

**Council of European Energy Regulators Secretariat  
Rue le Titien 28  
B 1000 Brussels  
Belgium**

**For the Attention of: Jose-Manuel Hernandez**

23 June 2005

Dear Sirs

**Response to the ERGEG Public Consultation for Guidelines on Congestion Management.**

We are pleased to provide our response to the above public consultation.

NGT have actively participated, alongside other ETSO members, in the process of compiling comments and amendments to the proposed text of the guideline. We can confirm that we support and concur with the amendments proposed by ETSO in their submission to ERGEG of 22<sup>nd</sup> June 2005.

The purpose of this individual response is to raise issues and comments of a more specific nature concerning the application of the proposed guideline with respect to the legal and regulatory framework for interconnectors in the UK. For the avoidance of doubt, the position set out in this letter is intended to compliment the ETSO response to the extent that the latter applies to the generality of interconnectors and congestion management mechanisms across the entire European networks.

**Guideline explanatory note.**

Introduction, para 5, Commencing: An interconnection is congested....

We believe that the first two sentences should simply state that where congestion exists it shall be resolved by market based allocation mechanisms.

Introduction, Item 1.2, final sentence.

This sentence should be deleted. We do not believe a principle of "no congestion...no charge" can be applied to all interconnectors. See general comments below.

**6. Merchant Interconnectors.**

A broader description is required at the start of the first sentence:- ie. "In the case of Interconnectors operating on a merchant business model...."

**General comments.**

Role of an Interconnector Operator.

The entire guideline appears to be written from the perspective of the role of TSOs being owners and operators of interconnectors within a meshed AC network. Whilst this may be appropriate in the majority of cases, it does not adequately cater for the role of an independent interconnector operator (ICO), as may be the case for new merchant facilities and certain existing arrangements. In this regard many of the clauses read ambiguously as to the roles of TSOs vs. ICOs and further in their application to network or interconnector infrastructure. We have not included amendments to reflect this position in the guideline text via our input to

the ETSO process as this may lead to many editorial changes to the text of the guideline and potentially detract from the more specific issues identified by ETSO. It is, however, very important that this distinction between roles and ownership be addressed in the guideline as a whole.

We would suggest that the guideline be revised more broadly to encompass, as a minimum, the following three categories of interconnector infrastructure ownership and operational arrangements:

- Category 1 – Regulated assets owned and operated by a TSO(s).  
This type of interconnector is owned and operated by a TSO. This category applies to new or existing interconnectors which are funded via the TSO(s) regulated asset base and which attract additional congestion revenues from congestion management mechanisms.
- Category 2 – Merchant assets owned and operated by a TSO affiliate(s)  
This type of interconnector is owned and operated by an independent interconnector operator (ICO). This category applies to existing interconnectors which are not included in the affiliate TSO's regulated asset base and are funded solely through the sale of capacity rights to third parties. This type of interconnector (being an existing asset) is understood not to be capable of exemption under Article 7 of the regulation.
- Category 3 – Merchant assets owned and operated by an independent investor(s).  
This type of interconnector is owned and operated by independent merchant investors. This category is likely to apply to new merchant investment in interconnector infrastructure and is funded solely through the sale of capacity rights to third parties. This type of interconnector is exempted under Article 7 of the regulation.

Specific position of IFA arrangements.

See Appendix 1, which describes the legal and regulatory a treatment of IFA under the GB interconnector licensing regime.

Yours faithfully



Graeme Steele  
Director European Policy  
National Grid Transco plc

Copied to:

William Webster – European Commission, DG Energy & Transport  
David Halldearn – Ofgem, Scotland and Europe

## APPENDIX 1

### THE TREATMENT OF THE ANGLO-FRENCH INTERCONNECTOR (IFA) IN ACCORDANCE WITH THE ENERGY ACT AND GB INTERCONNECTOR LICENSING REGIME.

