



Direct Dial: 020-7901 7435

17 March 2003

The National Grid Company, BSC Signatories and
Other Interested Parties

Our Ref: MP No P112

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P112: “Removing the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with Section A 2.2.5”

The Gas and Electricity Markets Authority (the “Authority”)¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P112, “Removing the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with Section A 2.2.5”.

The BSC Panel (the “Panel”) recommended to the Authority that the Proposed Modification P112 should be made with an Implementation Date of 15 Business Days after the date of the Authority’s decision.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives and the Authority’s wider statutory duties, the Authority has decided to direct a Modification to the BSC in line with the Modification Proposal P112.

This letter explains the background 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”) in line with Modification Proposal P112, as set out in the Modification Report.

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

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

² ELEXON document reference P112RR, Version No. 1, dated 22 January 2003

Background

Paragraph A 2.2.5 of the BSC currently requires that a person wishing to enter into or accede to the BSC Framework Agreement and become a Party to the BSC must comply with the requirements set out in the IPR Litigation Requirements document (and related undertakings of confidentiality). The IPR Litigation Requirements document refers to the litigation brought by OSL against two Pool members (the OSL Claim) regarding alleged misuse of OSL's confidential information. OSL claimed that the system implementing the 1998 Trading Arrangements was designed using confidential information developed by OSL and that its patents would be infringed by the performance of Stage 2 Settlement. There was also a threat that proceedings might be brought against the industry generally. New Parties to the BSC were therefore requested to sign the IPR Litigation Document ensuring confidentiality in respect to the dispute.

The breach of confidence action was struck out and there has been no appeal by OSL. OSL subsequently went into liquidation, the process of which is now close to completion, and ELEXON has recently obtained the patents owned by OSL from the liquidators.

The BSC Panel raised Modification Proposal P112, "Removing the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with Section A 2.2.5" on 27 November 2002. The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objective³ C3 (3) (d).

The Modification Proposal

Modification Proposal P112 seeks to remove the obligation on new BSC Parties acceding to the BSC Framework Agreement to comply with the provisions of paragraph A 2.2.5 of the BSC. The Modification has been proposed because following resolution of the OSL Claim the contents of the IPR Litigation Requirements document and related confidentiality undertakings are no longer relevant to new Parties acceding to the Framework Agreement. It was considered that the removal of the requirement to comply with paragraph A 2.2.5 would reduce the administrative burden on both new Parties wishing to accede to the Framework Agreement and ELEXON's administration of the accession process.

The Panel considered the Initial Written Assessment at its meeting of 12 December 2002 and agreed to submit Modification Proposal P112 directly to the Report Phase.

³ The Applicable BSC Objectives, as contained in 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.

ELEXON published a draft Modification Report on 17 December 2002, which invited respondents' views by 2 January 2003.

Respondents' views

ELEXON received six responses to the consultation on Modification Proposal P112. All of the six responses (representing 20 Parties) expressed support for the Proposed Modification.

The respondents' views are summarised in the Modification Report for Modification Proposal P112, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 16 January 2003 and considered Modification Proposal P112, the draft Modification Report 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 15 Business Days after the date of the Authority's decision.

Ofgem's view

Having carefully considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that Modification Proposal P112 will better facilitate achievement of the Applicable BSC Objective (d), since it will reduce the administrative burden both on new Parties wishing to accede to the Framework Agreement and on ELEXON's administration of the accession process.

Paragraph A 2.2.5 was previously required so as to ensure confidentiality obligations were adhered to by new Parties in respect of the dispute involving OSL. Given that this dispute has now been resolved, it is sensible to remove this obligation from the accession requirements. Ofgem notes that the Modification Proposal will also ensure that the current BSC Parties will remain bound by their existing confidentiality undertakings in relation to the IPR Litigation Requirements document.

Ofgem agrees with the Panel's recommendation that Modification Proposal P112 should be made and implemented.

The Authority's decision

The Authority has therefore decided to direct that the Proposed Modification P112, as set out in the Modification Report, should be made and implemented.

Direction under Condition C3 (5) (a) of NGC's Transmission Licence

Having regard to the above, the Authority, in accordance with Condition C3 (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 Modification Report.

The Implementation Date for Modification Proposal P112 is 15 Business Days after the date of this decision letter, that being the day on which the Authority decided to approve the Modification Report.

In accordance with Condition C3 (5) (b) of NGC's Transmission Licence, NGC shall modify the BSC in accordance with this direction of the Authority.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Edward', written in a cursive style.

David Edward

Head of Electricity Code Development

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