



*Promoting choice and
value for all customers*

Direct Dial: 020 7901 7491

The National Grid Company, BSC Signatories and
Other Interested Parties

05 April 2004

Our Ref: MP No P131

Dear Colleague,

Modification to the Balancing and Settlement Code ("BSC") - Decision and notice in relation to Modification Proposal P131 "Introduction of further provisions relating to the determination of Trading Disputes".

The Gas and Electricity Markets Authority (the "Authority")¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P131, "Introduction of further provisions relating to the determination of Trading Disputes".

The BSC Panel (the "Panel") recommended to the Authority that Proposed Modification P131 should be made and that the Implementation Date for Proposed Modification P131 should be 30 June 2004 if the Authority's decision is received by or on the 1 February 2004 and 3 November 2004 if the Authority's decision is received after 1 February 2004, but prior to 1 July 2004.

Having carefully considered the Modification Report and the Panel's recommendation and having regard to the Applicable BSC Objectives and Ofgem's wider statutory duties,³ the Authority has decided to direct a Modification to the BSC in line with Modification Proposal P131.

This letter explains the background and sets out the Authority's reasons for its decision and constitutes notice by the Authority under section 49A Electricity Act 1989 in relation to the direction.

Background

Prior to April 2003 the Trading Disputes Committee (TDC) adopted the approach described in BSCP11 "Volume Allocation and Settlement Run Queries", whereby a Trading Dispute could

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

² ELEXON document reference P131MR, Version No. 1.0, dated 19 January 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.

not be endorsed unless it fell within one of the criteria described in BSCP11 section 5.15 “Dispute Criteria”. In effect, the mechanism in BSCP11 was designed to deter a BSC Party from raising a Trading Dispute where that Party had not acted promptly. BSCP11 thus provided an incentive for BSC Parties to check their Settlement data and raise a Trading Dispute promptly.

The Code states that Settlement should be carried out in accordance with its rules, which state that where a Settlement error has occurred, any Party with an interest should be entitled to the remedy of having the error corrected, subject to the rules of limitation within the BSC.

At the Panel meeting of 10 April 2003 the TDC Chairman presented a paper⁴ to the Panel which stated that the criteria contained in BSCP11 and used by the TDC to determine the validity of a claim, were inconsistent with the Code and therefore invalid. The Panel agreed with the recommendations in the paper and decided that the TDC should suspend the application of the criteria set out in section 5.15 of BSCP11. In addition the Panel decided that BSCP11 should be modified and in particular should incorporate a valid time limit.

The TDC used the expertise of the Trading Disputes Criteria Advisory Group (TDCAG) to further investigate this issue and propose a way forward. The TDCAG determined that it was not possible to achieve the desired outcome solely by modifying BSCP11 and that in addition a Modification Proposal was required.

At the Panel meeting on 12 June 2003 the TDC Chairman presented paper 63/012 “TDC Recommendation to raise a Modification Proposal: “Introduction of further provisions relating to the determination of Trading Disputes”. The Panel agreed with the recommendations in the paper, and the TDC, acting on behalf of the Panel, submitted Modification Proposal P131 on 23 June 2003.

At its meeting on 10 July 2003 the Panel agreed to progress P131 to the Definition Procedure. A Modification Group was established, met three times during the Definition Procedure and issued one consultation document to industry. At its meeting on the 11 September 2003 the Panel decided to submit P131 to a two month Assessment Procedure. The P131 Modification Group met four times and issued one consultation document to industry. Five responses representing 26 Parties were received to this consultation.

The assessment of P131 was initially considered by the Panel at its meeting of 13 November 2003. The Panel determined that P131 required further assessment because of an issue relating to the draft legal text. The Panel granted a one month extension to the Assessment Procedure in order to allow this issue to be explored further. The Assessment Report was presented to the Panel at its meeting on 11 December 2003. The Panel agreed that P131 should progress to the Report Phase.

The draft Modification Report, the draft legal text and the responses received to the consultation on that Report, were presented to the Panel on 15 January 2004. The Panel recommended that Proposed Modification P131 should be made.

⁴ Paper 60/017 “TDC Paper concerning the validity and application of BSCP11 criteria” to the Panel.

