

**The initial allocation of GB transmission
system access rights under BETTA**

An Ofgem/DTI conclusions document

August 2004

Summary

This document presents Ofgem/DTI's conclusions following its consultation on draft legal text associated with the initial allocation of GB transmission access rights under the British Electricity Transmission and Trading Arrangements ("BETTA").

The document summarises respondents' comments to that consultation, and presents Ofgem/DTI's response to those comments. It also presents the finalised legal text marked up against the consultation version, and provides an explanation for substantive changes. This finalised legal text was published on the Ofgem website on 16 August 2004 as part of Section E of the Standard Licence Conditions for transmission licences which are proposed to be designated by the Secretary of State.

In summary, Ofgem/DTI remain of the view that the approach consulted on in July remains appropriate and proportionate, subject to some additional clarification to the licence drafting. Under this approach, parties who have a signed agreement for connection with a transmission licensee or apply for a connection prior to or on 1 January 2005 shall receive an offer of terms from the GB system operator comparable to the offer of terms that would be received under the enduring (i.e. post-BETTA) arrangement except that:

- ◆ the offer shall not be contingent on the completion of network reinforcement works on circuits relating directly to the Scotland-England interconnector (or works directly consequential, in the context of the relevant offer, to such network reinforcement), and
- ◆ parties connecting in Scotland shall not receive an offer contingent on the completion of works in England and Wales, and parties connecting in England and Wales shall not receive an offer contingent on the completion of works in Scotland.

In identifying contingent infrastructure for the purposes of preparing offers for parties that have signed a connection agreement or applied for connection on or before 1 January 2005, the GB system operator shall consider first, and in sequence, parties who have signed agreements as at 1 September 2004 assuming that all parties who have signed a local offer shall accept the associated GB offer. It shall then consider applicants as at 1 September and those that sign agreements after 1 September, ensuring that the sequence in which parties receive offers does not result in a later applicant receiving an offer before an earlier applicant.

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1. Rationale

BETTA

- 1.1. The objective of the British Electricity Trading and Transmission Arrangements (BETTA) reforms is to implement new trading and transmission arrangements that are designed to promote the creation of a single competitive wholesale electricity trading market and to introduce a single set of arrangements for access to and use of any transmission system in Great Britain (GB).
- 1.2. The rationale for BETTA was set out initially in an Ofgem consultation paper of December 2001¹ ('the December 2001 consultation') and reaffirmed in a joint Ofgem/DTI report of May 2002² ('the May 2002 report'). DTI has also published a Regulatory Impact Assessment (RIA) which assessed the likely costs and benefits of the BETTA reforms. The RIA was published in draft in May 2002 for consultation, and published in final form with the draft Electricity (Trading and Transmission) Bill (the 'E(TT) Bill') in January 2003.
- 1.3. The December 2001 consultation set out Ofgem's view that it was appropriate and timely to implement market based wholesale trading arrangements in Scotland. It was proposed that the most appropriate way of achieving this was through the creation of GB balancing and settlement arrangements, a common GB transmission charging regime, common terms throughout GB for connection to and use of the transmission system, removing the current commercial arrangements surrounding use of the Scotland-England interconnector assets by incorporating those assets into the GB transmission system and the creation of a GB system operator responsible, at a minimum, for balancing the GB transmission system.
- 1.4. It was also proposed that the basis for consultation on the arrangements to apply across GB should be the arrangements in place in England and Wales.
Consequently, consultation has been progressed by Ofgem/DTI over the past 2-3

¹ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper', Ofgem, December 2001: Ofgem #74/01.

² 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps' Ofgem/DTI, May 2002: Ofgem #38/02.

years on, amongst other things, transmission licence conditions to apply under BETTA and the detail of GB versions of the Connection and Use of System Code (CUSC), Balancing and Settlement Code (BSC) and Grid Code. Details on all of these consultations can be found on the BETTA publications section of the Ofgem website³.

Allocation of GB access rights in the transitional period

- 1.5. The enduring (post-BETTA) arrangements setting out how parties seeking connection to and use of the GB transmission system shall be treated will be specified in the transmission licence of the GB system operator and in industry codes pursuant to the licence, e.g. the GB CUSC and GB Grid Code. The licenses and industry codes do not, however, describe how rights to access the GB transmission system are to be allocated in the first instance in the transition to BETTA.
- 1.6. Ofgem/DTI therefore considered it appropriate to consult separately on the policy and associated legal text (in the form of licence conditions to apply to the GB system operator in the transitional period) in respect of how access rights are to be allocated by the GB system operator in the first instance⁴. This document sets out Ofgem/DTI's conclusions in respect of that consultation.
- 1.7. It should be noted that on 16 August 2004, Ofgem/DTI published versions of licences and industry codes that it anticipated would be designated by the Secretary of State using the powers available to her under the Energy Act 2004⁵. The conclusions of this document are reflected in those published versions of the licences.

³ www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/betta00

⁴ The initial allocation of GB transmission system access rights under BETTA: A consultation on draft legal text – Ofgem/DTI, July 2004 #174/04

⁵ www.ofgem.gov.uk

2. Background

- 2.1. This chapter sets out relevant background to the issue of the initial allocation of GB access rights.

Legal framework for implementing BETTA

- 2.2. Chapter 1 of Part 3 of the Energy Act 2004 contains provisions that are designed to implement BETTA. The BETTA provisions would give the Secretary of State the ability to implement BETTA principally by:

- ◆ making a licensing scheme (pursuant to Schedule 17 of the Energy Act) in relation to existing transmission licences so that each such licence takes effect as a licence pursuant to a new prohibition “to participate in the transmission of electricity”. The scheme will also be used to incorporate new standard licence conditions and to make amendments to the existing framework agreements for the BSC and CUSC
- ◆ determining new standard licence conditions for transmission licensees, and
- ◆ modifying the standard and special licence conditions of each of transmission, generation, supply and distribution licences.

- 2.3. The legal, technical and operational arrangements to be put in place to implement BETTA will take full effect at BETTA go-live (“go-live”), which, among other things, is the first date at which balancing and settlement will be undertaken on a GB basis, although certain elements of the arrangements will be implemented before go-live. The go-live date will be determined by the Secretary of State, and is presently anticipated to be 1 April 2005.

Enduring contractual framework under BETTA

- 2.4. One of the key functions of the GB system operator under BETTA will be to contract with users of the transmission system across GB. It will do so by establishing and maintaining agreements with existing users of the transmission systems which will form the GB transmission system under BETTA, and by

offering terms for connection and use of the GB system to prospective new users. The manner in which the GB system operator undertakes this task would be in accordance with, amongst other things, the following documents:

- ◆ the system operator's transmission licence
- ◆ the GB CUSC, GB Grid Code and GB BSC, and
- ◆ the approved GB charging methodologies for connection and use of system.

- 2.5. The provisions in these documents would, among other things, result in the establishment for each generator of a contracted level of Connection Entry Capacity⁶ ("CEC") and Transmission Entry Capacity ("TEC"), and an annual use of system charge commensurate with the relevant TEC and the location of the generator. This TEC would ordinarily be 'firm', i.e. a generator would be compensated through balancing services contracts with the GB system operator (e.g. through the Balancing Mechanism) if the contracted capacity could not be met at any point in time.
- 2.6. New applications for transmission capacity from users of the transmission system after BETTA go-live would also be handled within the framework established by the documents listed above. An offer of terms to a new user (or an existing user seeking increased access) would ordinarily be based on an assessment of what additional works were required to facilitate the additional export whilst maintaining a network that complies with relevant standards. To the extent that this assessment indicated the need for infrastructure reinforcement to accommodate a new or expanded connection, the user would not generally have the right to export at TEC until the completion of the associated network reinforcement.
- 2.7. Whilst these (or indeed any of the) provisions of the CUSC are capable of being changed via modification proposals, in the absence of change the allocated level of TEC (i.e. the firm right to export energy onto the transmission system) would

⁶ CEC and TEC are defined terms in the existing CUSC. In effect, CEC is an upper limit on the level of export of a generator, while TEC is the maximum level of export NGC is contracted to accept on its system. In practice, TEC and CEC are generally equal to each other, although this is not necessarily the case.

be retained by the generator indefinitely if it continued to meet its other contractual obligations, such as the obligation to pay transmission charges.

Transitional issues

- 2.8. The key transitional issue is, in effect, how TEC (and CEC) is established in relation to the GB transmission system in the first instance for existing users of a transmission system, noting that parties only have rights currently to use a transmission system which under BETTA will form part of the GB transmission system.
- 2.9. One possible allocation rule would be to take the level of TEC (or its equivalent) within existing agreements or offers and translate this to GB TEC on a one-for-one basis. In the light of recent rapid increases in the rate of new generation connection applications, particularly in Scotland, Ofgem/DTI concluded that further analysis and consultation was required before the transitional legal framework could be designed. The specific concern related to the extent to which the GB transmission system would not have the physical capacity to accommodate, on a GB basis, the aggregate amount of local rights, and therefore the extent to which the cost of constraints borne by consumers could escalate.

