



Direct Dial: 020 7901 7435

The National Grid Company, BSC Signatories and
Other Interested Parties

18 March 2004

OurRef: MP NoP150

Dear Colleague,

Modification to the Balancing and Settlement Code ("BSC") - Decision and Notice in relation to Modification Proposal P150: "Targeting excess costs of PNE appeals process at unsuccessful appellants"

The Gas and Electricity Markets Authority (the "Authority")¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P150, "Targeting excess costs of PNE appeals process at unsuccessful appellants".

The BSC Panel (the "Panel") recommended to the Authority that Proposed Modification P150 should not be made, but in the event that the Authority direct that the Proposed Modification should be implemented the Panel recommended an Implementation Date of 5 Working Days after the Authority decision.

Having carefully considered the Modification Report and the Panel's recommendation and having regard to the Applicable BSC Objectives and the Authority's wider statutory duties,³ the Authority has decided not to direct a Modification to the BSC.

Ofgem considers that as no appeals relating to the decision of the PNE Committee have been made to the Authority and that as a result the Proposed Modification, if implemented, would not have any practical effect, it is not necessary carry out a regulatory impact assessment (RIA), or consult on a GB wide basis in conjunction with this decision.

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

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 P150RR, Version No. 1.0, dated 13 February 2004.

³ 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.

The proposer suggested that the costs of the Past Notification Error (PNE) claims process exceeded the expectations of most market participants and that it was anticipated that much of the pre-appeal PNE process costs will be smeared across all users through BSCCo charges, even though some of those users did not make a claim. The decision in respect of P145 "Cost reflective mechanism to allocate any deficit arising from the application of the PNE claims fee" confirmed the latter of these two expectations.

It was contended that it would not be appropriate for similar smearing of costs to be replicated at the appeals stage of the PNE process, but that instead any ELEXON costs incurred as a result of a particular appeal, over and above the fees paid for lodging such an appeal, should be paid for by the appellant if its appeal was unsuccessful.

In order to address these issues Powergen UK submitted Modification Proposal P150, "Modification Targeting excess costs of PNE appeals process at unsuccessful appellants" on 25 November 2003.

The Initial Written Assessment (IWA) for P150 was presented to the Balancing and Settlement Code Panel (the Panel) at its meeting on 11 December 2003. The Panel determined that P150 should be submitted to a two-month Assessment Procedure to be undertaken by the Error Processing Modification Group (EPMG). The draft Modification Report and a cover paper were presented to the Panel at its meeting on 12 February 2004.

The Modification Proposal

Modification Proposal P150 seeks to modify the BSC so as to ensure that any difference between the ELEXON costs of processing unsuccessful referrals to the Authority in respect of PNE claim determinations and the fee payable for making the referral, should be recovered from the unsuccessful applicant. Any such reference would attract a claim fee of £5,000 as defined within paragraph P6.7.2 (d) of the Code. This fee, it was suggested, may not fully recover the ELEXON costs of undertaking work associated with the appeals process.

The current status of the Code requires that costs incurred above those which are collected through the application of the PNE claim fee in accordance with paragraph P6.2.2 are to be paid by all Parties via the application of the BSCCo charges as defined in Section D of the Code. P150 would introduce arrangements under which the ELEXON costs arising from processing each reference to the Authority would be separately identified by BSCCo, and where an individual reference is unsuccessful the ELEXON costs of processing that reference would be paid by the unsuccessful appellant.

The Modification Proposal was justified on the grounds that by targeting costs at unsuccessful applicants the proposal will help promote competition in the generation and supply of electricity, thus better facilitating the achievement of Applicable BSC Objective⁴ C3 (3) (c).

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

The Panel considered the Initial Written Assessment at its meeting of 11 December 2003 and agreed to submit Modification Proposal P150 to the Assessment Procedure. The draft Modification Report and a cover paper were presented to the Panel at its meeting on 12 February 2004. The Panel considered the Modification Proposal redundant and rejected it.

ELEXON consultation respondents' views

ELEXON published a draft Modification Report on 27 January 2004, which invited respondents' views by 03 February 2004. 6 responses were received. 5 (five) responses (representing 25 Parties and 1 non-Party) expressed support for the Proposed Modification, 0 (zero) parties opposed the Proposed Modification and the remaining response (representing 1 non-party) provided a "no comment" response.

The respondents' views are summarised in the Modification Report for Modification Proposal P150, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 12 February 2004 and considered Modification Proposal p150, the draft Modification Report, the views of the Modification Group and the consultation responses received.

The Panel recommended that the Authority should reject the Proposed Modification but that, if approved, the Proposed Modification should be implemented 5 (five) working days after the Authority decision.

Ofgem's view

Having carefully considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that Proposed Modification P150 would not better facilitate achievement of the Applicable BSC Objectives.

Ofgem considers that as no references have been made to the Authority, the introduction of a Code Modification reallocating the costs of the ELEXON process for dealing with any references would not be an advantageous use of NGC's resources and would be incapable of better facilitating the achievement of the Applicable BSC Objectives.

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- 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.

The Authority's decision

The Authority has therefore decided to direct that the Proposed Modification P150, as set out in the Modification Report, should not be made and implemented.

Having regard to the above, the Authority, in accordance with Section F1.1.4 of the BSC, hereby notifies NGC that it does not intend to direct NGC to modify the BSC as set out in the Modification Report.

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