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9 April 2003

The National Grid Company, BSC Signatories and  
Other Interested Parties

Our Ref: MP No P113

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P113: “E-mail Communications under the Code”**

The Gas and Electricity Markets Authority (the “Authority”)<sup>1</sup> has carefully considered the issues raised in the Modification Report<sup>2</sup> in respect of Modification Proposal P113, “E-mail Communications under the Code”.

The BSC Panel (the “Panel”) recommended to the Authority that the Proposed Modification P113 should be made with an Implementation Date of 13 weeks after the date of the Authority’s decision.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives and the Authority’s wider statutory duties, the Authority has decided to direct a Modification to the BSC in line with the Modification Proposal P113.

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 BSC in line with Modification Proposal P113, as set out in the Modification Report.

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

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

<sup>2</sup> ELEXON document reference P113RR, Version No. 1, dated 22 January 2003

## Background

According to BSCCo's current practice, general communications, involving correspondence with large numbers of recipients, are sent by e-mail. Examples of such communications include ELEXON<sup>3</sup> Circulars and the distribution of information regarding BSC Modification Proposals and Change Proposals. The existing provisions within Section H9.2 of the Code require that these notices and communications should be in writing, and requires them to be delivered by hand, first class prepaid post (airmail if overseas) or by facsimile.

Modification Proposal P113, "E-mail Communications under the Code", was raised on behalf of the Panel on 27 November 2002.

## The Modification Proposal

Modification Proposal P113 seeks to modify the BSC so that where a general communication is to be given by BSCCo, the Panel, a Panel Committee, a Modification Group, or their respective secretaries, to all Parties (or class of Parties) simultaneously, the communication may be given by e-mail. The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objective<sup>4</sup> C3 (3) (d), "promoting efficiency in the implementation and administration of the balancing and settlement arrangements". The Proposed Modification is not intended to alter the provisions by which particular communications are given to individual Parties.

BSCCo considers that e-mail is the most efficient means for the widespread dissemination of such communications to large numbers of interested parties and considers that a requirement to issue such communications by post or facsimile would be impose significant administrative and cost burdens on BSCCo.

The Panel considered the Initial Written Assessment at it meeting of 12 December 2002 and agreed to submit Modification Proposal P113 directly to the Report Phase, since it considered that the issues raised by the changes being proposed were not of such a complex nature to warrant significant evaluation.

ELEXON published a draft Modification Report on 17 December 2002, which invited respondents' views by 2 January 2003.

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<sup>3</sup> ELEXON is the company that performs the role and functions of the BSCCo, as defined in the Code

<sup>4</sup> 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.

## **Respondents' views**

ELEXON received eight responses to the consultation on Modification Proposal P113. Three responses (representing 25 Parties) expressed unqualified support for the Proposed Modification and four others (representing 10 Parties) gave their support, but with some reservations. One respondent (representing 1 Party) provided a "No Comment" response.

Those respondents who had reservations about the Modification Proposal highlighted the following issues:

- ◆ Notices or communications are being deemed as received by Parties one hour after being sent by ELEXON. Some respondents considered this time span to be too short
- ◆ There is no obligation on ELEXON to use "best endeavours" to ensure receipt of notices or communications in the event of undeliverable receipts being received by ELEXON.

It was also noted that there is no distinction between Working and non-Working Days in the legal text of the Modification Proposal, but that this was done intentionally in order to remain consistent with the current version of the Code.

The respondents' views are summarised in the Modification Report for Modification Proposal P113, which also includes the complete text of all respondents' replies.

## **Panel's recommendation**

The Panel met on 16 January 2003 and considered the Modification Proposal P113, 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 13 weeks after the date of any such Authority's approval.

## **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 P113 will better facilitate achievement of Applicable BSC Objective (d).

The existing provisions within the Code dictate that where a communication is to be given by BSCCo, the Panel, a Panel Committee, a Modification Group, or their respective secretaries, to another Party or Parties, it must be delivered by hand or sent by post or facsimile. Ofgem notes BSCCo's concern as to the administrative and cost burdens that the enforcement of these provisions would impose on BSCCo. Ofgem considers the requirement to issue communications by hand, post or facsimile to be unduly onerous in light of the administrative burden and time delays it imposes on the information distribution process. The distribution of general notices by e-mail (which is current working practice) has demonstrated itself to be as reliable as postal or facsimile distribution methods, whilst delivering significant gains in administrative efficiency.

Ofgem acknowledges the concerns of respondents who were concerned about delivery failures. BSCCo has clarified that that outgoing general e-mail communications will only be deemed to have been sent once it has successfully passed BSCCo's e-mail firewall. Consequently, mail failures as a result of problems with BSCCo's e-mail system would be considered not to have

been successfully transmitted. BSCCo has also confirmed that it will endeavour to contact Parties where undeliverable receipts are received, so there may be scope for Parties to instigate procedures with their service providers regarding undeliverable e-mails as an additional safeguard.

Ofgem notes that some respondents considered the deemed period between e-mail transmission and receipt is too short. The concern was that Parties may be disadvantaged by not polling their service provider on a sufficiently regular basis and therefore be disadvantaged through not receiving information in a timely manner. However, given the ease with which Parties can establish several e-mail accounts from different service providers at the same physical location, it is highly unlikely that a diligent Party would find itself disadvantaged through the failure of all its e-mail accounts to receive information from BSCCo in a timely manner.

Ofgem considers that the potential efficiency gains that may result from approval of the Modification Proposal outweigh the perceived increase in risk to Parties through not receiving information in a timely manner, and further, that the strict enforcement of the obligation to deliver all communications by post or fax would hinder the effective administration of BSCCo's duties.

### **The Authority's decision**

The Authority has therefore decided to direct that the Proposed Modification P113, 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 P113 is 13 weeks after the date of this decision letter, that being the day on which the Authority decided to approve the Modification Report.

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,



**David Edward**  
**Head of Electricity Code Development**

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