

August 2000

**Programme Implementation
Scheme**

**Ofgem/DTI
Conclusions Paper**

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1. EXECUTIVE SUMMARY

Background

- 1.1 Over the past twelve months a series of Ofgem and Ofgem/DTI consultation documents have described, in increasing levels of detail, the legal framework within which the New Electricity Trading Arrangements (NETA) will be implemented. In summary, NETA will be implemented by way of modifications to existing Electricity Act Licences¹. The Secretary of State will make the modifications under statutory powers introduced in the Utilities Act 2000 for that purpose – the “NETA power”. Each Electricity Act Licence will require the licensee to comply with a scheme, the “Programme Implementation Scheme” or “Scheme”, to be designated by the Secretary of State. The Scheme will contain those obligations which the Secretary of State considers appropriate in order to give full and timely effect to the Licence modifications introduced under the NETA power.

The Programme Implementation Scheme

- 1.2 This document deals with one specific aspect of the legal framework – the Programme Implementation Scheme. The Scheme sets out the key steps participants will need to take in order to ensure that the new trading arrangements can be given effect (both legally and practically). These steps include changes to other Core Industry Documents connected with the wholesale trading arrangements, the migration of assets and liabilities from the existing Electricity Pool to the BSCCo, the co-ordination and testing and trialling of new IT systems and processes, and the establishment of arrangements to ensure the smooth transition from the Pooling & Settlement Agreement (P&SA) to the Balancing & Settlement Code (BSC).
- 1.3 Ofgem/DTI consulted on the draft Implementation Scheme element in June 2000. Written comments were invited and a seminar at which the detailed elements of the Scheme were outlined was held on 5 July 2000. Twenty responses were received from a cross section of interested Parties including

¹ The conditions are outlined in “The New Electricity Trading Arrangements: Proposed Licence Conditions”, Ofgem/DTI Consultation Document February 2000 and “The New Electricity Trading Arrangements: Proposed Licence Conditions”, Ofgem/DTI Conclusions Paper June 2000.

generators, supply businesses, distribution companies, the transmission company, trading organisations, and service providers.

Headline Issues

Part A: “Introduction”

- 1.4 Part A of the draft Scheme sets out the purpose and effect of the Scheme, its organisation and content, and provisions for its amendment. All licensed Parties will be required to comply with the Scheme. The Scheme can be modified following consultation by the Secretary of State. Respondents to the consultation expressed concern that the power of the Secretary of State to modify the Scheme appeared to be unlimited. They suggested that there may need to be some restrictions on his power and that more information was needed on the consultative process. They felt that the Secretary of State should clarify the criteria against which he would assess modifications, should allow sufficient time for any consultative process and should give reasons for his decision. Some respondents were concerned about their ability to comply with the scheme and suggested that the obligations in the scheme were, in fact, more onerous than those contained within the Licences.
- 1.5 Ofgem/DTI acknowledge the concerns expressed about the width of the Secretary of State’s powers. The NETA power under the Utilities Act limits the Secretary of State’s ability to exercise his power to matters which are relevant to the implementation of new electricity trading arrangements and the Licence Conditions (set out in the February Consultation document and reaffirmed in the June Final Proposals document) circumscribe that power by stating that the purpose of the Scheme is to give full and timely effect to NETA. The indicative consultation period was intended to be a minimum of 48 hours and may, depending on the complexity and potential impact of proposed changes, be extended. It has also been agreed to clarify the intention by changing the minimum period from “48 hours” to “two working days”. The obligation to comply with the Scheme is intended to ensure a smooth and orderly transition from the P&SA to the BSC. The obligations in the Licences are to use all reasonable endeavours to do such things as are necessary to give full and timely effect to the NETA conditions. The

obligations in the Licences are different and are without prejudice to the obligation to comply with the Scheme.

Part B: “General”

- 1.6 Part B of the Scheme contains a list of definitions used in the Scheme and sets out the obligations and liabilities of the Parties and defines the Scheme’s relationship to the BSC and other documents.
- 1.7 A number of Parties expressed concerns about liability issues including the agreement of firm limitations of liability and potential for Parties to be placed in breach of the Scheme by the actions of others. In addition, some Parties felt that the introduction of financial liabilities during the trialling and testing phase ran counter to the principle of co-operation required during this phase. They suggested that the principles adopted during the introduction of the competitive market in 1998, that is that Parties should be free from liability for losses arising from data transfer during testing, might be more appropriate. Following further discussions with the Industry, the Scheme will be amended such that there is a zero cap on liabilities. A number of respondents suggested that the relevant sections of the Code should be set out in the Scheme itself, or in the Scheme Framework Agreement. Ofgem/DTI agree that it would be sensible to use the relevant wording of the Code in the Scheme.
- 1.8 Respondents generally thought that disputes about the meaning, as a matter of contract, of the Scheme should be resolved through arbitration under the auspices of the Electricity Arbitration Association. Ofgem/DTI have incorporated this as a method for resolution in relation to contractual disputes under the Scheme although disputes over certain aspects of changes to Core Industry Documents (see below) are capable of reference to the Director General of Electricity Supply (the “Director”). Ofgem/DTI agree that it would be sensible to use the relevant wording of the Code in the Scheme.

Part C: “Core Industry Documents”

- 1.9 The Scheme imposes specific obligations about making changes to Core Industry Documents (including the Grid Code, the Master Connection and

Use of System Agreement, the Master Registration Agreement and the Pooling and Settlement Agreement).

- 1.10 Most respondents were concerned about the general principles associated with changing the documents as a whole rather than detailed changes to individual documents. Some were concerned that the Scheme could place more onerous obligations on Parties than those presently contained in the Licence Conditions (which have been amended to require licensees to use all reasonable endeavours, rather than best endeavours) to make changes to Core Industry Documents. Others were concerned that although the Scheme makes provision for the Secretary of State to make further amendments to core documents to correct errors or omissions or to take account of changes made to the Scheme itself or to transitional amendments to the BSC, there were no criteria against which such changes should be measured.
- 1.11 The power of the Secretary of State to change the provisions of the Core Industry Documents is, in fact, tightly constrained by his powers under the Utilities Act. This limits the exercise of that power to matters that are necessary or expedient for the purpose of implementing or facilitating the operation of the new trading arrangements. The provisions of the Scheme are consistent with the criterion set out in the relevant Licence Condition which is to give full and timely effect to the New Trading Arrangements and the Secretary of State expects, in all but the most urgent cases, to consult before exercising his powers.
- 1.12 Requests were made for Part 2 Ancillary Services and the Radio Teleswitch Agreement to be classified as Core Industry Documents. After due consideration, Ofgem/DTI conclude that it is not appropriate for these documents to be included.

Part D: “Establishment of Panel, BSCCo and the BSC Clearer”

- 1.13 This section of the Scheme sets out the structure of the Panel, BSCCo and the BSC Clearer. It defines the different roles and representatives and explains the order of the processes by which the transfer of responsibility is handed over from NGC to the Board of BSCCo on, or around, the Scheme Effective Date on 14th August 2000. It also clarifies what NGC's role is during this process.

- 1.14 Few comments were received on this section beyond a suggestion that NGC, as sole shareholder in the BSCCo, should procure that Panel appointments and establishment of the Company's Board are carried out and that NGC should be required to ensure that BSCCo enters into the Scheme Framework Agreement and the BSC Framework Agreement.
- 1.15 Ofgem/DTI agree that obligations should be placed on NGC to procure that BSCCo enters into the appropriate agreements. In general, the obligations on NGC to carry out certain activities are contained in the relevant conditions within its transmission licence rather than in the Scheme.

Part E: "Pool Related Matters and Pool Transfer"

- 1.16 This section describes the arrangements for the transfer of assets, liabilities and obligations from Pool Members to the BSCCo and Parties to it. It also deals with transitional issues, such as the appointment of the BSCCo as Chief Executive of the Pool, the administration of the Pool, the role of the Pool Executive Committee and Pool Members during the period between Go-active (the point at which certain Licence Conditions become effective) and Go-live (the point at which trading under the Code commences). Part E also sets out the transitional funding arrangements.
- 1.17 Clarity was sought on the arrangements for transferring assets and liabilities. Concern was also expressed about potential breaches of the Scheme arising from failure to amend or inappropriate changes to the P&SA. Some respondents also felt that during the Transitional Period Pool Members might be disenfranchised in a number of ways, not least when it came to controlling expenditure and the actions of BSCCo.
- 1.18 A number of amendments have been made to the Scheme to add clarity and to address some of the issues raised by existing Pool Members. Development and amendment of the Pool Transfer Scheme is under the direction of the Pool's Chief Executive Office. The documentation is complex and all the necessary changes and arrangements have yet to be agreed. Further work will be carried out and Pool Members and Parties will be consulted on any subsequent changes.

Part F: “Testing, Pre-Production and Entry”

- 1.19 This section addresses the processes and requirements for allowing Parties and Party Agents (organisations which provide services to Parties) to become involved in testing and pre-production. The Transition Document, which also forms part of this section, addresses the actions necessary to complete registration activities.
- 1.20 Respondents sought clarification as to whom the Scheme applied and what the basis for participation in testing was. Liability issues were a matter of some concern and further information was sought on the definition of Go-live compliance. Further assurance was sought on the procedures for modifying the Transition Document including the requirement to publish changes.
- 1.21 Participants for certain phases of the testing process have already been chosen outwith the Scheme. They were selected to reflect the cross section of roles and functions carried out within the New Electricity Trading Arrangements. Participants had to demonstrate that their own system and process development was sufficiently advanced to enable them to participate. There is no selection process for the Pre-Production stage of testing. As far as liability is concerned it is the responsibility of each Party, and not the Programme, to ensure that their appointed agents are contractually bound to support their responsibilities during testing and pre-production. Ofgem/DTI consider that the requirements in terms of provision of data and the passing of tests are already sufficiently unambiguous and do not propose amending these. The section on the procedure for modifying the Transition Document has been amended to reflect, in part, some of the concerns expressed in the consultation process.

