

April 2002

**Modification to NGC's Transmission
Licence: BSC modification proposal
implementation dates
Consultation under section 11A of
the Electricity Act 1989**

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1. Introduction

Purpose of this Paper

- 1.1 This Paper opens a consultation process about how best to ensure that approved modification proposals under the Balancing and Settlement Code (“BSC”) are delivered in optimum time. It considers whether the current arrangements provide the most effective means of ensuring that approved modifications take effect in this manner.
- 1.2 At the moment, these arrangements for the implementation of approved modifications are governed by standard condition C3.4. (c) of the NGC Transmission Licence.
- 1.3 This Paper examines these arrangements and discusses their effectiveness. It identifies an area Ofgem recognises as of concern to industry and outlines how an improvement might be made and sets out the proposed licence modification to achieve it.

Context

- 1.4 The limitations of standard condition C3.4 (c) of the NGC Transmission Licence were brought to the fore during evaluation of BSC P28. This modification proposal to the Balancing and Settlement Code sought to reform some of the Governance arrangements in the Balancing and Settlement Code. In particular, one element of BSC P28 proposed a facility to bring forward timetables for the implementation of approved modifications. At present the standard condition C3.4 (c) of the NGC Transmission Licence precludes this course of action. Ofgem is minded to approve the Alternative Modification to BSC P28 but will not do so until it has considered consultation responses to this document by interested parties on whether standard condition C3.4 (c) should be modified to allow for the shortening of implementation timetables.
- 1.5 The formal notice under Section 11A of the Electricity Act 1989 is set out in Appendix 1.

- 1.6 Responses should be sent by 23 May 2002 to:

David Edward
Head of Electricity Code Development
Ofgem
9 Milbank
London
SW1P 3GE

- 1.7 Or by e-mail to David.Edward@Ofgem.gov.uk

- 1.8 Where paper copies of a response are sent, it would be helpful if responses could also be sent electronically. It is open to respondents to mark all or part of their responses as confidential. However, we would prefer it if, as far as possible, responses were provided in a form that can be placed in the Ofgem library and on our website.

- 1.9 If you have any queries about this consultation then contact David Edward (Tel: 020 7901 7435).

2. Regulatory and legal framework

- 2.1 This section outlines the current legal and regulatory framework of the electricity industry after the majority of the remaining provisions of the Utilities Act 2000 came into force on 1 October 2001. It summarises the current legislative, licensing and regulatory regimes and describes the relationship between the Electricity Act 1989, the Utilities Act 2000, licences and industry agreements.

The Electricity Act 1989 (“The Electricity Act”)

- 2.2 The Electricity Act provides the framework for the functions of the Gas and Electricity Markets Authority (the Authority) and sets out the licensing regime in relation to the generation, transmission, distribution and supply of electricity.
- 2.3 Under section 9(2) of the Electricity Act, holders of Transmission Licences are obliged to develop and maintain an efficient, co-ordinated and economical system of electricity transmission and to facilitate competition in the supply and generation of electricity. NGC owns and operates the national grid in England and Wales, which transports electricity at high voltage from the generators to the local distribution networks and to customers connected directly to the transmission system.

The Utilities Act 2000 (“the Utilities Act”)

- 2.4 The Utilities Act received Royal Assent on 28 July 2000 after which the Authority was created on 20 December 2000. From this date, the functions of the Director General of Electricity Supply and the Director General of Gas Supply were transferred to and exercisable by, the Authority.
- 2.5 The Utilities Act introduced a new principal objective (primary duty) and general duties on the Authority as set out in Section 3A of the Electricity Act. Further sections of the Utilities Act were implemented on 1 October 2001, including: the introduction of standard licence conditions for each type of electricity licence granted under the Electricity Act; and the separation of the licensing of electricity supply and distribution.

The Electricity Transmission Licence

- 2.6 By virtue of a licensing scheme under Schedule 7 to the Utilities Act 2000, NGC holds an Electricity Transmission Licence. NGC is the sole possessor of an Electricity Transmission Licence in England and Wales, which is treated as granted under section 6(l)(b) of the Electricity Act.
- 2.7 In addition to its obligations under the Electricity Act, NGC has a duty to operate an efficient, co-ordinated and economical system of electricity transmission under special condition AA4 of its Transmission Licence.

