



Direct Dial: 020-7901 7412

04 December 2001

The National Grid Company, BSC Signatories and  
Other Interested Parties

Your Ref:  
Our Ref : MP No: P58

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P58: “Disapplication Of Volume Notifications Relating To A Defaulting Party”**

The Gas and Electricity Markets Authority (the “Authority”) has carefully considered the issues raised in Modification Proposal P58 ‘Disapplication Of Volume Notifications relating To A Defaulting Party’.

The Balancing and Settlement Code Panel (the “Panel”) recommended to the Authority that the Modification Proposal be approved and implemented with immediate effect.

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 Urgent Modification Proposal P58.

**Background to the proposal**

The current rules, as stated within Section H3.2.2, set out the actions that the Panel may take in relation to a Defaulting Party following that Party’s Default. The BSC recognises that the Panel may take one or more of the steps outlined in Section H3.2.2 at such time as it sees fit. The current drafting of the BSC allows for disapplication (for the purposes of Settlement) of any such notifications as have been submitted prior to the time when the Panel notifies the Defaulting Party of its Default.

In addition, because two different times were referred to in the notice, the resolution was unclear as to whether the disapplication would be retrospective in respect of Settlement Periods for which Gate Closure has taken place between the time of the Default notice and the time of the notice of disapplication and for which Metered Volume Reallocation Notifications (MVRNs) were submitted prior to the time of the default notice.

On 30 November 2001, the Panel noted that, under Section H Paragraph 3.1.1. (g)(iv) of the BSC, Enron Capital and Trade Resources Limited (ECTRL) and Enron Gas and Petrochemicals Limited (EGPTL) were in Default of the BSC ( the “Defaulting Party”). The BSC Panel met on 2 December 2001 and passed a resolution which meant that Energy Contract Volume Notifications (ECVNs) and MVRNs which were submitted prior to the Panel notification of 30 November 2001, would be disapplied from 15:00 hours on 4 December 2001.

On 3 December 2001, Dynergy submitted Modification Proposal P58: “Disapplication Of Volume Notifications relating To A Defaulting Party” with a recommendation that the proposal be treated as an Urgent Modification Proposal. After obtaining the views of the Panel the Authority gave consent for this proposal to be treated as urgent for the purposes of Section F2.9 of the BSC on the 3 December 2001. The Authority instructed that the Modification Report should be completed and submitted on 4 December 2001 following a short consultation period.

### **The Modification Proposal**

Modification Proposal P58 seeks to modify the BSC so as to allow the Panel to determine that when a Default has occurred in accordance with Section H of the BSC, Volume Notifications<sup>1</sup> can be disapplied for such time (not in respect of Settlement Periods for which Gate Closure has taken place prior to the notice of disapplication), as the Panel so determines, on or after the Default occurring.

ELEXON published a consultation document on 3 December 2001 that invited respondents' views by 4 December 2001.

### **Respondents' views**

In total, ELEXON received 8 responses to the consultation on Modification Proposal P58. Of the responses, 7 expressed support for the proposed modification and the remaining respondent opposed its approval.

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<sup>1</sup> Volume Notifications refers to ECVNs and MVRNs.

The respondents who supported the Modification Proposal commented that it provides a more efficient method of dealing with Default under the BSC and may preserve confidence in the market.

Respondents were asked to specifically comment on the attached legal text of the Modification Proposal. Five respondents believed that the attached legal text gave full and correct effect to the Modification Proposal. However one respondent noted that the legal text needed to be more explicit in defining that time that applies for disapplication.

### **Panel's Recommendation**

The Panel held a meeting by telephone conference call on 4 December 2001 and considered the Urgent Modification Report and the consultation responses received.

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

### **Ofgem's view**

Ofgem<sup>2</sup> agrees with respondents views that an urgent solution is required to address the consequences of the Default of Enron Capital and Trade Resources Limited (ECTRL) and Enron Gas and Petrochemicals Limited (EGPTL).

Ofgem agrees with the Panel and considers, having had regard to its Statutory Duties, that the Modification Proposal will promote competition by reducing the risk to all Trading Parties through closing the position of the Defaulting Party.

Ofgem also believes that Modification Proposal P58 will better facilitate the relevant objectives of the BSC through the promotion of efficiency in the implementation and administration of the balancing and settlement arrangements.

Ofgem has noted the comments of one respondent stating that the Modification Proposal needs to have retrospective effect in order to allow for notifications to be cleared as at 30 November when a notice of default was served on the Defaulting Party. Ofgem considers that this is outwith the scope of the Modification Proposal.

Ofgem is making this decision against the background of the provisions within the BSC that allow the Panel to review an Urgent Modification.

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<sup>2</sup> Ofgem is the office of the Authority. The terms "Ofgem" and "the Authority" are used interchangeably in this letter.

Ofgem agrees with the Panel's recommendation that the Proposed Modification take effect immediately.

### **The Authority's decision**

The Authority has therefore decided to direct that Modification Proposal P58 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 Modification Proposal P58. A copy of the text of the modification to the BSC is attached to this letter.

The modification is to be implemented on 4 December 2001.

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.

Yours sincerely,

**Sonia Brown**

**Head of Electricity System Operation**

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

## Attachment 1

### LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

Section H3.2.2 of the Code will need to be amended as follows:

3.2.2 The rights and steps referred to in paragraph 3.2.1(b) are:

- (a) in relation to Energy Contract Volume Notifications (or, in the case of a Default of the type referred to in paragraph 3.1.1(a) or (b), relevant Energy Contract Volume Notifications, as defined in Section P2.4.3):
  - (i) the right to submit such Energy Contract Volume Notifications under Section P; and/or
  - (ii) the disapplication (for the purposes of Settlement) of any such Energy Contract Volume Notifications as have **already** been submitted **at any time (except to the extent that they relate to Settlement Periods for which Gate Closure has occurred prior to the time when the Panel notifies the Parties of such disapplication) prior to the time when the Panel notifies the Defaulting Party of its Default (other than ones relating to Settlement Periods for which Gate Closure has occurred prior to such time);**
- (b) in relation to Metered Volume Reallocation Notifications (or, in the case of a Default of the type referred to in paragraph 3.1.1(a) or (b), relevant Metered Volume Reallocation Notifications, as defined in Section P3.4.3):
  - (i) the right to submit such Metered Volume Reallocation Notifications under Section P; and/or
  - (ii) the disapplication (for the purposes of Settlement) of any such Metered Volume Reallocation Notifications as have **already** been submitted **at any time (except to the extent that they relate to Settlement Periods for which Gate Closure has occurred prior to the time when the Panel notifies the Parties of such disapplication); prior to the time when the Panel notifies the Defaulting Party of its Default (other than ones relating to Settlement Periods for which Gate Closure has occurred prior to such time)**
- (c) where the Defaulting Party is an Interconnector User, the rights of such Party to be allocated BM Unit Metered Volumes (of such kinds as the Panel may specify) in respect of its Interconnector BM Units;
- (d) following consultation with the Transmission Company, the right to submit Bid-Offer Pairs under Section Q;
- (e) with the prior approval of the Authority, the right to register further Metering Systems and BM Units;

- (f) the rights to receive reports and data under Section V;
- (g) the right to vote pursuant to Annex B-2.