

Modification proposal:	<b>Balancing and Settlement Code (BSC) P221: "Amendments to the BSC to reflect the revised Fuel Security Code (FSC)" (P221)</b>		
Decision:	The Authority <sup>1</sup> directs that this proposal be made <sup>2</sup>		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	22 February 2008	Implementation Date:	1 Working Day after Authority decision

## Background to the modification proposal

Modification P221 was raised by the BSC Panel on 17<sup>th</sup> December 2007. It was primarily raised to align the BSC with amendments to the Fuel Security Code (FSC)<sup>3</sup> made by the Secretary of State on 22<sup>nd</sup> October 2007.

The FSC sets out the framework within which the Secretary of State may exercise powers contained in sections 34 and 35 of the Electricity Act 1989 to call and manage a Fuel Security Period. Amongst other things, it provides the Secretary of State with the power to direct a generator to operate the generating station in a certain way in order to achieve specified objectives. The FSC also provides market participants with information on how those affected by the exercise of such powers can make a claim for remuneration.

Section G1.5 of the Balancing and Settlement Code (BSC) requires the BSC Panel to propose any modifications to the BSC which are necessary to reflect a revised FSC, after consultation with the Secretary of State and the Authority. Elexon consulted with the Secretary of State and the Authority in November 2007.

The most significant changes to the FSC that impact on the BSC relate to the process by which costs that are incurred by generators during a Fuel Security Period can be recovered by generators. These are known as "Exceptional Costs".

## The modification proposal

P221 seeks to align the BSC with the amended FSC by making the following revisions to Section G of the Code:

- Reclassifying those definitions that shall have the meaning ascribed to the terms in the FSC;
- Creating a process for applications for recovery of Exceptional Costs and setting out the timeframe for such applications;
- Creating Party obligations in assisting the Panel with Exceptional Cost recovery applications; and
- Describing the Panel's interaction with the Authority in processing Exceptional Cost recovery applications.

P221 also updates BSC Section:

<sup>1</sup> The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> The FSC can be found here: <http://www.berr.gov.uk/energy/reliability/downstream/page30313.html>

- G1.5 to note that revisions to the BSC may arise from future amendments of the arrangements relating to Sections 35, 36 and 96 of the Electricity Act and sections 1 to 4 of the Energy Act 1976; and
- X to remove the term "Generator Compensation Instruction" as the term no longer has meaning under the FSC.

Under the proposed modification the BSC Panel would be required to validate and determine all claims for Exceptional Costs. It would also be required to discuss any determinations with Ofgem, if requested to do so and take account of any guidance given by Ofgem when making such determinations.

### **BSC Panel<sup>4</sup> recommendation**

The Draft Modification Report was considered by the BSC Panel at its meeting on 21<sup>st</sup> January 2008. The Panel unanimously agreed that proposed modification P221 better facilitated applicable BSC Objectives a), b) and d). Please see section 5 of the Final Modification Report (FMR) for full details of their views.

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

The Authority has considered the issues raised by the modification proposal and the Final Modification Report dated 21<sup>st</sup> January 2008. The Authority has considered and taken into account the responses to Elexon's<sup>5</sup> consultation which are attached to the FMR<sup>6</sup>. The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the BSC<sup>7</sup>; and
2. directing that the modification be made and is consistent with the Authority's principal objective and statutory duties<sup>8</sup>.

### **Reasons for the Authority's decision**

The FSC provides a framework for the effective management of a Fuel Security Period<sup>9</sup>. In the event that the Secretary of State directs a Fuel Security Period, the FSC sets out how such a period will be managed by outlining the role of the key industry players, the powers of the Secretary of State and the mechanism by which exceptional costs can be recovered by affected parties. The BSC would play a key role in supporting the FSC, in particular in relation to Exceptional Costs.

