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The National Grid Company, BSC Signatories and
Other Interested Parties

26 July 2005

Our Ref: MP No P187

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and notice in relation to Modification Proposal P187 “Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority”.

The Gas and Electricity Markets Authority (the “Authority”)¹ has considered the issues raised in the Modification Report² in respect of Modification Proposal P187, “Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P187 should be approved.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives³ and the Authority’s wider statutory duties,⁴ the Authority has decided to direct a Modification to the BSC in line with Proposed Modification P187.

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

² ELEXON document reference P187RR, Version No. 1.0, dated 14 July 2005.

³ The Applicable BSC Objectives, as contained in Standard Condition C3 (3) of NGC’s Transmission Licence, are:

- a) the efficient discharge by the licensee of the obligations imposed upon it by this licence;
- b) the efficient, economic and co-ordinated operation by the licensee of the licensee’s transmission system;
- c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements
- e) the undertaking of work by BSCCo (as defined in the BSC) which is:
 - (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and
 - (ii) relevant to the proposed GB wide balancing and settlement code; and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

⁴ Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

This letter explains the background and sets out the Authority's reasons for its decision.

This letter constitutes notice by the Authority under section 49A Electricity Act 1989 in relation to the direction.

Background

Section F2.9 of the BSC contains the process under which the progression of a Modification Proposal may be expedited as an Urgent Modification Proposal.

On receipt of a Modification Proposal, BSCCo and/or the Transmission Company can recommend to the Panel that the Modification Proposal be treated as urgent. If neither BSCCo nor the Transmission Company recommends urgent treatment, the proposal is progressed via the normal Modification Procedures. A decision by BSCCo and the Transmission Company on whether to recommend urgent treatment is final, and does not require assent from the Panel or the Authority. Implicitly, a decision by BSCCo and the Transmission Company not to recommend urgency therefore determines that a proposal is not progressed as urgent.

Where BSCCo and/or the Transmission Company have recommended urgent treatment, the Panel must consider whether to recommend to the Authority that the Modification Proposal be treated as urgent. If the Panel does not recommend urgent treatment, the Proposal is progressed via the normal Modification Procedures. A decision by the Panel not to recommend urgency is final, and does not require Authority approval. Implicitly, a decision by the Panel not to recommend urgency therefore determines that a proposal is not progressed as urgent.

Only in cases where either BSCCo and/or the Transmission Company recommend urgent treatment and the Panel agrees will the Authority be asked to decide whether to agree to the urgent treatment of the Modification Proposal and the proposed timetable for its progression.

The Proposer of P187 considers that this represents a flaw in the current BSC provisions, in that the Authority does not always determine the outcome of an urgency request. The Proposer believes that as with decisions on whether to approve Proposed Modifications, the decision on whether to grant urgency should lie wholly with the Authority in all circumstances. The Proposer also believes that there should be a formal process for the Proposer of a Modification Proposal to request urgent status.

In order to rectify this situation, the Proposer submitted Modification Proposal P187, "Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority " on 4 April 2005.

The Modification Proposal

Modification Proposal P187 seeks to modify the BSC so that it:

1. Details a formal process by which the Proposer of a Modification Proposal may request that it be expedited as an Urgent Modification Proposal;

2. Requires all requests for urgency to be passed by BSCCo to the Panel, regardless of BSCCo's or the Transmission Company's view as to whether the Modification Proposal should be treated as urgent;
3. Requires that the Panel's recommendation must be passed to the Authority, regardless of whether that recommendation is to grant or deny urgent status;
4. Specifies that only the Authority can decide on requests for urgent status (i.e. only the Authority may determine that Modification Proposal shall or shall not be treated as an Urgent Modification Proposal following a request for urgency);
5. Retain the ability for BSCCo and/or the Transmission Company to independently recommend urgency for a Modification Proposal to the Panel, where urgency has not already been requested by the Proposer – but clarify that such recommendations are separate from any Proposer's request, and must also proceed to the Authority for final decision; and
6. Introduce guidance regarding the basis on which urgency is considered.

The justification for the Modification Proposal was that it would better facilitate achievement of Applicable BSC Objectives C3 (3) (d) and, to a lesser extent, (c) by:

1. Introducing a transparent, efficient, formalised process whereby a Proposer can request urgency and be certain that the decision on this issue will always be considered by the Authority;
2. Ensuring consistent treatment of Modification Proposals where the Proposer seeks urgency, noting that the Proposer did not perceive that this had always happened in the past; and
3. Facilitating competition by ensuring that market participants are assured that if an issue is material to them, then the case for urgency will be considered by the Authority.

The Panel considered the Initial Written Assessment at its meeting of 14 April 2005 and agreed to submit Modification Proposal P187 to a two month Assessment Procedure. The Modification Group (the "Group") held two meetings; issued an industry consultation; and commissioned impact assessments from both BSCCo and the Transmission Company.

The Assessment Report prepared by the Group was considered by the Panel at its meeting on 9 June 2005. The Panel unanimously agreed with the Group's recommendation to approve P187, and that the Modification Proposal should enter the Report Phase.

Responses to ELEXON Consultation

ELEXON published a draft Modification Report on 15 June 2005, which invited respondents' views by 22 June 2005. Seven responses were received. All seven responses (representing 42 Parties and zero non-Parties) expressed support for the Proposed Modification.

Respondents believed that P187 would increase the efficiency of the Modification Procedures by allowing Parties to request urgency in a transparent manner; and ensuring that all such requests are considered by the Authority, thereby receiving consistent and equitable treatment. A secondary effect of stimulating competition was also perceived.

Those respondents who cited specific Applicable BSC Objectives used either (d), or both (d) and (c).

The respondents' views are summarised in the Modification Report for Modification Proposal P187, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 14 July 2005 and considered Modification Proposal P187, the draft Modification Report, the views of the 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 10 Working Days after an Authority decision.

Ofgem's view

Having considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that Proposed Modification P187 will better facilitate achievement of Applicable BSC Objectives (c) and (d).

Ofgem considers that by ensuring that market participants and potential new entrants have greater certainty on how any Modification Proposal with an urgency dimension will be handled, the market should also have increased confidence in the adequacy of the BSC governance structures to appropriately address urgent issues. This should act as an encouragement to competition, therefore better facilitating Applicable BSC Objective (c).

Ofgem also considers that P187 will further increase the transparency and consistency of decision making processes by ensuring that all requests for urgency are considered by the Authority. This should improve the efficiency of the administration and implementation of the trading arrangements, therefore better facilitating the achievement of Applicable BSC Objective (d).

It is Ofgem's view that implementation of P187 will mean that the Authority will always be in a position to consider whether urgent status is merited or not, which is not the case at present.

Ofgem notes that its provisional thinking⁵ on a previous Modification Proposal, P28, 'Review of Governance and Modification Procedures', rejected the suggestion that all requests for urgency should be directed to the Authority. Ofgem does not consider this constitutes a relevant

⁵ Published to the BSC Website at the following location:
http://www.elexon.co.uk/documents/modifications/28/P28_OfgemPrelim.pdf

precedent for considering P187. Ofgem's provisional thinking was aimed at elements of P28 proposing that requests for urgent status come direct to the Authority – bypassing the Panel and thereby diminishing its central role in administering the Modification Procedures. Ofgem considers that P187 finds a more appropriate balance between assuring market participants that their requests for urgency will be heard by the Authority and maintaining the role of the Panel in overseeing the Modification Procedures.

If you have any questions, please contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson

Director, Modifications

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