



To BSC Parties and any other party who has an interest in the transmission arrangements

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Dear Colleague

**The Authority's decisions on the Balancing and Settlement Code (BSC) modification proposals on zonal transmission losses**

On 14 September 2007, Ofgem published a letter ("the September 2007 decision letter")<sup>1</sup> on BSC modification proposals P198, the P198 Alternative, P200, the P200 Alternative, P203 and P204, all of which seek to alter the rules under which transmission losses are allocated to users of the electricity transmission system such that losses are allocated on a locational basis.

The September 2007 decision letter set out the Authority's decision (the "September decision") that the Authority would not be in a position to make its final decisions on these proposals on or before 20 September 2007 as it had previously expected to do<sup>2</sup>. It noted that the Authority considered it would be appropriate for it to delay taking its final decisions on the proposals until a further review was undertaken of the cost benefit analysis that Elexon had commissioned from Oxera as part of the industry assessment of the proposals, and the reliance placed upon it. It also noted that Ofgem would expect to consult on the findings of the review of the Oxera analysis. The September 2007 decision letter further stated that it was the Authority's then current expectation to be in a position to make its final decisions on the proposals in spring 2008.

This letter sets out the reasons why the Authority is no longer in a position to make its final decisions on these proposals in spring 2008 and the proposed way forward.

**Reasons for not making decisions in spring 2008**

Following the September 2007 decision letter, Ofgem issued an invitation to tender for the review of Oxera's analysis and in December 2007 we appointed the Brattle Group to undertake this review. The review is ongoing, and we intend to consult on the findings of the review before the Authority makes its final decisions on the proposals. That consultation (the "further consultation") will also cover any other new information or analysis and any changes or updates to relevant information or analysis since we last consulted on the proposals. For example, it may be appropriate to update and consult upon some of the information and/or analysis in our February 2007 impact assessment<sup>3</sup>

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<sup>1</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=91&refer=Licensing/ElecCodes/BSCode/Ias>

<sup>2</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=69&refer=Licensing/ElecCodes/BSCode/Ias>

<sup>3</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=20&refer=Licensing/ElecCodes/BSCode/Ias>

and June 2007 minded-to consultation<sup>4</sup> on the proposals, to the extent that this has changed since these consultations were issued.

In parallel to the ongoing review of Oxera's analysis, in December 2007 Ofgem was served notice of a legal challenge raised by a number of industry parties ('the Claimants') in respect of the Authority's September 2007 decision. The Claimants have challenged the Authority's power to make a decision on any of the proposals after the latest date for a decision set out in the Final Modification Reports (FMRs) for each of the proposals (i.e. 20 September 2007). This litigation is ongoing, and the earliest date we can expect to know the outcome of the judicial review is late May 2008<sup>5</sup>.

At its meeting on 13 March 2007, the Authority discussed the timetable for making its final decisions on the proposals, in light of the ongoing litigation. The Authority noted that although it can proceed with the further consultation and consideration of these proposals alongside the judicial review, in this particular case it considers it to be appropriate to temporarily halt such work by both Ofgem and the industry until the outcome of the judicial review is known. The Authority considers that it is not appropriate to devote significant Ofgem (and as a consequence industry) resources to the losses proposals when the outcome of the judicial review is unknown and at a time when there are other significant projects across the industry (most notably transmission access) that will also require significant industry and Ofgem resource and that we consider are much higher priority given the relative scale of the potential benefits to customers.

The Authority therefore decided to delay taking forward the further consultation until the outcome of the judicial review is known. The Authority therefore noted that it was no longer in a position to make its final decisions on the proposals in spring 2008.

The Authority further noted that, whilst it considered a delay to its final decision to be appropriate in the specific circumstances of this case, it should not be interpreted as indicating that this is the approach that the Authority would take in the context of other decisions. The Authority would need to assess the relevant circumstances in each and every case before it and determine the most appropriate way to proceed in the light of those circumstances.

## Way Forward

Once the outcome of the judicial review is known, we intend, subject to that outcome, to undertake the further consultation before the Authority takes its final decisions on the proposals. Given the uncertainty regarding the timing of the outcome of the ongoing litigation, the Authority currently expects that it will not be in a position to make its final decisions on the losses proposals until the second half of 2008.

Yours faithfully



**Steve Smith**  
**Managing Director, Networks**

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<sup>4</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=69&refer=Licensing/ElecCodes/BSCCode/Ias>

<sup>5</sup> The date for the rolled up permission/substantive hearing has been fixed for 19 and 20 May 2008. The timing of judgment being handed down is entirely a matter falling within the Court's discretion.