



Direct Dial: 020-7901 7435

13 May 2003

The National Grid Company, BSC Signatories and  
Other Interested Parties

Our Ref: MP No P111

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision and Notice in relation to Modification Proposal P111: “Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals”**

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 P111, “Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P111 should not be made, but in the event that the Authority determines that the Proposed Modification P111 should be made, the Implementation date should be 20 Working Days after any such Authority determination.

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<sup>3</sup>, the Authority has decided not to direct a Modification to the BSC.

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

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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 P111RR, Version No. 1.0, dated 17 March 2003

<sup>3</sup> 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.

## Background

Modification Proposal P109, "A Hedging Scheme for changes to TLF in Section T of the code" was submitted on 1 November 2002. This Modification Proposal seeks to hedge against the effects of any future alteration to the Code which may change the values of Transmission Loss Factors to any value other than zero. Although it was submitted as a stand-alone Modification Proposal, it anticipated the possible approval of other Pending Modification Proposals (P75 and P82). Accordingly, Powergen UK plc submitted Modification Proposal P111, "Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals" on 27 November 2002.

## The Modification Proposal

Modification Proposal P111 seeks to modify the BSC so as to impose an obligation on the Panel to refuse to accept the submission of any new Modification Proposals that are contingent on the Authority's acceptance of one or more future or Pending Modification Proposals. It also proposes that this contingency test should also be applied to all Modification Proposals currently within the Definition or Assessment Procedures, such that any Proposals that fail the test must be submitted directly to the Report Phase with a recommendation for rejection. The justification for the Modification Proposal was that it would directly better facilitate achievement of the Applicable BSC Objective<sup>4</sup> C3 (3) (d), and indirectly help promote Applicable BSC Objectives (a), (b) and (c).

The Proposer considered that the Modification Proposal would promote efficiency in the implementation of the balancing and settlement arrangements by avoiding resource being consumed on processes and systems that may never be used.

The Panel considered the Initial Written Assessment at its meeting of 12 December 2002 and agreed to submit Modification Proposal P111 to the Assessment Procedure. The Governance Standing Modification Group (the "Group") considered the Modification Proposal over the course of two meetings (9 & 30 January 2003). During the first meeting, the Group tried to define the characteristics of what would constitute a "contingent" Modification Proposal. The Group sought advice from ELEXON's legal services and this was provided on 27 January 2003. This advice considered that the Modification Secretary already had the powers to reject contingent Modification Proposals, so at the meeting on 30 January, the Group agreed to ask the Panel to stop the Assessment Procedure and proceed directly to the Report Phase, in accordance

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<sup>4</sup> The Applicable BSC Objectives, as contained in Standard Condition C3 (3) of National Grid Company's ("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.

with Section F2.2.11. The Group also decided that in view of the timescales involved regarding existing Modification Proposals still subject to Definition or Assessment Procedures (in particular Modification Proposal P109), it would not pursue the element of the Proposal relating to the application of the contingency test to existing Proposals.

The Panel meeting of 13 February 2003 considered the Group's request, and in light of the legal advice received from ELEXON, agreed to curtail the Assessment Procedure and send the Modification Proposal to the Report Phase. ELEXON published a draft Modification Report on 19 February 2003, which invited respondents' views by 27 February 2003.

### **Respondents' views**

ELEXON received nine responses to the consultation on Modification Proposal P111. Eight responses (representing 25 Parties and 1 non-Party) supported the recommendation that the Proposed Modification should not be made and the remaining one (representing 1 Party) provided a "No Comment" response.

The respondents' views are summarised in the Modification Report for Modification Proposal P111, which also includes the complete text of all respondents' replies.

### **Panel's recommendation**

The Panel met on 13 March 2003 and considered the Modification Proposal P111, the draft Modification Report, the views of the Modification Group and the consultation responses received. It also gave due regard to the advice given to the Group by ELEXON's legal services.

The Panel recommended that the Authority should reject the Proposed Modification but that, if approved, the Proposed Modification should be implemented 20 Working Days after any such Authority approval.

### **Ofgem's view**

Having carefully considered the Modification Report and the Panel's recommendation, and having regard to the Applicable BSC Objectives and its statutory duties, Ofgem considers that Modification Proposal P111 does not better facilitate achievement of the Applicable BSC Objectives.

The legal advice given to the Group by ELEXON stated that under Section F2.1.2, a submission for a new Modification Proposal must describe an issue or defect that it seeks to address and also describe how it better facilitates the achievement of the Applicable BSC Objectives as compared with the then current version of the Code. The advice considered that as a contingent Modification Proposal does not describe an issue or defect relating to "...the then current version of the Code", it is not possible to assess whether it better facilitates the achievement of the Applicable BSC Objectives. Consequently, the Code allows the Modification Secretary to refuse to accept such submission, in accordance with Section F2.1.3.

Ofgem agrees that the resource that Modification Proposal P111 seeks to introduce into the BSC already exists within the Code. As a result, the Authority considers that implementation of the proposal would not better facilitate achievement of the Applicable BSC Objectives.

**The Authority's decision**

The Authority has therefore decided not to direct that Proposed Modification P111, as set out in the Modification Report, should 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 'D. Edward', written in a cursive style.

**David Edward**

**Head of Electricity Code Development**

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