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National Grid Electricity Transmission plc,
BSC Signatories and Other Interested Parties

14 November 2005

Our Ref: MP No P190

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and notice in relation to Modification Proposal P190 “Removal of the obligation on the CDCA to provide a witnessing and sealing service in respect of all Metering Equipment associated with CVA Metering Systems”

The Gas and Electricity Markets Authority (the “Authority”)¹ has considered the issues raised in the Modification Report² in respect of Modification Proposal P190, “Removal of the obligation on the CDCA to provide a witnessing and sealing service in respect of all Metering Equipment associated with CVA Metering Systems”.

The BSC Panel (the “Panel”) recommended to the Authority that the Proposed Modification should be approved.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives³ and the Authority’s wider statutory duties, the Authority has decided to direct a modification to the BSC in line with the Proposed Modification.

This letter explains the background and sets out the Authority’s reasons for its decision.

This letter constitutes 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 P190MR, Version No. 1.0, dated 14 October 2005.

³ The Applicable BSC Objectives, as contained in Standard 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 GB 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; and
- d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

Background

The BSC requires that the Central Data Collection Agent (“CDCA”) shall provide a witnessing and sealing service in respect of all Metering Equipment associated with CVA Metering Systems. Meter Operator Agents (“MOAs”) have no authority to provide such a service themselves.

Sealing pliers, and the dies associated with them, are used to seal Metering Equipment to prevent or at least detect unauthorised access to that equipment. The dies associated with the sealing pliers leave identification marks on the copper ferrule that denote who conducted the work.

Witnessing relates to the physical presence of a CDCA employee(s) on site whilst the MOA conducts its work on the Metering Equipment.

It is contended that the current arrangements result in inefficiencies for both the MOA and CDCA by requiring them to co-ordinate their site visits. In particular, it is suggested that: the MOAs ability to commence work may be impeded if the CDCA is late in attendance; both CDCA and MOA may incur significant travelling and expense in order for the CDCA to carry out only a few minutes work; and a new Metering System cannot be used in Settlement until the CDCA has sealed it. More generally, it is argued that MOAs are technically skilled to conduct sealing themselves and that requiring them to co-ordinate with the CDCA for the latter to carry out this function is a needless waste of time and resources.

In order to rectify this situation, RWE npower submitted Modification Proposal P190 on 2 June 2005.

The Modification Proposal

Modification Proposal P190 seeks to modify the BSC so as to remove the requirement for the CDCA to provide a witnessing and sealing service. CVA MOAs would instead be allowed to carry out sealing work themselves. There would be no requirement on CVA MOAs to provide a witnessing service.

The justification for the Modification Proposal put forward by the Proposer was that it would better facilitate achievement of the Applicable BSC Objective C3 (3) (d). It was argued that MOAs would see a reduction in their operational costs through the adoption of the Proposed Modification, and that this would also result in a reduction in Party costs.

The Panel considered the Initial Written Assessment at its meeting of 7 July 2005 and agreed to submit Modification Proposal P190 to the Assessment Procedure. The Modification Group (the “Group”) met twice to discuss the implications of the proposed change and to make its recommendations to the Panel. The Group issued an industry consultation document; commissioned impact assessments from BSC Agents, Parties, the Transmission Company and the BSCCo; and agreed the scope of legal text to give effect to the change.

The Group concurred with the rationale for approval put forward by the Proposer, but framed this perceived benefit against objective (c) rather than (d). It put forward a case that P190 would better facilitate the achievement of Applicable BSC Objectives (b), (c) and (d).

It is suggested that Applicable BSC Objective (b) would be served by enabling the Transmission Company to make more effective use of its engineers, arguing that current arrangements may mean that skilled technical resources that could otherwise be deployed maintaining the Transmission System are being unnecessarily tied up in facilitating CDCA visits to otherwise unmanned sites.

Furthermore, the Group concluded that the proposal would facilitate the achievement of Applicable BSC Objective (c) in that MOAs would save time and money by being empowered to carry out sealing work. The case for this objective was that put forward by the Proposer against (d) It was also argued that these cost savings would be passed on to Parties, to the benefit of competition. Additionally, it is argued that a decreased risk of Metering Systems being left unsealed would aid the facilitation of (c).

The Group considered that Applicable BSC Objective (d) would be served by reducing the scope of the CDCA service, and therefore central costs for maintaining the BSC arrangements.

Respondents' views

ELEXON published a draft Modification Report on 15 September 2005, which invited respondents' views by 29 September 2005. Seven responses were received. Six responses (representing 27 Parties and 2 non-Parties) expressed support for the Proposed Modification, and one response (representing 5 Parties and 0 non-Parties) opposed the Proposed Modification.

One respondent who supported the Proposed Modification suggested that a capability for the CDCA to provide a sealing service should nonetheless be retained, as in some circumstances the geographical location of its workforce could mean they have resources better located to respond than the relevant MOA.