Part G: “Further Transitional Arrangements”

- 1.22 This part of the Scheme sets out arrangements that need to be put in place during the interim period between Go-active and Go-live to reflect the fact that there will be close interactions between the NETA Programme and the BSC Co as the Code is further developed and trading moves over from the present pooled arrangements to NETA. When the Scheme comes into force the whole of the BSC comes into force, except where modified or suspended by the Scheme. Part G makes provision for the Director General to propose

modifications to the Code in limited circumstances (the Transitional Modifications process). In addition comment was specifically invited on a proposal that the Director General should, in circumstances where there is substantial market failure after Go-live, ask the Panel for urgent advice as to whether a modification would remedy the problem. These proposals were contained in Part G8 and further addressed in a note accompanying the consultative draft of the Scheme entitled "Appendix 2" (22 June 2000). Ofgem/DTI proposed that this provision should be limited to a period of 12 months after Go-live. Limited written comments were received on the latter modification provisions, but attendees at the 5 July 2000 Implementation Scheme Seminar were uncomfortable with the proposal and wanted assurance about the circumstances in which the power would be exercised. Many did not feel the power was necessary.

1.23 A few respondents were concerned about the practicalities of the proposed working arrangements between the Programme and the Panel and Board and suggested that it would be more appropriate to work on a consultative and co-operative basis rather than on a more formal basis. Six respondents were concerned about the inability of participants to propose modifications during the period between Go-active and Go-live. Two respondents were concerned about the proposal to treat the Transitional Period and the period from Go-live to 31 March 2001 as separate financial years, since they considered that this might adversely affect those who were trading during the Transitional Period. Ofgem/DTI consider that the Director General's power should remain to ask the Panel's advice on whether a proposed modification would remedy the problem in circumstances of substantial market power.

1.24 Ofgem/DTI recognise that the arrangements for liaison between the Programme and the BSCCo are potentially impractical and agree that a consultative, co-operative process would achieve the desired result. The Director General's ability to modify the Code during the Transitional Period is tightly circumscribed, both by the Scheme and the provisions within the Licences. There is provision for consultation on proposed modifications and for a review process once the Code is substantively in place. Ofgem/DTI have worked closely with those who will be responsible for the management of the enduring obligations and potential signatories to the BSC have been invited to comment on the Company's business plan.

Summary

- 1.25 Comments made during the consultation process have, where appropriate, been reflected in the redraft of the Scheme placed on the Ofgem web site, www.ofgem.gov.uk

2. INTRODUCTION

Background

- 2.1 Over the past twelve months a series of Ofgem and Ofgem/DTI consultation documents² have described, in increasing levels of detail, the legal framework within which the new electricity trading arrangements (NETA) will be implemented. In summary, NETA will be implemented by way of modification to existing Electricity Act Licences³. The Secretary of State will make the modifications under statutory powers introduced in the Utilities Act for that purpose – the “NETA power”.
- 2.2 Each Electricity Act Licence will require the licensee to comply with a scheme, the “Programme Implementation Scheme” or “Scheme”, to be designated by the Secretary of State.
- 2.3 The Scheme will contain those obligations which the Secretary of State considers appropriate in order to give full and timely effect to the Licence modifications introduced under the NETA power. An extract from the relevant Licence Condition, which will form part of each of the generation, supply and transmission Licences, is reproduced in Appendix 3.
- 2.4 The Scheme sets out the key steps participants will need to take in order to ensure that the new trading arrangements can be given effect (both legally and practically). These steps include changes to other central industry documents connected with the wholesale trading arrangements, the migration of assets and liabilities from the existing Electricity Pool to the BSCCo, the co-ordination and testing and trialling of new IT systems and processes, and the establishment of arrangements to ensure the smooth transition from the P&SA to the BSC.

² The new electricity trading arrangements, Volume 1, Offer consultation document, July 1999; The New Electricity Trading Arrangements, Proposed Licence Conditions, Ofgem/DTI consultation document, February 2000; The New Electricity Trading Arrangements, Proposed Licence Conditions, Ofgem/DTI conclusions paper, June 2000; Balancing & Settlement Code Ofgem/DTI Consultation May 2000 and Programme Implementation Scheme Ofgem/DTI Consultation June 2000.

³ The conditions are outlined in the February and June licence proposals documents.

Purpose of this Document

- 2.5 In June 2000, a draft of the Scheme was published⁴ on the Ofgem web site and comments on the draft were invited. To assist the consultation process, a seminar was held on 5 July 2000. A further information seminar, providing direct feedback on the comments received, was held on 26 July 2000.
- 2.6 This document summarises the results of that consultation process on the Scheme. It details the key written and verbal responses received on Draft 1 of the Scheme and presents the Ofgem/DTI conclusions. Copies of the individual written responses are available from the Ofgem library.
- 2.7 A revised draft of the Scheme, which incorporates the changes outlined in this document as well as minor drafting changes, has also been placed on the Ofgem web site (<http://www.ofgem.gov.uk>).
- 2.8 Minor drafting point changes that have been incorporated into the Scheme are not discussed in this Conclusions paper. They can be most easily viewed by reviewing the redlined version of the Scheme, also published on the Ofgem web site.
- 2.9 The reader's attention is also drawn to the July 2000 Further Licence Conclusions document and the BSC Consultation Conclusions Report.

Outline of this Document

- 2.10 Each chapter of this paper follows the same format;
- a summary of the consultation version of the Scheme (Draft 1),
 - summary descriptions of the key responses,
 - Ofgem/DTI conclusions against each response.
- The conclusions generally map one to one with the responses and are presented in the same order to facilitate reading.
- 2.11 The preceding Executive Summary provides a summary of the key points highlighted by respondents and outlines Ofgem/DTI's views following consideration of these points. Chapters 3, 4 and 5 describe in more detail the

⁴ "Draft 1" of the Scheme issued for consultation in two sections – Parts A to C (Draft 1.0, 12/6/00) and Parts D to G (Draft(1), 22/6/00).

responses received in relation to Parts A to C of the Scheme, including amendments to core documents. Chapter 6 discusses the comments received on Part D of the Scheme, which deals with the process for establishing the BSC Panel, the BSC Co and the BSC Clearer. Chapter 7 describes in more detail the responses received on Pool related matters and Pool transfer (Part E of the Scheme). Chapters 8 and 9 address the issues raised in relation to Parts F and G of the Scheme, which outline the processes associated with testing, pre-production and entry processes and further transitional arrangements. In addition, Appendix 2 details responses and conclusions on the consultative draft of the Transition Document (7 July 2000).

Next Steps

- 2.12 On 7 July 2000 the DTI wrote to inform licensees and non-licensees of the detailed regulatory process leading up to and including the signing of the Balancing & Settlement Code Framework Agreement on 14 August 2000. A copy of that letter is attached as Appendix 4 to this document, together with a follow-up letter dated 14 July 2000. In the 7 July 2000 letter, the DTI explained that signatories to the BSC Framework Agreement (a contract which Licensed signatories of the Scheme are obliged to sign) would be required to sign the Scheme Framework Agreement on 14 August 2000 (in order to give contractual force to the Scheme).
- 2.13 Further details on the precise arrangements for the signature of the Agreement and other regulatory and contractual agreements will be forwarded to the relevant Parties shortly.

3. PART A - INTRODUCTION TO SCHEME

Summary of Part A (Draft 1, 12/06/00)

- 3.1 Part A of Draft 1 the Scheme sets out the purpose and effect of the Scheme, its organisation and content, and provisions for its amendment.
- 3.2 Part A sets out the steps which would apply for the purposes set out in the proposed Scheme Licence Conditions. All licensed Parties will be required to comply with the Scheme pursuant to the proposed Scheme Licence Conditions, and following a direction from the Director General, would ensure that non-licensees comply with the Scheme. NGC would ensure that BSCCo, ESIS and EPFAL sign up to the Scheme.
- 3.3 The Scheme can be modified by the Secretary of State following such consultation as he considers appropriate. A minimum period of 48 hours is allowed for consultation. It is proposed that modifications would be made upon service of notice by the Secretary of State to licensees and the BSCCo, and notices would be published for the benefit of persons likely to be affected by the modification.

Respondents' Views

- 3.4 A number of respondents commented on the consultation process to be carried out by the Secretary of State when making any modification to the Scheme. They were concerned that the power of the Secretary of State to modify the Scheme appears to be unlimited and suggested that there may need to be some restrictions on his power. They also felt that it would be preferable to provide greater precision as to how a consultation under this provision would be carried out, for example, providing for the publication of the results of the consultation and including a requirement to give reasons for the decision. They also felt that it should be made clear what criteria the Secretary of State would apply, for example by reference to the objectives set out in the Scheme Licence Conditions. Several respondents also felt that the period for responses should be "reasonable" rather than "as the Secretary of

⁵ The conditions are outlined in the February and June licence proposals documents.

State thinks fit”, and that the response time of 48 hours was too short (two respondents suggested a period of five working days).

