

Modification proposal:	<b>Balancing and Settlement Code (BSC) P396: 'Revised treatment of BSC Charges for Lead Parties of Interconnector BM Units' (P396)</b>		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	06 March 2020	Implementation date:	5 November 2020

## Background

This modification seeks to exclude Interconnector Balancing Mechanism (BM) Units from the Main Funding Share and Supplier Volume Allocation (SVA) (Production) Funding Share BSC Charges. The proposer argues that this change would be consistent with the objective of Regulation (EU) 2019/943 (the Electricity Regulation)<sup>3</sup>.

The BM is the principal tool used by National Grid Electricity System Operator (NGESO) to balance the electricity system in real time. Generators and demand with flexibility in their portfolios submit offers (to increase generation or decrease demand) and bids (to decrease generation or increase demand) to NGESO via the BM. The Balancing and Settlement Code (BSC) is a document arising from the operation of standard Licence Condition C3.1 that sets out the governance arrangements for this electricity balancing, and the settlement processes that arise from it.

In accordance with Condition C3.1B of their electricity transmission licence, NGESO established ELEXON to administer the BSC. ELEXON's role is to "provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC"<sup>4</sup>. ELEXON recovers BSC Costs<sup>5</sup> from parties to the BSC, including Interconnector Users<sup>6</sup>, via a monthly charge known as BSCCo Charges<sup>7</sup>. The methodology for determining how ELEXON recovers its costs via BSC Charges is set out in Section D of the BSC<sup>8</sup>.

Under the Electricity Regulation, an interconnector is defined as a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States<sup>9</sup>. As a consequence, interconnector flows are

<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 Regulation (EU) 2019/943 on the internal market for electricity (recast). This regulation came in to force on 1 January 2020 and repealed Regulation (EC) 714/2009.

<sup>4</sup> Transmission Licence, Condition C3.1B.

<sup>5</sup> The term "BSC Costs" is defined in [Section D 2.1.1\(a\)](#) of the BSC.

<sup>6</sup> The term "Interconnector User" is defined in Annex X-1 of the BSC.

<sup>7</sup> The term "BSCCo Charges" is defined in [Section D 2.1.1\(a\)](#) of the BSC.

<sup>8</sup> Section D of the BSC is available here: <https://www.elexon.co.uk/the-bsc/bsc-section-d-bsc-cost-recovery-and-participation-charges/>

<sup>9</sup> Article 2 of the Energy Regulation defines an interconnector as "a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States".

neither classed as production (generation) nor consumption (demand) but part of the overall transmission infrastructure facilitating the wider market. However, for the purposes of calculating BSC Charges, Interconnector BM Units<sup>10</sup> in Great Britain (GB) are currently treated as either a Production BM Unit (generation)<sup>11</sup> or Consumption BM Unit (demand)<sup>12</sup>.

The United Kingdom (UK) left the European Union (EU) on 31 January 2020 and, by virtue of the Withdrawal Agreement (October 2019), entered a Transition Period<sup>13</sup> during which EU law is applicable to and in the UK. Therefore the requirements of the Electricity Regulation continues to apply in the UK during the Transition Period. This means that GB interconnectors will continue to be considered as a transmission line and that network access charges will remain prohibited from being levied on those interconnectors.

### *BSC Costs*

All costs, expenses and other outgoings of BSCCo (ELEXON) are referred to as BSC Costs<sup>14</sup>. Each year, ELEXON calculates annual BSC Costs and recovers these costs from BSC Parties. Some of the costs are recovered via various specified charges on a tariff-style basis, where the cost is set and fixed for a period of time. The remaining costs are recovered from BSC Parties via Funding Shares based on a BSC Party's<sup>15</sup> (Party) market share. The Main and SVA (Production) Funding Shares are both calculated based on the latter approach.

The costs apportioned to each Party via Funding Shares are generally derived from a Party's Credited Energy Volumes (QCE) i.e. they are based on the Party's metered generation and/or consumption. In this way, a Party that generates or consumes more electricity will pay a larger proportion of the related costs. Currently, Interconnector Users, like any other Party, pay these costs.

### **The modification proposal**

Nord Pool Spot AS ("Nord Pool"), the Proposer, raised Modification P396 on 10 December 2019. The modification seeks to exclude Interconnector BM Units from the Main Funding Share<sup>16</sup> and Supplier Volume Allocation (SVA) (Production) Funding Share<sup>17</sup>.

