

Offshore Transmission Managing Interactions between Offshore Code Changes and Other Code Changes – A Note for Code Panels

Background

With the recent publication of the joint Ofgem / BERR Regulatory Policy Update, the Offshore Transmission project is moving into its final stages. As part of its contribution to that consultation National Grid prepared draft legal text for the CUSC, Grid Code and SO-TO Code¹. These texts, while not final, are anticipated to form the backbone of the changes that are ultimately designated by the Secretary of State at the Go-Active Date for the Offshore Transmission Project. The Go-Active date is currently anticipated as 1st April 2009.

Prior to the Go Active Date there are a number of consultative and iterative processes that the legal text for the each of the electricity codes will be subject to. These are as follows:

13 June 2008	Offshore Electricity Transmission – A joint Ofgem/BERR Regulatory Policy Update
<i>This is the most recent offshore consultation. As part of this consultation the first drafts of the Codes, GBSQSS and Licences for Offshore Transmission were published.</i>	
25 July 2008	Consultation Letter for draft tender regulations
<i>This further publication set out Ofgem's preliminary draft of the offshore tender regulations, designed to facilitate the making of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.</i>	
September 2008	Publication of draft tender documentation and second consultation on draft licence, code and technical standards modifications
<i>This is the anticipated final opportunity to make substantive comments on the codes, GBSQSS and Licences for the offshore transmission regulatory regime. Again legal text for the electricity codes will be included within this consultation.</i>	
October 2008	Second Consultation on Tender Regulations
<i>An updated version of the Tender regulations previously published in July 2008</i>	
December 2008	Final (Statutory) Consultation
<i>The Statutory Consultation will set out the final legal text that, with the exception of final minor comments, will be that which is designated by the Secretary of State at Go-Active</i>	
December 2008	Designation Order
<i>This legislative instrument is required to be progressed through parliament to allow the Secretary of State to utilise his designation powers under the Energy Act 2004. It is anticipated that this will be taken forward concurrently with the Statutory Consultation.</i>	
April 2009	Go Active
<i>The date upon which the offshore code changes are designated and come into effect within the "live" baseline codes.</i>	

Interactions with "normal" Code Governance

Clearly the above process will be continuing against a background of the normal code amendment processes. In a number of areas these processes are particularly active currently (for instance Transmission Access review in the CUSC). The interaction between amendments being taken forward through the normal code governance processes and the drafting being developed through the offshore transmission project will therefore need to be carefully co-ordinated. There are three areas where potentially the "live" codes and the offshore code drafting could move out of line with each other and therefore cause issues:

1. During the development of the code legal drafting for offshore transmission
2. Through the Statutory Consultation phase
3. Following the Statutory Consultation / Go Active

¹ Drafting for the BSC has been prepared by ELEXON, drafting for the Distribution Code by the ENA and drafting for the DCUSA has been prepared by the DCUSA Panel. These draft legal text have also been included with the latest Ofgem/BERR consultation document

In each case the impact of normal code governance changes on the drafting for the offshore transmission project and vice versa are considered.

During the development of the code legal drafting for offshore transmission

Normal Code Governance → Offshore Drafting

The management of the offshore drafting against the background of the evolving live baseline will be managed by National Grid as it drafts the CUSC, Grid Code and SO-TO Code for offshore transmission². As each amendment to the live baseline is approved by Ofgem and subsequently implemented, so National Grid will continue to update the offshore drafting in parallel.

Offshore Drafting → Normal Code Governance

At the time of writing, and with the evolving nature of the offshore transmission code changes, it is unlikely that the normal code governance processes can consider in detail the likely interactivity between their code change proposals and the offshore transmission code change proposals. Therefore an awareness of the offshore code changes will suffice during the assessment of code changes under normal governance. As timescales advance however greater consideration of the levels of interactivity will need to be taken.

Statutory Consultation phase

Normal Code Governance → Offshore Drafting

No changes can be made to the offshore drafting during the statutory consultation. If there are outstanding amendments which have been taken forward through normal code governance that would affect the validity of the offshore code drafting in the statutory consultation, there may be the opportunity to update the code amendments for offshore transmission once the statutory consultation has concluded and prior to the changes being designated by the Secretary of State.

Offshore Drafting → Normal Code Governance

At this stage in the process there is a near final suite of offshore code drafting in existence. It would therefore seem prudent that normal code governance processes take account of this background at this stage. Potentially then amendment reports prepared under normal governance might need to contain two sets of draft legal text for the Authority's consideration; one that might be implemented prior to the Go-Active Date (i.e. before the offshore changes come into effect) and one should the amendment be implemented after the Go-Active Date.

Following the Statutory Consultation / Go-Active

Normal Code Governance → Offshore Drafting

Only very minor changes to the offshore drafting are anticipated following the statutory consultation, although there may be the opportunity to update the drafting to reflect any code changes that have been approved during the statutory consultation.

Offshore Drafting → Normal Code Governance

The greatest risk at this stage of the process is to changes being taken forward through normal code governance. It is now extremely important that at this stage any amendment reports with the Authority for decision contain legal text that would be robust should the amendment be approved following Go-Active. Else there is the possibility that some changes might have to be rejected on a technicality whereas otherwise they may have been approved.

² It is assumed that DCUSA Panel for DCUSA, ENA for the Distribution Code and ELEXON for the BSC will manage interactions between the code drafting for offshore and the live codes evolving.

One particular area to emphasise is those amendments that are likely to require an extended decision period from the Authority – e.g. any that may require regulatory impact assessments. It is quite possible that such amendments could be submitted to the Authority for approval well in advance of Go-Active, but due to the necessary regulatory decision processes are not in fact approved until after Go-Active.

Conclusions and Recommendation

The most important area for the Grid Code Review Panel to note is the interaction between the amendments being taken forward under the Offshore Transmission Project and amendments being taken forward under “normal” governance. Although the Grid Code amendment procedure potentially allows for minor changes to be made to legal text that has been consulted upon and provided to the Authority, it would seem most prudent that Working Groups that are currently meeting actively consider any “normal” governance amendments against both the current Grid Code baseline and the proposed offshore “baseline”. The offshore “baseline” is likely to be near final only once the Statutory Offshore Consultation is published (likely to be in December 2008) however the next consultation anticipated in September could offer a close approximation to the likely Offshore baseline.

The recommendation of this paper is therefore that

1. Following the publication of the next iteration of drafting for the Grid Code, Working groups considering amendments to the Grid Code should do so against both an “Offshore” Grid Code and the current baseline, and
2. That following the publication of “near-final” offshore Grid Code text in the Statutory Consultation, Reports to the Authority should contain legal text developed against the existing Code baseline (should the amendment be approved by the Authority prior to Offshore Go-Active) and also legal text developed against the offshore Code baseline (should the Authority approve any changes following Offshore Go-Active).

The GCRP are invited to ENDORSE the above approach.