Industry Codes

The Balancing and Settlement Code (“The BSC”)

- 2.8 The BSC’s scope is defined in NGC’s Transmission Licence. The BSC is a code that sets out the rules for the balancing mechanism and imbalance settlement process under NETA and it is maintained by NGC under standard condition C3 of its Transmission Licence.
- 2.9 The BSC sets down the arrangements in respect of making, accepting and settling offers and bids to increase or decrease electricity delivered to, or taken off, the total system (NGC’s transmission system and the distribution systems) to assist NGC in balancing the system; and determining and settling imbalances and certain other costs associated with operating and balancing the transmission system.
- 2.10 A BSC Panel has been charged with overseeing the management, modification and implementation of the BSC rules, as specified in Section B of the BSC. The Panel has twelve representatives made up from industry members, consumer representatives, independent members and NGC. The Authority appoints the Chairman of the Panel.
- 2.11 The Balancing and Settlement Code Company (ELEXON) supports the BSC Panel. The primary purpose of ELEXON is to provide or procure a range of operational and administrative services, both directly and through contracts with service providers, to implement the provisions of the BSC and modifications to it.

- 2.12 The details of the modification procedures are contained in Section F of the BSC. The modification procedures are designed to ensure that the process is as efficient as possible whilst ensuring that as many parties as possible can propose modifications and have the opportunity to comment on modification proposals.

3. Current arrangements

- 3.1 As currently drafted, standard condition C3.4 (c) of NGC's Transmission Licence, states that the BSC should include procedures for its own modification, which procedures shall provide for the timetable for implementation of any modification to be such as will enable the modification to take effect as soon as practicable after the Authority has directed such modification to be made, account being taken of the complexity, importance and urgency of the modification.
- 3.2 In practice the BSC Panel sets the final implementation date on the advice of ELEXON who are in turn, when system changes are required advised by the Service Provider who offers ELEXON delivery dates based on best estimates of the levels of development work that are likely to be required. This is dependent upon the development of user requirements to a sufficient detail to enable the Service Provider and Market Participants and their developers to have a common understanding of the proposed changes.

4. Issues raised by current arrangements

- 4.1 It is recognised that implementation dates are based on best estimates of when the Service Provider can deliver the systems. In recognition of the fact that a recommended implementation date is based on an estimate, standard condition 3.4(c) goes on to provide that the timetable can be extended with the consent of or as directed by the Authority. A defect highlighted during evaluation of BSC P28 was that, while in recognition of the fact that recommended implementation dates are based on best estimates of when the systems to implement the change can be delivered, it was permissible to extend the timetable, there existed no corresponding provision for the shortening of implementation timetables where the circumstances were such that the benefits could be delivered within a shorter timescale than the Panel were at first given to believe.
- 4.2 During consideration of BSC P28 it was argued that there was no rationale for this discrepancy and that it would be in the interest of efficiency to provide the mechanism for implementation timetables to be shortened.

Background to Modification Proposal P28

- 4.3 Modification Proposal P28 arose as a result of the amalgamation of three modification proposals: Modification P21, Modification Proposal P23 and Modification Proposal P24. The proposal seeks to reform the operation of the BSC governance arrangements specifically in relation to the operation of the BSC Panel, Panel Committees, Modification Groups and the Modification Procedures. The intent of the proposal is to initiate a broad view of how these arrangements can be made more efficient and transparent. During the Definition phase of the process the Governance Modification Group outlined a number of suggested reforms and the Panel at its meeting of 23 August agreed that the Group proceed to examine those proposals in more detail during the assessment phase. The major issues arising from the deliberation of the modification group were:
1. Openness of the Panel, the Modification Groups and the Panel Committees.