The modification proposal would, for the purposes of calculating BSC Charges, mean that Interconnector flows are no longer treated as a Production BM Unit or Consumption BM Unit. The Proposer considers that this approach better meets the requirements of the Electricity Regulation.

The Proposer believes that the modification proposal will better facilitate applicable BSC objectives (c)<sup>18</sup> and (e)<sup>19</sup> and is neutral with regard to the other BSC objectives.

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<sup>10</sup> An 'Interconnector BM Unit' is defined in paragraph 5.5 of Section K of the BSC.

<sup>11</sup> A 'Production BM Unit' is defined in Annex X-1 of the BSC.

<sup>12</sup> A 'Consumption BM Unit' is defined in Annex X-1 of the BSC.

<sup>13</sup> The Transition Period is currently expected to run until 23:00 (GMT) on 31 December 2020.

<sup>14</sup> The term "BSC Costs" is defined in [Section D](#) 2.1.1(a) of the BSC.

<sup>15</sup> A BSC Party is any company that has acceded to the Balancing and Settlement Code (i.e. that has signed the BSC Framework Agreement).

<sup>16</sup> The term "Main Funding Share" is defined in Annex D-1 of the BSC.

<sup>17</sup> The term "SVA (Production) Funding Share" is defined in Annex D-1 of the BSC.

## **BSC Panel<sup>20</sup> recommendation**

By majority decision, the BSC Panel (the Panel) recommended that P396 should be rejected. The Panel unanimously agreed that P396 does not better facilitate BSC applicable objective (c), but that it does better facilitate objective (e). The Panel agreed that the proposal would have a neutral impact on all other BSC objectives<sup>21</sup>.

## **Our decision**

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR), dated 23 January 2020. We have considered and taken into account the responses to the industry consultation which are attached to the FMR<sup>22</sup> and the recommendation of the Panel. We have concluded that:

- implementation of P396 will better facilitate the achievement of the applicable objectives of the BSC<sup>23</sup>; and
- directing that the modification be made is consistent with our principal objective and statutory duties<sup>24</sup>.

## **Reasons for our decision**

We consider that we have not been provided with evidence that the modification better facilitates, or has a detrimental impact on objective (c). We consider that the modification proposal better facilitates objective (e). After careful consideration and close examination of European Electricity legislation, namely the Electricity Regulation and Commission Regulation (EU) No 838/2010 (“the ITC mechanism”), we have concluded that we should approve the modification proposal. It is our view that the decision to approve the modification proposal is consistent with the objective of the Electricity Regulation.

***(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***

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<sup>18</sup> See standard condition C3 (3), objective (c) of NGENSO’s Transmission Licence: “Promoting effective competition in the generation and supply of all electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity”.

<sup>19</sup> See standard condition C3 (3), objective (e) of NGENSO’s Transmission Licence: “compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency”.

<sup>20</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>21</sup> See standard condition C3 (3), objective (a) of NGENSO’s Transmission Licence: “The efficient discharge of the licensee’s obligations under this licence”; objective (b) of NGENSO’s Transmission Licence: “The efficient, economic and coordinated operation of the National Electricity Transmission System”; objective (d) of NGENSO’s Transmission Licence: “promoting effective competition in the implementation and administration of the balancing and settlement arrangements”; objective (f) of NGENSO’s Transmission Licence: “implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation”; and objective (g) of NGENSO’s Transmission Licence: “compliance with the Transmission Losses Principle”.

<sup>22</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>23</sup> As set out in Standard Condition C3(3) of NGENSO’s Transmission Licence: <https://epr.ofgem.gov.uk>

<sup>24</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.

The Proposer argued that the modification proposal would better facilitate BSC objective (c). This is on the basis that the relevant BSC charges create a price differential between (i) trading only within GB and (ii) trading across the border. The Proposer considered that this has the effect of reducing the number of occasions where potentially beneficial trades could take place and that this acts as a barrier for Interconnector Users to enter the GB market. They considered that the impact of exempting Interconnector BM Units Credited Energy Volumes from the Main Funding Share and SVA (Production) Funding Share would promote competition by lowering the barrier to Interconnector Users to enter the GB market and facilitating cross-border trade, therefore better facilitating objective (c).

