

Modification proposal:	<b>Balancing and Settlement Code (BSC) P309: Facility to enable BSC Parties to select either replacement contract notifications or additional contract notifications</b>		
Decision:	The Authority <sup>1</sup> directs that modification P309 Alternative be made <sup>2</sup>		
Target audience:	National Grid Transmission Plc (NGET), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	19 March 2015	Implementation date:	5 November 2015

## Background

The volume of electricity bought or sold by a BSC party is notified to Elexon<sup>3</sup> following each settlement period through an authorisation, as set out in the contract notification process under the BSC.<sup>4</sup> This information enables energy imbalance volumes to be calculated.

Following an error in contract submissions by a BSC party (the proposer of P309), after a software upgrade by that party, it was observed that under the current BSC provisions and associated systems it was possible for BSC parties to make errors that result in an unintentional switch between replacement contract notifications and additional contract notifications or vice versa. The effect of this would be that the party's contract position would be unintentionally skewed from their intended position.

## The modification proposal

Modification proposal P309 (P309 Proposed) was raised by RWE Supply and Trading GmbH (the proposer). It proposes to give BSC parties the ability to specify that either replacement contract notifications or additional contract notifications are associated with any particular authorisation of contract volume. The proposer suggests that this would remove the risk that BSC parties inadvertently switch between replacement contract notifications and additional contract notifications.

In addition, under the proposal, parties would be allowed to retrospectively apply these notification type selections to historic authorisations for a period of five working days following the implementation date of the modification. Any retrospective changes could be applied to historic authorisations on or after 21 May 2013 only, which is the settlement day that had its final settlement reconciliation run on 10 July 2014 (the date the modification proposal was initially presented to the BSC Panel).

The P309 workgroup put forward an alternative solution (P309 Alternative) which is the same as P309 Proposed except that it would not allow parties to retrospectively apply these notification type settlements to authorisations made prior to the implementation date of the modification proposal. P309 Alternative would only apply prospectively, from the proposed P309 implementation date of 5 November 2015.

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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

<sup>3</sup> The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

<sup>4</sup> BSC Section P 'Energy Contract Volumes and Metered Volume Reallocations'

The P309 workgroup recommended approval of P309 Alternative and rejection of P309 Proposed. The workgroup unanimously agreed that P309 Alternative would better facilitate BSC objectives (c) and (d).<sup>5</sup>

### **BSC Panel<sup>6</sup> recommendation**

At the BSC Panel meeting on 12 February 2015, the BSC Panel unanimously considered that P309 Proposed would not better facilitate the applicable BSC objectives and the Panel therefore did not recommend its approval.

The BSC Panel unanimously considered that P309 Alternative would better facilitate applicable BSC objectives (c) and (d), and the Panel therefore recommended that P309 Alternative should be approved.

### **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 12 February 2015. We have considered and taken into account the responses to the industry consultation(s) which are attached to the FMR.<sup>7</sup> We have concluded that:

1. implementation of P309 Proposed will not better facilitate the achievement of the applicable objectives of the BSC;
2. implementation of P309 Alternative will better facilitate the achievement of the applicable objectives of the BSC;<sup>8</sup> and
3. directing that P309 Alternative be made is consistent with our principal objective and statutory duties.<sup>9</sup>

### **Reasons for our decision**

We consider that P309 Proposed will not better facilitate BSC objectives (c) and (d) and will have no impact on the other applicable objectives. We consider that P309 Alternative will better facilitate BSC objectives (c) and (d), and will have no impact on the other applicable objectives.

### ***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 P309 workgroup (apart from the Proposer) agreed that P309 Proposed would not better facilitate BSC objective (c) and would be detrimental against this objective. The P309 workgroup unanimously agreed that P309 Alternative would better facilitate BSC objective (c). The workgroup's views were that the introduction of this new check on contract notifications would clarify ambiguity in the current arrangements and reduce the risk of errors, for both current participants and new entrants. While beneficial

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<sup>5</sup> The BSC objectives are set out in Standard Condition C3(3) of NGET's Transmission Licence: <https://epr.ofgem.gov.uk>

<sup>6</sup> The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and Standard Special Licence Condition C3 of the Electricity Transmission Licence available at: [www.epr.ofgem.gov.uk](http://www.epr.ofgem.gov.uk)

<sup>7</sup> BSC modification proposals, modification reports and representations can be viewed on the Elexon website at [www.elexon.co.uk](http://www.elexon.co.uk)

<sup>8</sup> As set out in Standard Condition C3(3) of NGET's Transmission Licence: <https://epr.ofgem.gov.uk>

<sup>9</sup> 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.

prospectively, the workgroup's views were that changing the arrangements retrospectively would create uncertainty in the arrangements and would be detrimental to competition. The BSC Panel shared the views expressed by the P309 workgroup.