Process to date

- 2.10. On 26 January 2004 Ofgem/DTI published a statement on GB transmission access⁷. The statement explained that whilst Ofgem/DTI did not anticipate BETTA *per se* providing a reason to move away from the 'first-come, first-served' framework for considering new applications for transmission capacity on an enduring (i.e. post-BETTA) basis, further consideration was needed of the establishment of GB access rights in the first instance. The statement also set out that, based on information provided by the transmission licensees, Ofgem/DTI understood there to be sufficient capacity to accommodate all users connected as at 26 January 2004. The statement explained that anticipated network constraints could potentially result in new parties seeking connection to the GB transmission system receiving an offer of connection contingent on the

⁷ "Statement on access to the GB transmission system", Ofgem (15/04), January 2004 # 15/04

completion of the relevant network reinforcements. The statement also recognised that the position of parties who had applied for a connection but were not yet connected needed further consideration.

- 2.11. In an open letter published on 4 May Ofgem/DTI requested that NGC consult on options for allocating access rights to use the GB transmission system to existing users of one of the three existing transmission systems in the first instance, and to submit a report to Ofgem/DTI summarising consultation responses and assessing (and, where possible, quantifying) the effect of different options, e.g. on constraint costs, and on the extent to which derogations against planning standards would be required.
- 2.12. NGC's consultation was published on 21 May⁸. The consultation characterised four broad options:
- I. make a non-discriminatory economic allocation of firm initial GB access rights consistent with the physical capacity of the network (e.g. using auctions)
 - II. allocate firm GB access rights to all parties who apply for them for a period up to a point when the enduring BETTA transmission access processes (for assessing connection applications, including how contingent infrastructure is identified) take over
 - III. allocate firm GB access rights to all parties that had existing agreements for access to either the Scottish or England and Wales networks prior to an appropriate date (envisaged to be earlier than the point at which the enduring BETTA transmission access processes take over), and
 - IV. as immediately above; but with the provision of 'non-firm' rights until a point in time at which the system could accommodate firm rights.
- 2.13. NGC compiled a report summarising respondents' views on the consultation document and published the report on its website together with copies of non-confidential responses⁹. The consultation revealed that all options highlighted

⁸ www.nationalgrid.com/uk/indinfo/betta/gb_consultations.html)

⁹ www.nationalgrid.com/uk/indinfo/betta/gb_consultations.html)

by NGC attracted some support, and that the option which attracted most support was option II above.

2.14. NGC's analytical work to quantify the effects of the different options has been ongoing, and NGC has provided technical updates to Ofgem/DTI on a continuing basis. The final report on this analysis was published by NGC on 4 July 2004¹⁰.

2.15. NGC's technical report addresses the following issues in respect of the four options identified in the consultation paper:

- ◆ the potential transmission constraints that might occur
- ◆ the mechanisms that might be used to manage the allocation of access rights (Transmission Entry Capacity, "TEC") which is contingent on the completion of network reinforcements, and
- ◆ the mechanisms that might be used to manage non-firm/less firm access rights.

2.16. The report concludes that constraint volumes could escalate significantly if new generation projects are granted firm rights prior to the completion of network reinforcements and if there are no significant other changes in connected generation. These constraints would be predominately within Scotland and at the boundary between Scotland and England. The report noted that the extent of these constraints would depend on the volume and geographical pattern of firm rights allocated, e.g. constraint volumes would be lower if firm rights were allocated only to those parties who were connected as at 26 January 2004 compared to approaches which allocated firm GB rights to parties connected, or applied to be connected, after this date.

¹⁰ www.nationalgrid.com/uk/indinfo/betta/pdfs/Technical_Report_Final_Draft_070704_nwcomments.pdf

2.17. On 6 July 2004 Ofgem/DTI published a consultation paper on the transition to a GB CUSC¹¹. Included within that document was a proposed licence condition that would apply to NGC in the transitional period prior to BETTA go-live in relation to the process for putting in place offers for connection to and use of the GB transmission system for existing users and applicants prior to BETTA go-live. That document referred to the then unresolved issue of the allocation of GB transmission access rights at BETTA go-live and recognised that the licence condition proposed for NGC in relation to the putting in place of connection and use of system agreements prior to BETTA go-live might need to change when this issue was resolved.

Ofgem/DTI's proposals

2.18. Ofgem/DTI published its proposals for the initial allocation of GB access rights, following NGC's consultation and its submission of its technical report, on 23 July 2004¹². It was proposed that in respect of parties requiring connection:

- ◆ for parties who are already connected to a transmission system or who have accepted an offer of connection but are not yet connected¹³, and parties who have submitted a connection application to a transmission licensee before 1 January 2005¹⁴, they should receive an offer based on the transitional arrangements

- ◆ when assessing contingent infrastructure requirements, offers made by the GB system operator pursuant to the transitional arrangements shall be consistent as far as practicable with offers made under the enduring GB arrangements (i.e. based on a GB assessment of necessary contingent local and remote infrastructure), subject to the following:

¹¹ "Provisions for the transition to the GB CUSC, the GB Grid Code and GB connection and use of system agreements under BETTA", Ofgem (#152/04), July 2004

¹² The initial allocation of GB transmission system access rights under BETTA: A consultation on draft legal text – Ofgem/DTI, July 2004 #174/04

¹³ A new connection application in this context also includes requests by existing connected parties to increase the capacity of their existing agreement.

¹⁴ i.e. parties who would be entitled to expect under the existing regulatory framework to receive an offer of connection from a transmission licensee prior to the anticipated BETTA go-live date of 1 April 2004.

- ◆ that the offer shall not be contingent on the completion of network reinforcement works on circuits relating directly to the Scotland-England interconnector (or works directly consequential to such network reinforcement), and
- ◆ parties connecting in Scotland shall not receive an offer contingent on the completion of works in England and Wales, and parties connecting in England and Wales shall not receive an offer contingent on the completion of works in Scotland.

- 2.19. Ofgem/DTI noted that this approach ensured that parties would receive a GB offer contingent only on local (i.e. specific to the network in Scotland, or in England and Wales) considerations, and noted that under this approach it was expected that all users connected as at 26 January 2004 would get a non-contingent allocation of GB access rights equivalent to their existing level of local rights.
- 2.20. Ofgem/DTI also noted that the proposed approach also provided scope for GB offers to existing connected parties to accommodate within the GB framework non-standard connection designs. Whilst it is expected that an assessment against planning standards for existing plant would indicate no network reinforcement contingencies, it could pick up some local issues associated with non-standard connection designs or ownership boundaries that might need to be reflected in some way in the GB offer.
- 2.21. Ofgem/DTI also proposed that where the network reinforcements identified by the GB system operator do not differ substantially from the network reinforcements set out in the prevailing agreement, then this approach would allow the GB system operator to make a GB offer based on the contingencies identified in the prevailing agreement.
- 2.22. The approach proposed applies to: (1) all existing transmission users with commissioned plant; (2) users who have signed agreements but are not yet connected; and (3) potential users who have applied for connection (or apply for connection on or before 1 January 2005). Since assessments of required

network investment depend on the order in which offers are considered and accepted, the proposed transitional arrangements also needed to specify how such a processing order is to be established for the purposes of identifying contingent network investment.

- 2.23. It was proposed that all parties who have an agreement with a transmission licensee as at 1 September 2004 will, for the purposes of identifying contingent network investment, be considered first, i.e. the GB offer will not reflect the potential effect on the network of any party who does not have an agreement in place as at 1 September 2004 with a transmission licensee. Within the class of parties who have existing agreements as at 1 September 2004, to the extent that the order in which the network infrastructure required to support such users is considered to have a material effect on the GB offer, offers will be derived in chronological order based on when the party and the relevant transmission licensee entered into the existing agreement. In Ofgem/DTI's view this approach is more consistent with its understanding of the enduring arrangements, whereby the contingent network infrastructure set out in an offer can be dependent, in instances where two or more related offers are being considered jointly (an 'interactive offer'), on when an offer is accepted.
- 2.24. For parties who do not have an agreement in place with an existing transmission licensee as at 1 September 2004 but have applied to an existing transmission licensee for connection prior to or on 1 January 2005 or have accepted a connection offer after 1 September and prior to or on 1 January, it was proposed that GB offers are to be considered, for the purposes of identifying network reinforcement requirements, in the chronological order in which applications were made. Absent any accepted offer as at 1 September 2004, Ofgem/DTI considered that the date of application was the most appropriate parameter to use to determine the order in which offers should be considered.