Conversely, the Panel unanimously agreed that P396 does not better facilitate BSC applicable objective (c) and noted a view that the modification is detrimental to competition. A Panel member cited that UK generators cannot compete as they are being treated differently to offshore generators, and are subject to certain charges which offshore generators are not. For example, it was inferred that traditional generators, such as a combined cycle gas turbine (CCGT) generator, are at a competitive disadvantage as they pay Transmission Network Use of System (TNUoS) and Balancing Services Use of System (BSUoS) charges whereas interconnectors do not.

It is our view that the FMR has not addressed the overall impact on competition of reallocating the relevant BSC Charges to other BSC Parties. We consider that there is insufficient evidence to support the view of the Proposer that this particular modification proposal better facilitates objective (c). Equally, we consider that there is insufficient evidence to support the majority view of the BSC Panel that P396 would have a detrimental impact on objective (c).

***(e) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency***

A key consideration in our analysis of P396 was whether the Main Funding Share and SVA (Production) Funding Share charges are access charges for the purposes of the Electricity Regulation. We consider that network access charges must not be recovered from Interconnector Users. Therefore, if we determined the aforementioned BSC charges to be access charges, then they should be removed from Interconnectors Users.

*Access Charges*

We consider the Main Funding Share and SVA (Production) Funding Share charges recovered via BSC Charges to be network access charges for the purposes of the Electricity Regulation. We have reached this conclusion based on the following reasons.

Interconnector Users, and other parties, are required to pay these BSC charges in order to have access to the GB network.

Moreover, balancing (both energy balancing and system balancing) are integral parts of network management. They are not optional add-on services, which a Party could decline to use.

The term “charges for access to networks” is not confined to charges for the physical cost of providing access to the network, or maintaining/operating the system. All physical and practical measures will generally involve an element of administrative cost as well.

### *Network Access Charges are prohibited under the Electricity Regulation*

We consider that network access charges must not be recovered from Interconnector Users. This conclusion is based on the following reasons.

The premise behind the Electricity Regulation is to enable a single European electricity market and to that end, it intends to facilitate cross-border flows of electricity and eliminate distortions to cross-border trade. In light of this purpose, we consider that Article 18 of the Electricity Regulation prohibits Interconnector Users being subject to network access charges. Specifically, Article 18(3) permits only producers and consumers to be charged network access charges.

We have further considered the proposal that the charges which otherwise would be paid by Interconnector Users are reallocated across other BSC parties, and our view is that this is appropriate. We do not consider that these charges can be recovered through the Inter-Transmission System Compensation mechanism ('ITC Mechanism'). Network operators can recover the cost of (a) *energy losses*; and (b) *making infrastructure available to host cross-border flows of electricity* through the ITC Mechanism, which is established under the ITC Guidelines. As the Main Funding Share and SVA (Production) Funding Share charges do not relate to compensation for these costs, we do not consider that they can be recovered through the ITC mechanism.

As a result, we consider that the modification proposal would better facilitate objective (e) as it better aligns the treatment of Interconnector Users with the intentions set out in the Electricity Regulation.

### **Impact assessment**

We have not undertaken an impact assessment relating to this modification as we consider the modification is consistent with the objective of the Electricity Regulation and therefore an impact assessment would not better inform our decision.

### **Decision notice**

In accordance with Standard Condition C3 of NGESO's Transmission Licence, the Authority hereby directs that the modification proposal BSC P396: 'Revised treatment of BSC Charges for Lead Parties of Interconnector BM Units' (P396) be made.

### **Implementation**

The changes to the BSC charges shall take effect from the 5 November 2020 as the necessary change to the system used to calculate BSC charges cannot be made until then. As a result, there will be a reconciliatory period beginning from the 1 April 2020 up to the day immediately prior to the scheduled implementation date of 5 November 2020.

ELEXON will calculate the difference between i) the amounts already paid to or payable by each Party by way of BSC Charges in relation to the period commencing 1 April 2020 and ending on the day immediately prior to the scheduled implementation date of 5

November 2020 and ii) the amounts that would have been payable by each Party over the same period had P396 been in effect from 1 April 2020. ELEXON shall send an invoice to Parties in respect of the reconciliation amounts on the next available billing run after the 5 November 2020.

**Tom Corcut**

**Deputy Director, Wholesale Markets**

Signed on behalf of the Authority and authorised for that purpose