



Direct Dial: 020-7901 7355

28 May 2002

The National Grid Company, BSC Signatories and
Other Interested Parties

Our Ref: MP No P84

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P84: “Amendment To Process For Past Notification Errors (2)”

The Gas and Electricity Markets Authority (the “Authority”)¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P84, “Amendment To Process For Past Notification Errors (2)”.

The Balancing and Settlement Code Panel (the “Panel”) recommended to the Authority that:

- It reject the original Modification Proposal
- It approve the Alternative Modification Proposal

The Panel also recommended that, if approved, the Alternative Proposed Modification should be implemented with immediate effect.

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

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 Alternative Modification Proposal P84, 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.

Background

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

² ELEXON document reference P84_UMR, Version No. 2, dated 28 May 2002

Modification Proposal P84, "Amendment To Process For Past Notification Errors (2)", was submitted on 22 May 2002 by Innogy plc. The justification for the Modification Proposal was the better facilitation of the Applicable BSC Objectives³ C3 (3) (a), C3 (3) (c) and C3 (3) (d). Ofgem granted the Modification Proposal urgent status for the purposes of Section F.2.9 of the BSC on 22 May 2002, and also established timescales for the evaluation.

Modification Proposal P84 was issued for consultation at 17:04 on 22 May 2002. Consultation responses were received by 09:00 on 24 May. The Modification Group considered the responses and legal text was issued for consultation on 24 May. The Panel considered the draft Urgent Modification Report on 27 May 2002. The Final Urgent Modification Report was sent to the Authority on 28 May 2002.

The Modification Proposal

Ofgem approved Modification Proposal P37⁴ on 10 May 2002. This decision allowed BSC Parties to claim remedy for past errors in Energy Contract Volume Notifications ("ECVNs") and Metered Volume Reallocation Notifications ("MVRNs"). Claimants incur a non-refundable sum of £5000 with each claim.

Innogy plc stated that a single error spanning a number of Volume Notifications and/or a number of contiguous Settlement Periods should be treated as one claim. It stated that this was an intention of Modification Proposal P37, but that the legal text obscured this. It believes that any other view would be discriminatory against users of a "multiple notification over-write" approach. Modification Proposal P84 seeks to modify the BSC to treat a transaction notification error that covers a number of Volume Notifications and/or a number of contiguous Settlement Periods as one past notification error. This compensation process would require only one claim and one £5000 fee for each transaction notification error involving a number of Volume Notifications and/or a number of contiguous Settlement Periods.

An Alternative Modification Proposal was originated at the Modification Group meeting on 24 May 2002. This gives the Panel the duty to treat a number of past notification error claims as a single claim for the purposes of the fee, if it is satisfied that the relevant mistake for the past notification errors resulted from the same cause. Parties would have to notify ELEXON before the time specified by ELEXON if they want the Panel to consider whether a number of their claims should be treated as a single claim. It also confers the right on Parties who have already lodged claims to qualify their claims in the same manner, so they are not placed at a disadvantage.

³ The Applicable BSC Objectives, as contained in Condition C3 (3) of National Grid Company'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.

⁴ Modification Proposal P37: "To provide for the remedy of past errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications"

Respondents' views

In total, ELEXON received eleven responses to the original consultation on Modification Proposal P84. Six respondents (representing 15 Parties) felt that the administration fee in Section P6 of the BSC was clear, while four (representing 16 Parties) felt it was unclear. One Party felt unable to reply on this question. Seven of the eleven respondents (representing 25 Parties) felt the fee could be adjusted if it could be proven that the fee would be disproportionate to the costs involved in considering the claim. Respondents were divided as to how this could be best achieved.

Eight responses were received to the consultation on the legal text for Alternative Modification Proposal P84. Two of these (representing 5 Parties) were strongly against approval of the Proposed Modification. One respondent was concerned that Parties may use this as a means of recouping losses that were due to repeats of the same type of mistake, thereby alleviating the consequences of those Parties having inadequate systems in place. This would be contrary to the concept of a reasonable and prudent operator. The remainder (representing 19 Parties) either expressed support, or their support could be inferred from their comments from this and the previous consultation.