3. Summary of responses and Ofgem/DTI views

- 3.1. This chapter summarises non-confidential responses to the consultation, and sets out Ofgem/DTI's views on the issues raised. A total of fifteen non-confidential responses were submitted. These are available in full on the 'BETTA publications' area of the Ofgem website.
- 3.2. For ease of exposition the comments raised have been grouped under a number of headings, and are discussed in turn below.

General overview

Respondents' views

- 3.3. All fifteen respondents expressed views at a high level on the appropriateness or otherwise of Ofgem/DTI's proposals.
- 3.4. Two respondents did not support the proposals in broad terms. One respondent expressed a view that the proposals would result in significant amounts of new connections in inappropriate parts of the network, and that access rights would be allocated in full knowledge that the physical capacity will not be available. The respondent also argued that enabling parties to connect earlier than would otherwise be the case under the enduring arrangements would dilute locational signals.
- 3.5. Another respondent argued that the proposals would prompt speculative applications for connection, and that this could obstruct progress on more robust, viable schemes. The respondent also expressed a view that measures to support growth in the amount of renewable generation should be specific and should not distort the market arrangements, and implied that Ofgem/DTI's proposals failed that test.
- 3.6. Thirteen respondents expressed support for the Ofgem/DTI proposals. Two respondents highlighted the importance of clarification of policy in this area, given the interaction with commercial decisions relating to investment in new plant. A further two respondents noted the certainty it provided for existing generators.

3.7. One respondent who supported the proposals in broad terms expressed concern about the scope of the consultation, and in particular the absence of a consideration of the position of distribution-connected generators within the BETTA arrangements. The respondent argued that the implementation of BETTA would result in changes to rights and charging liabilities for distribution-connected generators. Another respondent highlighted to need to consider further the position of distribution-connected generators. Both of these respondents argued that if limits were to be imposed on the rights of distribution-connected generators to export as a result of limits on transmission capacity, then claims on this capacity should be prioritised in a similar manner to the 'queue mechanism' proposed by Ofgem/DTI for the initial allocation of transmission access rights under BETTA.

Ofgem/DTI's views

3.8. Ofgem/DTI welcome the broad support for the proposals set out in the July consultation paper.

3.9. Ofgem/DTI note concerns raised by respondents about the extent to which the proposals might, in their view, distort competition, and encourage less than efficient decisions. However, Ofgem/DTI remain of the view, in the light of respondents views, that the proposals represent a pragmatic and proportionate approach, given the balance of issues involved and the range of relevant considerations, which include:

- ◆ the access arrangements that parties currently experience (and the associated property rights)
- ◆ the extent to which competition between generators is facilitated
- ◆ the potential emergence of transmission constraints and associated costs, and
- ◆ the objectives of BETTA and the scope of the legislative provisions available to implement BETTA.

3.10. It is correct to note that the proposed approach will result in offers of connection to the GB transmission system which are less dependent on the completion of

transmission network investment than would be the case under the enduring arrangements. This could mean, relative to the enduring arrangements, that parties connect to the network and participate in energy markets at an earlier point in time than would otherwise be the case and, until the relevant network investment is complete, in the context of more prevalent transmission constraints. Ofgem/DTI does not, however, accept that this will inevitably lead to less efficient decisions and outcomes. An increase in the number of generators participating in the GB market will, other things equal, increase competition and promote more efficient outcomes. In addition, whilst constraints might increase in the short term, market-based evidence of the cost of resolving such constraints in the short term can provide important signals as to the value of investment at different points in the network in the longer term, which in turn can promote more efficient transmission investment.

- 3.11. Ofgem/DTI remain of the view that this approach is appropriate given the objectives of BETTA, i.e. to facilitate the introduction of a single set of GB transmission and trading arrangements, and do not consider the approach as a measure to support renewable generation. The arrangements apply to all generators equally.
- 3.12. In respect of the issues raised relating to the position of distribution-connected generators, Ofgem/DTI is of the view that the transmission arrangements that are to apply under BETTA, including how they might impact on distribution-connected generators, have been subject to full and extensive consultation. In respect of certain technical matters this process of consultation is still ongoing. Ofgem/DTI have concluded, subject to the limited area on consultation still ongoing, that the transmission arrangements proposed are appropriate, recognising that consultation by NGC on the detail of transmission charging arrangements is still ongoing. Consideration of the arrangements to be applied by Distribution Network Operators (“DNOs”) is outside the scope of BETTA. Whilst reform to the enduring arrangements in respect of distribution-connected generators is possible under the governance arrangements of the relevant industry codes and documents after BETTA go-live, since parties to the codes can at any time propose changes to the codes for consideration, anticipating such reform in the arrangements to be put in place at go-live would not, in Ofgem/DTI’s view, be appropriate.

Detail of Proposed Option

Respondents' views

- 3.13. Eight respondents provided comments on the detail of Ofgem/DTI's policy proposals.
- 3.14. Five respondents expressed support for the choice of a variant of NGC's options II/III (i.e. the allocation of firm GB access rights to applicants prior to a cut-off date) set out in its earlier consultation. Three of these respondents supported the choice of applications prior to 1 January 2005 as the cut-off date, and noted that the choice of a retrospective cut-off date would have been inappropriate.
- 3.15. One respondent, however, stated that an earlier cut-off date should have been adopted in order to reduce uncertainty as to the future level of transmission constraints. The respondent noted that there was a point at which the benefits of enhanced competition consequent to a later cut-off date would be offset by the potential for generators to seek to take advantage of enduring transmission constraints in balancing services markets.
- 3.16. One respondent expressed a view that the design and implementation of auctions, and of non-firm transmission products, were not achievable in the relevant timescales. However, another respondent argued that a one-off auction of rights in Scotland could be achievable in the relevant timescales.
- 3.17. Two respondents commented on the position of existing plant under the arrangements. One respondent agreed with Ofgem's assumption that the approach proposed would result in all commissioned plant being offered access rights equivalent to levels in existing agreements. Another respondent cited a number of reasons why it was appropriate for parties with agreements in place prior to 26 January 2004 to get a non-contingent offer equivalent to local access rights.
- 3.18. Two respondents argued that non-standard connections should, as Ofgem/DTI proposed, be reflected in GB agreements. One respondent further commented that this should be extended to non-standard connections contained within offers that have not yet been accepted, as well as non-standard connections contained

within agreements. One of these respondents stated that this process should not create additional risk for the generator.

- 3.19. A number of parties noted the potential for the proposals to result in a rush of applications in advance of the cut off date. One party, as noted above, expressed concern over the uncertainty this created for future constraint volumes and costs. Another respondent highlighted the need for appropriate commercial arrangements (e.g. application fees) to encourage serious and viable projects. A number of respondents noted potential resource implications for the transmission licensees in progressing 'GB applications'.
- 3.20. Three respondents expressed concern about escalating levels of constraint costs. One respondent noted that such cost would need to be adequately reflected in NGC's future SO incentives scheme. The same respondent noted that potential constraint volumes of 2-3TWh priced at, in its view, realistic efficient levels of £25/MWh would give constraint costs across the Scottish border of between £50m and £75m. Two respondents expressed concern about the lack of clarity on likely constraint volumes, and one respondent invited Ofgem to refer the matter back to NGC for further analysis. A number of respondents highlighted the potential need to review the non-locational nature of Balancing Services Use of System ("BSUoS") charging in the light of enduring GB transmission constraints.

Ofgem/DTI's views

- 3.21. Ofgem/DTI note respondents' views. Ofgem/DTI were mindful of the need to clarify this issue, given its potential commercial significance, and we remain of the view that the proposed approach represents a pragmatic and proportionate approach given the range of relevant considerations.
- 3.22. Ofgem/DTI also note the concerns of some of the respondents as to future constraint volumes and costs associated with the proposed approach. Ofgem/DTI highlighted this issue as a relevant consideration in its consultation, and it was highlighted in the NGC consultation and technical report. There is, as one respondent notes, a balance to be struck between the competitive benefits of reducing barriers to accessing the transmission system, and the cost to consumers and potential distortions to energy markets through the creation of

enduring transmission constraints. On the basis of the information available to Ofgem/DTI, and noting the uncertainty associated with forecasting future constraint costs and the ability of the enduring arrangements to adapt to new developments if required, Ofgem/DTI remain of the view that the approach set out in the July consultation strikes an appropriate balance. Ofgem/DTI consider that the adoption of an earlier cut-off date would have placed too great an emphasis on potential short-term constraint costs relative to the other considerations highlighted above.

