* means the system consisting (wholly or mainly) of electric lines owned or operated by a Public Electricity Supplier and used for the distribution of electricity from Grid Supply Points or Generating Units or other entry points to the point of delivery to Customers or other Users and includes any Remote Transmission Assets (as defined in the Grid Code) operated by such Public Electricity Supplier and any Plant and Apparatus and meters owned or operated by such Public Electricity Supplier in connection with the distribution of electricity, but does not include any part of the NGC Transmission System.”

5.70 These solutions were proposed by two of the participants to the Consultation and more widely supported.

Ofgem/DTI Conclusions

5.71 In addressing the definition of GSP Group and related entities Ofgem/DTI believe that some circularity in the definition is unavoidable because of the choice available to private network operators of whether to register their individual take-off points or not. The definition proposed by the meeting contains some circularity and does not solve the problem. The proposal also appears to treat remote transmission assets as if they were part of the Distribution System; this conflicts with the proposed treatment under the Code.

5.72 Ofgem/DTI have concluded that the BSC definition for GSP Group and Distribution System is adequate and the definition will broadly remain as currently drafted. This reflects the current position, however it should be noted that the Utilities Act 2000 makes provision for separate Distribution Licences to

be issued and the impact on these definitions as a result of issuing such licences may need to be considered at a later date.

6. Conclusions and next steps

- 6.1 This document has summarised a number of issues that were raised during the consultation process on the Balancing and Settlement Code, and has provided Ofgem/DTI's conclusions on each issue. These conclusions will, where applicable, be incorporated into the "near final" draft of the BSC, which is due to be released on the 31 July. In addition, a significant number of the more detailed comments received on the draft BSC have been adopted and will be reflected in this draft of the BSC.
- 6.2 Following Royal Assent of the Utilities Bill obtained on 28 July 2000, the final, "designated" version of the BSC is due to be issued on 7 August 2000. It is currently envisaged that the Secretary of State will designate 14 August 2000 as the date on which industry participants will be required to sign the Framework Agreement by which the BSC is made contractually binding.
- 6.3 In addition, in each Electricity Act licence there will be a new condition requiring the licensee to comply with an Implementation Scheme, also designated by the Secretary of State. A conclusions document on the Implementation Scheme consultation is being issued on 31 July 2000. The Implementation Scheme provides a mechanism by which to oblige licensees to carry out the necessary steps in order to give full and timely effect to the implementation of NETA. It is envisaged that the Implementation Scheme will come into force at the same time as the BSC. However trading under the BSC will not occur until all the necessary implementation steps have been undertaken. The date for trading to commence (Go-Live) will be determined by the Secretary of State, following advice from the Director General of Electricity Supply.
- 6.4 The BSC also refers to a number of 'subsidiary documents', including BSC Procedures (BSCPs). Ofgem/DTI have published drafts of new or substantially modified versions of these documents on the NETA web site in order that interested parties have visibility of the full suite of BSC and supporting documentation.
- 6.5 The BSC Procedures that were posted on the web site were developed and reviewed by the Programme working with the Pool's CEO, NGC, EPFAL, Logica and ESIS. Following the issue of the Go Active version of the BSC, these procedures will be modified to ensure they remain consistent with the

BSC before being reviewed by the Balancing and Settlement Expert Group (BSEG) and simultaneously being made available on the Ofgem web site. The remaining BSC Procedures will not differ significantly from the existing Pool Agreed Procedures, and as they are developed these too will be reviewed and circulated for comment as appropriate.

Appendix 1 - List of written respondents and members of the consultation groups

Companies that submitted written comments

Alcan
British Gas Trading Transportation Services
BNFL
BP Marketing
BP Chemicals Ltd
British Energy
Campbell Carr
Cinergy Global Power
Confederation of Renewable Energy Associations
Centrica
Concert Energy
Combined Heat and Power Association
Elecpool
EDF
Electralink
Enron
Hyder
Imserv
London Electricity
MRASCo
Npower
Norweb Distribution
Norweb Plc
National Grid Company
Northern Electric
Northern Electric Distribution
Powergen
Shell Power Ltd
Seaboard
Slaughter and May
Slough Heat and Power
St Clements Services
Scottish Power Plc
TXU Europe
Unit Energy
Winterton Power Ltd
Yorkshire Electricity Distribution
Yorkshire Electricity

Legal and Governance Consultation Meetings attendees

Attendees	Company
Nick Lumley	Accord
Sheila Connell	Allen and Overy
Anil Mehta	Allen and Overy
Nigel Fowkes	British Energy
Megan Goss	Dynegy
Yehuda Cohen	Dynegy
Christopher Day	Enron Europe
Rebecca Kreiss	Freshfields
Patrick Wallace	Freshfields
Robert Byk	Slaughter & May
Oliver Wareham	Slaughter & May
Paul Stacey	Slaughter & May
Harish Mistry	London Electricity
Paul Chesterman	London Electricity
Simon Sandford	MRASCo
Jonathan Munsey	NGC
Robert Lane	NGC
Mark Bartholomew	NGC
Alan McAdam	Npower
David Duff	Npower
Nigel Cornwall	St Clements Services
Richard Ford	St Clements Services

