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The National Grid Company, BSC Signatories and
Other Interested Parties

14 April 2004

Our Ref: MP No P165

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) – Decision and notice in relation to Modification Proposal P165 “Housekeeping Modification – Removal of Approved Modification P125”

The Gas and Electricity Markets Authority (the “Authority”)¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P165, “Housekeeping Modification – Removal of Approved Modification P125”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P165 should be made, and that if made P165 should have an Implementation Date of 10 Working Days after an Authority decision.

Having carefully considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives³ and the Authority’s wider statutory duties,⁴ the Authority has decided to direct a Modification to the BSC in line with Proposed Modification P165.

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

² ELEXON document reference P165MR, Version No. Final/1.0, dated 08/04/04.

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 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
- e) the undertaking of work by BSCCo (as defined in the BSC) which is:
 - (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and
 - (ii) relevant to the proposed GB wide balancing and settlement code;and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

⁴ Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

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.

Background

P82 'Introduction of Zonal Transmission Losses on an Average Basis' and P125 'Apportionment of the Scottish Interconnector Flows to the Northern and North Western GSP Groups for the Purposes of Calculating Losses' were approved in order to facilitate the introduction of Average Zonal Transmission Losses (AZTL) in England and Wales. The aim of these provisions was to send out long term economic signals to Generators and Suppliers. It was intended the modifications would be implemented together on 1 April 2004.

On 21 January 2004 the Gas and Electricity Markets Authority submitted to judgment in judicial review proceedings, on the basis that its decision of 17 January 2003 approving Modification Proposal P82 "Introduction of Zonal Transmission Losses on an Average Basis" was procedurally flawed, and could not stand. A quashing order in respect of the 17 January 2003 decision was made, and the matter was remitted to the Authority for reconsideration.

On 30 January 2004 the Authority published a letter explaining that it had decided to formally reject Modification Proposal P82 on the grounds that the timetable proposed for its implementation had expired, and without expressing an opinion as to whether the Proposal would or would not better facilitate achieving the applicable BSC objectives by comparison with the current provisions of the BSC.

As a consequence of that decision the Authority directed NGC to remove the modifications made to the BSC pursuant to the 17 January 2003 decision on Modification Proposal P82.

The rejection of P82 means that Approved Modification P125 seeks to supplement parts of the Code which are no longer part of its legal baseline. Allowing the legal text of P125 to remain part of the BSC has the potential to give rise to a number of discernible errors and minor inconsistencies, as the text would not be operationally meaningful in the absence of P82. In order to rectify this situation P165 was raised on 23 February 2004 by the BSC Panel, at the recommendation of ELEXON.

The Modification Proposal

Modification Proposal P165 seeks to modify the BSC so as to remove the legal text introduced by P125 from the BSC, in accordance with Section F 2.1.1(d)(iv).⁵ ELEXON suggested that P165 seeks to ensure that text which was only ever intended to supplement a baseline of the Code which included Modification Proposal P82 is removed from the Code prior to its Implementation Date, and sought to justify the Modification Proposal on the grounds that it would better facilitate achievement of Applicable BSC Objective C3 (3) (d).

⁵ Which states that the Panel can raise a Housekeeping Modification to "rectify manifest errors in or to correct minor inconsistencies (or make other minor consequential changes) to the Code".

The Panel considered the Initial Written Assessment at its meeting of 11 March 2004 and agreed to submit Modification Proposal P165 to the Report Phase.

ELEXON published a draft Modification Report consultation on 18 March 2004 which invited respondents' views by 5.00pm on 26th March 2004.

Respondents' views

Five responses were received. Four responses (representing 21 Parties and 0 non-Parties) expressed support for Modification Proposal P165, zero responses opposed the Modification Proposal and the remaining respondent (representing 1 Parties) provided a "no comment" response.

The responses agreed that it was appropriate that P165 should be approved in order that the legal text of Approved Modification P125 might be removed. Two respondents commented that by doing so potential discernible errors and minor inconsistencies, which could impact a Party's understanding of the operation of the BSC in the absence of P82, would be removed. One of these respondents also stated its agreement with the proposed Implementation Date for P165, highlighting that it was the closest to the Implementation Date for P125 as could be achieved.

The respondents' views are summarised in the Modification Report for Modification Proposal P165, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 8 April 2004 and considered Modification Proposal, the draft Modification Report, and the consultation responses received.

The Panel recommended that the Authority should approve the Modification Proposal and that if approved the Modification Proposal should be implemented 10 Working Days after an Authority decision.

Ofgem's view

Ofgem has carefully considered P165 in the context of the Modification Report for the Proposed Modification, the Panel's recommendation, the Applicable BSC Objectives and its own Statutory Duties.

Ofgem considers that in light of the Authority's letter of 30 January 2004 formally rejecting Modification Proposal P82, that Proposed Modification P165 will better facilitate Applicable Objective (d).

Ofgem considers that P165 is the procedurally appropriate mechanism to abrogate the remaining provisions relating to AZTL which are currently present in the BSC. It is Ofgem's

view that by removing the risk of discernible errors and minor inconsistencies impacting a Party's understanding of the operation of the BSC, and guarding the market against the potential detrimental effect such a misunderstanding may cause, Proposed Modification P165 will promote efficiency in the implementation and administration of the balancing and settlement arrangements.

If you have any questions, please contact me 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