- 3.23. Ofgem/DTI remain of the view that alternative allocation mechanisms, such as a one-off auction of rights in Scotland, would not be deliverable in the relevant timescales given existing resource commitments by the transmission licensees, and could create significant additional regulatory risk.
- 3.24. Ofgem/DTI note and agree with the comments made regarding the need to reflect non-standard connection designs (both those contained in existing agreements and those contained within existing offers) in GB offers. Additional drafting has been included in the proposed licence condition for NGC (paragraphs 5(f) and 6(f)) to reflect this.
- 3.25. In respect of the comments raised concerning future developments in charging pursuant to changes in the geographic pattern of enduring transmission constraints, under the BETTA arrangements it is for the GB system operator in keeping its charging methodologies under constant review, including to ensure that they meet the relevant objectives, to bring forward change proposals where it considers them to be appropriate. It would not be appropriate for Ofgem to express a view as to the merit of a particular proposal in the context of potential future developments at this stage, given its power to accept or reject charging methodology change proposals and its statutory requirement to undertake, in certain circumstances, an impact assessment prior to making any such decision.

Proposed licence drafting

Respondent's views

- 3.26. A number of respondents provided comments on the detailed licence drafting. Substantive comments are discussed below.

- 3.27. One respondent highlighted the need to clarify the interpretation of the bracketed term in the phrase “the offer shall not be contingent on completion of network reinforcement works on circuits relating directly to the Scotland-England interconnector (or works directly consequential to such network reinforcement)”. The respondent illustrates the need for clarification by considering the hypothetical treatment of an applicant in southern Scotland followed by an applicant in northern England, where there could be an overlap in the (unconstrained) network contingencies identified. The respondent invited Ofgem/DTI to clarify whether the contingencies identified, but not included in the offer to the user in Scotland pertaining to network improvements in northern England, should also not be included in the offer to the user in northern England. The respondent highlighted a concern over potential perverse incentives.
- 3.28. Four respondents highlighted concern over an apparent discrepancy in the timescales for providing offers to existing users in England and Wales, and existing users in Scotland. All four respondents stated that timescales should be harmonised.

Ofgem/DTI's views

- 3.29. In respect of both of these substantive points, Ofgem/DTI has revised the legal drafting in the light of respondents' views.
- 3.30. On the point of interpretation, Ofgem/DTI has revised the legal drafting to clarify that in the transitional period offers shall not be contingent on “the completion of transmission system works which relate directly to the interconnection (or works directly consequential, in the context of the relevant offer, to such transmission system work)”. This additional wording, in the context of the illustrative example above, highlights that the respondent's interpretation is not correct. The offer to the generator in northern England would be contingent on identified works in northern England, irrespective of the network contingencies identified (and potentially excluded) from the offer to the generator in southern Scotland.
- 3.31. Ofgem/DTI recognise, indeed it is explicit in the drafting of the licence condition, that there will be differences in treatment between generators in Scotland and generators in England and Wales, and it is possible that in some

circumstances the arrangements could be perceived to benefit some parties relative to others. Ofgem/DTI, however, remain of the view that the approach is proportionate given its objective, and its transitional nature.

- 3.32. In respect of the comments received as to the timing of the issuing of offers, Ofgem/DTI has revised the drafting to ensure consistency of treatment between parties in England and Wales and parties in Scotland.

Future developments in allocating access rights

Respondents' views

- 3.33. A number of respondents, whilst recognising the immediate need to establish how access rights were to be allocated in the first instance under BETTA, commented on potential longer term developments in the allocation of access rights.
- 3.34. Four respondents highlighted perceived weaknesses in the enduring arrangements, based around invest-then-connect, and advocated an alternative approach which would allocate firm rights to all applicants within a fixed period of time, irrespective of the timing of contingent infrastructure, in return for a commitment by the connectee to pay use of system charges in respect of the relevant plant from that date, irrespective of whether the generator was ready to connect or not. The respondents contended that this would deliver more efficient outcomes in the longer term.
- 3.35. One respondent noted the possibility of enduring arrangements being reformed following the implementation of BETTA, but urged Ofgem/DTI not to act prematurely in pressing through specific reforms as part of BETTA. Another respondent expressed concern about the statement in the consultation documents that the initial allocation of GB rights might change over time.

Ofgem/DTI's views

- 3.36. Ofgem/DTI note the comments raised by respondents as to their views of perceived deficiencies in the enduring arrangements. These issues are outside the scope of the BETTA project. The BETTA arrangements do, however, provide

transparency and inclusive governance arrangements such that potential changes to the enduring arrangements can be raised and given full consideration. It would not be appropriate for Ofgem, given its procedural role in deciding upon change proposals submitted to it, to express a view as to the merit or otherwise of the alternative proposals for future developments in transmission access arrangements identified by a number of respondents.

4. Ofgem/DTI's conclusions

- 4.1. The conclusions of Ofgem/DTI's consultation on licence obligations in respect of the initial allocation of GB transmission system access rights were, in terms of the legal text, published on 16 August as an element of the proposed transmission licence condition designation text. For completeness a marked up version of this legal drafting, compared to draft legal text published as part of the July consultation is included as Appendix 1. Some of the changes identified in Appendix 1 (specifically any changes other than those made to Schedule 1 or the inclusion of paragraphs 5(f) and 6(f)) have been made in response to the Ofgem/DTI consultation on the transition to a GB CUSC and GB connection and use of system agreements under BETTA¹⁵. Conclusions on that consultation have also been published¹⁶ which explain these changes to the licence condition. These conclusions are not repeated here.
- 4.2. In addition to the changes made by Ofgem/DTI in the light of respondents' comments, as discussed in chapter 3 above, Ofgem has made a number of changes (including as highlighted by respondents) to clarify the drafting where it has been identified as appropriate.
- 4.3. There is one particular area of substantive revised drafting where Ofgem/DTI considers it appropriate to explain its rationale for change in more detail. This relates to the wording of Schedule 1, and in particular the assumptions to be made and timescales to be adopted in processing and issuing offers as set out in the revised wording of paragraph 3 and the addition of paragraphs 4 and 5.
- 4.4. Paragraph 3 requires that the GB system operator shall identify required network investment for the purposes of preparing offers in the following order. First, for parties who have an existing connection agreement with a transmission licensee as at 1 September 2004 (including those who do not yet have commissioned plant). Second, for all other parties, i.e. those who sign local agreements after 1

¹⁵ Provisions for the transition to the GB CUSC, the GB Grid Code and GB connection and use of system agreements under BETTA; including associated licence conditions for NGC and for generation, distribution and supply licensees; changes to the CUSC Framework Agreement; and transitional drafting for the GB CUSC and GB Grid Code: Ofgem/DTI consultation, July 2004, Ofgem 152/04

¹⁶ The CUSC under BETTA: Ofgem/DTI conclusions and proposed designation text, August 2004

September 2004 and those who submit an application prior to or on 1 January 2005 but are yet to sign a connection agreement with a transmission licensee. Within the first category, the GB system operator shall identify transmission system works relevant to each offer in the order in which existing agreements were signed (or, if that is not known, using the date at which plant was commissioned).

- 4.5. Paragraph 4 clarifies the generation and demand backgrounds the GB system operator is to assume in identifying relevant transmission system works for the purposes of preparing a GB offer. Essentially, the GB system operator is to assume that all parties who have an agreement as at 1 September 2004 also sign their associated GB agreements in the order in which they originally accepted their existing agreements. It states that for all those who have an agreement as at 1 September 2004, in preparing an individual party's GB offer, an assumption to be made is that any existing users who precede that party have accepted their GB offers. To illustrate, the transmission system works for an applicant who signed its local agreement on 1 August will be derived assuming that all parties who signed agreements before 1 August also sign their GB agreement (and, conversely, that the decisions of parties who signed local agreements after that date will not be relevant).
- 4.6. Paragraph 4 also establishes the background to be assumed for the second category, i.e. parties who do not have a signed local agreement as at 1 September 2004. The only assumption to be made is that parties who have signed agreements as at 1 September sign their associated GB offers. Importantly, no assumption is made about parties who might be in a position to sign GB agreements after that date. In practical terms, this means that GB offers to parties who do not have a signed agreement as at 1 September have the potential to be 'interactive', i.e. transmission system works identified in the offer to applicant A might be contingent on whether other applicants sign their agreements. These arrangements mirror the enduring arrangements, with the difference between the transitional arrangements being the scope of the transmission system works that are permitted to be included in the GB offer.
- 4.7. The need for the provisions of paragraph 5 is a consequence of the possibility of interactive GB offers in the transitional period. If offers are interactive, then the

date by which parties receive their offers (and are therefore in a position to sign the offer) could have a material effect on the transmission system works included in the offer. Paragraph 5 establishes that in issuing offers the GB system operator shall ensure that if party A applies before party B, then party B shall not receive their offer before party A. Ofgem/DTI considers that this most closely mirrors the way in which such arrangements operate on an enduring basis and considers that this is necessary to ensure equitable treatment of applicants in the transitional period.

