

**DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY
OF A DISPUTE REFERRED TO IT UNDER PARAGRAPH 3 OF STANDARD
CONDITION 4E OF THE ELECTRICITY DISTRIBUTION LICENCE
CONCERNING THE TERMS OF A CONNECTION AGREEMENT.**

1. INTRODUCTION

1.1 The Gas and Electricity Markets Authority ("the Authority") has been asked by the Generator to determine a dispute between the Generator and the Company. The dispute concerns proposed amendments to the contractual terms of an existing connection agreement at the Premises.

1.2 The dispute has been referred to the Authority for determination under paragraph 3 of standard condition 4E (Functions of the Authority) ("SLC 4E") of the electricity distribution licence ("the Licence"). The Authority may determine such disputes once a party to a connection agreement has requested that it do so.

2. BACKGROUND

2.1 The Generator initially made an application to the Company on 4 December 2001 for an electrical connection at the Premises.

2.2 Prior to energisation, the Company issued the Generator with an Embedded Generation Connection Agreement ("EGCA"). The Generator provided comments relating to the drafting, deleting condition 10.3 ("the Condition"). The Company responded with a revised draft of the EGCA which reinstated the Condition.

2.3 The Company and the Generator had a telephone conference on 11 November 2005 where the Generator raised their concerns about the Condition.

- 2.4 On 31 January 2006, the Authority issued a determination (reference RFA/SCO/BTA/RUN/2) ("the Earlier Determination") on a condition in an agreement, in respect of another site, that is similar to the Condition. The Company issued a further draft of the EGCA to the Generator incorporating the Authority's decision in the Earlier Determination.
- 2.5 The revised drafting did not fully address all of the Generator's concerns so the parties had a further telephone discussion on 8 March 2006 where they clarified their positions.
- 2.6 The parties did not reach agreement on the drafting of, or the principles behind, the Condition and agreed they would enter into a side letter (dated 5 April 2006) dealing with the disputed matters to allow the Generator to connect to the system as planned but to still refer the Condition to the Authority for determination.
- 2.7 On 7 April 2006, the Generator referred the Condition in dispute to the Authority for settlement under paragraph 3 of SLC 4E of the Licence.
- 2.8 The Company connected the Premises on 27 April 2006.
- 2.9 Condition 10.3 is currently drafted as follows:
The Company may issue despatch instructions which are at variance with the agreed programme of generation at any time, including but not limited to:
- (a) when acting upon an Emergency Instruction issued by NGC pursuant to the Grid Code;
 - (b) when adverse weather is anticipated; and
 - (c) pursuant to any other obligations placed on the Company by the Distribution Code, the Grid Code, the CUSC or any agreements to which the Company is a party to under the CUSC.

3. VIEWS OF THE GENERATOR

- 3.1 The Generator objects to the transfer of a clause of the nature of the Condition into the connection documentation applicable for the British Electricity Trading and Transmission Arrangements ("BETTA") as it considers that one of the changes introduced by BETTA is to allow

generators to self despatch rather than require central despatch by another party.

- 3.2 The Generator objects to the version of the Condition proposed by the Company. Specifically, the Generator considers that the inclusion of the words "including but not limited to" mean that the circumstances in which despatch instructions can be issued are not adequately defined as these words suggest that there is no limit to the circumstances. The Generator considers that the Condition would therefore allow the Company to issue despatch instructions for its own wishes or indeed for reasons which were previously expressly deleted from the list.
- 3.3 Further, the Generator considers that despatch instructions that are required for system management during adverse weather should be adequately provided for as part of the Company's compliance with its obligations under the Distribution Code and other relevant industry documents. The Generator does not consider that it is necessary for adverse weather to be listed as a circumstance in isolation without any context.
- 3.4 The Generator considers that any despatch instructions issued by the Company in relation to its obligations under the industry documents, should be limited to: (1) the instructions that the Company needs to issue to comply with defined obligations rather than merely inform the Company acting pursuant to those provisions; (2) the Company should act reasonably in issuing any despatch instructions; and (3) the Company should take account as a factor in deciding whether to issue any despatch instructions, the financial impact on the Generator, and more specifically the fact that as a renewable generator, reduction in generation would result in the loss of Renewable Obligation Certificates and Levy Exemption Certificates (which have greater value than just power alone).

4. VIEWS OF THE COMPANY

- 4.1 The Company notes that the Earlier Determination stated that it was appropriate for the Company to have rights under the agreement to issue despatch instructions in certain circumstances. The Company considers

that these circumstances include where the Company is acting on emergency instructions from the GB System Operator and is taking actions to comply with its obligations under the Distribution Code. The Company believes that it must have these rights if the Company is to comply with its contractual obligations to the GB System Operator and its obligations under the Distribution Code.

4.2 The Company also highlights that the Earlier Determination by the Authority makes reference to other industry developments relating to exporting Grid Supply Points. The Company also notes that the Earlier Determination states that the Authority's decision in relation to condition 10.3 of the agreement is separate from the change proposals that are currently being considered by industry.

4.3 The Company believes that the Generator's concerns relate to these other change proposals. The Company considers that the circumstances under which it would require to issue despatch instructions in respect of the Premises would typically be to secure the system, to prevent damage to equipment, or to prevent widespread loss of supply. The Company further notes that in these circumstances, the potential loss of revenue of the Generator would not be a material consideration.

4.4 The Company observed that it does not have access to the information it would need to take account of the financial effect on the Generator when issuing despatch instructions. The Company also noted that it is not clear that it has the right to require such information from the Generator.

