

Modification proposal:	Balancing and Settlement Code (BSC) P291: REMIT Inside Information Reporting Platform for GB Electricity		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	16 August 2013	Implementation Date:	31 December 2014

Background to the modification proposal

Regulation (EU) No 1227/2011 on Wholesale Energy Markets Integrity and Transparency (REMIT)³ was adopted in December 2011. REMIT requires, amongst other things, that wholesale energy market participants publicly disclose inside information in an effective and timely manner.⁴

The Agency for the Cooperation of Energy Regulators (ACER)⁵ has published (non-binding) guidance on the application of REMIT. In the second edition of the guidance, ACER advocates that market participants disclose inside information on central platforms, if they exist, to meet the criterion of disclosing inside information in an effective manner. Should such platforms not exist, ACER advises that market participants should (at least for an interim period) disclose inside information on their own websites.⁶

There is currently no central platform for the disclosure of inside information in the wholesale electricity market in Great Britain (GB). There is a central platform for the disclosure of inside information, operated by National Grid, for notifications regarding the wholesale gas market. Market participants in electricity are therefore required to use other means, for example their own websites, to disclose inside information. As a result, inside information is published on many websites, so that it may be more difficult for interested parties to locate and monitor all published information.

The modification proposal

P291 (the "Modification") was raised by SSE Energy Supply Limited (the "Proposer") in January 2013 and seeks to establish a central platform, in the form of a webpage on the Balancing Mechanism Reporting System (BMRS) website⁷. This is both to address the current absence of a central platform for the disclosure of inside information regarding

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0001:EN:PDF>

⁴ Article 4 of REMIT; Article 2(1) of REMIT defines inside information.

⁵ A European Union Agency created by the Third Energy Package to further progress on the completion of the internal energy market for electricity and natural gas; see:

http://www.acer.europa.eu/The_agency/Pages/default.aspx

⁶ ACER, *Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency*, 2nd Edition, updated 22 April 2013, pages 34 – 35. The Guidance states that inside information should be disclosed in a manner ensuring that it is capable of being "disseminated to as wide a public as possible".

⁷ "The BMRS website provides near real time and historic data about the Balancing Mechanism which is used as a means of balancing power flows on to and off the electricity Transmission System in GB" – see:

<http://www.bmreports.com/>.

the wholesale electricity market, and to establish standards for the reporting of such information.

Under P291, market participants may voluntarily publish a notification on the BMRS using the following routes: (1) Grid Code data submission and/or (2) the ELEXON Portal.

(1) Grid Code data submission

Market participants subject to the Grid Code currently submit data to National Grid Electricity Transmission (NGET) in its role as the National Electricity Transmission System Operator (NETSO). Under this Modification, data currently submitted to NGET would be expanded through a Grid Code modification to allow the submission of all information required for the disclosure of inside information in accordance with REMIT. NGET would transmit any inside information notifications it receives to the BMRS.

(2) ELEXON Portal⁸

Where an entity is required to disclose inside information but is not subject to the Grid Code, under this Modification it could submit data to the BMRS through ELEXON (via the "ELEXON Portal"). REMIT online notification forms would be provided on ELEXON's website. Persons wishing to disclose inside information could, upon logging into their account, complete the form which would then be transmitted to the BMRS.

Grid Code users with access to the Portal solution could choose to use either method to submit information. The Portal solution would be available to all persons wishing to disclose inside information, including non-BSC parties, provided they gain the necessary authorisation to access the ELEXON Portal.

The central implementation cost of P291 is approximately £475k, including proposed changes to the Portal to receive Grid Code data from NGET and NGET's proposed changes to its systems. Industry respondents estimated their costs for using one of the two data submission routes to the BMRS as ranging from minimal to £300k. It is anticipated that this platform would be operational by 31 December 2014.

The Workgroup that assessed P291 considered unanimously that the Modification better facilitates Applicable BSC Objective (c) and, by a majority, that the Modification also better facilitates Applicable BSC Objective (e)⁹.

Workgroup assessment

The Workgroup considered a number of options in addition to the proposed modification solution. It also explored the potential for NGET (in its role as the NETSO) to both receive and publish inside information under REMIT. However, this solution was not taken forward as it did not affect the BSC, and Workgroups established under a BSC modification consider only scenarios in which the BSC is affected.

The Workgroup decided that inside information should be published on the BMRS. The information to be published was primarily based on ACER's guidance, but includes additional data items that are required under the recently published Commission Regulation (EU) No 543/2013, commonly known as the Transparency Regulation.

⁸ The Elexon Portal is a website providing operational balancing and settlement data.