Appendix 1 Designation text

~~TRANSITIONAL LICENCE CONDITIONS FOR ALLOCATION OF GB TRANSMISSION SYSTEM ACCESS RIGHTS~~¹ Condition C18. Requirement to offer terms for connection or use of the GB transmission system during the transition period²

~~NOTES:~~³

- ~~1. — On 6 July 2004, Ofgem/DTI published a consultation on transitional arrangements for the CUSC and Grid Code. Part of that consultation related to the licensee conditions which will be imposed during the transition period relating to connections to and use of the GB transmission system. The text of the transitional licence conditions which were included in the consultation noted that they would need to be amended, as appropriate, to take account of the outcome of the consultation and consideration of the allocation of GB access rights.~~⁴
- ~~2. — The attached drafting reflects that which was included in the above consultation, but is marked up to highlight the changes which would be made to reflect Ofgem/DTI's proposed approach to allocating GB access rights during the transition period.~~⁵
- ~~3. — The attached drafting may need to be amended further to take account of the related transitional TO licence conditions once these have been settled.~~⁶

RELEVANT DEFINITIONS⁷

~~“applicant”~~ means either an existing other applicant or an existing Scottish applicant.⁸

~~“BETTA go-live date”~~ *[It is currently anticipated that the BETTA go-live date will be 1 April 2005. The actual BETTA go-live date will be signalled by the Secretary of State. This term will be defined by reference to the date which the Secretary of State signals as the BETTA go-live date].*⁹

~~“Connection Entry Capacity”~~ has the meaning given to it in the CUSC;¹⁰

~~“existing agreement”~~ means an agreement between the licensee or a Scottish licensee and an existing user;¹¹

~~“existing other applicant”~~ means, in respect of each application, either:

¹²

(a) any authorised electricity operator in the case of an application for use of system; or¹³

(b) any person in the case of an application for connection,¹⁴

who has made or who at any time during the transition period makes an application requesting an offer for connection to or use of the licensee’s transmission system but who has not, as at [1 January 2005], accepted any such offer provided that an authorised electricity operator or a person, as appropriate, shall not (or no longer) constitute, for the purposes of the relevant

~~application, an existing other applicant where the period within which the relevant offer needs to be accepted has expired and the offer has not been accepted.~~¹⁵

~~“existing other user” means, in respect of each agreement, a person who, as at [1 January 2005], has an agreement with (or has accepted an offer from) the licensee for connection to or use of the licensee’s transmission system provided that any person who has an agreement with the licensee relating to connection to the licensee’s transmission system of the interconnection shall not, in respect of that agreement, constitute an existing other user for the purposes of this condition.~~¹⁶

~~“existing Scottish applicant” means, in respect of each application, either:~~¹⁷

~~(a) any authorised electricity operator in the case of an application for use of system; or~~¹⁸

~~(b) any person in the case of an application for connection,~~¹⁹

~~who has made or who at any time during the transition period makes an application requesting an offer for connection to or use of a Scottish licensee’s transmission system but who has not, as at [1 January 2005], accepted any such offer provided that an authorised electricity operator or a person, as appropriate, shall not (or no longer)~~

~~constitute an existing other applicant where the period within which the relevant offer needs to be accepted has expired and the offer has not been accepted.~~²⁰

~~“existing Scottish user” means, in respect of each agreement, a person who, as at [1 January 2005], has an agreement with (or has accepted an offer from) a Scottish licensee for connection to or use of a Scottish licensee’s transmission system provided that any person who has an agreement with a Scottish licensee relating to connection to that Scottish licensee’s transmission system of the interconnection shall not, in respect of that agreement, constitute an existing Scottish user for the purposes of this condition.~~²¹

~~“existing user” means an existing Scottish user or an existing other user.~~²²

~~“interconnection” [the definition of “interconnection” which relates to the Anglo-Scots interconnection and appears in the existing transmission licence will be included here]~~²³

~~“licensee” means the holder of a licence granted under the Act.~~²⁴

~~“relevant time” for the purposes of this condition means the time at which the licensee makes an offer as required by paragraph 3 of this condition.~~²⁵

~~“Scottish licensee” means the holder of a transmission licence at the date that this condition takes effect in the~~

~~licensee's licence, but shall not include the licensee.~~²⁶

~~“Transmission Entry Capacity” has the meaning given to it in the CUSC.~~²⁷

~~“transmission licensee” means the licensee or any Scottish licensee, as appropriate.~~²⁸

~~“transition period” means the period beginning on the date upon which this condition has effect in the licensee's licence and ending on the BETTA go-live date.~~²⁹

~~TRANSITIONAL LICENCE CONDITION FOR NGC~~³⁰

1. The principal objectives of this condition are to ensure that, to the extent possible, the licensee shall, in accordance with the requirements of this condition:
 - (a) have agreements governing connection to or use of the GB transmission system with all existing users by the BETTA go-live date; and
 - (b) make offers for connection to or use of the GB transmission system to all applicants in accordance with the timescales specified in paragraph 7 below,

each such agreement and offer, as appropriate, to take account of and be consistent with:

- (i) the licensee's obligations under this condition⁺³¹; ³³ including the licensee's obligations under Schedule 1 to this condition; ³⁴
- (ii) subject to (i), those obligations which it is, at the relevant time, known (or reasonably anticipated) are to be imposed on the licensee by this licence on and from the BETTA go-live date and which would, had the agreement been entered into or the offer been made after the BETTA go-live date, have applied to that agreement or offer, as appropriate; ~~and~~³⁵ 36
- ~~(iii) — Schedule 1.~~³⁷

2. Without prejudice to its obligations under ~~[]~~²³⁸ condition B13 (BETTA implementation)⁴⁰, the licensee shall take such steps and do such things as are

~~⁺ It may be necessary or appropriate to extend the scope of this to include other conditions of the licensee's licence which will apply during the transition period.~~³²

~~² Insert cross reference to the generic licence condition.~~³⁹

necessary or requisite and as are within its power to secure the achievement of the principal objectives described in paragraph 1 above³⁴¹.

3. The licensee shall, in the manner provided for in Section 12 of the CUSC (save that, in the event of any conflict between the provisions of Section 12 of the CUSC and the provisions of this condition, the provisions of this condition shall prevail) and unless otherwise directed by the Authority:
 - (a) offer to enter into agreements to connect to or use the GB transmission system with all existing Scottish users, which agreements shall comply and be consistent with the provisions of this condition;
 - (b) offer to amend such of the⁴³ existing agreements between it and existing other users for connection to or use of the licensee's transmission system ~~such~~⁴⁴ as are necessary to ensure⁴⁵ that all of⁴⁶ those agreements will, with effect from the BETTA go-live date, become agreements for connection to or use of the GB transmission system and will otherwise be modified such that those agreements comply and are consistent with the provisions of this condition; and
 - (c) subject to paragraph 8 below, offer to enter into agreements to connect to or use the GB transmission system with all applicants, which agreements shall comply and be consistent with the provisions of this condition.

4. To enable the licensee to comply with paragraph 3 above, the licensee shall, unless otherwise directed by the Authority and, in the case of applicants, subject to paragraph 8 below, offer to enter into:
 - (a) the CUSC Framework Agreement (where the relevant person is not already a party to such agreement); and

~~³ Once the TO obligations have been developed, it is anticipated that an obligation to cooperate and coordinate activities with TOs will be included here and that a reciprocal obligation will be imposed on TOs.~~⁴²

- (b) to the extent appropriate, such other agreements as are provided for in the CUSC,

with each existing ~~Scottish~~⁴⁷ user and each applicant.

