



Direct Dial: 020-7901 7355

13 August 2003

The National Grid Company, BSC Signatories and
Other Interested Parties

Our Ref: MP No P114

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P114: “Entitlement of Licence Exemptable Generators ('LEGs') and other non-trading Parties to BSC Membership without Evidence of Trading”

The Gas and Electricity Markets Authority (the “Authority”)¹ has carefully considered the issues raised in the Modification Report² in respect of Modification Proposal P114, “Entitlement of Licence Exemptable Generators ('LEGs') and other non-trading Parties to BSC Membership without Evidence of Trading”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P114 should be made with an Implementation Date of 4 November 2003, should the Authority determination be received before 2 May 2003. It also recommended that if an Authority determination is received on or after 2 May 2003, but prior to 22 August 2003, then the Implementation Date should be 24 February 2004.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives and the Authority’s wider statutory duties³, the Authority has decided to direct a Modification to the BSC.

This letter explains the background and sets out the Authority’s reasons for its decision. In addition, the letter contains a direction to The National Grid Company plc (“NGC”) to modify the Balancing and Settlement Code (“BSC”) in line with Modification Proposal P114, as set out in the Modification Report.

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

² ELEXON document reference P114RR, Version No. 1.0, dated 17 March 2003

³ Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things social and environmental guidance provided to Ofgem by the government.

This letter constitutes the notice by the Authority under section 49A Electricity Act 1989 in relation to the direction.

Background

Annex V-1 of the BSC details a number of reports, elements of which are currently available only to BSC Parties⁴. Data contained in these reports is covered by the confidentiality arrangements within the BSC. Three Modification Proposals have been submitted previously regarding the release of elements of this data; Modification Proposals P30, P50 and P102. During the Modification Group discussions on P30, the Group considered that the implementation costs and increased implementation timescales did not justify the benefits of making the Balancing Mechanism Unit Aggregation Report available to non-BSC Parties, so it raised an Alternative Modification Proposal which excluded the release of this report. The Authority approved this Alternative Modification Proposal on 23 January 2002. Modification Proposal P50 also sought to make the data contained within the Balancing Mechanism Unit Aggregation Report available to non-Parties. The Modification Group formulated an Alternative Modification that originated a new report to provide appropriate metered volume data to increase market transparency, whilst at the same time protecting the anonymity of individual Directly Connected Demand Sites⁵. The Authority rejected both the original and Alternative Modification Proposals on 3 September 2002 on grounds of cost-efficiency and concerns as to the confidentiality of the data being requested for release.

Modification Proposal P102 seeks to modify the BSC so as to allow LEGs be excused the requirement to demonstrate evidence of trading activity within six months of registration as a BSC Party, as currently defined in Section A 2.6 of the Code. During its meetings, the Modification Group formulated an Alternative Proposal whereby LEGs could sign a licensing agreement which would allow them access to elements of the data reports detailed in Annex V-1. The Modification Group considered whether this licensing arrangement could be extended to all non-Parties, but legal advice from ELEXON suggested that since the defect described in the Modification Proposal was specific to LEGs, any extension beyond LEGs was not permissible. Accordingly, Slough Energy Supplies Ltd. submitted Modification Proposal P114, "Entitlement of Licence Exemptable Generators ('LEGs') and other non-trading Parties to BSC Membership without Evidence of Trading" on 2 December 2002.

The Modification Proposal

Modification Proposal P114 seeks to modify the BSC so that non-Parties can sign a licensing agreement which would allow them access to elements of the data reports detailed in Annex V-1. Licensees would pay a fee to recover the costs in making the data available and would be bound by similar confidentiality considerations in relation to the data as Parties currently are. A licensee would also be able to nominate a third-party (eg, a data-processing agent) to receive the

⁴ A Party must show evidence of trading activity within six months of accession to the Framework Agreement, in accordance with Section A2.6, in order to maintain its status as a Party

⁵ Directly connected demand refers to directly connected importing BM Units (i.e. Central Volume Allocation registered) such as large industrial demand premises (i.e. BM Units where import exceeds export for all or the vast majority of Settlement Periods). The term is not defined in the BSC.

data on its behalf, and this nominated party would be bound by confidentiality conditions similar to those of the licensee. This arrangement had the perceived advantage that the licensees would not be subject to the full range of obligations that come with being a signatory to the Code.