One respondent who opposed the Proposed Modification reiterated their belief that the main defect identified by P190 appears to be either a failure in CDCA's delivery of its service or an inadequately specified service description.

Several respondents requested that references to 'witnessing' should be removed from the draft legal text, stating that this is no longer relevant if the MOA is carrying out its own sealing activity. The reference to witnessing was subsequently deleted from the legal text in response to these comments.

Several respondents commented in regard to the proposals for how the CVA sealing pliers register would be maintained. One preferred for the Central Registration Agent ("CRA") to maintain the proposed sealing pliers register rather than ELEXON, as CRA already holds details of the people who are authorised to make requests to carry out planned work on Metering Equipment. Two expressed concerns that an ELEXON provided service would create an unnecessary additional sealing pliers register given that a similar register for the SVA market is separately maintained under the Meter Operation Code of Practice Agreement ("MOCO PA").

One respondent considered that removal of the current independent sealing and witnessing service would only be justified if assurance were obtained by other means, such as by an increase in the level of independent inspection of CVA Boundary Points and metering installations.

The respondents' views are summarised in the Modification Report for Modification Proposal P190, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 13 October 2005 and considered the Modification Proposal, 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 on 28 June 2006 if an Authority decision is received on or before 1 March 2006, or 28 November 2006 if an Authority decision is received after 1 March 2006 but on or before 12 July 2006.

Ofgem's view

Having considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that the Proposed Modification will better facilitate achievement of Applicable BSC Objectives (b) and (d). Ofgem notes that a case has been made for (c), but Ofgem is not persuaded that the Proposed Modification better facilitates the achievement of this objective.

Applicable BSC Objective (b) relates to *'the efficient, economic and co-ordinated operation of the GB transmission system'*. Ofgem notes the Transmission Company's advice that the majority of the sites that it holds responsibility for as CVA MOA are unmanned, resulting in logistical costs where it is necessary for it to co-ordinate site access for a third party who cannot access the site independently (the CDCA). In addition, the Transmission Company has indicated that the engineers used to carry out the majority of its CVA metering work are also required to carry out other maintenance work on the Transmission System and that the current arrangements may mean that these skilled resources are tied up in facilitating site access for the CDCA, or waiting for it to complete work, when they could otherwise be deployed carrying out other duties. Ofgem considers that a reasonable case has been made to suggest that the Transmission Company could get better value for money from its engineers if the current arrangements were rationalised in the manner put forward by P190. Ofgem therefore concurs with the view put forward that removing the need for CDCA to conduct witnessing and sealing would result in the more efficient and economic operation of the transmission system.

Applicable BSC Objective (c) relates to *'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'*. Ofgem notes that two arguments have been put forward in support of this objective.

The first of these is that competition would be better facilitated by decreasing the current risk that a Metering System may be left unsealed from the time that a CVA MOA finishes its work until the CDCA is able to attend the site to reseal the Metering Equipment. Ofgem does not consider that it is clear why this risk has any relevance to competition, and does not consider that this argument demonstrates either the facilitation, or impedance of, objective (c).

The second is that allowing MOAs to provide their own sealing service would result in a reduction in their costs, which could be passed on to Parties. There is some evidence to suggest that many CVA MOAs would see cost savings were P190 approved, noting that the majority of CVA MOAs responded to either the Assessment Procedure and/or the Report Phase consultation, and that a sizeable majority of these respondents were supportive of the Proposed Modification. It is not clear that all CVA MOAs will see cost savings however, and a minority opinion has been voiced by one CVA MOA that P190 would actually result in the introduction of new processes, and therefore costs, on those CVA MOAs who do not have pre-existing obligations and experience in relation to sealing Metering Equipment in the SVA market.

It is equally unclear to what extent any cost savings or increases will be passed through from MOAs to Parties. Ofgem notes that many CVA MOAs form part of vertically integrated energy groups but may also act on behalf of other Parties in the marketplace. The bilateral contractual relationship between each Party and its MOA is invisible to Ofgem, and no information has been brought forward in the assessment of P190 that would clearly infer the pattern in which changes to MOAs costs would flow through to Parties' costs. Ofgem does not consider that it has been provided with sufficient evidence to accurately predict a significant change in the competitive environment for the generation and supply of electricity, either positive or negative, as a result of P190. Ofgem is therefore minded to view the case against objective (c) as neutral.

Applicable BSC Objective (d) relates to *'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'*. Ofgem concurs with the Panel that the witnessing and sealing service currently provided by the CDCA does not provide benefits when compared with allowing the CVA MOA to conduct this work itself, as proposed by P190.

It is noted that one consultation respondent considered that an alternative to approving the Proposed Modification would be to seek to improve the CDCA service, considering that it appears to be either inadequately specified or poorly delivered. Ofgem agrees that it is imperative that Parties have confidence that BSC Agents adequately discharge their contractual obligations, but does not agree that amendments to the CDCA service could provide the level of benefits that P190 does.