5. Each offer which the licensee makes to an existing Scottish user or an existing Scottish applicant pursuant to paragraph 3 above shall:

- (a) ~~f~~⁴⁸ reflect⁴⁹ any associated TO offer which relates to that offer and⁵⁰, to the extent appropriate,⁵¹ ~~the TOs input to the offers which the licensee is to make pursuant to this condition~~;⁵² Section I Information;⁵⁴

- (b) take account of and be consistent with the licensee's obligations under this condition;⁵⁵ including the licensee's obligations under Schedule 1 to this condition;⁵⁷

- ~~(c) — take account of and be consistent with Schedule [1]~~;⁵⁸

- ~~(d~~⁵⁹ c⁶⁰) in the case of each existing Scottish user, reflect a Connection Entry Capacity and Transmission Entry Capacity which are, to the extent practicable, equal to that existing Scottish user's equivalent rights under the relevant existing⁶¹ agreement between it and a Scottish licensee;

- ~~(e~~⁶² d⁶³) subject to sub-paragraphs (b), (c),⁶⁴ and ~~(d~~⁶⁵ f⁶⁶), take account of and be consistent with those obligations which it is, at the relevant time, known (or reasonably anticipated) are to be imposed on the licensee by this licence on and from the BETTA go-live date and which would, had the offer been made after the BETTA go-live date, have applied to that offer;

~~⁴ If and to the extent appropriate, a transitional licence obligation will be imposed on Scottish transmission licensees to provide certain support to the licensee for these purposes. The nature of this support (once defined) will be referred to here.~~⁵³

~~⁵ It may be necessary or appropriate to extend the scope of this to include other conditions of the licensee's licence which will apply during the transition period.~~⁵⁶

(~~f~~ e)^{67 68} where that offer is for connection, and to the extent appropriate⁶⁹, make detailed provision regarding the connection charges to be paid to the licensee, such charges:

- (i) to be presented in such a way as to be referable to the GB connection charging methodology (or, in respect of any offer made prior to 1 February 2005 or such later date as the Authority may direct for these purposes, the licensee's best estimate thereof) or any revision thereof;
- (ii) where the licensee has, in accordance with sub-paragraph (e)(i) above, relied upon an estimate of the GB connection charging methodology, to be updated, as necessary, so as to be referable to the GB connection charging methodology as soon as reasonably practicable after it is available;⁷⁰

(iii)⁷¹ to be set in conformity with the requirements of ~~f~~⁷² paragraph 8 of standard condition C6 (Connection charging methodology) and (where relevant) paragraph 4~~f~~⁷³; ~~and~~⁷⁵

~~(iii)~~⁷⁶ f) save where the Authority otherwise directs, reflect the division of ownership of Plant and Apparatus provided for in:⁷⁷

(i) the relevant existing agreement between a Scottish licensee and that existing Scottish user; or⁷⁸

(ii) any offer made or to be made by a Scottish licensee to that existing Scottish applicant, and⁷⁹

(g) contain⁸⁰ such further terms as are or may be appropriate for the purpose of the agreement, taking account, in the case of existing Scottish users, of any rights afforded to and any restrictions imposed

~~⁶ It may be necessary or appropriate to amend this sub-paragraph to ensure that it captures charges set in relation to works etc. undertaken for connection to a licensee's transmission system in the past (as well as charges for connection to the GB transmission system).~~⁷⁴

upon the relevant person pursuant to any existing ~~[⁸¹ agreement for~~
⁸²connection ~~agreement]~~⁸³ or ~~[⁸⁴ use of system agreement~~⁸⁵, as
appropriate]~~⁸⁶ ⁸⁷~~ to the extent that the same have been notified to the
licensee and the licensee is able ~~[and willing]~~⁸⁸ to continue to offer
such rights or impose such restrictions, ~~as appropriate.~~⁸⁹ and there are
no grounds upon which the licensee may reasonably object to such
rights or restrictions being reflected in the offer being made by it to the
relevant existing Scottish user (or in any subsequent agreement).⁹⁰

6. Each offer which the licensee makes to an existing other user or an existing other applicant pursuant to paragraph 3 above shall:
- (a) ~~[reflect the TOs input to the offers which the licensee is to make pursuant to this condition];~~⁹¹ reflect any associated TO offer which relates to that offer;⁹³
 - (b) take account of and be consistent with the licensee's obligations under this condition⁸⁹⁴; ~~(e) take account of and be consistent with~~⁹⁷ including its obligations under⁹⁸ Schedule 1;~~;~~⁹⁹ to this condition;¹⁰⁰
 - ~~(d~~¹⁰¹ c¹⁰²) in the case of each existing other user, reflect the Connection Entry Capacity and Transmission Entry Capacity which apply under the relevant existing agreement between that existing other user and the licensee;
 - ~~(e~~¹⁰³ d¹⁰⁴) subject to sub-paragraphs (b), (c),¹⁰⁵ and ~~(d~~¹⁰⁶ f¹⁰⁷), take account of and be consistent with those obligations which it is, at the relevant time, known (or reasonably anticipated) are to be imposed on the licensee by this licence on and from the BETTA go-live date and

~~⁷ It is envisaged that a licence obligation will be imposed on Scottish transmission licensees to provide certain support as the licensee reasonably requires for these purposes. Once the nature of this input has been defined it will, to the extent appropriate, be referred to here.~~⁹²

~~⁸ It may be necessary or appropriate to extend the scope of this to include other conditions of the licensee's licence which will apply during the transition period.~~⁹⁵

which would, had the offer been made after the BETTA go-live date, have applied to that offer; and

(~~f~~¹⁰⁸ ~~e~~¹⁰⁹) where that offer is for connection, and to the extent appropriate, make detailed provision regarding the connection charges to be paid to the licensee, such charges:

(i) to be presented in such a way as to be referable to the GB connection charging methodology (or, in respect of any offer made prior to 1 February 2005 or such later date as the Authority may direct for these purposes, the licensee's best estimate thereof) or any revision thereof;

(ii) where the licensee has, in accordance with sub-paragraph (f)(i) above, relied upon an estimate of the GB connection charging methodology, to be updated, as necessary, so as to be referable to the GB connection charging methodology as soon as reasonably practicable after it is available;¹¹⁰

(iii)¹¹¹ to be set in conformity with the requirements of ~~f~~¹¹² paragraph 8 of standard condition C6 (Connection charging methodology) and (where relevant) paragraph 4~~]~~¹¹³; ~~9~~¹¹⁴; ~~;~~¹¹⁶

~~(iii)~~¹¹⁷ f) save where the Authority otherwise directs, reflect the division of ownership of Plant and Apparatus provided for in:¹¹⁸

(i) the relevant existing agreement between the licensee and that existing other user; or¹¹⁹

(ii) any offer made or to be made by the licensee to that existing other applicant; and¹²⁰

~~⁹ It may be necessary or appropriate to amend this sub-paragraph to ensure that it captures charges set in relation to works etc. undertaken for connection to a licensee's transmission system in the past (as well as charges for connection to the GB transmission system).~~¹¹⁵

(g) contain¹²¹ such further terms as are or may be appropriate for the purpose of the agreement, taking account, in the case of existing other users, of any rights afforded to and any restrictions imposed upon the relevant person pursuant to any existing ~~{~~¹²² agreement for¹²³ connection agreement~~}~~¹²⁴ or ~~{~~¹²⁵ use of system agreement¹²⁶, as appropriate~~}~~¹²⁷ ¹²⁸ and to the extent that the licensee is able ~~[and willing]~~¹²⁹ to continue to offer such rights or impose such restrictions, ~~as appropriate.~~¹³⁰ and there are no grounds upon which the licensee may reasonably object to such rights or restrictions being reflected in the offer being made by it to the relevant existing other user (or in any agreement between it and that relevant user).¹³¹

7. ~~Without prejudice to the licensee's obligation to prepare offers in the order specified in paragraph 3 of Schedule 1, the~~¹³² The¹³³ licensee shall make an offer in accordance with paragraph 3 above:

(a) ~~to each~~¹³⁴ (i) to the extent required to comply with paragraph 3, to each¹³⁵ existing other¹³⁶ user ; and¹³⁷

(ii) to each existing Scottish user whose details have been provided to the licensee in accordance with Section I of the STC.¹³⁸

as soon as reasonably practicable after the date upon which this condition takes effect in the licensee's licence and, in any event, by 1 February 2005 or such later date as the Authority may direct for these purposes;

(b) to each existing other applicant as soon as reasonably practicable and in any event (except where the Authority consents to a longer period) within:

(i) 3 months of the later of (aa) ~~the first day of the transition period~~¹³⁹ 1 January 2005¹⁴⁰ and (bb) the earliest date upon which the licensee is in receipt of an application from that existing other applicant for connection to the licensee's transmission system containing all such information as the

licensee may reasonably require for the purpose of formulating the terms of its offer; or

- (ii) 28 days of the later of (aa) ~~the first day of the transition period~~¹⁴¹ 1 January 2005¹⁴² and (bb) the earliest date upon which the licensee is in receipt of an application from that existing other applicant for use of the licensee's transmission system containing all such information as the licensee may reasonably require for the purpose of formulating the terms of its offer;

- (c) to each existing Scottish applicant as soon as reasonably practicable and in any event (except where the Authority consents to a longer period) within:
 - (i) 3 months of the later of (aa) ~~1 January 2005~~¹⁴³ and (bb) the earliest date upon which the licensee is in receipt of a notification from a Scottish ~~transmission~~¹⁴⁵ licensee in accordance with ~~standard condition []~~¹⁴⁶ condition D15 (Obligations relating to the preparation of TO offers during the transition period)¹⁴⁸ that that Scottish ~~transmission~~¹⁴⁹ licensee has received an application for connection containing all such information as that Scottish ~~transmission~~¹⁵⁰ licensee reasonably requires for the purpose of formulating the terms of its offer to that existing Scottish applicant; or

 - (ii) 28 days of the later of (aa) ~~1 January 2005~~¹⁵¹ and (bb) the earliest date upon which the licensee is in receipt of a notification from a Scottish ~~transmission~~¹⁵³ licensee in accordance with ~~standard condition []~~¹⁵⁴ condition D15

¹⁴⁰ ~~This condition will contain an obligation on TOs to pass on all relevant information to NGC.~~
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¹⁴¹ ~~This condition will contain an obligation on TOs to pass on all relevant information to NGC.~~
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[\(Obligations relating to the preparation of TO offers during the transition period\)](#)¹⁵⁶ that that Scottish-~~transmission~~¹⁵⁷ licensee has received an application for use of system containing all such information as that Scottish-~~transmission~~¹⁵⁸ licensee reasonably requires for the purpose of formulating the terms of its offer to that existing Scottish applicant.