4.5 The Company believes that the Earlier Determination deals fairly and practically with the issues in dispute in respect of the Premises. The Company does not consider that the Condition should be amended.

5. STATUTORY OBLIGATIONS

5.1 Pursuant to standard condition 4D (Requirement to Offer Terms for Use of System and Connection) ("SLC 4D") of the Licence treated as granted to the Company, the Company is required to offer to enter into agreements to connect to or use its distribution system on application made by any person.

5.2 If either party to an agreement entered into pursuant to SLC 4D proposes to vary the contractual terms of such an agreement in any manner provided for under such agreement, pursuant to paragraph 3 of SLC 4E the Authority may at the request of that party settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.

5.3 The Generator has applied to the Authority to settle the terms in dispute of the EGCA under paragraph 3 of SLC 4E. The terms in dispute may be referred to the Authority to be settled pursuant to section 7(3)(c) of the Electricity Act 1989 ("the Act").

6. DISCUSSIONS AND CONCLUSIONS

6.1 The Generator and the Company have provided details of the history of this case to Ofgem. Both parties have agreed in writing that their arguments are reasonably reflected in sections 3 and 4.

6.2 The Authority acknowledges that BETTA enables generators to self despatch. The Authority notes the Generator's view that a right for the Company to issue despatch instructions to the Generator is inconsistent with BETTA. The Authority also notes the Company's view that it needs to be able to issue despatch instructions when it needs to ensure distribution system security, to prevent damage to equipment or widespread loss of supply.

6.3 The Authority notes that evidence has not been provided to suggest that the connection arrangements for the Premises do not meet the Generator's requirements or the Company's obligations. However, the Authority understands that the export capacity of the Premises is of a similar level to the loading levels on the part of the distribution system to which it is connected. The Authority further notes that there may be occasions where the export from the Premises exceeds the demand on the relevant part of the distribution system. Therefore, the Authority agrees that there may be abnormal distribution system operating arrangements where the Company needs to require the Generator to change from its intended operating pattern to ensure the safe and secure operation of the

distribution system and/or GB transmission system. The Authority notes that actions required to ensure the safe and secure operation of the GB transmission system would be initiated by an instruction from the GB System Operator.

- 6.4 The Authority acknowledges the Generator's concern that the Condition does not adequately define the circumstances where the Company would issue despatch instructions. The Authority notes that the industry codes and agreements that are referenced by the Condition do not provide a comprehensive list of the possible circumstances where the Company may need to issue a despatch instruction. The Authority further notes that the industry codes only provide examples of circumstances where the Company may require, or may be required, to issue despatch instructions. The Authority acknowledges that not all possible operational circumstances where a distribution licensee may need to require a user of its distribution system to take an action can be foreseen. In particular, the Authority notes that the Distribution Code and Grid Code include specific arrangements for managing unforeseen circumstances¹ that may arise.
- 6.5 The Authority does not consider that limiting the Condition to references to obligations within other industry codes and agreements which are not limited, would limit the scope of the Condition. The Authority considers that it is appropriate for the Condition to explicitly reflect the possibility that unforeseen, exceptional circumstances may from time to time arise.
- 6.6 The Authority notes the Generator's concern that the Condition would allow the Company to issue despatch instructions for its own wishes. The Authority acknowledges that the Condition is not limited to particular circumstances. The Authority considers that the Company should only be able to exercise the Condition in circumstances where the Company considers that distribution system conditions cannot reasonably be managed without a despatch instruction being issued. The Authority further notes that such circumstances may include times when adverse weather is anticipated.

¹ These arrangements are set out in the Distribution General Conditions (DGC3) of the Distribution Code and General Conditions (GC.3) of the Grid Code.

- 6.7 The Authority acknowledges the Company's view that in circumstances where the Company needed to issue a despatch instruction to protect the safety and/or security of the distribution system or as a consequence of an instruction issued by the GB System Operator to protect the integrity of the GB transmission system, the potential loss of revenue to the Generator would not be a material consideration.
- 6.8 The Authority notes the Generator's view that the Company should take account of the financial consequences on the Generator before issuing a despatch instruction. The Authority also notes the Company's view that it would not have access to sufficient information to consider the potential loss of revenue to the Generator.
- 6.9 The Authority does not consider that it would be appropriate to require the Company to assess the financial impact on the Generator of despatch instructions issued under the Condition. The Authority would be concerned that such an obligation could require the Company to discriminate between users of its distribution system. The Authority notes that the distribution licence² expressly prohibits discrimination between users of a distribution system.

7. DETERMINATION

- 7.1 Having regard to the points made above, the Authority accordingly determines that:
- in the Condition, after the words "generation at any time," the words "including but not limited to" should be deleted and the word "when" should be inserted;
 - sub-paragraph (b) of the Condition relating to when adverse weather conditions is anticipated should be deleted; and
 - an additional sub-paragraph should be inserted at the end of the Condition which allows the Company to exercise its right to issue despatch instructions in circumstances where it reasonably considers

² Standard condition 4C (Non-Discrimination in the Provision of Use of System and Connection to the System).

that distribution system conditions cannot reasonably be managed to ensure the safe and secure operation of the distribution system and/or GB transmission system without a despatch instruction being issued.

7.2 This document constitutes a notice stating reasons for the Authority's decision for the purpose of section 49A of the Act.

A handwritten signature in black ink, appearing to read 'M. Crouch', with a long horizontal flourish extending to the right.

Martin Crouch
Director - Distribution

Duly authorised on behalf of the Gas and Electricity Markets Authority

21 July 2006