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7 March 2003

The National Grid Company, BSC Signatories and  
Other Interested Parties

Our Ref: MP No P96

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision and Notice in relation to Modification Proposal P96: “Merger of Assessment and Definition Phases in the Modification Process”**

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 P96, “Merger of Assessment and Definition Phases in the Modification Process”.

The Balancing and Settlement Code Panel (the “Panel”) recommended to the Authority that the Proposed Modification P96 should be made with an Implementation Date of 15 Business Days after the Authority decision.

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, 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.

**Background**

When the BSC Panel has agreed to accept submission of a new Modification Proposal, it has four options to progress the Modification Proposal:

- ◆ amalgamate the Modification Proposal with any other Modification Proposal

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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 P096RR, Version No. 1, dated 18 December 2002

- ◆ submit the Modification Proposal to a Modification Group for clarification and definition, where there is insufficient detail to enable the BSC Panel to decide whether to proceed with a detailed assessment; this is the Definition Procedure
- ◆ submit the Modification Proposal to a Modification Group for a detailed assessment; this is the Assessment Procedure
- ◆ submit the Modification Proposal directly to the Report Phase.

If the Modification Proposal is submitted to the Definition Procedure, the Modification Group will normally be allowed no more than two months in which to produce a Report for the Panel. The purpose of this Report is to provide sufficient clarification and detail on the issues relating to the Proposal, so that the Panel can determine whether to send the Proposal to the Assessment Procedure or directly to the Report Phase.

Dynergy UK Ltd submitted Modification Proposal P96, "Merger of Assessment and Definition Phases in the Modification Process" on 13 August 2002. The justification for the Modification Proposal was that it would better facilitate achievement of Applicable BSC Objective<sup>3</sup> (d), "promoting efficiency in the implementation and administration of the balancing and settlement arrangements".

### **The Modification Proposal**

Modification Proposal P96 seeks to reduce the overall timescale to process a Modification Proposal through the Modification Procedure by merging the Definition and Assessment Procedures to create an Evaluation Procedure. This would allow each Modification Proposal to be defined and assessed as one complete stage. The current range of definitional and assessment activities would continue to be undertaken, but in a single process. The Proposed Modification also includes transitional arrangements to allow for the continued progression of Modifications that are currently within the process.

The Proposer suggested that this change would introduce greater efficiency, clarity and flexibility into the Modification Procedure and would facilitate more effective consultation on Modification Proposals and their respective Alternative Modifications.

The Panel considered the Initial Written Assessment at its meeting of 12 September 2002 and agreed to submit Modification Proposal P96 to the Assessment Procedure. The Governance Standing Modification Group (the "Group") considered the Modification Proposal over the course of two meetings (on 18 September and 22 October 2002) and commented on the draft legal text by e-mail during the period 1-8 November 2002. In the course of the Assessment

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<sup>3</sup> The Applicable BSC Objectives, as contained in Condition C3 (3) of National Grid Company'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.

Procedure, a consultation was issued and an Assessment Report was presented to the Panel on 14 November 2002, with a recommendation from the Group that the Proposed Modification be made. The Panel concurred with the Group's recommendation and agreed that Modification Proposal P96 should proceed to the Report Phase.

ELEXON published a draft Modification Report on 22 November 2002, which invited respondents' views by 2 December 2002.

### **Respondents' views**

ELEXON received eight responses to the consultation on the draft Modification Report for Modification Proposal P96. Six responses (representing 20 Parties) expressed support for the proposed Modification and one respondent (representing 3 Parties) was opposed to the Proposed Modification. One respondent (representing 1 Party) replied with a "No Comment" response.

The respondents' views are summarised in the Modification Report for Modification Proposal P96, which also includes the complete text of all respondents' replies.

### **Panel's recommendation**

The Panel met on 12 December 2002 and considered the Modification Proposal P96, the draft Modification Report, the views of the Modification Group and the consultation responses received.

The Panel recommended that the Authority should approve the Proposed Modification and that, if approved, the Proposed Modification should be implemented 15 Business Days after any such Authority approval.

### **Ofgem's view**

Having carefully considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties that Modification Proposal P96 does not better facilitate achievement of Applicable BSC Objective (d).

Ofgem is mindful of the views of respondents that a combined Evaluation Phase would reduce the number of mandatory consultations for a Modification Proposal that is sent to the Definition, Assessment and Report Phases in turn, thereby reducing "consultation fatigue". Respondents have also commented that the purpose of the Definition Phase is vague and that there are frequent questions raised as to whether the Modification Group is acting *ultra vires* during this phase of the process. It has been suggested that the combination of Definition and Assessment Phases would eliminate such concerns and allow for the resources to be dedicated to addressing the substantive issues raised by the Modification Proposal. Additionally, it was considered that the Modification Proposal would allow for Proposals to be considered in a flexible and iterative manner, thereby preventing options being closed off to the Group too early in the process.

Ofgem observes that the Definition Phase has been used in a relatively sparing fashion (approximately one in ten Modification Proposals have been sent to the Definition Phase), so in

response to the assertions of “consultation fatigue”, Ofgem considers that use of the Definition Phase cannot fairly be said to be imposing a major burden on Parties. Furthermore, the Definition Phase has primarily been used during the evaluation of Modification Proposals that Parties have deemed to be complex and of great significance to the trading arrangements (eg, P74, P75, P78, P82). In such instances, there is no basis to suggest that the number of consultations would have been fewer had the Modification Proposals been considered under a single Evaluation Phase.

Further, Ofgem considers that a well-defined Proposal can serve to enhance the efficiency and speed of the evaluation process in that once adequately defined, the Modification Group members involved in the Assessment Phase of the evaluation of a Proposal can proceed with their task relatively free of the hindrances that attend Proposals where an element of uncertainty still surrounds the nature of the issues raised. Ofgem considers that to limit the facility for the clarification of ambiguities and the definition of the issues raised in proposals in the manner suggested in the Proposed Modification would not facilitate achievement of Applicable BSC Objective (d).

Ofgem therefore considers that the Definition Phase should remain as a useful element of the Modification process and that in the light of operational experience, the current process has proven generally to be robust and efficient. Also, Ofgem considers that the introduction of an Evaluation Procedure which has a potential duration of five months could introduce further delays into the Modification Process, so that the possible reductions to the timescales for processing Proposals might not be realised in practice. In any case, Ofgem is reluctant to relax the procedural rigour of the evaluation mechanisms within the BSC when the extent of the suggested efficiency gains is not self-evident. Therefore, Ofgem considers that Modification Proposal P96 should not be approved.

### **The Authority’s decision**

The Authority has therefore decided not to direct that Proposed Modification P96, as set out in the Modification Report for Modification Proposal P96, 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 'A. 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