

7327

Direct Dial: 020 7901

The National Grid Company, BSC Signatories and
Other Interested Parties

24 July 2001

Your Ref:
Our Ref : MP No: P5

Dear Colleague,

**Modification to the Balancing and Settlement Code ("BSC") - Decision and Direction
in relation to Modification Proposal P5: "Extension of Indemnity under Section B2.9"**

The Gas and Electricity Markets Authority (the "Authority") has carefully considered the issues raised in Modification Proposal P5: "Extension of Indemnity under Section B2.9".

The Balancing and Settlement Code Panel (the "Panel") recommended to the Authority that Modification Proposal P5 be made and that it be implemented immediately.

The Authority has decided to direct a modification to the BSC.

This letter explains the background to the Modification Proposal and sets out the Authority's reasons for its decision. In addition, the letter contains a direction to

The National Grid Company plc (“NGC”) to modify the Balancing and Settlement Code (“BSC”) as set out in Modification Proposal P5.

Background to the proposal

Modification Proposal P5 was raised by London Electricity on 5 April 2001. Under the Assessment Procedure, the Panel referred the proposal to the Governance Modification Group (GMG). The Group, after having taking into account the views of the proposer, representations from interested parties and the views of the Group itself, concluded that the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives.

The Panel considered the GMG’s report and agreed that the Modification Proposal should proceed to the Report Phase and that the draft Modification Report should be consulted upon. All representations received in response to the consultation on the draft Report supported the proposal.

The Modification Proposal

Modification Proposal P5 seeks to modify the BSC 2.9.1 and 2.9.4 so as to extend the indemnity to cover actions taken in good faith, i.e. where the persons taking the action demonstrably and reasonably believed that the actions they took were permitted under the terms of the BSC. At present, under the terms of the BSC, Elexon must indemnify certain persons (‘indemnity beneficiaries’) against any loss resulting from the proper exercise of their duties as prescribed by the BSC. In addition, each BSC party irrevocably and unconditionally waives any liability of any indemnity beneficiary and any rights, remedies and claims against any indemnity beneficiary where that person is found to be acting properly.

It is proposed that BSC B2.9.1 and B2.9.4 now read as follows (for ease of reference the proposed changes are underlined):

B2.9.1:

BSCCo shall indemnify and keep indemnified each of the persons referred to in paragraph 2.9.2 (each such person an “indemnify beneficiary”) in respect of all costs (including legal costs), expenses, damages and other liabilities properly incurred or suffered by such person when acting in or in connection with his office under the Code, or in what he in good faith believes to be the proper exercise and discharge of

the powers, duties, functions and discretions of that office in accordance with the Code and all claims, demands and proceedings in connection therewith, other than:

- (a) any such costs or expenses in respect of which such person is reimbursed pursuant to paragraph 2.11;
- (b) any such costs, expenses, damages or other liabilities incurred or suffered as a result of the wilful default or bad faith of such person.

B2.9.4:

The Parties agree that no indemnity beneficiary shall be liable for anything done when acting properly in or in connection with his office under the Code, or anything done in what he in good faith believes to be the proper exercise and discharge of the powers, duties functions, and discretions of that office in accordance with the Code; and each Party hereby irrevocably and unconditionally waives any such liability of any indemnity beneficiary and any rights, remedies and claims against any indemnity beneficiary in respect thereof.

ELEXON published a Draft Modification Report on 6 June 2001 which invited respondents' views by 25 June 2001

Respondents' views

In total, ELEXON received 4 responses to the consultation on the Draft Modification Report. Of the responses, all expressed support for the proposed modification. Although one respondent, while supportive of the change, suggested an alternative form of legal text to give effect to the Proposed Modification.

The respondents' views are comprehensively summarised in the Modification Report for Modification Proposal P5 dated 3 July 2001.

Panel's Recommendation

The Panel met on 25 June 2001 and considered Modification Proposal P5, the Modification Report, the views of the Modification Group and the consultation responses received.

The Panel recommended that the Authority should approve the Proposed Modification and that, if approved, the Proposed Modification should be implemented with immediate effect.

Ofgem's view

Ofgem¹ considers, having had regard to its statutory duties, that Modification Proposal P5 will better facilitate the relevant objectives of the BSC in that in the absence of an indemnity, there would be expense and delay in the operation of the Panel, the Panel Committees, and the Modification Groups. Moreover, the proposed modification better facilitates the BSC objective of promoting efficiency in the implementation and administration of the balancing and settlement arrangements (Condition 7A.3 (d)), since in the absence of the proposed modification, the Panel may not be willing to operate effectively in circumstances where the provisions of the BSC are not absolutely clear.

Ofgem agrees with the Panel's recommendation that this modification be implemented immediately in order to allow the resulting benefits to be realised at the earliest opportunity.

¹ Ofgem is the office of the Authority. The terms "Ofgem" and "the Authority" are used interchangeably in this letter.

The Authority's decision

The Authority has therefore decided to direct that Modification Proposal P5 should be made and implemented.

Having regard to the above, the Authority, in accordance with Condition 7A.5(a) of the licence to transmit electricity granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence"), hereby directs NGC to modify the BSC as set out in the paragraph entitled "The Modification Proposal" above.

The modification is to take effect immediately.

In accordance with Condition 7A.5(b) of NGC's Transmission Licence, NGC shall modify the BSC in accordance with this direction of the Authority.

If you have any queries in relation to the issues raised in this letter, please feel free to contact me on the above number.

Yours faithfully,

Nick Simpson

Director of Industry Code Development

Signed on behalf of the Authority and authorised for that purpose by the Authority