Trading Consultation Meetings attendees

Attendees	Company
Andrew McKay	AES Indian Queens
James Roe	ALEC
Ralph Cohen	ALEC
Robert Bignell	ALEC
Steve Drummond	ALEC
Jessica Fincham	Aquila Energy
Martin Mate	British Energy
Nigel Fowkes	British Energy
John Capener	British Energy
Nick Simpson	Centrica
Terry Brookshaw	Centrica
Megan Goss	Dynegy
Richard Norris	Dynegy
Yehuda Cohen	Dynegy
Ttofa Costas	Enron direct
Christopher Day	Enron Europe
Mark Coyle	ESIS
Richard Slark	Hydro Company, Edison First Power, Lakeland Power and Derwent Cogen
David Smol	Hydro Company, Edison First Power, Lakeland Power and Derwent Cogen
Chris Rowell	Electricity Pool CEO
Sharif Islam	Elf Gas and Power
John Chennells	Logica
David Hicks	Logica
Paul Chesterman	London Electricity
Trevor Storm	Magnox Electricity
Chris Page	Magnox Electricity
Jan Flynn	National Power
Alan McAdam	National Power
Robert Lane	NGC
Dave Coan	NGC
Louise Elder	NGC
Mark Bartholomew	NGC
Phil Johnson	NGC
Jon Munsey	NGC
Josephine Lord	Norweb
Chris Melling	Norweb
Afroze Miah	PowerGen
Robert Hackland	Scottish & Southern Energy
Mike Harrison	Scottish Power
Richard Ford	St Clements Services
Duncan Jack	St Clements Services
David Lenton	St Clements Services
Andrew Foster	UKPX
Barbara Vest	Yorkshire Electricity

Metering and Registration Consultation Meetings attendees

Attendees	Company
James Roe	ALEC
Peter Clubb	ALEC
Ralph Cohen	ALEC
Robert Bignell	ALEC
Steve Drummond	ALEC
Jessica Fincham	Aquila Energy
Shelia Connell	Allen & Overy
John Capener	British Energy
Katherine Bergin	British Energy
David Watts	British Energy
Megan Goss	Dynegy
Christopher Day	Enron Europe
Geoff Huckerby	East Midlands Electricity
Finn Craig	GPU Power Distribution
John Williamson	Electricity Pool CEO
Ttofa Costas	Enron Direct
Richard Slark	Hydro Company, Edison First Power, Lakeland Power and Derwent Cogen
David Smol	Hydro Company, Edison First Power, Lakeland Power and Derwent Cogen
Richard Harrison	National Power
Ben Graff	NGC
Amanda Seaton	NGC
Louise Elder	NGC
Steve Browning	NGC
Nadim Al-hariri	ESIS
Stuart Boyle	NGC
Robert Lane	NGC
Munir Hussan	NGC
David Coan	NGC
Richard Harrison	National Power
Chris Gibson	National Power
Nigel Ellis	Logica
Paul Fujamade	Logica
Harish Mistry	London Electricity
Leyla Lewis	Norweb
Robert Brown	Norweb
Chris Melling	Norweb
Mike Game	Seeboard
Paul Jones	PowerGen
Richard Ford	St Clements Services
Duncan Jack	St Clements Services
David Lenton	St Clements Services
Andrew Wrigglesworth	Yorkshire Electricity
Barbara Vest	Yorkshire Electricity

Appendix 2 – Governance of Parameters

Parameter/ Reference	Proposed Treatment	Comments
Annex D3 Main Specified BSC Charges	Initial numbers to be stated in Annex D3. Panel Decision required to modify these numbers.	
M: Credit Assessment Price.	Panel to set value. Panel decision required to change this value. Panel required to give parties 20 Business Days notice of any change so that they can manage their credit arrangements to match such a change.	Initial Price proposed of £25/MWh.
M: CALF _i	Panel needs to give 20 Business Days notice of any changes to CALF so that parties can manage their credit levels accordingly. Slightly different to CAP because CALF may also change when a party amends GC or DC.	These values will need to be set between Go-Active and Go-Live. The Panel will need to know the BM Unit configurations to do so.
N: BSC Clearer Credit Facility	Set initially at £4M. Panel to set value up to a maximum of £10M. A Code modification will be required above this level.	
T: Alpha	Define as equal to 0.45. A Code modification will be required to change this value.	

T: TLFij	<p>Define as equal to 0.</p> <p>A Code modification will be required to change this value.</p>	
T: IIPj	<p>Define as equal to 0.</p> <p>A Code modification will be required to change this value.</p>	Definition needs to be added into section T.
<p>Annex T1</p> <p>NRj</p> <p>To be renamed Balancing Reserve Level</p> <p>BRL_j</p>	<p>Set value in Annex T1.</p> <p>Separate Governance as follows:</p> <p>Panel to set values of BRL from time to time and in consultation with BSC Parties and the Transmission Company.</p> <p>Panel in any case to set the values every 12 months for the forthcoming BSC year.</p> <p>Values of BRL must be approved by the Authority.</p>	To be added into Section T.