⁹ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: <http://epr.ofgem.gov.uk/index.php?pk=folder380751>

The Workgroup identified three different routes by which the information could be sent to the BMRS – via:

1. the ELEXON Portal;
2. the BMRS website; and
3. Grid Code submissions

It explored the costs and robustness of the above options and combinations of them. After considering the Impact Assessment (IA), a combined solution where both the ELEXON Portal and Grid Code submissions could be used to send inside information to the BMRS was taken forward as the proposed solution to P291 for the Assessment Consultation. The alternative Portal-only solution was also presented for comments.

There were some concerns expressed in the Report Phase Consultation regarding the Grid Code submission part of the solution. Nonetheless six of the seven respondents agreed it should be approved, the seventh respondent being neutral in this regard.

BSC Panel¹⁰ recommendation

At its meeting of 11 July 2013, the BSC Panel voted unanimously to recommend that P291 should be approved. The views of Panel members can be found in the Final Modification Report (FMR) for P291.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report dated 12 July 2013. The Authority has considered and taken into account the responses to ELEXON's¹¹ consultation which are attached to the FMR.¹² The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the BSC⁹; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties¹³.

Reasons for the Authority's decision

We set out below our views against those Applicable BSC Objectives which we consider are impacted by the Modification Proposal.

BSC Objective (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"

The Proposer and all Workgroup members considered that the Modification better facilitates this objective. They considered that (i) the Modification facilitates the publication of inside information relating to wholesale electricity on a public platform, which ensures that this information is freely accessible to all interested parties, and (ii) the Modification facilitates non-BSC parties to publish inside information on the platform,

¹⁰ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

¹¹ The role and powers, functions and responsibilities of ELEXON are set out in Section C of the BSC.

¹² BSC modification proposals, modification reports and representations can be viewed on the ELEXON website at www.elexon.co.uk

¹³ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

which, although this comes at a cost to BSC parties, benefits BSC parties as well as non-BSC parties.

One respondent to the Report Phase consultation considered that although the proposed combined-route solution is more expensive than possible alternatives, it would lower the overall costs on individual parties publishing inside information on the BMRS. The respondent considered that it would also maximise the number of parties choosing to publish on the platform.

Both the proposer and some consultation respondents noted that there is great interest in a central platform, which could suggest that, although not a requirement, market participants would choose to publish inside information on the new platform. Respondents to an Open Letter¹⁴ published by Ofgem in March 2013 were also generally supportive of a central platform.

We consider that the Modification may better facilitate the ability of market participants to identify a comprehensive picture of the market, enabling them to make more informed decisions as a consequence of increased transparency. The new platform could be particularly beneficial for those market participants with fewer resources, who would otherwise have to monitor multiple individual websites of other market participants. This is likely to promote increased market participation and thus increase effective competition in the generation and supply of electricity as well as in its sale and purchase.

A potential Portal-only solution would have had the benefits of being highly adaptable, being less expensive and having a shorter implementation lead-time, and some Workgroup members noted their preference for it for these reasons. However we acknowledge that facilitating the submission of inside information through current Grid Code submissions may be expected to result in greater participation on the proposed platform. This would allow market participants to have a more informed view of the market, which may result in more effective competition as outlined above. Furthermore, we agree with one market participant's point that the provision of a choice of submission routes addresses the uncertainty about the costs to market participants of implementing the solution by allowing them to choose the solution that is most cost-effective for them.

We are aware that there are businesses that collate information from a number of individual websites and provide a single information 'feed' to subscribers to their services. Given the important benefits to the market that will arise from transparency (arising out of access to the necessary information), we note the importance of ensuring that the information available on the new platform is widely accessible and that there is no barrier to its use by businesses, including for the purposes of the above services.

With consideration of the points above, we consider that the Modification better facilitates Applicable BSC Objective (c).

BSC Objective (e): "Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency"

The Proposer and the majority of the Workgroup considered that the Modification better facilitates Applicable Objective (e) because it aligns with the spirit of this objective and it better facilitates market participants' compliance with REMIT.

Some Workgroup members and some respondents to the Report Phase consultation were neutral on whether the Modification does better facilitate this objective as ACER's

¹⁴ <https://www.ofgem.gov.uk/ofgem-publications/75234/ofgem-remit-open-letter-final-published.pdf>

Guidance on the Application of REMIT, which the Modification seeks to follow, is not legally binding.

Whilst ACER's guidance does recommend that platforms are established for the publication of inside information pursuant to Article 4 of REMIT, this guidance is not legally binding. Compliance with recommendations in this non-binding guidance – and specifically that inside information is published on platforms – is therefore not in itself relevant to compliance with this Applicable Objective.

Whilst we agree that the Modification is likely to better facilitate compliance with obligations under REMIT, we express some doubts as to whether REMIT falls under this objective. However, because we have decided to approve this Modification on the basis of the other objectives mentioned elsewhere, we have not considered this further.

