

By email to ofgemreview@decc.gsi.gov.uk : Response from BSC Panel

17 September 2010

Ms Jacqui Russell
Department of Energy and Climate Change
4th floor Area C
3 Whitehall Place
London
SW1A 2AW

Dear Ms Russell

BSC Panel response to Ofgem Review: Call for Evidence

The Balancing and Settlement Code (BSC) Panel which, amongst other responsibilities, oversees the modification process within the Balancing and Settlement Code, welcomes the opportunity to respond to DECC's call for evidence in relation to the review of Ofgem which DECC proposes to carry out in parallel with a complementary programme of work on electricity market reform.

The BSC Panel notes the wide ranging terms of reference for the review and wishes to focus its response on Ofgem's statutory duties and how these are reflected through the industry change processes with which the BSC Panel is familiar.

The BSC Panel has previously struggled to reconcile the Government's energy and climate change objectives with the requirements of the BSC and the applicable objectives against which any changes to that code must be assessed¹. In response to Ofgem's consultations under the Code Governance Review the BSC Panel has welcomed proposals to provide clarity in licence conditions which underpin the BSC and now, where applicable, takes in to account the impact proposed modifications to the BSC may have on carbon emissions.

The Gas and Electricity Market's principal objective under the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition. Whilst two members of the BSC Panel are appointed by Consumer Focus there is no specific requirement on Panel Members to form a view on the effect any change to the BSC might have on consumers. Although one of the parameters against which the BSC Panel assesses change

¹ Known as the Applicable BSC Objectives these are contained in Condition C3(3)(a) to (d) of National Grid's Transmission Licence

is whether or not the effect of any change would promote competition, the Panel recognises that there may sometimes be solutions outside the BSC which might provide a more cost effective/efficient solution to a problem. Within the confines of the BSC it is unable to fully assess these and to provide an informed opinion on their merits relative to proposed changes to the BSC. The Consumer Panel Members themselves have long sought from Ofgem a specific BSC Objective to be able to take account of the direct impact on consumers rather than through the more indirect impact on competition.

There is also a read across to the regulatory impact assessments (RIA) which Ofgem conducts around any significant change. If the Panel were able to take account of consumer benefits and disbenefits it may reduce the need for Ofgem to conduct a separate RIA which often leads to a duplication of effort on behalf of the industry as well as a time delay – an RIA usually takes six weeks. Similarly there may be occasions where an early indication of Ofgem concerns about an issue could be addressed during the Panel’s consultation and which again might reduce the need for an RIA.

The Panel has supported an initiative by ELEXON (the BSC Code administrator) and National Grid to hold industry forums where common issues can be discussed and industry participants become better informed about consequential or alternative changes to other codes. However, because of its limited vires, the Panel is unable to consider an issue holistically and can do no more than note in the report to Ofgem that there could be a potential impact or solution in another area.

The BSC Panel (like the CUSC Panel) has recently begun including estimated industry costs associated with the processing of modifications in its reports and some Panel Members have suggested that including Ofgem’s costs of processing each change would lead to greater transparency and understanding of the value for money that Ofgem provides.

The BSC Panel welcomes Ofgem’s recent moves, reflected in licence conditions, to introduce an element of self governance to the BSC change process and believes these to be consistent with better regulation principles and a move to reduce the regulatory burden.

However, as some Panel Members noted, in some cases the constraints around timeliness and transparency imposed on it by Ofgem were not matched with similar disciplines upon Ofgem; delays in responding to important industry issues can create further uncertainty.

Additionally some Panel Members noted that adopting the Bank of England’s Monetary Policy Committee’s procedures whereby full minutes are published and members’ votes are recorded would lead to greater transparency of the Authority’s decision making processes. They felt that understanding the Authority’s thought process would better inform their own view on issues.

In general the BSC Panel believes that clarity around the Government’s energy policy and strategy and Ofgem’s role within that can only be helpful.

We would reiterate that this response reflects the view of the BSC Panel. It is possible that Panel Members may separately respond to your consultation in an individual capacity rather than as BSC Panel Members.

We would be happy to expand on any of the points raised in this response and would be grateful if you would contact Megan Bennie, the BSC Panel Secretary, at megan.bennie@elexon.co.uk in the first instance.

Yours sincerely

A handwritten signature in black ink that reads "Nich Durlacher". The signature is written in a cursive style with a large initial "N".

Nicholas Durlacher

BSC Panel Chairman, on behalf of the BSC Panel