

Modification Proposal – BSCP40/03

MP No:P262

Title of Modification Proposal:

Code Governance Review: Significant Code Reviews, Self Governance and Code Administration Code of Practice

Submission Date: 2 August 2010**Description of Proposed Modification****Background**

The industry codes contain the contractual arrangements for participating in the Electricity and Gas markets. In November 2007 Ofgem launched the Code Governance Review. The aim of the review was to reduce the complexity and fragmentation, and to increase the transparency and accessibility, of these arrangements. In July 2010 Ofgem directed that the licence modifications be made to implement the Code Governance Review Final Proposals. In order to comply with the modified Transmission Licence the BSC will need to be amended to reflect the new processes and policies coming into effect.

We have split the relevant Transmission Licence changes into 2 Modification Proposals. This Modification Proposal covers:

- Significant Code Review
- Self Governance
- Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes

Significant Code Review (SCR)

The SCR process has been added to the licence in order to facilitate significant industry changes in the most efficient manner. Ofgem has the sole right to raise SCRs, but will consult on scope of the review before commencing the SCR. Once commenced the SCR will utilise a number of industry workshops to develop an SCR conclusion. The period between the SCR commencing and SCR closing is known as the 'SCR Phase'. Further details on the SCR process can be found in the final licence modifications.

Solution

The following provisions would be added to the BSC in order to be consistent with the new SCR provisions in the Transmission Licence.

When SCR Provisions apply

The SCR Provisions shall apply from the start date of the SCR Phase, as directed by the Authority. They shall end either:

- When the licensee raises a Modification Proposal as directed by the Authority as a result of the SCR conclusions;
- If the Authority issues a statement that no directions will be made to the BSC; or
- 28 days after the Authority has published its SCR conclusions.

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Modification Proposals raised prior to the SCR Phase

Modification Proposals raised before the commencement of the SCR phase shall progress through the standard BSC Modification Procedures as normal, and the SCR provisions shall not apply.

For the avoidance of doubt, if a Modification Proposal raised before the commencement of a SCR is issued to the Authority for determination, but is subsequently sent back into the Modification Procedures during an SCR Phase (see Send Back process below), that Modification Proposal shall not be subject to the SCR provisions.

Exempt Modification Proposals

- The Modification Proposal form (contained in BSCP40) shall be amended to include a section for the Proposer to justify why the Modification Proposal should be exempt from the SCR provisions.
- At any point, from being raised up until the Panel's Final Recommendation, the Authority may declare a Modification Proposal exempt from the SCR provisions. If this happens:
 - The Authority will inform the BSC Panel that the Modification Proposal is exempt either at the Panel meeting, or in writing, detailing the rationale; and
 - The Modification Proposal shall enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable timetable as agreed by the Panel and the Authority.

SCR Suitability Assessment

- At any point, from being raised up until the Panel's Final Recommendation, the Authority or Panel (subject to majority Panel decision) may undertake a "SCR Suitability Assessment" on a Modification Proposal.
- Once a SCR Suitability Assessment is undertaken on a Modification Proposal, it may not proceed through the Modification Procedures without Authority consent.
- Modification Proposals that have been declared exempt by the Authority may still undergo a SCR Suitability Assessment. If so, they are no longer considered exempt unless subsequently declared so by the Authority at the end of the SCR Suitability Assessment.
- As part of an SCR Suitability Assessment the BSC Panel shall form a recommendation to the Authority as to whether or not the Modification Proposal is suitable for inclusion in an ongoing SCR. The Panel may issue an industry consultation to assist their recommendation.
- To complete the SCR Suitability Assessment, the Panel discussions and any relevant representations are issued to the Authority for determination. The Modification Proposal shall not progress in the Modification Procedures until the Authority have made a determination.
- If the Authority has not made a determination with regards to a SCR Suitability Assessment within

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15 Working Days of receipt of the SCR Suitability Assessment, then the Modification Proposal shall enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable timetable as agreed by the Panel and Authority.

- If a Modification Proposal is unsuitable for the SCR it shall be declared exempt by the Authority and shall enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable Timetable as agreed by the Panel and Authority.
- If a Modification Proposal is suitable for the SCR it shall be declared “Subsumed” by the Authority.

Subsumed Modification Proposals

- At any point, from being raised up until the Panel’s Final Recommendation, the Authority may declare a Modification Proposal “Subsumed”. BSCCo shall inform Participants within 1 Working Day of the decision to subsume a Modification Proposal.
- If a Modification Proposal is declared Subsumed then:
 - It shall not proceed through the Modification Procedures without consent of the Authority;
 - When the SCR Phase, for the SCR that subsumed the Modification Proposal, has ended it shall enter the normal BSC Modification Procedures and shall progress to a suitable Timetable as agreed by the Panel and Authority.
- For the avoidance of doubt the Proposer has the right to withdraw their Subsumed Modification Proposal at any time during the SCR Phase, for the SCR that subsumed the Modification Proposal.
- Following the completion of the SCR Phase, if the Proposer of a Subsumed Modification Proposal is unable to progress their Modification Proposal as Proposer (for example the organisation that raised the Modification Proposal is no longer in existence), then the Panel is able to initiate the withdrawal process.