The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objectives⁶ C3 (3) (c) and (d). The Proposer believed that the implementation of this Modification Proposal would assist in creating a fairer negotiating position for non-Party LEGs and facilitate both data access and data transparency without incurring significant cost to existing BSC Parties.

The Panel considered the Initial Written Assessment at its meeting of 12 December 2002 and agreed to submit Modification Proposal P114 to the Assessment Procedure. The Modification Group (the "Group") considered the Modification Proposal over the course of two meetings (on 7 and 29 January 2003).

The Panel considered the Assessment Report at its meeting of 13 February 2003 and agreed to submit the Modification Proposal to the Report Phase. ELEXON published a draft Modification Report on 19 February 2003, which invited respondents' views by 3 March 2003.

Respondents' views

ELEXON received ten responses to the consultation on Modification Proposal P114. Seven responses (representing 33 Parties and 2 non-Parties) expressed support for the Proposed Modification, one response (representing 1 Party) replied with "No Comment" and the remaining two responses (representing 7 Parties) were opposed to the Proposed Modification.

Respondents in favour of the proposal supported the release of information in order to increase transparency and facilitate competition. Of the two responses opposing the Proposal, one opposed it on the basis of cost, and the other was concerned about the precedent of creating an effective sub-class of Party which was excluded from the full extent of BSC signatory obligations. The respondents' views are summarised in the Modification Report for Modification Proposal P114, which also includes the complete text of all respondents' replies.

⁶ The Applicable BSC Objectives, as contained in 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.

Panel's recommendation

The Panel met on 13 March 2003 and considered the Modification Proposal P114, the draft Modification Report, the views of the Modification Group 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.

The Panel noted that Modification Proposal P114 has an interaction with Alternative Modification P102 and noted that if Proposed Modification P114 were made then Alternative Modification P102 would not be necessary.

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 Modification Proposal P114 will better facilitate achievement of the Applicable BSC Objectives.

Ofgem has consistently stated that appropriate market information should be made available to all active and potential participants where it is practical and prudent to do so. The rationale is that this release of information increases market transparency, thereby allowing active and potential market participants additional criteria by which to gauge the scope for further competition in the market. It facilitates competition by reducing the advantage of market incumbents and reducing the risks of market entry, which otherwise constitute barriers to market entry. The implementation of Modification Proposal P114 will mean that active and potential market participants who are not BSC Parties should not be disadvantaged by a lack of relevant market information. The licence agreement will provide Parties with the assurance that the data is not being inappropriately used or disseminated beyond its intended audience, which is in line with the current restrictions on BSC signatories. The ability to nominate third-parties to receive the data on behalf of the licensee should lead to the development of cost-effective data processing services, while maintaining control on the confidentiality of the data. Furthermore, the costs of maintaining this licence system are appropriately targeted on the end users. Accordingly, Ofgem considers that the Proposed Modification will better facilitate achievement of Applicable BSC Objective (c).

Given that the BSC already makes provision for non-Parties to gain access to information, Ofgem does not consider that this Modification Proposal represents the creation of a sub-class of Party without the consequential obligations. Ofgem's view is that this Proposal represents an effective way of increasing transparency in the market, whilst having due regard for the protection of the Parties' confidentiality rights.

In view of the importance of the proposed licensing agreement to the manner in which the Modification Proposal is to be implemented, the Authority considered it prudent to obtain from ELEXON a draft copy of the agreement for scrutiny, prior to making its final determination. However, Ofgem passes no judgement as to the terms of this agreement, which it considers to be a matter for ELEXON and the contracting parties.

The Authority's decision

The Authority has therefore decided to direct that the Proposed Modification P114, as set out in the Modification Report, should be made and implemented.

Direction under Condition C3 (5) (a) of NGC's Transmission Licence

Having regard to the above, the Authority, in accordance with Condition C3 (5) (a) of the licence to transmit electricity granted to NGC under Section 6 of the Electricity Act 1989 as amended (the "Transmission Licence"), hereby directs NGC to modify the BSC as set out in the Modification Report.

The Implementation Date for Modification Proposal P114 is 24 February 2004.

In accordance with Condition C3 (5) (b) of NGC's Transmission Licence, NGC shall modify the BSC in accordance with this direction of the Authority.

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

Yours sincerely,

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

Nick Simpson

Director of Industry Code Development

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