2. The constitution and operation of Modification Groups and Panel Committees.
 3. Increasing the efficiency of the Modification Procedures.
- 4.4 Following discussion by the Panel of the two Interim Reports and the Authority's provisional thinking having been provided to the Panel, the Governance Modification Group was instructed to develop the following alternative proposal:

Alternative Proposal (P28)

a) Panel and Committees

- 4.5 All non-confidential (Panel and Committee) business to be held in open session, where practical. The default position and presumption would be that a meeting would be in open session and it would be for the relevant Chairman to determine otherwise on grounds of practicality or confidentiality. The Trading Disputes Committee and the Performance Assurance Board will remain entirely confidential.

b) Modification Groups

- 4.6 All Modification Group business to be held in open session by default subject to confidentiality/practicality as per Panel / Committee above.
- i) The Panel may establish standing Modification Groups.
 - ii) Modification Groups will be able to consider issues ahead of there being any formal Modification Proposal. Terms of Reference will prescribe the scope and budgetary controls for such discussions and the Modification Group Chairman will exercise discretion in considering whether new issues are within scope. Routine reporting to the Panel will enable review of such business to be undertaken.

c) Modification Procedures

- i) Re-consultation and a commensurate extension to the Report Phase will be allowed for if late material changes arise, at the Panel's discretion. The Panel's decision to extend the Report Phase will be subject to the Authority's consent.

- ii) The Panel may apply to the Authority to bring forward the proposed implementation date of an Approved Modification. Any such application will be preceded by consultation with parties to assess the impact of the revised date.

4.7 The Authority is minded to approve this proposal. However, under the current drafting of the Transmission Licence, provision is made only for the extension of implementation dates. Approval of the last element of P28 (Modification Procedures (ii) would be in conflict with the provisions of standard condition C3.4 (c) and be outside the scope of the modification procedures specified in that condition. The licence condition cannot be modified by a change to the BSC and therefore Ofgem would have no power to approve Modification Proposal P28.

5. Ofgem Proposals

- 5.1 It is Ofgem's view that it would be prudent in the interest of efficiency to alter the arrangements so as to permit timetables for implementation dates to be shortened and that standard condition C3.4(c) of the Transmission Licence should be amended to read as follows (changes shown in bold):

Condition C3.4 (c)

- 5.2 "...and for that timetable to be extended **or shortened** with the consent of or as directed by the Authority **after those persons likely to be affected by the revision of the timetable have been consulted.**"

6. The way forward

- 6.1 The formal notice of Ofgem's proposal to make this modification to standard condition C3.4(c) is set out in Appendix 1. NGC has indicated that it is content that this proposed modification consultation should proceed.

Appendix 1 Notice under section 11a(3) of the Electricity Act 1989

1.1 The Gas and Electricity Markets Authority (“the Authority”) hereby gives notice pursuant to Section 11A(3) of the Electricity Act 1989 (“the Act”) as follows:

1. The Authority proposes to modify the standard licence conditions contained in the licences of each electricity transmitter treated as granted under Section 6(1)(c) of the Act by amending standard licence condition C3, paragraph 4(c), so as to enable the timetable for implementation of approved modifications to the Balancing and Settlement Code to be shortened.
2. The reasons why the Authority proposes to make this licence modification and its effect were published by the Authority in a document entitled “Modification to NGC’s Transmission licence: BSC modification proposal implementation dates. Consultation under s.11A of the Electricity Act 1989.”
3. The effect is to allow the implementation timetable for approved modifications to be shortened, as well as extended, with consent of or as directed by the Authority.
4. Copies of the document referred to in paragraph 2 which sets out the proposed licence modification are available (free of charge) from the Ofgem Library, 9 Millbank, London SW1P 3GE (020 7901 7003) or on the Ofgem website (www.ofgem.gov.uk).
5. Any representations or objections to the proposed licence modification may be made on or before [23 May] 2002 to David Edward, Head of Electricity

Code Development, Ofgem, 9 Millbank, London, SW1P 3GE or by E-mail
to david.edward@ofgem.gov.uk

A handwritten signature in black ink, appearing to read 'N. Simpson', with a long horizontal line extending from the end of the signature.

Nick Simpson
Director of Industry Code Development
Duly authorised on behalf
of the Authority

23 April 2002