#### 1 PURPOSE

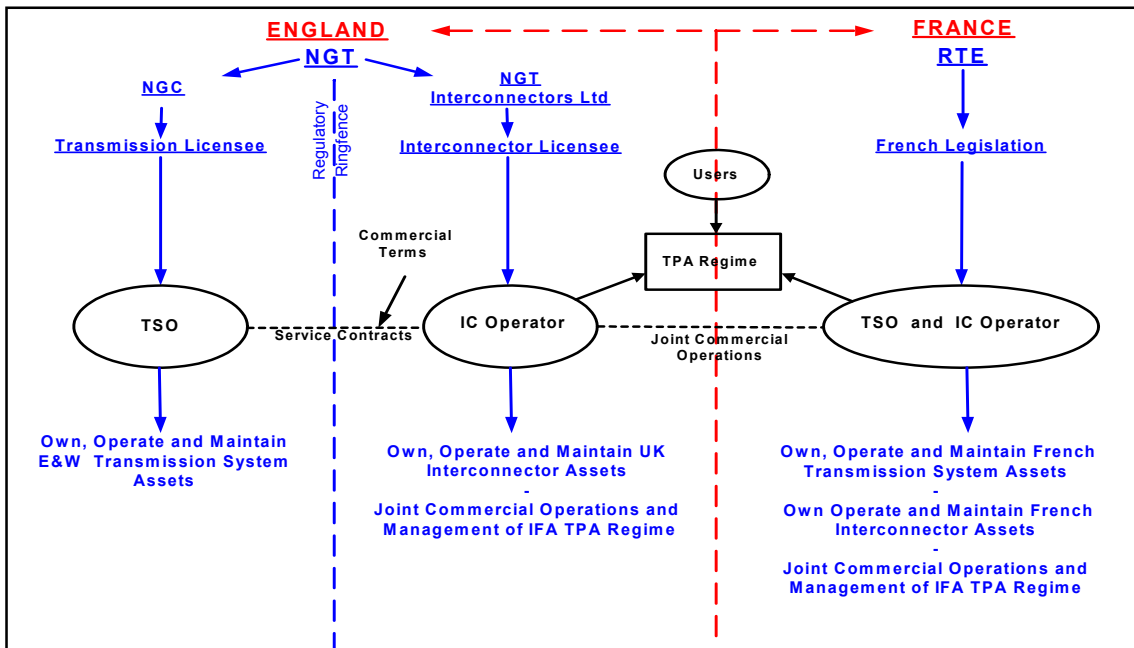
- 1.1 This paper is to set out the legal and regulatory arrangements for the NGC owned assets comprising the Anglo-French Interconnector (IFA) in light of the Electricity Directive, Electricity Regulation and the proposed interconnector licensing regime arising from the Energy Act.