We agree with the views expressed by the workgroup and the BSC Panel relating to BSC objective (c) with respect to both P309 Proposed and P309 Alternative. Introducing this new risk management tool will improve the processes for future authorisations, remove the scope for errors and ensure that the arrangements are clearer. This will benefit all current participants as well as potential future market entrants, promoting effective competition. We note the views of one respondent to the P309 industry consultation that this may prove to be of particular benefit to smaller players in the market, who could be left particularly exposed by accidental errors in the contract notification process and may be less able to withstand large imbalance shocks.

While we agree that any moves to de-risk the contract notification process would be beneficial to parties (and ultimately consumers), applying this retrospectively to account for an individual case creates an undue degree of uncertainty for parties and therefore may have detrimental impacts on the promotion of effective competition. This retrospective change could undermine investment made by other BSC parties in order to avoid such errors, which would impact on the promotion of effective competition.

In general, we consider that modifications should not change the character of past transactions, completed on the basis of the then existing rules, and that retrospective modifications should be avoided as they undermine market confidence. However, there may occasionally be exceptions that could give rise to the need for a modification which would have retrospective effect.<sup>10</sup> As such, it is appropriate to consider any retrospective modification proposals on a case by case basis.

In this case, while we recognise that the cost of the proposer's error in 2014 represented a material cost for that party, we consider that the application of a retrospective change on a one-off basis to allow for such an error to be reversed would not better facilitate competition in the generation or supply of electricity.

### ***BSC Objective (d) - promoting efficiency in the implementation of the balancing and settlement arrangements***

The majority of the workgroup agreed that the retrospective element of P309 Proposed would be detrimental against BSC objective (d). The majority of the P309 workgroup also considered that P309 Alternative would better facilitate BSC objective (d). The BSC Panel shared the views expressed by the P309 workgroup.

We agree with the views expressed by the P309 workgroup and the BSC Panel relating to BSC objective (d) with respect to both P309 Proposed and P309 Alternative. The accurate notification of energy contract volumes is important in ensuring the effective operation of the balancing and settlement mechanism and, ultimately, the market. The introduction of this extra risk management tool will serve to increase the accuracy of the settlement notification process by mitigating the risk of accidental errors in contract notifications. By reducing ambiguity and risk in the contract notification process, we consider that P309 Alternative would promote the efficient implementation of the balancing and settlement arrangements.

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<sup>10</sup> We have previously issued guidance to this effect, outlining some particular circumstances that could give rise to the need for a retrospective change. Page 2, [Ofgem Guidance on Code Modification Urgency Criteria](https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria): <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria>

We however consider that applying this retrospectively, as is the case with P309 Proposed, would not promote efficiency in the implementation of the balancing and settlement arrangements. The current arrangements, whereby there is no means for retrospective correction, mean that parties are incentivised to ensure the accuracy of their contract notifications. This incentive promotes the efficient implementation of the balancing and settlement arrangements, but would be diluted if parties had the ability to correct an individual contract notification error retrospectively.

We note that P309 Alternative will also introduce an additional step into the contract notification process. Some parties highlighted in their consultation responses that under P309 they will have to manually choose their notification type and may have to switch between notification types. On balance, however, we consider the benefits to efficiency from P309 Alternative outweigh the potential downsides of the additional step in the process that will be created.

### **Decision notice**

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that modification proposal BSC P309 Alternative: '*Facility to enable BSC Parties to select either replacement contract notifications or additional contract notifications*' be made.

**Philippa Pickford**

**Associate Partner, Wholesale Market Performance**

Signed on behalf of the Authority and authorised for that purpose