- 3.5 Two respondents commented that consultation by electronic publishing might be inappropriate in certain circumstances.
- 3.6 Two respondents were concerned that the Scheme places more onerous obligations upon Parties than their Licence Conditions (which require licensees to use “all reasonable endeavours” to make changes to the Core Industry Documents), and that any conflicts between what is in Licences and what is in the Scheme should be resolved in favour of the licence. They also felt that obligations placed under the Scheme should be consistent with the licence and that no participant should be held to be in breach of Scheme obligations, provided it complies with its licence.
- 3.7 Two respondents were concerned about the provision in A1.7 that all licensees should take such steps to exercise and enforce their rights under the Scheme to ensure that non-licensees comply with it. They queried how licensees would be able to comply with this provision and what precise steps licensees would be required to take in order to comply with this obligation, and did not think that failure to take these steps should result in contractual liability.
- 3.8 A number of respondents asked for clarification as to whether exempt persons would also be required to comply with the Scheme. Two respondents went further, submitting that exempt suppliers and exempt generators should also be under the obligations imposed by the Scheme, and that an obligation to that effect should be imposed upon them by a new Exemption Order.
- 3.9 Several respondents suggested that there should be an obligation on NGC to ensure that BSCCo (as well as EPFAL and ESIS) complies with the Scheme, given that all three are wholly owned subsidiaries of NGC.
- 3.10 A concern was raised that NGC would not be able to fulfil its obligations under paragraph 1.8 of Part A. NGC will only be in a position to “take all reasonable measures to cause BSCCo” to do anything, prior to Go-active. Given that the “Scheme Effective Date” is not yet defined, but A1.1 indicates the BSC will be in force by then, it was felt that NGC was unlikely to fulfil its obligations.

Ofgem/DTI's Conclusions

- 3.11 In relation to the comments about including specific criteria in the Scheme, the Scheme derives its authority from the new Licence Conditions (e.g. proposed Condition 15A Paragraph 2 of the PES licence and proposed Condition 9A.2 of the Generation Licence). Paragraph 3 of these Conditions states that the purpose of the Scheme is to give “full and timely effect” to the proposed new Licence Conditions, thereby restricting the Secretary of State’s power to use the Scheme. The Scheme itself contains the process for bringing in the new trading arrangements, and Ofgem/DTI believe that the proposed new Licence Conditions provide an effective criterion for the amendments to the Scheme designated by the Secretary of State.
- 3.12 Paragraph A3.2 states that consultation shall be as the Secretary of State thinks appropriate, and may be by way of electronic publishing. Ofgem/DTI is mindful of the need to ensure that all consultation is effective and appropriate. Hence, it will be selective in its use of electronic publishing.
- 3.13 The licence obligation in relation to the Scheme is to comply with it. It is intended to provide a mechanism to ensure that specified steps are taken in a timely and co-ordinated fashion to implement NETA and to provide a smooth transition from the P&SA to the BSC. Separately, licensees are required to use all reasonable endeavours to do such things as are necessary to give full and timely effect to the NETA Licence Conditions. This is an additional obligation, which is expressed to be without prejudice to the obligation to comply with the Scheme.
- 3.14 The obligation to take all reasonable measures to amend Core Industry Documents consequent on a BSC modification is intended as an enduring requirement continuing beyond Go-live. The Scheme imposes specific obligations about making changes to Core Industry Documents in order to introduce NETA in the first place.
- 3.15 The provision in A1.7 was intended as a means of ensuring, as far as possible, that those Parties to the Scheme who are not licensees nonetheless comply with their contractual obligations under the Scheme. The provision, falling within Part A of the Scheme, does not itself have contractual force

(Part A has purely regulatory force; in other words, licensees are required to comply with it by virtue of their licences only). However, Ofgem/DTI have agreed to remove A1.7 in the light of the concerns raised, but will of course expect licensees to take such steps as are appropriate in order to ensure the Scheme is given effect.

- 3.16 DTI (which has responsibility for any new Order) is considering whether or not a new Exemption Order is necessary to ensure that the companies in question will sign the Scheme Framework Agreement.
- 3.17 Once NGC and BSCCo have signed the BSC Framework Agreement and become bound by the BSC, the relationship between NGC and BSCCo will be largely governed by the BSC itself. Under the BSC, BSCCo is an uncontrolled subsidiary of NGC, and therefore Ofgem/DTI consider it inappropriate to give NGC any ongoing obligations in relation to BSCCo under the Scheme.
- 3.18 In order to clarify the sequence, Ofgem/DTI have agreed that Paragraph A1.1 will be amended to read “NGC is to have adopted the BSC...” rather than “NGC has or will have adopted the BSC...” although both the coming into force of the BSC and the Scheme becoming effective will be happening on the same day.

4. PART B - GENERAL PROVISIONS

Summary of Part B (Draft 1, 12/06/00)

- 4.1 Part B of the Scheme contains a list of definitions used in the Scheme, and sets out the obligations and liabilities of the Parties, the Scheme's relationship with the BSC and other documents, and general provisions.

Respondents' Views

- 4.2 Several respondents were concerned about the liability of Parties to one another and asked that this be clarified. They suggested firm limitations of liability between Parties, and a means of ensuring that a Party would not be in breach to the extent that it is unable to comply with the Scheme because of another's actions. A large number of respondents were concerned that introducing financial liabilities for testing and trialling runs contrary to the principle of co-operation required for the successful execution of testing and trialling. They suggested that the principles adopted during the introduction of the competitive market in 1998, that is that Parties should be free from liability for losses arising from data transfer during testing, might be more appropriate. They also raised the issue of whether or not BSCCo should bear any liability for its actions as facilitator and/or service provider and thought that the approach taken in the Scheme should be consistent with the approach eventually adopted for the BSC.
- 4.3 There was a general preference that disputes between Parties about the meaning, as a matter of contract, of the Scheme, be resolved through arbitration through the Electricity Arbitration Association (EAA).
- 4.4 A large number of respondents expressed concerns about incorporating Section H9 (the General Provisions) of the BSC into the Scheme. They felt that a number of provisions in Section H9 are inapplicable, and that there was potential for crossover between H9 and provisions of the Scheme and the Scheme Framework Agreement (e.g. the liability waiver and the entire agreement clause). The respondents preferred that the relevant provisions of Section H9 be set out (so far as applicable) either in the Implementation Scheme itself or in the Scheme Framework Agreement.

Ofgem/DTI's Conclusions

- 4.5 Ofgem/DTI consulted with the Industry in relation to terms and conditions for participating in testing and trialling. During that process, it was suggested that there be a zero cap on liabilities, and therefore Annex 3 of the Scheme will reflect that position. In addition, in B2.4, the wording “(save in the circumstances and to the extent set out in Paragraph F[/])” together with the footnote, will be deleted.
- 4.6 In relation to the issue of BSCCo bearing liabilities for its actions as facilitator and/or service provider, it has been agreed that BSCCo will bear some financial liability to Parties (subject to recovery from trading Parties) on an enduring basis in limited circumstances under the BSC. Ofgem/DTI do not consider it appropriate for BSCCo to have financial liabilities towards Parties during the implementation process, in the light of the relationship between the NETA Programme and BSCCo during this period and the need for BSCCo to be able to manage a complex and difficult process in co-operation, rather than in conflict, with the Industry. Threats of litigation would not be conducive to this goal or in the interests of the industry as a whole.
- 4.7 Ofgem/DTI note the preference expressed in 4.3, above, that disputes between Parties about the meaning, as a matter of contract, of the Scheme be resolved through arbitration. Ofgem/DTI have therefore agreed to incorporate this as the method for resolution in relation to contractual disputes under the Scheme.
- 4.8 Ofgem/DTI again note the preference that provisions in Section H9 of the BSC be set out in the Scheme to avoid crossover between provisions in H9 of the BSC, the Scheme and the Scheme Framework Agreement and have agreed that the relevant provisions of Section H9 will be set out, as appropriate, in the Implementation Scheme.

5. PART C – AMENDMENTS TO CORE INDUSTRY DOCUMENTS

Summary of Part C (Draft 1, 12/06/00)

5.1 Part C of the Scheme provides for amendment of the following set of documents, defined as Core Industry Documents in the Transmission Licence:

- Grid Code;
- Master Connection & Use of System Agreement (MCUSA);
- Supplemental Agreements (between NGC and a user entered into pursuant to clause 2 of the MCUSA);
- Ancillary Services Agreements;
- Master Registration Agreement (MRA);
- Data Transfer Services Agreement;
- British Grid Systems Agreement;
- Use of Interconnector Agreement;
- Settlement Agreement for Scotland;
- Distribution Codes;
- Distribution Use of System Agreements; and
- Distribution Connection Agreements.

5.2 Nearly all the comments made by those who responded on this Part were about section C1, which deals with general matters.

5.3 Some of the amendments are made by requiring an existing document to be replaced by a new version (as in the case of the Grid Code), or by requiring appropriate amendments to be made to it (e.g. the MCUSA). Before the new documents or the amendments are specified by the Secretary of State, each set of amendments will have been through a process that tracks the normal process for amending the document to which they relate. As a consequence, those who are Parties to the various Core Industry Documents will be aware of the amendments, and will have had the opportunity to contribute.

Respondents' Views

- 5.4 A number of respondents expressed concern that the Scheme gives the Secretary of State very wide discretion as to what amendments he designates, and suggested that specific criteria be set out in the Scheme. This concern was echoed through various parts of the Scheme and for Part C in particular, in Paragraph C1.4.
- 5.5 In Paragraph C1.6, some Core Industry Documents (such as Distribution Use of System Agreements) are to be amended "to incorporate the changes necessary to give effect to, or to be given effect in consequence of" the new Trading Arrangements, without actually stipulating the new wording. Non-standard clauses in Supplemental Agreements are to be dealt with similarly. Five respondents expressed concern at the difficulty a Party might have in working out and agreeing what amendments are to be made.
- 5.6 Paragraph C1.9 empowers the Secretary of State to make further amendments to Core Industry Documents to correct errors or omissions or to take account of changes made to the Scheme itself or to transitional amendments to the BSC. Five respondents expressed concern that there were no criteria for the Secretary of State to apply in exercising this power.
- 5.7 Those respondents also pointed out that there is no provision for consultation before further amendments are designated. They further argued that the expression "manifest errors or omissions" confined Paragraph C1.9(a) to errors or omissions obvious on the face of the documents.
- 5.8 Paragraph C6.5 provides that each MRA Party shall "take all steps necessary within its power" to amend the MRA so as to be in the form designated by the Secretary of State. Two respondents noted that the obligation was expressed in language stronger than that used in the proposed Conditions (where the formula is "take all reasonable steps").
- 5.9 Several respondents questioned the requirement in paragraph C6.4 for a MRA Forum Meeting, believing it unnecessary, costly and impractical. Given that MRA governance requires only the MRA Executive Committee's authority to approve the amended MRA, the MRA Forum is unnecessary, unless the MEC resolution was to be appealed. Respondents noted, however, that any appeal would put Parties in breach of the Scheme.