The respondents' views are summarised in the Modification Report for Modification Proposal P84, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel held a conference call on 27 May 2002 and considered the Modification Proposal P84, the draft Urgent Modification Report, the views of the Modification Group and the consultation responses.

The Panel recommended that the Authority should:

- Reject the original Proposed Modification
- Approve the Alternative Modification Proposal

The Panel also recommended that, if approved, the Alternative Proposed Modification should be implemented with immediate effect.

Ofgem's view

Ofgem does not consider that the relevant drafting of Modification Proposal P37 is unclear. The issue was discussed during consideration of Modification Proposal P37 and Ofgem is concerned that the points now raised in Modification Proposal P84 were not resolved at that time. The governance process is intended to provide the time and opportunity for all Parties, especially those who are likely to be affected, to ensure that the Proposal and any Alternative are a robust solution to address the issue. We are therefore disappointed that this Proposal was not put forward until after the implementation date of Modification Proposal P37. In future, we would expect Parties to adopt a more constructive approach so as to facilitate the efficient administration of the BSC.

Ofgem considers, having had regard to its statutory duties, that Alternative Modification Proposal P84 will better facilitate achievement of the Applicable BSC Objectives, in particular Condition C3 (3) (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.

A number of respondents noted that the Modification Proposal P84 would be more cost-reflective than the current arrangements and as a result, less discriminatory. On the other hand some respondents had concerns over the last-minute nature of the change in the light of the long period for consideration of the implications of P37. In addition, one respondent asserted that the fact that a mistake from a single cause involved a number of erroneous Volume Notifications would of itself imply that prudent systems and processes were not in use.

The Authority's decision letter for Modification Proposal P19⁵ stated that any notification error correction scheme should have '...an appropriate and material charge for any party seeking to correct a notification error'⁶. The point at issue is whether a £5000 charge for each and every claim relating to a Volume Notification is appropriate, when an individual error may have resulted in errors spanning a number of Volume Notifications and/or a number of contiguous Settlement Periods.

In such instances, Parties who use frequent overwrite notification systems may have to pay multiple £5000 fees to claim remedy for a single mistake. Ofgem's view is that this may be discriminatory inasmuch as the multiple fees that are due under the current claims procedure for a single related investigation are not likely to reflect the difference in administration costs to a single investigation for a single claim.

In consequence, Ofgem believes that it is prudent to give the Panel the duty to consider if claims covering a number of Volume Notifications should be treated as a single claim. Where the Panel agree that such claims should be treated as a single claim for the purpose of the fee, the claimant will have to pay a single £5000 fee. However, the Panel (or its designated committee) still has the duty to decide, "...whether the Past Notification Error should in all circumstances be rectified in relation to the relevant Settlement Period"⁷. In other words, the Panel will determine on each claim irrespective of whether they are considered to have resulted from the same cause. It will also be for the Panel to judge whether numerous related claims indicate a lower level of prudence in making Volume Notifications than should be expected in the circumstances prevailing.

To conclude, Ofgem agrees with the Panel's recommendation that the original Modification Proposal should be rejected and that the Alternative Modification Proposal should be approved.

⁵ Modification Proposal P19, "To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications"

⁶ Paragraph 25 of the Authority's decision letter for Modification Proposal P19

⁷ BSC Section P6.4.4 (d) (iii)

The Authority's decision

The Authority has therefore decided to direct that the Proposed Alternative Modification P84, as set out in the Modification Report for Modification Proposal P84, 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 in line with the Alternative Modification Proposal, as set out in the Modification Report.

The Modification is to be implemented with immediate effect.

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 'A. N. Simpson', written over a horizontal line.

Nick Simpson
Director of Industry Code Development

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