On this basis, we are neutral on whether this Modification does better facilitate the achievement of Applicable BSC Objective (e).

BSC Objective (d): "Promoting efficiency in the implementation and administration of the balancing and settlement arrangements"

We note the view given in the FMR that Applicable BSC Objective (d) is not met due to the costs incurred by BSC Parties without the realisation of an increase in efficiency. We consider that, despite the initial costs to parties noted in the FMR (and we note that we would expect changes to be made in a cost-effective way), the Modification may, in fact, ultimately lead to increased efficiency in the implementation of the balancing and settlement arrangements. If the proposed platform is widely used, market participants may be better informed and hence balance their positions more effectively, which may lead to more efficient balancing of the system by NGET. Thus we believe that this objective will be better facilitated.

BSC Objective (b): "The efficient, economic and co-ordinated operation of the national electricity transmission system"

We agree with the view noted in the FMR that Applicable BSC Objective (b) may be better facilitated. As set out above, we consider that the Modification may better facilitate the ability of market participants to identify a comprehensive picture of the market, enabling them to make more informed decisions as a consequence of increased transparency. This in turn may result in the more efficient, economic and co-ordinated operation of the national electricity transmission system. Therefore, while it is difficult to determine the extent to which this objective (b) is better facilitated by the Modification, we consider that this outcome is supported by the improved transparency this platform facilitates.

For the reasons outlined above, and considering them together, we believe that the Modification better facilitates the Applicable BSC Objectives. We also consider that it is in line with our principal objective and statutory duties.

Other issues

REMIT inside information

One respondent noted¹⁵ their concern that all Grid Code submissions of maximum export limit¹⁶ changes would be reported to the BMRS rather than only those that are inside

¹⁵ Noted in P291 Report Phase Consultation Responses; see: <http://www.elexon.co.uk/mod-proposal/p291/>

¹⁶ "The Maximum Export Limit for a BM Unit is one of the Export and Import Limits listed in Appendix A to BC1 of the Grid Code. It is the maximum power export level of a particular BM Unit at a particular time. It is

information according to REMIT. We note that it is for market participants to determine whether they possess information which is inside information and needs to be disclosed according to REMIT. We note that the FMR states that there is a threshold for needing to submit information under REMIT which is 100MW. This is not correct; all information that meets REMIT's criteria¹⁷ as being inside information must be disclosed in the circumstances detailed in REMIT. In further response to this concern, it is our understanding that information that is submitted via the Grid Code submission route may be flagged as being inside information under REMIT so that only information considered to be inside information is submitted to the REMIT notification page on the BMRS.

Transparency Regulation

A BSC Modification, P295, has been raised to address the NETSO's obligation under the Transparency Regulation to submit transparency information to a central European platform (following submission of that information by relevant entities to the NETSO or, where relevant, a data provider). P295 was raised before the deadline for the receipt of responses to the P291 Report Phase Consultation Questions. Due to the potential overlaps of the obligation to disclose inside information in accordance with REMIT with the obligation to disclose information in accordance with the Transparency Regulation, one respondent to the Report Phase Consultation Questions noted that there would be merit in considering the reporting requirements under both regulations together. Notwithstanding such overlaps, we consider that we are not precluded from approving this Modification at this stage. We note that the P295 Workgroup is able to take into account the requirements under REMIT in association with the requirements under the Transparency Regulation in developing its proposal. While those developing P295 may wish to take into account our approval of P291, P295 will ultimately be the subject of a separate decision of the Authority on the basis of the P295 FMR submitted to us.

Final Notes

REMIT came into force in December 2011, and the Authority was granted specific powers to enforce the Regulation in June 2013. We expect all persons to fulfil their obligations under the Regulation. We would remind market participants of the need to comply with their obligations under Article 4 of REMIT to disclose inside information and the consequential risk of also breaching Article 3 of REMIT (the prohibition on insider trading) if they fail to do so. We recommend that market participants consult ACER's guidance on the application of REMIT.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that Modification Proposal BSC P291: '*REMIT Inside Information Reporting Platform for GB Electricity*' be made.

Emma Kelso
Associate Partner, Wholesale Markets

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

submitted as a series of point MW values and associated times" – see:

http://www.bmreports.com/bwx_help.htm#MEL

¹⁷ Article 2 of REMIT states that inside information is information that is (i) of a precise nature; (ii) has not been made public; (iii) relates, directly or indirectly, to one or more wholesale energy products; and (iv) if it were made public, would be likely to significantly affect the prices of those wholesale energy products. We note that current ACER guidance (second edition) notes that outages that are equal to or exceed 100MW may constitute inside information, but this does not preclude outages below this level meeting the definition of inside information.