Given that parts of the BSC will be enacted with the declaration of a Fuel Security Period, it is important that the two codes are aligned. Aligning the codes will prevent any unnecessary confusion and inefficiencies should a Fuel Security Period arise. Ofgem therefore welcomes the Panel's efforts to ensure that the BSC is aligned with the amended FSC, in accordance with the requirements of the BSC. Ofgem considers that

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<sup>4</sup> The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

<sup>5</sup> The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

<sup>6</sup> BSC modification proposals, modification reports and representations can be viewed on the Elexon website at [www.elexon.com](http://www.elexon.com)

<sup>7</sup> As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: [http://epr.ofgem.gov.uk/document\\_fetch.php?documentid=4151](http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151)

<sup>8</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

<sup>9</sup> A Fuel Security Period begins when the Secretary of State gives a direction under section 34(4)(b) of the Electricity Act 1989 that a generation station is to be operated in a certain way or with a view of achieving specified objectives.

approving this modification is consistent with our principal objective and statutory duties, in particular our duty to promote security of supply.

We are disappointed that the FMR, in this instance, does not provide information on the reasons why the Panel considered that the BSC's relevant objectives will be better facilitated. Whilst we recognise the need to align the BSC with the FSC, it is nevertheless important that the proposal is properly justified against the objectives that are cited in the FMR. However, the Authority agrees with the view of the Panel that P221 will better facilitate the achievement of the BSC's relevant objectives. In particular, the Authority considers that P221 will better facilitate the achievement of applicable BSC objectives a) and d).

*Objective a) - "the efficient discharge of the licensee of the obligation imposed upon it by this licence"*

We consider that P221 better facilitates the achievement of the above objective as it will align the BSC with the provisions of the FSC. The Transmission Company, under the standard conditions of its licence, is required to comply both with the FSC (SLC8) and the BSC (SLC3). Alignment between the two codes prevents conflict and inefficiency in the discharge of the licensee's obligations.

*Objective d) - "Promoting efficiency in the implementation and administration of the balancing and settlement arrangements".*

We consider that P221 better facilitates the achievement of the above objective as it will align the BSC with the provisions of the FSC and as such will provide clarity to BSC parties who are affected by a Fuel Security Period on the role and requirements of the BSC, in particular in relation to the recovery of Exceptional Costs.

#### *Further Issues*

All respondents unanimously supported the implementation of P221. However, a respondent raised two indirectly related concerns:

- the FSC only applies to generators operating under a generation licence and therefore licence exemptible generators are excluded from the BSC provisions despite the fact that they may be affected by actions taken under the FSC.

BM Units, which might be affected by possible directions given by the Secretary of State to the BSC Panel to limit bid-offer prices to historical values, may not have been given fuel security directions, and hence under the FSC and the BSC would not be entitled to claim compensation for resulting exceptional costs.

Ofgem notes Elexon's view that these are matters that relate to the functioning of the FSC and that they have been referred to BERR for further consideration.

Finally, two respondents took the opportunity to suggest that a new issue should be raised to allow industry participants to discuss the process surrounding recovery of Exceptional Costs (for example the Panel role and process, communication processes, interim claims, likely mechanism for recovering costs of payment from suppliers). One respondent suggested that guidance could be provided by both Elexon and Ofgem. In order to take this forward we note that Elexon has raised Issue Group 33 to discuss these issues, which Ofgem will participate in. Ofgem welcomes the setting up of the Group and we will consider its recommendations in relation to our role in determining a mechanism for the recovery of Exceptional Costs from suppliers.

## **Decision notice**

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority, hereby directs that modification proposal BSC P221: "Amendments to the BSC to reflect the revised Fuel Security Code (FSC)" be made, with the implementation date of 1 Working Day after the Authority's decision.

A handwritten signature in black ink, appearing to read 'Andrew Wright', written over a light blue rectangular background.

**Andrew Wright**

Managing Director, Markets

**Signed on behalf of the Authority and authorised for that purpose.**