- 5.10 One respondent requested that the Radio Teleswitch Agreement be included in the list of Core Industry Documents.
- 5.11 It was questioned why the list of Core Industry Documents did not include Part 2 Ancillary Services in addition to Part 1.

Ofgem/DTI's Conclusions

- 5.12 The Scheme derives its authority from the new Licence Conditions (see, for example, proposed Condition 15A Paragraph 2 of the PES Licence). Paragraph 3 of this Condition restricts the Secretary of State's power to use the Scheme by indicating that its function is to give full and timely effect to the licence Conditions introduced by the NETA power in the Utilities Act. The scope of the Scheme is in effect the steps appropriate for bringing in the new trading arrangements. This is considered an appropriate criterion for the amendments designated by the Secretary of State, so that nothing further is required in the Scheme itself.
- 5.13 Ofgem/DTI do not share the concern that where modifications to documents are not specified in the Scheme Parties will not know what to do. In most cases changes will be small and obvious. If there are instances where the result is not obvious and Parties cannot agree, the Parties may refer the issue to the Director for him to settle. These arrangements reflect those that have been successfully used for settling connection disputes. But in this case, the Director General's discretion in settling the changes will be further constrained by the requirement for them to give effect to the New Electricity Trading Arrangements.
- 5.14 Ofgem/DTI have given further thought to the power which paragraph C1.9 confers upon the Secretary of State to make further amendments to Core Industry Documents. Some respondents have complained that this power is unrestricted. Since the Scheme as a whole is limited in its purpose to giving effect to the New Trading Arrangements, Ofgem/DTI do not believe that this complaint is justified. Nevertheless, to offer greater assurance we propose to amend paragraph C1.9 to say expressly that the power may only be exercised for this purpose. Further, the power is needed to cope with unforeseen changes that may be required, perhaps urgently, as preparation for Go-Live. Accordingly, changes to Core Industry Documents may be

needed not only to correct errors in them and to take account of changes made to the Scheme itself, but also to take account of testing and trialling and to enable trading to take place, and to take place without market distortion. This will be achieved by aligning the drafting with the similar provision for BSC modifications in Paragraph G5.3. However, because the power is needed for this initial period, and to minimise regulatory intrusion, it will be available only until Go-Live.

- 5.15 Ofgem/DTI accept that express provision should be made for consultation. The Scheme will be amended to require at least a two working day period of consultation; but this will be a minimum, with a longer period being given where possible. Consultation by electronic mail will be permitted, where appropriate. We note that in the expression “manifest errors or omissions” in paragraph C1.9(a) the word 'manifest' has a technical meaning which may limit its application in a way not intended. Accordingly we have changed the wording to read; “to correct any errors or omissions in the amendments...”
- 5.16 Ofgem/DTI note the objection to the stronger wording in paragraph C6.5 and have decided to amend the opening words of that paragraph to run: “Each Party...shall take all reasonable steps to ensure that the MRA is amended...”
- 5.17 Ofgem/DTI have decided to take the advice of respondents and to remove Paragraph 6.4(a); thereby removing the requirement for a meeting of the MRA Forum to pass a resolution to approve the amended MRA.
- 5.18 Ofgem/DTI remain of the view that the Radio Teleswitch Agreement should not be a Core Industry Document. Parties will need to amend the Agreement to accommodate NETA, but these changes will not fall within the Scheme.
- 5.19 After due consideration, Ofgem/DTI have decided not to include Part 2 Ancillary Services within the set of Core Industry Documents. The Scheme provides for Part 1 Ancillary Services, because these are system related, which Generators are obliged to provide. Part 2 Ancillary Services are “System Ancillary Services which Generators will provide only if agreement to provide them is reached with NGC.” Although Part 2 Ancillary Services are system related services which Generators are obliged to offer, unlike Part 1, if NGC does not accept the terms offered then the Generator is under no obligation to provide. Hence, for the purposes of the Scheme, Ofgem/DTI

conclude that Part 2 Ancillary Services should be classified in a similar way to Commercial Ancillary Services, rather than as Part 1 Ancillary Services.

6. PART D – ESTABLISHMENT OF PANEL, BSCCo AND THE BSC CLEARER

Summary of Part D (Draft 1, 22/06/00)

- 6.1 Part D of the Scheme sets out the structure of the BSC Panel and BSCCo Board and BSC Clearer. It states the different roles and provides names where they have been identified. It further explains the order of the processes by which the transfer of responsibility is handed over from NGC to BSCCo on, or around, the Scheme Effective Date. The role of NGC during this process is also stated.

Respondents' Views

- 6.2 Limited comments were received in direct relation to Part D of the Scheme. Three respondents commented that NGC, as the only shareholder in BSCCo, should procure that the Panel appointments and establishment of the BSC Board are carried out. The respondents further commented that NGC should be required to procure that BSCCo enters into the Scheme Agreement and BSC Framework Agreement.

Ofgem/DTI's Conclusions

- 6.3 Ofgem/DTI believe that the Scheme already contains adequate provisions to ensure that NGC procure that BSCCo carries out actions set out in D3.1 and D3.4. In general, the obligations on NGC to carry out certain activities are contained in the relevant conditions within its transmission licence rather than in the Scheme.

7. PART E – POOL RELATED MATTERS AND POOL TRANSFER

Summary of Part E (Draft 1, 22/06/00)

- 7.1 Part E of the Scheme describes the arrangements for the transfer of assets, liabilities and obligations from Pool Members to the enduring organisations created by the New Electricity Trading Arrangements. It applies to the BSCCo and participants who are Parties to the P&SA on, or at any time after, the Scheme Effective Date. The provisions of Part E include obligations on Parties to take the necessary steps to:
- ensure that the necessary amendments to the Pooling and Settlement Agreement (P&SA) are made, and
 - comply with the Pool Transfer Agreement.
- 7.2 Section E also covers transitional matters such as the appointment of the BSCCo as Chief Executive of the P&SA, the administration of the Pool, the role of PEC and Pool Members between Go-active and Go-live and Transitional Funding Arrangements.

Respondents' Views

- 7.3 One respondent felt that the amendments referred to in Paragraph E2.1 should be annexed to the Scheme rather than being separately designated by the Secretary of State.
- 7.4 Five respondents felt that the obligations placed on Parties to affect the P&SA amendments in Paragraph E2.4 were more onerous than the Licence Condition with which it should be consistent. It was also stated that there was no provision for the possibility of written resolutions.
- 7.5 Five respondents felt that the statement that no steps should be taken to delay or hinder the making or implementation of the P&SA amendments was unnecessarily onerous and, if it was retained, should be limited to steps taken knowingly. Concern was also expressed over the breadth of acts which could breach Paragraph E2.5 and that this could be done unintentionally, and the opinion was that only acts intended to delay or hinder the implementation of amendments should represent a breach of the Scheme Framework

Agreement. A request was made for Ofgem/DTI to specify the types of acts contemplated by this clause.

- 7.6 Two respondents stated that the appointment of BSCCo as Chief Executive should be until termination of the P&SA. It was also queried what criteria the Panel would apply if the appointment was terminated at a later date than the Pool Run-Off date.
- 7.7 Two respondents felt that the terms of reference for the appointment of BSCCo as Chief Executive should be set out initially in an annex to the Implementation Scheme, but be capable of amendment by the Pool Executive Committee with agreement of the BSCCo. Concern was also expressed that Paragraph E4.1.5 stated responsibilities placed on the Chief Executive went beyond the given initial terms of reference.
- 7.8 Two respondents expressed concern that the ability of the BSCCo to refer matters of dispute to the Director General would increase the probability of unresolved conflicts, which could have been resolved by agreement. Also, during any potential conflict over BSCCo duties or allocation of resources, Pool Members could be in the position of being unable to replace or remove the BSCCo as Chief Executive and yet be denied access to its resources (either pending a determination by the Director General or following a determination in favour of the BSC functions).
- 7.9 In relation to Paragraph E5.2, two respondents commented on the scope of the BSCCo's role and apparent lack of liability for its actions. This comment was also raised in the context of the BSC consultation.
- 7.10 Five respondents raised concerns about the controls on Authorised Pool Expenditure and, in particular, what happens if the expenditure incurred is greater than the capped amount.
- 7.11 Three respondents noted that neither the Implementation Scheme nor the BSC makes any express provision for the funding of ERS development (and the reimbursement of that development cost), nor for the on-going recovery of costs associated with the continuation of ERS.
- 7.12 Two respondents asked what the VAT treatment of payments was to be as this section had been left blank.

- 7.13 Two respondents stated that the indemnity arrangements were unacceptable (Parties are jointly and severally liable for any other Party's failure to pay its share) and preferred the existing P&SA provisions. The suggestion was made to either delete this entirely, or alternatively, a Party should only be liable for its proportionate share after the BSCCo has pursued all available steps to recover the debts from a defaulting Party.
- 7.14 Two respondents were concerned that the provisions of Paragraph E5.3.2 would allow BSCCo to request additional funding from Pool Members in excess of the amounts originally agreed.