The Modification Proposal

Modification Proposal P131 seeks to modify the BSC so as to incorporate provisions relating to the timely detection and prompt rectification of Trading Disputes, including for example, the setting of baseline dates for the detection of settlement errors. The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objective⁵ C3 (3) (d).

The Group agreed by a majority that of the criteria developed to encourage the timely raising of Trading Queries, the second option was preferable. This comprised high level objective criteria with TDC discretion. A general timeliness criterion would be introduced requiring Trading Queries to be raised within SF⁶ + 20WD.⁷ The option carried forward was supported by a majority of the Group and was considered to have the benefits of being an exhaustive list, simpler to draft than the others evaluated and easy to use. When the draft legal text was first considered by the Panel, concerns were raised as to whether its clarity was negatively affected by the formulation of the discretionary powers of the TDC. For this reason Modification Proposal P131 was returned to the Assessment Procedure for the perceived problem to be resolved.

The general rule developed has four exceptions:

- Trading Queries relating to SVA Half Hourly data and processes excluding Metering Outside Settlement Timescales (MOST), will have an R1⁸ + 20WD timescale;
- Trading Queries relating to SVA Non Half Hourly data and processes including MOST, will have an RF⁹ + 70WD timescale;
- Trading Queries relating to Profiling and Profile Coefficients will have a D¹⁰ + 3 timescale;
- Trading Queries relating to Market Domain Data, will have a D + 2 timescale;
- There is also provision within the criteria to cover the situation where an error appears in a Settlement or Reconciliation Run which was not present in the previous Settlement or Reconciliation Run.

In order to raise a Trading Dispute, Parties must first raise a Trading Query by sending the Trading Query form¹¹ to BSCCo within the prescribed timescales. The same criteria would apply should BSCCo wish to raise a Trading Dispute. Parties would be able to appeal to the TDC's

⁵ 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.

⁶ SF = Initial Settlement Run

⁷ WD = Working Day

⁸ R1 = First Reconciliation Run

⁹ RF = Final Reconciliation Run

¹⁰ D = Settlement Day

¹¹ (F11/01)

discretionary powers should they feel the criteria were impossible to comply with. The TDC would then consider whether a settlement error actually exists by using data provided by Parties, Party Agents and BSC Agents. If a settlement error is identified prompt rectification would occur provided that the materiality passes a threshold of £500. Failure to meet the relevant requirements at any stage in the process of raising a dispute would cause the Party's Trading Query not to be heard. In the event that a Party is dissatisfied on grounds of due process it would be entitled to appeal to the Panel, which would consider the matter according to the same criteria as the TDC. Should a Party consider the decision of the TDC unsatisfactory for reasons aside from procedural grounds it may take the case to arbitration.

Responses to ELEXON Consultation

ELEXON published the first version of its draft Modification Report on 17 December 2003, which invited respondents' views by 5 January 2004. Five responses were received. Four responses (representing 18 Parties) expressed support for the Proposed Modification, none opposed the Proposed Modification and one response (representing one Party) provided a "no comment" response.

The respondents that supported P131 considered that the Modification Proposal would facilitate the timely detection of errors, and hence the prompt raising of Trading Queries and Trading Disputes. They agreed that in doing so P131 better facilitated the achievement of Applicable BSC Objective (c). One respondent commented that P131 would also improve the liquidity of smaller parties and considered that P131 would better facilitate the achievement of Applicable BSC Objective (c) by introducing detailed objective criteria which would improve the Trading Dispute process used by the TDC when making its determination, and would improve the mechanism under which BSC Parties would raise potential Trading Disputes.

The respondents' views are summarised in the Modification Report for Modification Proposal P131, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 15 January 2004 and considered Modification Proposal, the draft Modification Report, the views of the Modification Group and the consultation responses received.

The Panel noted the Group's view that there does not appear to have been a substantial change in the number of disputes raised since the abrogation of the criteria in section 5.15 of BSCP11, and agreed that the Implementation Date should correspond with a scheduled programme release date in order to minimise the cost of implementation. However the Panel considered it possible that the number of "late" Trading Disputes could begin to rise significantly, and as a result, the option of bringing forward the implementation date should be left open.

