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30 April 2003

The National Grid Company, BSC Signatories and
Other Interested Parties

Our Ref: MP No P107

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and Direction in relation to Modification Proposal P107: “Data Retention Requirements for Post-Final 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 P107, “Data Retention Requirements for Post-Final Trading Disputes”.

The BSC Panel (the “Panel”) recommended to the Authority that the Proposed Modification P107 should be made with an Implementation Date of 4 November 2003, if an Authority determination is received before 2 May 2003, or if an Authority determination is received on or after this date, but prior to 22 August 2003, then the Implementation Date should be 24 February 2004. It also agreed that if approved, Proposed Modification P107 should be implemented on a calendar day basis.

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 P107.

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 P107, 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 P107RR, Version No. 1.0, dated 17 March 2003.

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

Background

Currently the data retention obligations on Parties and Party Agents are not explicitly included within the BSC. The BSC does however oblige Parties to provide and ensure that any Party Agents appointed provide data, reports and other information to allow the Trading Disputes Committee to fulfil its functions relating to the Trading Disputes process.

The BSC states that Trading Queries/ Trading Disputes can be raised up to 36 months after the Settlement Day to which they relate. In order to comply with the BSC, it is implied that Parties and Party Agents could be required to provide data to support a Trading Dispute raised 36 months after the relevant Settlement Day. To fulfil this requirement, it is necessary for Parties and Party Agents to retain appropriate data for more than 36 months after any Settlement Day.

The BSC also states that Settlement Runs or Volume Allocation Runs can be carried out up to 36 months after the Settlement Day to which such run relates. In addition, the Panel has the power to authorise a Post-Final Settlement Run or a Volume Allocation Run beyond 36 months after the resolution of a Trading Dispute. Therefore, in order to comply with the BSC, Parties and Party Agents are required to retain data for more than 36 months after any Settlement Day (and potentially retain the data indefinitely).

These data retention timescales are inconsistent with those outlined within many Code Subsidiary Documents. In order to allow the BSC to reflect current industry working practices, SSE Energy Supply Limited submitted Modification Proposal P107, "Data Retention Requirements for Post-Final Trading Disputes" on 30 October 2002.

The Modification Proposal

Modification Proposal P107 seeks to refine the existing cut-off points defined within the BSC, associated with raising and resolving a Trading Dispute post the Final Settlement Run. The Modification Proposal also seeks to include within the BSC appropriate data retention obligations for Parties and Party Agents. The initial justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objectives³ C3 (3) (c) and (d).

³ 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.

The Panel considered the Initial Written Assessment at its meeting of 14 November 2002 and agreed to submit Modification Proposal P107 to the Assessment Procedure. The Governance Standing Modification Group (the "Group") considered the Modification Proposal over the course of three meetings (22 November 2002, 14 January and 4 February 2003). The Volume Allocation Standing Modification Group and the Trading Disputes Committee supported the Group during the Assessment Procedure.

The Group agreed that the current process outlined in the BSC for raising Post-Final Trading Queries / Trading Disputes implied onerous and expensive data retention requirements for Parties, Party Agents and BSC Agents. In its view, this was not consistent with industry working practices. In order to achieve Modification Proposal P107, the Group agreed the following:

- The cut-off point for raising a Trading Query should be 20 months after the Settlement Day
- The cut-off point for a Post-Final Settlement Run should be 28 months after the Settlement Day
- The existing ability of the Panel to authorise Settlement Runs beyond the normal cut-off (28 months under Modification Proposal P107), should be removed
- No cut-off point will be specified for undertaking an Extra-Settlement Determination. Typically these will be undertaken by 40 months after the Settlement Day. Industry would be notified of any requirement to undertake an Extra-Settlement Determination beyond this point
- Parties, Party Agents and the relevant BSC Agents will be required to retain a minimum of 40 months of Settlement data (with 28 months being retained in the live operational environment and the further 12 months being retained either in the live operational environment or using an appropriate archiving mechanism)
- Data transfer obligations, on change of Party Agent, within a number of Code Subsidiary Documents would be revised to ensure consistency with the BSC following implementation of Modification Proposal P107
- The above requirements should not compromise the Past Notification Error (P6) or the large Annualised Advance / Estimate Annual Consumption issue. For example it would be possible to process P6 claims via Post-Final Settlement Runs beyond 28 months if required.

The Group agreed that implementing Modification Proposal P107 would introduce certainty into the Trading Disputes process and bring the BSC closer to existing industry practice, thereby better facilitating achievement of the Applicable BSC Objective (d). The Group did consider whether Applicable BSC Objective (c) applied in relation to Modification Proposal P107 but felt that it would not have an effect, so it was not considered as part of the rationale for the Group's recommendation.

The Panel considered the Assessment Report at its meeting of 13 February 2003 and it 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 P107. Five responses (representing 22 Parties) expressed support for the Proposed Modification agreeing with the Panel's provisional recommendation and three responses (representing 9 Parties and 1 non-Party) did not agree with the Panel's provisional recommendation. The remaining two respondents (representing 6 Parties) provided a "no comment" response.

Of those responses not supportive of the Proposal, one response from a non-Party stated that the Modification Proposal would lengthen the Trading Dispute Process. One response from a Party expressed the view that the introduction of a data retention period of 40 months for a complete set of Settlement data increased the cost burden on market participants. This, it was stated, was likely to discourage new entrants. Another Party made a further comment stating that limiting the data retention period and restricting the execution of Settlement Runs beyond a particular time could create considerable difficulties and might not be a cost-effective means for resolving Trading Disputes.

The respondents' views are summarised in the Modification Report for Modification Proposal P107, 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 P107, 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 on 4 November 2003, if an Authority determination is received before 2 May 2003, or if an Authority determination is received on or after this date, but prior to 22 August 2003, then the Implementation Date should be 24 February 2004. Moreover the Panel recommended that if approved, Modification Proposal P107 should be implemented on a calendar day basis.

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 P107 will better facilitate achievement of the Applicable BSC Objectives. The Modification Proposal imposes clearly defined timescales for the retention of data by Parties and Party Agents, thereby removing the current degree of uncertainty within the Code. This should ensure that common standards are adopted across the industry and facilitate the administration of Trading Disputes and Extra-Settlement Determinations, and will therefore better facilitate achievement of Applicable BSC Objective (d). Furthermore, Ofgem agrees with

the Group's view that a calendar day Implementation Date would be more appropriate for this Modification Proposal.

Ofgem notes the concerns of those respondents who consider that the Modification Proposal seeks to extend the mandatory data retention period from 36 to 40 months and so might impose additional costs on Parties. As stated in the Modification Report, the requirement to support a Post-Final Settlement Run or Volume Allocation Run beyond 36 months upon resolution of a Trading Dispute means that in theory, Parties and their Agents may have to retain data indefinitely. Ofgem considers that while the removal of this requirement better facilitates the achievement of Applicable BSC Objective (d), the Modification Proposal may not necessarily constitute the optimal solution for data retention procedures. The Modification Report states that if the Modification Proposal is approved, the Trading Disputes Committee will review the process within 6 to 9 months of implementation and inform the Panel of the outcome. It is Ofgem's view that then would appear to be a suitable juncture to discuss the issue in a Standing Group with a view to refining the data retention timescales through the Modifications Process.

The Authority's decision

The Authority has therefore decided to direct that the Proposed Modification P107, 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 P107 is 4 November 2003.

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