Ofgem/DTI's Conclusions

- 7.15 Ofgem/DTI agree with the view that amendments to the P&SA should be annexed to the Scheme rather than being designated separately, and paragraph E2.1 will be amended accordingly.
- 7.16 Ofgem/DTI agree that the obligations contained in Paragraph E2.4 should be retained but Paragraphs E2.4 and E2.5 will be amended to reflect the concerns raised by respondents. These concerned the overly onerous nature of the clause in respect of a Party acting unintentionally in a way that represents a breach of the clause in question.
- 7.17 Ofgem/DTI agree that Paragraph E4.1.2 will be amended to allow the appointment of BSCCo as Chief Executive to run until termination of the P&SA.
- 7.18 Ofgem/DTI agree that the initial terms of reference for the appointment of BSCCo as Chief Executive of the Pool should be set out in the Annex to the Scheme and that they should be capable of amendment by the Executive Committee with the agreement of BSCCo.
- 7.19 In response to the view expressed in Paragraph 7.8 above, E4.1.6 has been removed.
- 7.20 The issue of the scope of the BSCCo's role and lack of liability was also raised as part of the consultation on the BSC. Chapter 3 of the BSC Consultation Conclusions Report discusses the issues raised.

- 7.21 In relation to controls on Pool expenditure, Paragraph E5.2 deals with the concerns about the level of Authorised Pool Expenditure and the mechanisms for recovering it in excess of the initially agreed amount. It is anticipated that BSCCo will fund BSCCo transitional expenditure, in excess of Authorised Pool Expenditure by borrowings, which will be recovered from Pool Members on the basis of contributory shares post Go-live.
- 7.22 Ofgem/DTI confirm that express provisions have not been made in the BSC or Implementation Scheme for the funding of ERS developments. The funding of the developments has been agreed by the Pool Executive Committee and is a matter for Pool Members to deal with. Details are still to be finalised, but it is anticipated that the existing cost recovery provisions will apply until Go-live, after which a provision will most likely apply in the BSC for the ongoing recovery of costs associated with the continuation of ERS.
- 7.23 In relation to E5.2.6, VAT will be applied to payments at the applicable rate.
- 7.24 The indemnity arrangement in Paragraph E5.2.9 is an indemnity given to BSCCo by the parties to meet the funding commitments to EPFAL. It is needed to give BSCCo assurance as to funding and the liability is several, not joint and several.
- 7.25 Paragraph E5.3.2 was added as a backstop provision in the event that additional borrowing is not available from either banks or other sources, e.g. NGC. It is not currently anticipated that there will be a requirement to draw upon this facility.

8. PART F – TESTING, PRE-PRODUCTION AND ENTRY

Summary of Part F (Draft 1, 22/06/00)

- 8.1 Part F of the Scheme addresses the processes and requirements for allowing Parties and Party Agents to become involved in testing and pre-production activities and for completing registration requirements.
- 8.2 In addition, Annex 3 of the Scheme addresses co-operation between participants in Market Integration Testing and Pre-Production and the management of the Market Integration Testing activity.
- 8.3 A blank section on Parallel Running (F3) was inserted to recognise NGC's requirement in exercising the Balancing Mechanism in the cutover period from Pool operation to the live NETA operation.
- 8.4 A section on Initial BSC Requirements specifically addresses actions required to allow Parties and Party Agents to complete registration activities. The detail of this section is held in the Transition Document and the bulk of this Part F defines the content of the Transition Document.
- 8.5 The section on Initial BSC Requirements addresses three key issues:
- (i) recognition of when each Party has satisfied registration requirements;
 - (ii) a definition of when data submitted by a Party can be considered live for the purposes of settlement at go-live; and
 - (iii) provisions for modification of the Transition Document.

Respondents' Views

- 8.6 Three respondents asked on what basis Parties are selected for participation in testing and questioned whether the term 'proving' in Paragraph F2.2 was sufficiently understood.
- 8.7 Two respondents were concerned that the Scheme applied to Parties and not to other organisations who may be involved in testing. They asked whether a more comprehensive multi-lateral agreement might be appropriate.

- 8.8 In Section 3 of Part F, four respondents raised the matter of co-operation and liability issues in respect of NGC parallel running. They asked for early sight of wording to address these issues.
- 8.9 Four respondents raised questions about the interpretation of the definition of Go-live compliance in Paragraph F4.2(a). They expressed opinions that the wording was too strict and that the requirements were insufficiently clear.
- 8.10 Two respondents expressed concern over the ability of the Director General to override the BSC using the Transition Document as detailed in Paragraph F4.5, particularly given the powers available in Part G.
- 8.11 A number of comments referred to Paragraph F4.10, either directly or indirectly, variously concerned about the workability of the provision where a Party wilfully fails to take the steps necessary to register its BM Units and its rights as a Party are suspended.
- 8.12 Three respondents questioned how BSCCo would determine whether or not a Party has “substantially” complied with the requirements. The comments applied to Paragraph F4.14(a) with related comments in respect of F4.14(b).
- 8.13 Four respondents raised concerns about the processes for consultation, particularly in relation to the publication of proposed changes to the Transition Document. One point concerned the need for the Director General to draw Parties’ attention to proposed changes, while another concerned the appropriateness of specifically requiring electronic publication. The setting of the response period should be “reasonable” rather than “as the Director General thinks fit”.
- 8.14 The reader is also referred to Appendix 2, where respondents’ views on the Transition Document are considered.

Ofgem/DTI’s Conclusions

- 8.15 The participants for Market Integration Testing have already been chosen and the selection process is necessarily beyond the scope of the Scheme. There is no selection process relating to Pre-Production, though there are rules for participation given in the Transition Document.

- 8.16 In relation to the comments on Paragraph F2.3, it is not clear what non-Party participants might be involved in testing other than Party Agents appointed by Parties. It is the responsibility of each Party to ensure that their appointed Party Agents are bound to support the responsibilities of the Party through whatever contractual arrangement is in place. This point is made explicitly in the Transition Document in relation to Pre-Production.
- 8.17 NGC Parallel running is to be recognised in the Scheme and Party obligations in this area will be identified. NGC are responsible for clarifying the implications of Parallel running to the satisfaction of Pool Members.
- 8.18 Ofgem/DTI believe that the definition of Go-live Compliance states no more than is defined in the BSC and it is not the intention of the Scheme to reduce these requirements. It is felt that the stated requirements, in terms of provision of data or the passing of tests, are sufficiently unambiguous for the purposes of this definition.
- 8.19 Ofgem/DTI note that the powers given to the Director General to use the Transition Document to modify the BSC are restricted by Paragraph F4.3, which sets out the content of the Transition Document. However, Paragraph F4.3(d) has been recognised as unnecessarily broad and has been deleted. Further, Ofgem/DTI note that the powers given to the Director General under Part G are intended to be used under restricted circumstances and address different issues from those relevant to Part F.
- 8.20 Ofgem/DTI recognise the impracticality of Paragraph F4.10 and, as a consequence, it has been deleted.
- 8.21 With regard to the question of the determination of “substantially complied” in Paragraph F4.14, it is noted that the requirements of the BSC relate to the provision of data or the passing of tests and that these are, in general, unambiguous conditions. Where there might be any ambiguity over any of these matters the BSC provides for processes, including derogations and dispensations, to address these and there is no need to reproduce these in the Scheme. In recognition of this, Paragraph 4.14(b) has been deleted.
- 8.22 In Paragraph F4.19, the publication requirement has been changed to a more general communication requirement. Allowing the Director General to set a response period as he sees fit remains, on the grounds that during the period

before Go-live, decisions may be required to be made on necessarily short timescales, and these timescales may not be equally reasonable to all Parties.

9. PART G – FURTHER TRANSITIONAL ARRANGEMENTS

Summary of Part G (Draft 1, 22/06/00)

9.1 Part G of the Scheme covers the arrangements that need to be put in place to support the continuance of the Director General's NETA Programme; ensuring consistency of the BSC and the Procedures, processes and systems used in the implementation of BSC. It outlines the procedures for making transitional BSC modifications, the arrangements for adapting Agreed Procedures for use under the BSC, determination of the Go-live date and the cut-over from trading under the P&SA to trading under the BSC. It also covers the modification process post Go-live.

Respondents' Views

- 9.2 One Party questioned whether enough consideration was given to the possibility of double recovery of Programme costs through the licence costs and BSCCo charges. The Party suggested that sufficient mechanisms be put in place to prevent this.
- 9.3 Two respondents questioned whether the provision in G2.5(b) is practical. This concerned BSCCo agreeing not to give conflicting instructions to individuals who have taken up positions with BSCCo, but who also retain responsibilities in the NETA Programme. The view was expressed that it would be seen as more appropriate to have a consultation and co-operation provision rather than an absolute restriction on BSCCo. Better still, it was felt that the individuals ceasing to have dual responsibilities resolved conflicts.
- 9.4 In relation to Paragraph G3.5(a), two respondents questioned whether the BSCCo should be required to follow the same consultation process as followed in formulating the BSC.
- 9.5 Six respondents expressed concern over the transitional arrangements for modifications as set out in Part G5. They felt that there should be a process for Parties to suggest modifications during this stage and expressed dissatisfaction that there was no referral to the Director General.

- 9.6 In Paragraph G6.2(b), two respondents questioned the treatment of the Transitional Period and the period from Go-live until 31 March 2001 as separate BSC years. The concern was that this might adversely affect certain Parties, for example, if there is uneven expenditure during the Transitional Period, which is only spread out amongst those trading during that period.
- 9.7 One Party stated that Paragraph G8.9 could be interpreted as meaning that no Party should make any critical observation on any modifications to the BSC following the Go-live date least they be construed as “preventing, hindering or unduly delaying” the implementation of Part G8. The respondent said that this implied there would be a lack of healthy debate on modifications.