One Panel member commented that there were no smaller Parties represented on the Modification Group or on the TDC. The Panel member questioned whether the solution developed by the P131 Modification Group was fair to smaller Parties, specifically whether they would be expected to detect settlement errors within the prescribed timescales. The view of the Modification Group was that since smaller Parties generally have a lot less data to check, they

should be equally capable of, and therefore still be expected to, adhere to the timescales. It was noted by another Panel member that the TDC and Modification Group members are independent of the companies they work for whilst they perform those roles.

The Panel recommended that the Authority should approve the Proposed Modification and that, if approved the Implementation Date for Proposed Modification P131 should be 30 June 2004 if the Authority's decision is received by or on the 1 February 2004 and 3 November 2004 if the Authority's decision is received after 1 February 2004, but prior to 1 July 2004.

Responses to Ofgem GB Consultation

On 5 December 2003 Ofgem undertook to invite responses on additional implications that a Proposed Modification may have, were it to be applied on a GB wide basis, as opposed to being limited to England and Wales. In order to discharge this undertaking Ofgem published a GB Consultation Paper on 07 January 2004 which invited respondents' views by 5pm on Tuesday 3 February 2004. 1 (one) response was received. The response did not identify any such additional implications.

The Consultation Paper can be found on the *BETTA GB Consultation* section of the Ofgem website.¹²

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 P131 will better facilitate achievement of the Applicable BSC Objectives.

Ofgem considers that the measures introduced by P131 will reduce uncertainty in Settlement and improve the quality of data entering the Settlement process during its early stages. It will also increase transparency in the Disputes process, thereby alleviating perceived barriers to entry in the existing system, better facilitating the achievement of Applicable BSC Objective (c).

The Authority also considers that achievement of Applicable Objective (d) may also be better facilitated, although to a lesser extent than Objective (c), as P131 may save the TDC and BSCCo time by alleviating these bodies of the requirement to analyse whether settlement errors exist for Trading Queries submitted outside the timescales.

By incorporating a final materiality criterion¹³ Proposed Modification P131 ensures that only Settlement errors with material effect on Settlement accuracy are rectified. In setting the materiality threshold (£500) slightly higher than the cost of rectification (£400), P131 balances the need to correct Settlement errors with the need to avoid the rectification of errors which it would be uneconomic for the market to address, thus promoting efficiency in the implementation and administration of the balancing and settlement arrangements and better facilitating achievement of Applicable Objective (d).

¹² <http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/bettagbcons>


¹³ The threshold above which an upheld Trading Dispute would be rectified.

Proposed Modification P131 allows the TDC to apply a degree of discretion in relation to the timeliness criteria which apply when a Trading Query is raised. The discretion clause is drafted so as not to prevent a Party capable of demonstrating that a Settlement error has occurred, but which it was not able to detect within the relevant timescale, from raising a Trading Query in relation to the error.¹⁴ Although this could be seen as a potentially broad discretionary remit, the eligibility criteria specifically include a provision to the effect that if an error appears in a Settlement or Reconciliation run which was not present in the previous Settlement or Reconciliation run, a Trading Query reference will not be precluded. By including such a provision P131 will minimise the occasions on which TDC discretion is used. Ofgem considers that the exercise of judgment by the TDC is unavoidable, but that P131 would reduce the number of occasions in which discretion will be exercised as far as reasonably possible. The resulting certainty in the Dispute process will increase transparency, reduce barriers to entry and provide a satisfactory level of certainty to market participants, thereby better facilitating achievement of Applicable BSC Objective (c).

Evaluation by the Group has shown that there does not appear to have been a substantial change in the number of disputes raised since the abrogation of the criteria in section 5.15 of BSCP11. Ofgem agrees with the view of the Panel that for as long as this remains true the Implementation Date should correspond with a scheduled programme release date in order to minimise the cost of implementation, but that if this situation should change it may be appropriate to bring forward the release date.

Ofgem notes the concerns of the Panel relating to the low number of responses from smaller Parties to the BSCCo consultation, the absence of such Parties in the TDC and on the Modification Group. This absence of responses has made the impact of P131 on such Parties difficult to determine. The Authority has considered the particular circumstances of Proposed Modification P131 and is satisfied that BSCCo has done that which might be expected of it to secure the views of such Parties and that the assessment made by it .

Yours sincerely,

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

Nick Simpson
Director, Modifications

¹⁴ It may not permit a trading query to be raised after the dates provided for in Section W1.2.6.