8. The licensee shall not be obliged pursuant to this condition to offer to enter or to enter into any agreement with any applicant if:
- (a) to do so would be likely to involve the licensee:
 - (i) in breach of its duties under section 9 of the Act;
 - (ii) in breach of any regulations made under section 29 of the Act or of any other enactment relating to safety or standards applicable in respect of the transmission business;
 - (iii) in breach of the Grid Code; or
 - (iv) in breach of the conditions; or
 - (b) the person to whom the offer is being made does not undertake to be bound insofar as applicable by the terms of the Grid Code or the CUSC from time to time in force; or
 - (c) in the case of offers for use of system, the person to whom the offer is being or is to be made ceases to be an authorised electricity operator; or
 - (d) ~~another transmission~~¹⁵⁹ a Scottish¹⁶⁰ licensee has notified the licensee that under ~~[condition ...]~~¹⁶¹ [paragraph 5 of condition D15 \(Obligations relating to the preparation of TO offers during the transition period\)](#)¹⁶² it is not obliged to offer to enter or to enter into any agreement in response to the application or notification, as appropriate.
9. Each offer made by the licensee to:

- (a) an existing Scottish user or an existing other user pursuant to paragraph 3 above shall be open for acceptance for a minimum period of one month (or such longer period as the Authority may direct for these purposes)¹⁶³ from the date that it is received by that existing Scottish user or existing other user, as appropriate; and
 - (b) an applicant pursuant to paragraph 3 above shall be open for acceptance for a minimum period of three months.
10. If the licensee and any applicant or existing user fail to agree upon the terms of an agreement based upon an offer made pursuant to this condition, the Authority may, pursuant to section 7(3)(c) of the Act and on application of the licensee, an applicant or an existing user, settle any terms in dispute in such manner as appears to the Authority to be reasonable.

~~11.~~¹⁶⁴ ~~Insofar as an applicant or an existing user wishes to proceed on the basis of an agreement as settled by the Authority pursuant to paragraph 10 above, the licensee shall forthwith enter into~~¹⁶⁵ ~~such agreement.~~¹⁶⁶

11. If an application is made to the Authority as provided at paragraph 10 above, the licensee shall.¹⁶⁷

(a) notify the Authority of:¹⁶⁸

(i) any associated TO offer which relates to the agreement which is the subject of that application;¹⁶⁹

(ii) any Section I Information which relates to the agreement which is the subject of that application;¹⁷⁰

(iii) any transmission licensee (other than a transmission licensee who has made a TO offer or who is affected by the Section I Information notified to the Authority in accordance with subparagraph 11(a)(ii)) which the licensee knows or reasonably considers is or may be an affected transmission licensee for the

purposes of the agreement which is the subject of that application or any associated TO offer;¹⁷¹

(b) notify each transmission licensee who has made an associated TO offer or who is affected by the Section I Information notified to the Authority in accordance with sub-paragraph 11(a)(ii) and any other transmission licensee which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the agreement which is the subject of that application or any associated TO offer, of such application; and¹⁷²

(c) request that the Authority exercise its powers under section 7(3)(c) of the Act to;¹⁷³

(i) settle the terms of each associated TO offer which is affected by the Authority's determination made pursuant to paragraph 10 above or this paragraph 11(c);¹⁷⁴

(ii) determine any changes to be made to Section I Information (including any addition to be made thereto) as a consequence of the Authority's determination made pursuant to paragraph 10 above or this paragraph 11(c); and¹⁷⁵

(iii) determine whether any TO offer (other than those TO offers (if any) which the licensee shall have notified to the Authority in accordance with paragraph 11(a) above) is required in connection with the Authority's determination made pursuant to paragraph 10 above or this paragraph 11(c).¹⁷⁶

12. Insofar as an applicant or an existing user wishes to proceed on the basis of an agreement as settled by the Authority pursuant to paragraph 10 above, the licensee shall forthwith enter into¹⁷⁷ an agreement or amend an existing agreement, as appropriate, on the basis so settled.¹⁷⁸

13. ¹⁷⁹If the licensee has failed by 1 March 2005 (or such later date as the Authority may direct for these purposes) to enter into an agreement with an

existing Scottish user who is also a ¹⁸⁰ an electricity ¹⁸¹ licensee, or to agree changes to an existing agreement for connection to or use of system with an existing other user who is also a ¹⁸² an electricity ¹⁸³ licensee, then, without prejudice to either party's right to refer the matters in dispute to the Authority for determination as provided at paragraph 10 above, the licensee shall, ^{184,185}

(a) ¹⁸⁶ where no such reference has been made, apply to the Authority to settle any terms in dispute and the Authority shall be entitled to settle such terms in such manner as appears to the Authority to be reasonable. ^{187,188}

~~13. ¹⁸⁹ Where the terms of an agreement ¹⁹⁰ are settled by the Authority pursuant to paragraph 12 above, the licensee shall forthwith enter into ¹⁹¹ an agreement or amend an existing agreement, as appropriate, on the basis so settled. ¹⁹²~~

(b) notify the Authority of: ¹⁹³

(i) any associated TO offer which relates to the agreement which is the subject of that application; ¹⁹⁴

(ii) any Section I Information which relates to the agreement which is the subject of that application; ¹⁹⁵

(iii) any transmission licensee (other than a transmission licensee who has made a TO offer or who is affected by the Section I Information notified to the Authority in accordance with sub-paragraph 13(b)(ii)) which the licensee knows or reasonably considers is or may be an affected transmission licensee for the purposes of the agreement which is the subject of that application or any associated TO offer; ¹⁹⁶

(c) notify each transmission licensee who has made an associated TO offer or who is affected by the Section I Information notified to the Authority in accordance with sub-paragraph 13(b)(ii) and any other transmission licensee which the licensee knows or reasonably considers is or may be an affected transmission licensee for the

purposes of the agreement which is the subject of that application or any associated TO offer, of such application; and¹⁹⁷

(d) request that the Authority exercise its powers under section 7(3)(c) of the Act to:¹⁹⁸

(i) settle the terms of each associated TO offer which is affected by the Authority's determination made pursuant to this paragraph 13; and¹⁹⁹

(ii) determine any changes to be made to the Section I Information (including any addition to be made thereto) as a consequence of the Authority's determination made pursuant to this paragraph 13; and²⁰⁰

(iii) determine whether any TO offer (other than those TO offers (if any) which the licensee shall have notified to the Authority in accordance with paragraph 13(b) above) is required in connection with the Authority's determination made pursuant to this paragraph 13.²⁰¹

14. Where the terms of an agreement are settled by the Authority pursuant to paragraph 13 above, the licensee shall forthwith enter into an agreement or amend an existing agreement, as appropriate, on the basis so settled.²⁰²

15.²⁰³ Where the terms of an agreement²⁰⁴ which are to be settled by the Authority pursuant to paragraph ~~12~~²⁰⁵ 13²⁰⁶ above have not been settled by the date which falls two weeks prior to the BETTA go-live date, the licensee shall forthwith enter into an agreement, or amend an existing agreement, on the basis of the terms of the licensee's offer to the relevant ~~other~~²⁰⁷ electricity²⁰⁸ licensee pending settlement of the terms of that agreement by the Authority. The Authority's determination of the terms of any such agreement may, where and to the extent appropriate, take account of and make appropriate adjustments to reflect the difference between the terms of that agreement as settled and the terms of that agreement which applied during the period from

the²⁰⁹ BETTA go-live date to the date upon which the agreement as settled takes effect.