Ofgem/DTI’s Conclusions

- 9.8 Ofgem/DTI have no intention of double recovering the Programme costs and mechanisms are in place to both control and monitor costs.
- 9.9 Ofgem/DTI agree that the original provision in G2.5(b) is potentially impractical. As such, Paragraph G2.5(b) has been deleted. As suggested by respondents, a consultation and co-operation provision should be sufficient and is already contained in Paragraph G2.4. Further, the NETA Programme has sought to limit the number of individuals with dual responsibility, in order to minimise the risk of conflict.
- 9.10 Ofgem/DTI consider it impractical for the BSCCo to be required to follow the same consultation process as was followed in formulating the BSC.
- 9.11 Ofgem/DTI note the concerns over the transitional arrangements for modifications as set out in Part G5, but consider that the ability for Parties to introduce modifications between during the Transitional Period would increase the risk of delay to Go-live. The Director General will still be bound by general public law duties and is therefore obliged to follow due process.
- 9.12 Ofgem/DTI acknowledge that the cost recovery issues are complex and that whatever methodology is chosen runs the risk of adversely affecting certain Parties. Ofgem/DTI believe that the mechanism chosen strikes an appropriate balance between administrative complexity and accuracy. It is

therefore seen to be both pragmatic and equitable. The mechanism involves Pool Members paying the costs for all periods up to Go-live. The costs between Go-active and Go-live are spread over the 4½ years post Go-live. Costs incurred from Go-live to the end of the financial year are recovered in that period from the BSC trading Parties.

- 9.13 Ofgem/DTI agree with the comment that an interpretation of Paragraph G8.9 could limit critical appraisal of modifications to the BSC post Go-live. This was not the intention and, as such, Paragraph G8.9 will be modified to reflect the true intention.
- 9.14 The Utilities Act 2000 contains provisions to support the implementation of a more robust regime to apply in the event of supplier failure. Ofgem has been consulting with the industry on the arrangements to underpin the appointment of a 'Supplier of Last Resort' and it is continuing to take these discussions forward. In the light of these discussions, Ofgem/DTI believe the BSC may need to be modified prior to Go-live to accommodate the new Supplier of Last Resort arrangements once they are fully developed. This change would be through the Transitional BSC Modifications power. For these purposes, Ofgem/DTI have decided that Part G of the Scheme will include a power (to form part of the powers to direct Transitional BSC Modifications) for the Director General to be able to amend the BSC during the Transitional Period for Supplier of Last Resort reasons. ELEXON will be responsible for taking forward development of the necessary amendments to the BSC, in consultation with the industry, and for making recommendations to the Director General, as part of the current Supplier of Last Resort project.

10. GENERAL COMMENTS

Summary

10.1 A number of points were raised by respondents, which were either general in nature or related to more than one section. These comments are discussed here.

Respondents' Views

10.2 A number of respondents raised the concern that the legal obligations contained within the Scheme appeared to be more onerous than in the Licences. The view was expressed that, where a conflict between the Licence(s) and the Scheme existed, this should be resolved in favour of the Licence(s). These concerns extended beyond the obligations within the Scheme to the scope of the power of the Secretary of State to change the Scheme and to amend other core documents. Some respondents commented that this perceived expansion in the scope of powers amounted to unnecessary regulation. Greater precision over the scope of the Secretary of State's powers and the publication in the Scheme of transparency criteria was called for.

10.3 Respondents commented on the practicalities of effecting signatures to documents, which often would not be ready in final form until shortly before designation of the Licences and the Scheme. Similar comments were echoed at the Seminar on 5 July and duly noted.

Ofgem/DTI Conclusions

10.4 Each Licence Party is required to comply with the Scheme pursuant to the relevant Scheme Licence Condition(s). Ofgem/DTI conclude that the legal obligations contained within the Scheme are appropriate to provide a robust mechanism to implement NETA and for transition from the P&SA to the BSC. A fuller discussion is given in Part A. On the question of the scope of the powers of the Secretary of State, Ofgem/DTI believe that the proposed new Licence Conditions provide effective criteria for amendments to be

designated. Once again, a more detailed discussion is contained in Part A and also in Part C.

10.5 Ofgem/DTI recognise the concern over timescales. As discussed in the Introduction, a comprehensive consultation process has been followed, designed to give all Parties as much time as is practical to see the full set of documentation. The issuing of this material in separate tranches was designed to minimise delay in getting documentation to interested Parties and to maximise the amount of time each document was available for consideration. Thus, little in the final documentation will come as a surprise, with late changes primarily reflecting comments received from respondents. In addition, in order to meet the very real practical concerns of respondents and to assist Parties further, the DTI announced in its letter of 7 July 2000 to licensees and non-licensees that the signing day for the documentation would be put back a week to 14 August 2000. It was also stated that a near final draft of the BSC would be made available on the 31 July 2000.

Appendix 1 List of Respondents

Table of Respondents to Draft 1 of the Scheme				
No.	Company	Parts A-C of the Implementation Scheme	Parts D-G of the Implementation Scheme	Pool Supplement; Annex to the Implementation Scheme
1	Barking Power Ltd	Yes	Yes	
2	British Energy plc	Yes	Yes	
3	British Gas Trading Ltd	Yes		
4	Cms Cameron Mckenna			Yes
5	Enron Europe	Yes		
6	Electralink Ltd	Yes		
7	Freshfields on behalf of PowerGen	Yes	Yes	Yes
8	London Electricity plc	Yes	Yes	Yes
9	MRA Service Company Ltd	Yes		
10	National Power plc	Yes	Yes	Yes
11	National Grid Company plc	Yes	Yes	Yes
12	Norweb plc	Yes	Yes	Yes
13	Scottish Power plc	Yes		
14	Scottish & Southern Energy plc	Yes	Yes	
15	Slaughter & May	Yes	Yes	Yes
16	Slough Heat & Power Ltd	Yes	Yes	Yes
17	St Clements	Yes	Yes	Yes
18	Western Power Distribution	Yes	Yes	Yes
19	Yorkshire Electricity Distribution	Yes	Yes	
20	Yorkshire Electricity plc	Yes	Yes	

Appendix 2 Transition Document

Summary of Consultative Draft (7 July 2000).

- A2.1 The Transition Document supports Part F of the Implementation Scheme by providing detail in respect of Initial Entry Requirements, Initial Registration, Pre-Production and some miscellaneous items. Its purpose is primarily to allow for the management of those activities which Parties and Party Agents must complete in order to satisfy the registration requirements of the BSC as well as those activities which Parties, and Party Agents on their behalf, will be involved in while systems are operated prior to the Go-live Date.
- A2.2 The bulk of the document addresses the fact that the processes which are required for the proper management of registration activities are constrained by the volume of work to be done and that the enduring processes are inappropriate in this situation.
- A2.3 There is also recognition that the majority of Parties are already active in the Pool. At a detailed level this means that certain data will be available which may be used to assist the registration processes of data acquisition. It also means that continuity must be assured and that the registration data available to the systems at Go-live must capture all of the metering systems in use for the current Stage 1 settlements. The Programme has also been conducting a consultation on the new BSC Procedures.
- A2.4 In general, the Transition Document has been written under the assumption that the majority of Parties are, or will be, ready and able to complete their registration activities in the time required. However, it is recognised that there may be circumstances under which registrations may still be incomplete close to the Go-live Date. In such cases the Transition Document provides for certain defaults to allow for Go-live with a complete set of Metering Systems.

Respondents' Views

- A2.5 There were a number of comments raising concerns about the availability of BSCPs, particularly in relation to Registration and Accreditation. The concerns recognised that the Transition Document depends upon these

BSCPs for its interpretation and respondents found it difficult to be sure of their obligations in the absence of the BSCPs.

- A2.6 Respondents were concerned about the amount of notice they might receive of changes to the test calendar and the process by which the test calendar is calculated.
- A2.7 It was pointed out that there was an inconsistency between the Transition Document and the BSC in respect of accreditation requirements for ECVNA and MVRNA.
- A2.8 Clarification was also sought on the accreditation requirements for MOA.
- A2.9 Some respondents raised questions about the process of “staggering” Initial Registrations. The concerns focused on the ability of the process to ensure that no Party was left in breach of obligations at Go-live, and that no Party was treated with undue discrimination.
- A2.10 The Transition Document defines a data validation process whereby data is considered to be validated by default if a Party fails to respond in a given time. Concern was expressed that this process depends on the actual receipt of the information by the Party in the first place.
- A2.11 There are a number of Paragraphs in the Transition Document requiring action from the Panel. Concern was expressed that the Panel would be overwhelmed by the workload, particularly in the area of Trading Unit approval. Respondents requested a more streamlined process.
- A2.12 In considering Pre-Production, some respondents expressed concern that versions of software may change during the process and this might require test or validation actions to be repeated.
- A2.13 Respondents felt that the clause requiring Parties active in Pre-Production to ensure that they do not inhibit the operation of Pre-Production was onerous and should contain some reasonability wording.
- A2.14 Some concern was expressed over the difference in process applying to Original Parties and others who wish to accede to the BSC after Go-active. It was felt that some organisations may be unable to become Original Parties

for reasons outside their control and would therefore be treated without due discrimination.

A2.15 The Programme identified a need to support metering system validation, pre-production and other activities which require access to raw and aggregated meter data held by ESIS as well as the ability to read meters in parallel with ESIS.

Ofgem/DTI's Conclusions

A2.16 The concern over the availability of BSCPs is recognised. The BSC 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. The BSCPs 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.