#### 2 THE ENERGY BILL AND INTERCONNECTOR LICENSING

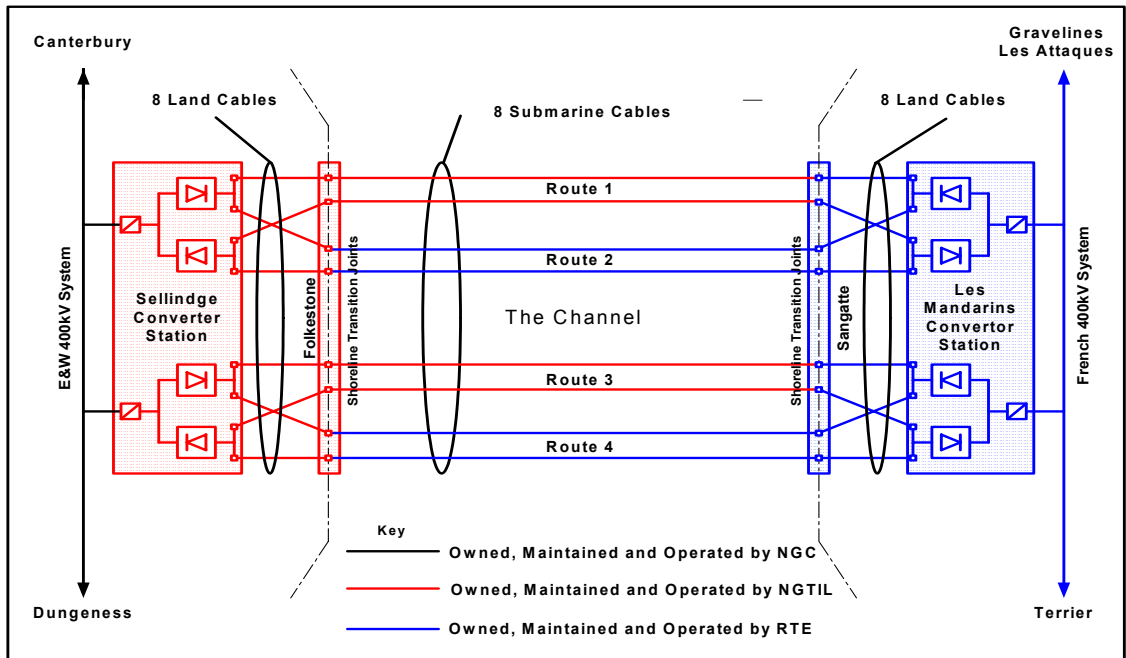
- 2.1 There are two key pieces of European legislation that are important in the consideration of future IFA regulation. The first is Directive 2003/54/EC concerning common rules for the internal market in electricity ("The Directive") and the second is Regulation 1228/2003 on conditions for access to the network for cross border exchanges in electricity ("The Regulation").
- 2.2 The Energy Act, which received royal assent in July 2004 introduced a licensing regime for both gas and electricity interconnectors. These proposals go further than the requirements of the EU Gas and Electricity Directives by requiring that interconnector licence holders be at least separate legal entities to the holders of a transmission licence.
- 2.3 This requires that the business arrangements for IFA will need to be contained within a separate legal entity from NGC, the transmission licence holder. Furthermore, the licensing regime specifically prohibits the Transmission Licence holder from "participating in the operation of an Interconnector". This leads to a clear separation of duties under the law.
- 2.4 Following an extensive consultation period the DTI determined the Standard conditions for Interconnector licenses on the 18<sup>th</sup> March 2005. All enabling legislation is now in place to issue licenses to new interconnector applicants, with only the remaining prohibition to prevent existing interconnector operators from operating without a licence awaiting enactment. It is currently anticipated that licenses to existing operators will be issued before September 2005.

#### 3 IFA COMPANY STRUCTURE

- 3.1 In order to receive an interconnector license a new wholly owned subsidiary company has been created within the National Grid Transco (NGT) group. This company is known as NGT Interconnectors Ltd (NGTIL) and is an independent and separate legal entity to the Transmission System Operator, National Grid Company plc (NGC).
- 3.2 Figure 1. – Relationship Diagram for IFA



3.3 Figure 2. – Ownership Diagram for IFA



3.4 NGTIL and Réseau de Transport d'Electricité (RTE) will be jointly responsible for the operation of the interconnector and for administration of the Third Party Access regime.

3.5 The ownership structure will be as follows:

- NGTIL owns the England situated IFA assets and route 1 & 3 subsea cables.
- RTE owns the France situated IFA assets and route 2 & 4 subsea cables.
- NGC owns the England & Wales Transmission System assets.
- RTE owns the French Transmission System assets.

#### 4 LEGAL AND REGULATORY ARRANGEMENTS IN THE UK

4.1 The Licensing regime in the UK now imposes a clear delineation between the activities of a Transmission System Operator (TSO) and an Interconnector Operator (ICO). At its interface with the E&W Transmission System, the IFA is treated in an equal and non-discriminatory manner with other market participants and is afforded firm transmission rights for both Generation and Demand at Sellindge.

4.2 All revenues falling to NGTIL under the TPA regime are financially ring-fenced within the NGT group, and the assets do not form part of the Transmission System Regulated Asset Base. NGTIL is funded entirely from revenues associated with the use of the interconnector and these are derived from the sale of capacity rights in both directions.

4.3 The revenues received from capacity sales cannot be regarded as constant; they will reflect the value the market places on the capacity offered. Revenues received from sales of capacity in one period will be different (higher or lower) than revenues received in other periods. As such the revenue stream for NGT Interconnectors Ltd as ICO is subject to a high degree of market risk in the form of price uncertainty. NGTIL is not protected by any form of "cap and collar" arrangement for revenues and operates on a merchant model. NGTIL provides an overall return on investment to its shareholders over the long run (20-25 Years), which is consistent with the risks that it faces. Uncertainty in ongoing revenue streams and costs is aggregated and smoothed over the life of the investment. Surplus revenues received in one year may reasonably be expected to balance out a shortfall in funding in another.