

ELECTRICITY GENERATION STANDARD LICENCE CONDITION 18: GENERATING UNIT AVAILABILITY

OFGEM CONSULTATION – FEBRUARY 2003

SCOTTISHPOWER RESPONSE

ScottishPower welcomes the opportunity to comment on this consultation paper. Our views are set out below. The key points of this response are:

- **ScottishPower’s preference is for removal of SLC 18 from all generators’ licences (Option 5) because:**
 - **The purpose behind SLC 18, the provision of generator unit availability data to assist in ascertaining instances of potential market abuse, is now achievable by other more effective means;**
 - **The spread of ownership of generation over a greater number of participants since privatisation and the new wholesale market trading conditions, as they have developed, reduce the potential for market abuse;**
 - **The powers given to Ofgem under the 1998 Competition Act provide an effective and sufficient alternative means by which Ofgem can take action in respect of cases of suspected market abuse;**
 - **Ofgem itself recognises that there are other means to obtain the same information (e.g. SLC 13).**

General Comments

1. The consultation paper asks for views on Powergen’s recent request to disapply Standard Licence Condition 18 (SLC 18) in its generation licence. Powergen’s application refers to the inequality arising out of the ‘switching on’ of SLC 18 in the generation licences of some operators in England & Wales (including itself) and not others.
2. ScottishPower does not have SLC 18 ‘switched on’ in its generation licence. It should be noted that the generation licence of the Scottish Power Generation subsidiary, Emerald Power Generation, has been revoked.
3. ScottishPower believes that it is no longer appropriate for SLC 18 to apply to the generation licence of any operator in England and Wales (Option 5 of the solutions which Ofgem proposes to deal with Powergen’s application). There are a number of reasons why we adopt this view.

4. The main justification for using SLC 18 in the past has been Ofgem's perception that the concentration of generation in the hands of a few companies was leading to anti-competitive practices or abuse of a dominant position in the generation market. However, both in terms of legislative change and changes in market conditions since SLC 18 (or its predecessor) was first included in generation licences, there are now more effective means to tackle these issues.
5. Ownership of generation in England & Wales has undergone considerable change since privatisation. Ofgem's own analysis (Chapter 3) indicates that ownership, in terms of market share, is now spread over a greater number of participants than when SLC 18 (or its predecessor) was first applied, which includes a period of significant market reform. Due to the current difficult trading conditions in the wholesale market, resulting from low prices, there is no substantive evidence to suggest that generators could use the availability of plant as a means to influence trading conditions. In these changed circumstances, SLC 18 provides little or no additional benefit to Ofgem to either identify or act upon perceived market abuse.
6. Ofgem's outline of its powers under the 1998 Competition Act indicates that there is considerable breadth both in terms of the behaviour which Ofgem can investigate, and the action to be taken if there is proof of actual anti-competitive behaviour. Ofgem indicates that proof of restrictions on unit availability in terms of SLC 18 could also be an abuse of a dominant position in respect of the Act. When there is considerable power to investigate and take action in this respect under the Act, the requirement to provide unit availability data is unlikely to add significantly to Ofgem's ability to determine whether market abuse is occurring.
7. There is an acknowledgement in the paper (Paras. 3.19 – 3.21) that there are other means by which Ofgem could access the data made available through SLC 18. One source is SLC 13 and there are other information 'routes' through industry code obligations. Ofgem's only concern is that these are not regular data sources. However, if added to Ofgem's ability to undertake wider market surveillance, these other 'routes' should provide sufficient means by which any potential market abuse can be monitored.
8. ScottishPower agrees with Powergen's assertion that SLC 18 creates inequality between generator participants and that it would be preferable for all participants to operate on an equal footing. However, of the options presented, and bearing in mind the purpose behind SLC 18, we regard the best way forward to be the removal of SLC 18 from all generation licences. Of the other options presented, Option 1 would arguably have the same effect as Option 5 for the applicant, Powergen, insofar as SLC 18 would be removed from the Powergen generation licence. However this would leave other affected generators without relief unless and until they also requested disapplication. ScottishPower would consider that this is an unnecessary and cumbersome way to address the issue, particularly as it views SLC 18 as inappropriate in the current market. Option 5 would provide a more efficient means to the same outcome.