A2.17 The test calendar will be published after completion of test design and process planning work. The time allocated to each group of tests will be derived from an analysis of the test specifications, with some allowance for set up time and snags. These times will be validated during Market Integration Testing and, if necessary, a new calendar will be published as soon as reasonably possible at that time. Since testing is due to start shortly after Market Integration Testing has proved the test specifications, any such change will necessarily be made at short notice. Times will be monitored during testing and any significant shortfall may result in a further change, also at potentially short notice. However, all efforts will be made to avoid short notice changes.

- A2.18 As a result of consideration following the recent BSC consultation, the revised BSC will show that Accreditation is not required for ECVNA and MVRNA. The Transition Document therefore has no need to address these agents explicitly. They are included by implication in the requirement to complete qualification tests and to be registered.
- A2.19 The Accreditation process and requirements for MOA are being developed by the Programme and it is recognised they will not be available in time to Accredite the MOAs which Original Parties will need for Metering System registration. The statement in the Transition Document that organisations currently carrying on an equivalent role would be deemed to be accredited has been re-evaluated. We now believe that it is important that such organisations must apply for Accreditation. They will then be given a derogation against the Accreditation requirements until such time as the BSC Panel may specify. They will then need to go through that process. This process of derogation against future requirements is similar to that used for Meter Administrators during the introduction of 1998 and is felt to be workable on that basis.
- A2.20 The data acquisition process is not “staggered” in the sense that some Parties are asked to provide data ahead of others. Rather, the process is suitably compressed so that all Parties are asked to provide all data at essentially the same time. Such a process requires management and the conditions in the Transition Document are aimed at allowing that management to take place. By way of clarification, the relevant Paragraph of the Transition Document has been modified to recognise the need to avoid undue discrimination. The details of the process are outside the scope of the Transition Document.
- A2.21 At the final stages of the data acquisition process for any one Party, that Party is sent a copy of the registration data and asked to validate it. The data will have been provided by the Party in the first place (this is the final stage, after all), so communication with the Party will have been established and it will be quite clear who the data should be sent to. It is not expected that this process will cause difficulty for the majority of Parties. In the case that a Party does not respond it is envisaged that some attempt will be made to establish why

not and to facilitate a rapid response. An assumption of validation will be made as a last resort.

A2.22 The Panel has been invoked as the responsible agent for approval of Trading Units and for other matters. The process by which they discharge that responsibility will be covered by the working arrangements document between the NETA Programme and ELEXON. In any case, discussions are progressing with ELEXON as to how some of these activities may be carried out both effectively and efficiently.

A2.23 Software used in Pre-Production is under change control and any change will be assessed for impact. The possibility that some re-testing might be required cannot be ruled out.

A2.24 The Paragraph obliging Parties to ensure that they do not inhibit Pre-Production has been modified to oblige Parties to ensure “as far as reasonably possible”.

A2.25 In making a difference between the registration processes for Original Parties and new arrivals, the Programme is recognising both the resource intensive nature of the data acquisition and qualification testing activities and the structured sequence of events required to manage these activities. Organisations wishing to enter the process after Go-active are at liberty to do so. However, they must recognise that the timing of their entry may not fit well with the ongoing processes and that Original Parties take precedence.

A2.26 A new paragraph has been added confirming that Parties allow the access to meter data in the various forms and from the various sources required for metering system validation, pre-production and related activities.

Appendix 3 Where to find Core Industry Documents

The documents referred to in Part C of the Programme Implementation Scheme can be found by referring to the following:

Grid Code

www.nationalgrid.com

MCUSA and Supplemental Agreements

www.nationalgrid.com/uk/library/documents/mn_connection_use.html

Ancillary Services Agreements

www.nationalgrid.com/uk/library/documents/mn_agreement.html

Master Registration Agreement

A copy of the MRA is available from MRASCo.

Data Transfer Services Agreement

A copy of the DTSA is available from Electralink

British Grid Systems Agreement

www.nationalgrid.com/uk/library/documents/mn_neta.html.

Use of Interconnector Agreement

This agreement is controlled by National Grid

Settlement Agreement for Scotland

Contact SESL on 0141 242 2700

Distribution Codes

A copy of the Distribution Code showing the amendments made to reflect NETA requirements is available on the Ofgem website at:

www.ofgem.gov.uk

Distribution Use of System Agreements

Refer to individual PES

Distribution Connection Agreements

Refer to individual PES

Appendix 4 DTI Letters

**Department of
Trade and Indust**

1 Victoria Street
London SW1H 0E

Enquiries
020-7215 5000

Direct line 020-7215 2779
Fax 020-7630 9570
Our ref 000707dh-letter
Your ref
Date 7th July 2000

Dear ,

NEW ELECTRICITY TRADING ARRANGEMENTS: REGULATORY PROCESS

A) Introduction

The Secretary of State will, subject to Parliamentary approval of the Utilities Bill, be granted powers to make changes to electricity licences for the purpose of implementing The New Electricity Trading Arrangements in England and Wales (NETA).

I am writing to inform licensees and non-licensees of the process the Secretary of State intends to follow to put in place the regulatory framework for NETA. This letter explains:

the detailed regulatory process leading up to, and including, the signing of the Balancing and Settlement Code (BSC) on the Signing Day; and
the obligations and requirements on licensees and non-licensees in the period leading up to, and including, the Signing Day.

This letter is structured into three sections (and two appendices):

⁸ Scheme Framework Agreement, Liability Sharing and Indemnity Deeds, and for Parties who are Pool Members, the Pool Transfer Deed. Refer to section C for more information.

- Section A (this section) provides an introduction;
- Section B provides information on the process and requirements in the period up to Royal Assent;
- Section C provides information on the process and requirements in the period from Royal Assent to the Signing Day.

In addition to this letter, there are a number of enclosures:

- copy of the proposed changes to your electricity licence and instrument of modification (licensees only);
- copy of the database entry that Ofgem/DTI hold for your company;
- confidentiality undertaking;
- seminar information.

B) Period up to Royal Assent

This section explains the process that will be adopted in the period up to Royal Assent, and the requirements placed on licensees and non-licensees.

1. Validating Database Details

During June, Ofgem/DTI requested you to validate the details held on its database regarding the number and type of licences held and what agreements you are current signatories to. The database will be used to assist Ofgem/DTI in the management of the transition to the new markets, and to ensure that the correct documents are presented for signature. As a consequence of this, it is important that the information we hold regarding your company is complete and accurate. I enclose the details we currently hold on the database for your company and ask you to double check that this accurately reflects your status.

⁹ Pool Members only.

Please can you provide any corrections (or confirmation that the details are correct) to Jerome Williams at the NETA Programme, 338 Euston Road, 10th Floor, London, NW1 3BP (e-mail jerome.williams@ofgem.gov.uk) no later than Friday 14th July.

2. Registering to be a Signatory of the BSC Framework Agreement (unlicensed parties only)

If you are an unlicensed party who intends to become a participant under the BSC, you are requested to register your interest with Ofgem/DTI no later than Friday 14th July. In the first instance you can do this by confirming your database details to Jerome Williams as described in (1) above.

If you would like to register but have accessed this letter from the Ofgem website, please contact Jerome Williams with the following information by Friday 14th July:

- company name;
- company address;
- company contact name (and address if different);
- contact telephone number and e-mail address;
- market sector (eg. generator, supplier, etc.);
- information on whether you are signatories to any agreements in the current electricity trading arrangements.

3. Submitting Party Details

There is a provision within the BSC (section A3) requiring parties to provide information to Elexon (the company that will administer the BSC). A form will be sent to you in the week commencing Monday 17th July requesting you to provide the information set out in BSC section A3.1. You will be requested to submit this form to the NETA Programme by Monday 31st July 2000. You

are advised to familiarise yourself with the provisions set out in A3.1 by referring to the BSC Consultation Version available on the Ofgem website (www.ofgem.gov.uk) in readiness to submit the information by the due date.

4. Licence Modifications

In June 2000, the DTI and Ofgem published a document titled “The New Electricity Trading Arrangements: Proposed licence conditions. Ofgem/DTI conclusions paper” (the conclusions paper) which contained the changes the Secretary of State is minded to make to electricity licences.

If you are a licensee, a copy of the changes, which would be made to your electricity licence(s) if these proposals were implemented, are enclosed. Please could you check this enclosure carefully against the generic changes in the conclusions paper and inform Ofgem of any errors or omissions. You should report your comments to Chooi Cardosa, Legal Directorate, Ofgem, Stockley House, 130 Wilton Road, London, SW1V 1LQ (e-mail chooi.cardosa@ofgem.gov.uk) by 5.00pm Monday 17th July.2000.

5. Preparing for the Signing Day

Licensees and those non-licensees intending to sign the BSC Framework Agreement (and other necessary documents¹⁰) on the Signing Day must notify Ofgem/DTI of the authorised person(s) who will be signing these documents. Please could you send details, using the form in appendix 1 to this letter, of your authorised person to Jerome Williams by 5.00pm Friday 21st July 2000.

You will be required to execute as deeds the Pool Transfer Deed and the Liability Sharing and Indemnity Deeds (LSID). You should ensure therefore that you are able to procure that these documents can be executed on the Signing Day as deeds . You may wish to appoint an attorney to execute all the

¹⁰ Scheme Framework Agreement, Liability Sharing and Indemnity Deeds, and for Parties who are Pool Members, the Pool Transfer Deed. Refer to section C for more information.

documents on your behalf (the deeds, BSC Framework Agreement and the Scheme Framework Agreement). A form of power of attorney which you may use for this purpose will be placed on the Ofgem website in the week commencing 10th July 2000. The form will also be available from Florence Simon-Hart, The NETA Programme, 338 Euston Road, 10th Floor, London, NW1 3BP (e-mail florence.simon-hart@ofgem.gov.uk), telephone 020 7874 1605. Please note that the power of attorney will also need to be executed as a deed. You will be required to produce evidence that the person(s) who execute either the required documents or the power of attorney has or have been duly authorised to execute them.

