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18 August 2003

The National Grid Company, BSC Signatories and  
Other Interested Parties

Our Ref: MP No P102

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision and Notice in relation to Modification Proposal P102: “Entitlement of Licence Exemptable Generators ('LEGs') to BSC Membership without Evidence of Trading”**

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 P102, “Entitlement of Licence Exemptable Generators ('LEGs') to BSC Membership without Evidence of Trading”.

The BSC Panel (the “Panel”) recommended to the Authority that:

- ◆ Proposed Modification P102 should not be made, but in the event that the Authority determines that Proposed Modification P102 should be made, the Implementation Date should be 20 Working Days after such an Authority determination
- ◆ Alternative Modification P102 should be made with an Implementation Date of 4 November 2003, if an Authority determination is received before 2 May 2003. 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

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<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 P102RR, 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

Annex V-1 of the BSC details a number of reports, elements of which are currently available only to BSC Parties<sup>4</sup>. Data contained in these reports is covered by the confidentiality arrangements within the BSC. Prior to Modification Proposal P102, two Modification Proposals have been submitted regarding the release of elements of this data; Modification Proposals P30 and P50. 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 directed the licensee to make 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 Sites<sup>5</sup>. 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.

Slough Energy Supplies Ltd. submitted Modification Proposal P102, "Entitlement of Licence Exemptable Generators ('LEGs') to BSC Membership without Evidence of Trading" on 7 October 2002.

## The Modification Proposal

Modification Proposal P102 seeks to modify the BSC so as to allow LEGs to be excused the requirement to demonstrate evidence of trading activity within six months of registration as a BSC Party, as currently required by paragraph A 2.6 of the BSC. Accordingly, LEGs would be able to remain BSC signatories and receive information currently available only to Parties, whilst not undertaking any trading activity.

The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objectives<sup>6</sup> C3 (3) (c) and (d). The Proposer believed that the implementation of this Modification Proposal would assist in creating a fairer energy contract negotiating position for non-Party LEGs and facilitate both data access and data transparency without incurring significant cost to existing BSC Parties.

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<sup>4</sup> 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

<sup>5</sup> 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.

<sup>6</sup> The Applicable BSC Objectives, as contained in 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.

The Panel considered the Initial Written Assessment at its meeting of 17 October 2002 and agreed to submit Modification Proposal P102 to the Assessment Procedure. The Settlement Standing Modification Group (the "Group") considered the Modification Proposal over the course of five meetings (on 24 October, 11 November, 10 December 2002, 7 and 29 January 2003). During its meetings, the Group formulated an Alternative Proposal whereby LEGs could sign a licensing agreement which would enable them to access elements of the data reports detailed in Annex V-1. Licensees would pay a fee to recover the costs of 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 data on its behalf, and this nominated party would be bound by confidentiality obligations 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 BSC.

The Group considered whether this licensing arrangement could be extended to all non-Parties, but advice from ELEXON legal suggested that since the defect described in the Modification Proposal was specific to LEGs, any extension beyond LEGs was not permissible. Accordingly, Modification Proposal P114, "Entitlement of Licence Exemptable Generators ('LEGs') and other non-trading Parties to BSC Membership without Evidence of Trading" was submitted by Slough Energy Services Ltd. on 2 December 2002. In view of the similar nature of the issues being addressed, the Assessment timetable for Modification Proposal P102 was extended by one month, such that the Assessment Reports for both Modification Proposal P102 and P114 could be presented at the same Panel meeting.

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 P102. One response (representing 2 Parties and 2 non-Parties) expressed support for the Proposed Modification, one response (representing 1 Party) replied with "No Comment" and the remaining eight (representing 38 Parties) were opposed to the Proposed Modification. Five responses (representing 12 Parties and 2 non-Parties) expressed support for the Alternative Modification, one response (representing 1 Party) replied with "No Comment" and the remaining four (representing 28 Parties) were opposed to the Alternative Modification.

The majority of respondents opposed to the Proposed Modification did so on the basis that they had issues about the use of Party status solely for the purposes of accessing data and the creation of a special class of Party which is only subject to subsets of the BSC. The respondent in favour was primarily concerned about the Alternative Modification's lack of any specific obligation on BSCCo to enter into a licence agreement with LEGs.

The majority of respondents were in agreement with the Alternative Modification's principle of allowing a licensing arrangement for LEGs to access data, but opponents considered that its limitation to LEGs could be discriminatory.

The respondents' views are summarised in the Modification Report for Modification Proposal P102, 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 P102, the draft Modification Report, the views of the Modification Group and the consultation responses received.

The Panel recommended that:

- ◆ Proposed Modification P102 should not be made, but in the event that the Authority determines that Proposed Modification P102 should be made, the Implementation Date should be 20 Working Days after such an Authority determination
- ◆ Alternative Modification P102 should be made with an Implementation Date of 4 November 2003, if an Authority determination is received before 2 May 2003. 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

The Panel noted that Alternative Modification P102 has an interaction with Modification Proposal P114 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 takes the view, having regard to the Applicable BSC Objectives and its statutory duties, that neither Modification Proposal P102 nor its Alternative better facilitate achievement of the Applicable BSC Objectives.

Ofgem has consistently stated that that appropriate market information should be made available to all active and potential energy market 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. However, the manner in which the release of such information is facilitated should not create alternative distortions such that Parties are unfairly disadvantaged or discriminated against. Ofgem considers that the BSC was originated under the pretext that signatories would be active Trading Parties, and as such, would contribute to the maintenance and development of the trading arrangements in a cost-reflective manner through the payment of Trading Charges. Modification Proposal P102 would allow LEGs to acquire all of the benefits of BSC membership without having to make the corresponding contributions to the costs of maintaining the trading arrangements, and so would be contrary to the principles upon which the BSC was founded. Being a signatory to the BSC carries both benefits and obligations, and Ofgem is not convinced that the means by which this Proposal imposes such burdens on LEGs is in the best interests of either LEGs or Parties, especially when compared with the reasons for so doing. Entry processes may prove to be a substantial barrier to becoming a Party for some LEGs, and

responses from non-Parties indicated that the likely take-up of Party status by non-Party LEGs solely for the purposes of obtaining data would not be significant. One concern cited by current Parties is that BSC Party status would allow a non-Trading Party to submit limitless Modification Proposals that affect a market in which it is not directly involved. Furthermore, Ofgem is concerned that the establishment of a special class of Party which is only subject to subsets of the BSC could set a dangerous precedent which may lead to unforeseen consequences in the future. Accordingly, Ofgem does not consider that Modification Proposal P102 better facilitates either of the Applicable Objectives (c) or (d).

Alternative Modification P102 proposes that LEGs could 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 confidentiality obligations in line with those to which Parties are subject to. In principle, Ofgem considers that this mechanism provides for a controlled release of information which represents an effective way of increasing transparency in the market, whilst having due regard for the confidentiality rights of Parties. It also provides a means of targeting the costs at the end-users, thereby making it somewhat cost-reflective. However, restricting the accessibility of the licensing agreement to LEGs is discriminatory. Further, the prior approval by the Authority of Modification Proposal P114, "Entitlement of Licence Exemptable Generators ('LEGs') and other non-trading Parties to BSC Membership without Evidence of Trading" has rendered the benefits of Alternative Proposal P102 redundant, so that the Authority does not consider that it better facilitates the achievement of the Applicable BSC Objectives when compared with the current baseline.

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

The Authority has therefore decided not to direct that Proposed Modification P102 or its Alternative, 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 '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