16. In this condition:²¹⁰

<u>"Apparatus"</u> ²¹¹	<u>has the meaning given to it in the CUSC.</u> ²¹²
<u>"applicant"</u> ²¹³	<u>means either an existing other applicant or an existing Scottish applicant.</u> ²¹⁴
<u>"Connection Entry Capacity"</u> ²¹⁵	<u>has the meaning given to it in the CUSC.</u> ²¹⁶
<u>"existing agreement"</u> ²¹⁷	<u>means an agreement between the licensee or a Scottish licensee and an existing user.</u> ²¹⁸
<u>"existing other applicant"</u> ²¹⁹	<u>means in respect of each application, either:</u> ²²⁰ <u>(a) any authorised electricity operator in the case of an application for use of system;</u> <u>or</u> ²²¹ <u>(b) any person in the case of an application for connection,</u> ²²² <u>who has made or who at any time during the transition period makes an application requesting an offer for connection to or use of the licensee's transmission system but who has not, as at 1 January 2005, accepted any such offer provided that an</u>

authorised electricity operator or a person, as appropriate, shall not (or no longer) constitute, for the purposes of the relevant application, an existing other applicant where the period within which the relevant offer needs to be accepted has expired and that offer has not been accepted.²²³

"existing other user"²²⁴

means in respect of each agreement, a person who, as at 1 January 2005, has an agreement with (or has accepted an offer from) the licensee for connection to or use of the licensee's transmission system provided that any person who has an agreement with the licensee relating to connection to the licensee's transmission system of the interconnection shall not, in respect of that agreement, constitute an existing other user for the purposes of this condition.²²⁵

"existing Scottish applicant"²²⁶

means in respect of each application, either:²²⁷

(a) any authorised electricity operator in the case of an application for use of system;
or²²⁸

(b) any person in the case of an

application for connection,²²⁹

who has made or who at any time during the transition period makes an application requesting an offer for connection to or use of a Scottish licensee's transmission system but who has not, as at 1 January 2005, accepted any such offer provided that an authorised electricity operator or a person, as appropriate, shall not (or no longer) constitute an existing other applicant where the period within which the relevant offer needs to be accepted has expired and the offer has not been accepted.²³⁰

"existing Scottish user"²³¹

means in respect of each agreement, a person who, as at 1 January 2005, has an agreement with (or has accepted an offer from) a Scottish licensee for connection to or use of a Scottish licensee's transmission system provided that any person who has an agreement with a Scottish licensee relating to connection to that Scottish licensee's transmission system of the interconnection shall not, in respect of that agreement, constitute an existing Scottish user for the purposes of this condition.²³²

"existing user"²³³

means an existing Scottish user or an

<u>"Plant"</u> ²³⁵	<u>existing other user.</u> ²³⁴
<u>"relevant time"</u> ²³⁷	<u>has the meaning given to it in the CUSC.</u> ²³⁶
<u>"Section I Information"</u> ²³⁹	<u>for the purposes of this condition means the time at which the licensee makes an offer as required by paragraph 3 of this condition.</u> ²³⁸
<u>"Site Specification"</u> ²⁴¹	<u>means any information which is contained or to be contained in the Site Specification.</u> ²⁴⁰
<u>"Transmission Entry Capacity"</u> ²⁴³	<u>means the "Transitional Connection Site Specification" (as defined in the STC).</u> ²⁴²
<u>"transmission licensee"</u> ²⁴⁵	<u>has the meaning given to it in the CUSC.</u> ²⁴⁴
<u>"transmission system works"</u> ²⁴⁷	<u>means the licensee or any Scottish licensee, as appropriate.</u> ²⁴⁶
	<u>means those works which are required to be undertaken on the GB transmission system to ensure that the GB transmission system meets the standards prescribed by standard condition C17 (Transmission system security standard and quality of service) and standard condition D3 (Transmission system security standard and quality of service).</u> ²⁴⁸

²⁴⁹SCHEDULE ~~H~~²⁵⁰ 1 TO CONDITION 18 (REQUIREMENT TO OFFER TERMS FOR CONNECTION OR USE OF THE GB TRANSMISSION SYSTEM DURING THE TRANSITION PERIOD)²⁵¹

~~GB TRANSMISSION SYSTEM ACCESS RIGHTS~~²⁵²

1. Offers made by the licensee pursuant to paragraph 3 of ~~[insert appropriate cross-reference to the transitional connections condition]~~²⁵³ this condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period)²⁵⁴ shall comply and be consistent with the requirements of this Schedule.
2. Each offer which the licensee makes in accordance with paragraph 3 of ~~[insert appropriate cross-reference to the transitional connections condition]~~²⁵⁵ this condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) to²⁵⁶
 - (a) an existing user; or
 - (b) an ~~existing~~²⁵⁷ applicant who has, on or before 1 January 2005, submitted a complete application (which, for the purposes of this Schedule 1 shall mean an application which contains the information which the transmission licensee to whom it is submitted reasonably requires for the purposes of preparing an offer for connection or use of that licensee's transmission system) for connection or use of system, shall:
 - (i) not be contingent on the completion of transmission system ~~reinforcement~~²⁵⁸ works on circuits which relate ~~[~~²⁵⁹ directly~~]~~²⁶⁰ to the interconnection (or works directly consequential, in the context of the relevant offer,²⁶¹ to such transmission system ~~reinforcement~~²⁶² works);
 - (ii) in the case of an existing Scottish user or an existing Scottish applicant who has submitted a complete application for connection or use of system to a Scottish licensee on or before

1 January 2005, not be contingent on the completion of transmission system works in England and Wales;

- (iii) in the case of an existing other user or an existing other applicant who has submitted a complete application for connection or use of system to the licensee on or before 1 January 2005, not be contingent on the completion of transmission system works in Scotland.

3. ~~The licensee shall, for the purposes of identifying~~²⁶³ ~~the transmission system~~²⁶⁴ ~~infrastructure requirements~~²⁶⁵ ~~which are relevant to each offer~~²⁶⁶ ~~which is~~²⁶⁷ In preparing the offers which the licensee²⁶⁸ makes or is to make²⁶⁹ in accordance with ~~condition [insert appropriate cross reference to the transitional connections condition] and this Schedule, prepare those offers~~²⁷⁰ this condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period) the licensee shall (subject to paragraph 2 of this Schedule 1) identify²⁷¹ the transmission system²⁷² works²⁷³ which are relevant to each offer²⁷⁴ in the following order:
- (a) first, and subject to (b), ~~to~~²⁷⁵ for²⁷⁶ each offer which is made or to be made to a²⁷⁷ person who is, as at 1 September 2004, an existing user;
- (b) ~~to~~²⁷⁸ for²⁷⁹ each existing user who falls within (a) above, in the order in which each such existing user accepted the offer for connection or use of system which led to its existing agreement, starting with the existing user who accepted its offer earliest, provided that, where it is not reasonably practicable for the licensee to determine the date upon which an offer was accepted by a particular existing user, the relevant date for these purposes shall be the date upon which that relevant existing user's ~~plant~~²⁸⁰ Plant²⁸¹ or ~~apparatus~~²⁸² Apparatus²⁸³ was commissioned; and
- (c) then, ~~to~~²⁸⁴ for²⁸⁵ each ~~other existing user or existing applicant in the order in which that existing user or existing applicant submitted or submits a~~²⁸⁶ offer which is made or to be made to each existing user

who does not fall within the scope of paragraph 3(a) and to each applicant.²⁸⁷

4. In identifying transmission system works for the purposes of preparing the offers which the licensee makes or is to make to.²⁸⁸

(a) existing users who fall within the scope of paragraph 3(a) of this Schedule 1, the licensee shall assume that each existing user who precedes, in the order identified in paragraph 3(b) of this Schedule, the existing user whose offer it is preparing, has accepted the offer which the licensee makes or is to make to it in accordance with this condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period).²⁸⁹

(b) existing users and applicants who fall within the scope of paragraph 3(c) of this Schedule 1, the licensee shall assume that each existing user who falls within the scope of paragraph 3(a) of this Schedule 1 has accepted the offer which the licensee makes or is to make to that existing user in accordance with this condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period).²⁹⁰

5. Without prejudice to paragraph 7 of this condition (Requirement to offer terms for connection or use of the GB transmission system during the transition period), the licensee shall use best endeavours to ensure that each existing user (an 'earlier existing user') and each applicant (an 'earlier applicant') who falls within the scope of paragraph 3(c) of this Schedule 1 does not receive its offer from the licensee, made in accordance with this condition 18 ((Requirement to offer terms for connection or use of the GB transmission system during the transition period) later than the date upon which another existing user or applicant who also falls within the scope of paragraph 3(c) of this Schedule 1 receives its offer where that other existing user or applicant, as appropriate, submitted or submits its complete application to the licensee or a Scottish licensee, as appropriate, later than the date upon which the earlier existing user or earlier applicant, as appropriate, submitted or submits its²⁹¹ complete

application to the licensee or a Scottish licensee, as appropriate, ~~starting with the existing applicant who submitted or submits the application which was received earliest~~²⁹² . " ²⁹³