Once details of your authorised person(s) and/or attorney have been received, Ofgem/DTI will write to them with additional details of the Signing Day and the list of documents that they will be expected to sign. Ofgem/DTI will request that you validate this list within 5 working days of receipt.

C) Period from Royal Assent up to the Signing Day

This section explains the process that will be adopted by the DTI in the period from Royal Assent to the Signing Day, and the obligations placed on licensees and non-licensees. It also summarises the necessary actions parties need to undertake in the period.

Royal Assent

We are planning on the basis that the Utilities Bill will receive Royal Assent by 31st July 2000. The Secretary of State will then be furnished with the powers provided by the Utilities Bill to effect modifications to licences for the purpose of implementing NETA. It is the intention of the Secretary of State to exercise this power to modify the licences shortly after Royal Assent (Monday 7th August) so that licence conditions shall be modified on Tuesday 8th August.

Licence Modification

Although it is intended that the new licence conditions will be inserted on 8th August 2000, these modifications will be “switched off” and consequently not be effective until they are “switched on” by the Secretary of State. The day on which those conditions relevant to Go-Active will be switched on by the Secretary of State is expected to be 14th August 2000. Further details will be provided to licensees regarding the dates and relevant conditions.

Publication that licence modifications have been made is a statutory requirement. The DTI will post a formal notice to this effect in the Financial Times, London Gazette and Edinburgh Gazette after the modifications have been made.

Although, clearly, licence obligations apply only to licensees, unlicensed persons who intend to become participants in NETA are invited to register their details with Jerome Williams by Friday 14th July (refer to section B above).

Regulatory Documents

The DTI and Ofgem will write to licensees and other parties interested in participating in NETA immediately upon the Secretary of State exercising his powers to modify licences. The letter will contain the following documents (where applicable):

- a copy of the licence modifications specific to your licence;
- a copy of the direction from the Secretary of State specifying the date when certain licence conditions (or parts of conditions) will be switched on;
- a copy of the designations of the approved version of the BSC Framework Agreement. This agreement is a short multiparty contract which will give the BSC contractual force;

- a copy of the designation of the Scheme Framework Agreement. This agreement is a short contract giving contractual force to the Implementation Scheme (the ‘Scheme’). The Scheme will contain arrangements for the transition from the Electricity Pool to NETA. All signatories to the BSC Framework Agreement will be obliged to sign the Scheme Framework Agreement;
- a copy of the designation of the Transition Document. The Transition Document sits underneath the Scheme and governs the transition arrangements relating to entry requirements and registration under the BSC;
- a copy of the designation of the list of core industry documents;
- a copy of the designation of changes to certain of the core industry documents specified in the Scheme;
- confirmation of the details of the arrangements for signing the agreements which licensees are obliged to enter into and other market participants may choose to enter into.

Signing Day

Signing of the agreements must take place on the day that relevant licence conditions are switched on, planned to occur on Monday 14th August 2000 (the Signing Day).

On the Signing Day licensees (and other parties who wish to sign the BSC Framework Agreement and well as other Pool Members) will be required to send an authorised person(s) and/or attorney to sign agreements and documents that they are required to enter into by virtue of their licence conditions as modified. Failure to sign the documents on the designated signing day will result in a breach of the relevant licence condition and will make the licensee liable to enforcement proceedings. The signing arrangements will take place at a central London location of which your authorised person(s) will be advised as soon as the arrangements are confirmed.

The documents to be signed on the Signing Day will include:

- BSC Framework Agreement.
- Liability Sharing and Indemnity Deeds.
- Scheme Framework Agreement.
- Pool Transfer Deed¹¹.

Please note:

- all parties who sign the BSC Framework Agreement are obliged to also sign the Scheme Framework Agreement and a Liability Sharing and Indemnity Deed;
- current non-licenced Pool Members who do not wish to sign the BSC Framework Agreement are required to sign the Scheme Framework Agreement (and Pool Transfer Deed) and must therefore send an authorised person(s) to the Signing Day (or provide power of attorney).

Related Actions

6. Confidentiality Arrangements

If a party wishes to have an opportunity to read and review the form of the Liability Sharing and Indemnity Deeds (and an accompanying explanatory memorandum) it must sign the form of confidentiality undertaking enclosed and return it in accordance with the return address details given in the form of that undertaking (enclosed) before 5.00pm Monday 17th July. It will then be sent the forms of the Deeds and the accompanying explanatory memorandum. Information regarding an LSID consultation seminar is enclosed.

7. Signing Day

Parties must ensure that their previously notified authorised person(s) and/or attorney attends the Signing Day on Monday 14th August. It is likely that this will be a half day commitment, but you are advised to book the whole day over

¹¹ Pool Members only.

to this task at this stage. It is mandatory that licensees and Pool Members comply with this requirement to attend the Signing Day.

Other Activities in Period from Royal Assent to the Signing Day

You are advised that a number of other activities relating to residual Electricity Pool matters will be executed in the period from Royal Assent to the Signing Day. You will be provided with details of any actions that are required in due course.

If you have any queries regarding the contents of this letter, please contact Harriette Meynell, The NETA Programme, 338 Euston Road, 10th Floor, London, NW1 3BP (e-mail: harriette.meynell@ofgem.gov.uk).

Yours sincerely

David Halldearn
(electronically signed)

DAVID HALLDEARN
Head, Electricity Trading Reform
Energy Utilities Directorate

Appendix 1
 Authorised Person Notification Form

Please complete this form and send or e-mail to Jerome Williams at the NETA Programme, 338 Euston Road, 10th Floor, London, NW1 3BP (e-mail jerome.williams@ofgem.gov.uk) to be received no later than Friday 14th July.

Name of authorised person:	
Company	
Job title	
Contact address	
Day-time telephone number	
Day-time facsimile number	
e-mail address	
Signing as an Attorney (Y or N)	
Other information	

Appendix 2
 Chronological List of Actions

The table below sets out, in chronological order, the actions you are required to undertake. The letter reference has been included to assist you in mapping back the action to the letter text.

Letter Ref.	Required Action	Due Date
1	Validate database details	14/7/00
2	Deadline for registering to be a signatory of the BSC Framework Agreement on the Signing Day (non-licensees only)	14/7/00
6	Return signed confidentiality undertaking	17/7/00
4	Deadline for comments on licence modifications (licensees only)	17/7/00

5	Submit details of authorised person	21/7/00
6	Confirm attendance at LSID seminar	21/7/00
6	LSID seminar	25/7/00
3	Deadline for submitting Party Details	31/7/00
5	Validate list of documents to be signed on the Signing Day	31/7/00 (tba)
7	Signing Day	14/8/00

**Department of
Trade and Industry**

1 Victoria Street
London SW1H 0ET

Enquiries
020-7215 5000

Direct line 020-7215 2779
Fax 020-7630 9570
Our ref 000717dh-letter
Your ref
Date 14th July 2000

Dear Participant,

**ADDITIONAL INFORMATION REGARDING THE REGULATORY
PROCESS**

Following my letter to you of 7th July 2000 (our reference: 000707dh-letter), I am writing to you with some additional information relevant to the regulatory process set out therein.

LSID

The 7th July 2000 letter set out certain confidentiality requirements relating to the draft LSID and information provided in connection with it (“the confidential information”). A number of recipients of the letter have raised the need for the confidential information to be disclosed to third parties including group companies, their own bankers, their own accountants and auditors and as required by law.

We confirm that as a further exception to your obligation of confidence set out in the confidentiality undertaking signed by you we are prepared to permit disclosure of the letter of 7th July 2000, this letter, the draft LSID and the explanatory memorandum to group companies, to your bankers, to your

accountants and auditors provided that a confidentiality undertaking in the form attached is obtained by you in advance of the intended disclosure and returned to The Chief Executive's Office for the attention of Jo Durant.

We confirm that we would not regard a disclosure required by law as a breach of your confidentiality obligations.

Power of Attorney

Please find enclosed a form of Power of Attorney which may be used by your organisation for the execution of documents (referred to in my 7th July 2000 letter) on their behalf.

If your organisation chooses to appoint an Attorney for the execution of documents, it may use the enclosed form of Power of Attorney to appoint either a specific Attorney of its own choice or one of a group of Attorneys within the Chief Executive Office of the Electricity Pool of England and Wales.

Alternatively the authorised person(s) may of course attend the Signing Day to execute documents.

Please note that the documents to be executed include documents to be executed as a deed. If in doubt as to the appropriate method of execution in respect of a given document organisations should consult their own legal advisers.

In my 7th July letter, you were requested to provide details of your authorised person to Jerome Williams by 21st July 2000 (jerome.williams@ofgem.gov.uk). Please indicate on this form whether your authorised person is signing as an Attorney. If you are using an Attorney, please send Jerome Williams a copy of a duly executed power of attorney by 5pm Monday 7th August 2000.

Documentation

Please be advised that a near final draft of the Balancing and Settlement Code will be available on Monday 31st July. The current draft of this document (together with all the other documentation referred to in my letter of the 7th July) can be found on the Ofgem website (www.ofgem.gov.uk).

If you have any queries regarding the contents of this letter, please contact Harriette Meynell, The NETA Programme, 338 Euston Road, 10th Floor, London, NW1 3BP (e-mail: harriette.meynell@ofgem.gov.uk, telephone 020 7874 1650).

Yours sincerely

David Halldearn

(electronically signed)

DAVID HALLDEARN
Head, Electricity Trading Reform
Energy Utilities Directorate