The concerns of this respondent appear primarily focussed on the potential for fraud or malpractice were an MOA allowed to carry out maintenance work or seal meters without an independent witness from the CDCA.

Ofgem considers that there are a number of factors that mitigate against this concern. The CDCA will continue to carry out daily meter reading and quarterly Meter Advance Reconciliations in relation to CVA Metering Systems. In addition, over the course of a year approximately five percent of Metering Systems registered in CVA will continue to be randomly inspected by the Technical Assurance Agent ("TAA"). The TAA may also target Metering Systems where non-compliance is suspected as directed by ELEXON. Ofgem notes that theft of

electricity is an offence under schedule 7 of the Electricity Act 1989. Ofgem further notes that SVA MOAs have been empowered to seal their own meters for many years, and that no evidence has been brought forward to suggest that this power has been abused on that side of the market. Both the Group and the Panel suggested that minimising the risk of fraudulently manipulating meter readings is not necessarily achieved even with CDCA witnessing, as there are items of Metering Equipment in each Metering System that are not sealed. Overall, effective and appropriate safeguards appear to be present to assure Settlement integrity in the absence of the CDCA witnessing service.

P190 will remove the need for CVA MOAs to co-ordinate witnessing and sealing activity with the CDCA. This should decrease the logistical burden on their activities; reduce the likelihood of Metering Equipment being left unsealed; and remove the potential for delays to work should the CDCA be late or unavailable.

P190 has highlighted that there is comparatively little value in the witnessing and sealing service currently provided by the CDCA. It is noted that removing this requirement from the CDCA contract will lead to estimated contract cost reductions of approximately £45,000 per annum. These savings are forecast to outweigh the estimated central costs of implementation⁴ within one year. The reduction of central costs, without any reduction in the assurance of Settlement integrity, suggests that efficiency in the implementation and administration of the balancing and settlement arrangements will indeed be promoted.

Ofgem notes the view of one Report Phase respondent who wished for the CDCA to retain the capacity to carry out sealing if requested, as there may be occasions when they have an employee closer to an affected site than the relevant MOA. ELEXON has advised that although P190 introduces an obligation on the Party to procure an MOA to conduct a sealing service, the legal text does not preclude the MOA from subcontracting part, or all, of this function provided the requirements of the relevant Code Subsidiary Documents are adhered to. In practice, an MOA may therefore subcontract to the CDCA to carry out sealing for some or all of its sites if so desired.

Ofgem further notes that there were a variety of respondent views as to whom should hold the central register of which MOAs hold which sealing pliers: ELEXON; the CRA; or MOCO PA. The choice adopted, ELEXON, held the greatest level of respondent support. Ofgem observes that the prescription of who should hold the register is not set out in the legal text but will be captured in the changes to Code Subsidiary Documents. It will therefore be possible for industry to reconsider ownership of the register in future if it so desires.

Ofgem has a statutory duty under section 3C of the Electricity Act 1989 to consult with, and take into account any advice given by, the Health and Safety Executive (“HSE”) in relation to all electrical safety issues which may be relevant to the carrying out of its functions. An electrical safety issue is defined as *‘anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of – (a) members of the public; or (b) persons employed in connection with any of those activities.’* In view of the intention of P190 to increase the scope of activities carried out by MOAs, Ofgem considered it appropriate to seek formal feedback from HSE prior to making its determination on P190.

⁴ These vary between £29,702 and £40,702 depending on whether P190 is implemented on a standalone or incremental basis.

HSE has advised Ofgem that it is content with the recommendation of the Group and Panel that P190 be approved. It considers that there would be no increase in risk were CVA MOAs allowed to carry out sealing work, but there would instead be a slight decrease in risk associated with a more immediate and efficient process for resealing. HSE agrees that this would make Metering Systems more secure and less likely to be subject to tampering than under the current process, although it noted that this existing risk is low due to the location of CVA Metering Systems.

HSE welcomed the proposal that each MOA should maintain a register tracking which sealing pliers are issued to each of its operatives as an appropriate measure to mitigate against potential abuse of the system and eliminate their use by unauthorised personnel, whilst enabling ELEXON to establish an audit trail of work. At the same time, HSE stressed that competence as well as hardware considerations should be considered and addressed in the operation of the new procedure and that it expects sealing work to continue to be undertaken by competent and trained personnel. It highlights that the requirements of the Electricity at Work Regulations 1989 including regulation 16⁵, the requirement for persons to possess the technical knowledge or experience to prevent danger or injury, remain applicable.

Ofgem was mindful of this advice in reaching its decision on P190, and considers it consistent with its recommendation to approve.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson

Director, Modifications

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

⁵ Available to download from the HMSO website at the following location:
http://www.opsi.gov.uk/si/si1989/Uksi_19890635_en_1.htm