Modification Groups and Alternative Modifications

- Only the Proposer of a Modification Proposal may request that the Panel undertake a SCR Suitability Assessment on the Modification Proposal.
- An Alternative Modification shall not cause a Proposed Modification to undergo a SCR Assessment and/or be Subsumed:
 - If a Proposed Modification requires an SCR Suitability Assessment then any Alternative Modifications shall also be included in that SCR Suitability Assessment
 - If an Alternative Modification is linked to an SCR, but the Proposed Modification is not linked to the SCR, and therefore does not require an SCR Suitability Assessment, then neither the Proposed nor the Alternative Modification shall undergo an SCR Suitability

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Assessment.

Modification Proposals raised by the Licensee as a result of a SCR

- If the Authority directs the Licensee to raise a Modification Proposal as a result of the SCR conclusions then:
 - The Panel cannot refuse to accept such a Modification Proposal on the basis that it has substantially the same effect as a Pending Modification Proposal or a Rejected Modification Proposal;
 - The Licensee cannot withdraw the Modification from the process without prior consent from the Authority;
 - If the Licensee withdraws a Modification Proposal (with the consent of the Authority) that Modification Proposal cannot be adopted by another Party;
 - The Modification Proposal shall not be amalgamated with any other Modification Proposal without prior consent of the Authority; and
 - The voting rights of the BSC Panel members and Modification Groups are not fettered in any way when making recommendations or decisions on the Modification Proposal.

Self Governance**Solution**

The following provisions would be added to the BSC.

Raising a Modification

- The Modification Proposal form (contained in BSCP40) shall be amended to include a Self Governance section which Proposers must complete. Here the Proposer shall indicate, giving justifications against the Self Governance criteria set out in the Transmission Licence drafting, if they believe the Modification is suitable for the Self Governance route.

Decision on Self Governance

- At any point, from being raised up until the Panel's Final Recommendation, the Panel may decide that a Modification Proposal should proceed under the self governance route. When this happens a 'Self Governance Statement' shall be issued to the Authority within 1 Working Day of the Panel decision.
- The Self Governance Statement shall include the Modification Proposal form, the Panel's rational and discussions as to why the change is self governance.

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- If the Panel submit a Self Governance Statement they must consult on the suitability of the proposal for self governance. The responses to the consultation must be issued to the Authority at least 5 Working Days before the Panel make a final decision on the Modification Proposal.
- If the Authority determine that a Modification Proposal may proceed down the self governance route, no self governance statement or consultation is required.

It should be noted if a decision to proceed as self governance is taken after the Report Phase consultation, by either the Panel or the Authority, an additional consultation shall be required to elicit industry opinions on the suitability of self governance and/or revised implementation dates.

Withdrawing the Self Governance Statement

- At any time after issuing the Self Governance Statement up until the Panel's final recommendation, the Panel may withdraw the Self Governance Statement. The consequence of withdrawing the Self Governance Statement is that the Panel wave the right to make a final decision and instead make a final recommendation to the Authority.
- The rational for withdrawing the self governance statement shall be captured in the Final Modification Report.

The Authority vetoes the Self Governance Statement

- At any time after issuing the Self Governance Statement up until the Panel's final recommendation the Authority can veto the ability for self governance.
- To do this the Authority must write to the Panel with rationale as to why they believe the self governance criteria has not been met.

Appeals process

- On the Working Day that the Panel make a decision on the approval of a self governance Modification Proposal BSCCo shall issue a notification to Participants. Participants have 15 Working Days in which to raise an appeal.
- To raise an appeal a Participant must write to the Authority and the Modification Secretary outlining their appeal. Within 1 Working Day BSCCo shall notify Participants that an appeal has been raised and that the implementation of the Modification Proposal is now on hold.
- The implementation of a Modification Proposal shall not proceed until a direction is received from the Authority.
- The Authority has 5 options when progressing an appeal. in all cases BSCCo shall notify participants within 1 Working Day:
 - The Authority does not uphold the appeal, in which case the Modification Proposal

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progresses as directed by the Panel.

If the appeal is upheld:

- The Authority agrees with the Panel decision and directs the Modification Proposal progresses as directed by the Panel.
 - The Authority quashes the Panel's decision (and directs the Modification Proposal is approved or rejected depending on the Panel's previous decision).
 - The Authority direct the Panel to revisit their decision, and to remake their decision under the self governance route.
 - The Authority direct the Panel to revisit their decision and to remake a recommendation under the normal Modification Proposal route (i.e. not self governance route).
- If the Authority uphold an appeal then the final decision of the Panel becomes a final recommendation and shall be issued to the Authority in a Final Modification Report, except where the Authority direct the Panel to revisit their decision, and to remake their decision under the self governance route.

Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes

Solution

The following requirements would be introduced into the BSC:

1. BSCCo shall act consistently with the relevant principles of the Code Administration Code of Practice;
2. The BSC Modification Procedures shall be consistent with the relevant principles of the Code Administration Code of Practice;
3. BSCCo, in conjunction with other code administrators, shall maintain, publish, review and amend from time to time the Code Administration Code of Practice. Any amendments to the Code of Practice shall first be approved by the Authority. As a working practice, BSCCo shall discuss any potential changes to the Code Administration Code of Practice with the BSC Panel;
4. BSCCo shall assist Parties and consumer representatives with the following:
 - i. drafting modification proposals;
 - ii. understanding the operation of the BSC;
 - iii. understanding the Modifications Procedures, including how Parties can get involved and be represented during the processes (including but not limited to panel and/or workgroup meetings); and
 - iv. accessing information relating to Modification Proposals;

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| <p>5. BSCCo shall check that the BSC is consistent with other Codes and Core Industry Documents and shall notify the Licensee and the Panel where it identifies such inconsistencies</p> <p>6. Introduce the following definitions in Section X-1:</p> <p>i. Code Administration Code of Practice:</p> <p>the Code Administration Code of Practice approved by the Authority and:</p> <p>a) developed and maintained by the code administrators in existence from time to time; and</p> <p>b) amended subject to the Authority's approval from time to time; and</p> <p>c) re-published from time to time.</p> <p>ii. 'Modification Group' becomes 'Workgroup': this term has been changed in the Licence. It would be updated in Annex X-1 and throughout the BSC.</p> | |
| <p>Description of Issue or Defect that Modification Proposal Seeks to Address (<i>mandatory by originator</i>)</p> <p>The Code Governance Review has introduced additional provisions into the Transmission Licence Condition C3 in the following areas:</p> <ul style="list-style-type: none"> • Significant Code Review • Self Governance • Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes <p>The BSC must be consistent with the additional provisions detailed in the Transmission Licence, by 31st December 2010 at the latest. Currently, the BSC does not contain any process or provisions to support the additional provisions and will therefore be non-compliant with the Transmission License (as of 31st December 2010) unless it is updated to reflect the amended licence drafting.</p> <p>This Modification Proposal covers off the requirements for ensuring the BSC is consistent with the Transmission Licence. However, there are other questions raised by the Transmission Licence changes which do not need to be immediately addressed. For example, the process for appointing the BSC Chairman. This is out of scope for this Modification Proposal.</p> | |
| <p>Impact on Code (<i>optional by originator</i>)</p> <p>Section B 'The Panel'</p> <p>Section C 'Powers and Functions of BSCCo'</p> <p>Section F 'Modifications Procedures'</p> <p>Section H 'General'</p> <p>Section X Annex X-1 'General Glossary'</p> | |
| <p>Impact on Core Industry Documents or System Operator-Transmission Owner Code:</p> <p>None</p> | |

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| Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties: | |
| None | |
| Impact on other Configurable Items: | |
| BSCP40 ‘Change Management’ | |
| Justification for Proposed Modification with Reference to Applicable BSC Objectives (<i>mandatory by originator</i>) | |
| <p>Ofgem Code Governance Review will introduce changes into the Transmission Licence. In order to efficiently discharge the Transmission Licence the licensee must ensure that the BSC is consistent with the Licence. Hence this Modification Proposal would better facilitate Applicable BSC Objective (a) ‘The efficient discharge by the licensee [i.e. the Transmission Company] of the obligations imposed upon it by this licence [i.e. the Transmission Licence];’</p> | |
| Urgency Recommended: No | |
| Justification for Urgency Recommendation: | |
| N/A | |
| Details of Proposer: | |
| <i>Name.....Alex Thomason</i> <i>Organisation.....National Grid Electricity Transmission plc</i> <i>Telephone Number.....01926 656379</i> <i>Email Address.....alex.thomason@uk.ngrid.com</i> | |
| Details of Proposer’s Representative: | |
| <i>Name.....Alex Thomason</i> <i>Organisation.....National Grid Electricity Transmission plc</i> <i>Telephone Number.....01926 656379</i> <i>Email Address.....alex.thomason@uk.ngrid.com</i> | |

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| Modification Proposal – BSCP40/03 | MP No:P262 |
| Details of Representative's Alternate: | |
| <i>Name.....Emma Clark</i> | |
| <i>Organisation.....National Grid Electricity Transmission plc</i> | |
| <i>Telephone Number.....01926 655223</i> | |
| <i>Email Address.....emma.clark@uk.ngrid.com</i> | |
| Attachments: Yes | |
| Attachment A – draft legal text (30 pages) | |