

Modification proposal:	Balancing and Settlement Code (BSC) Proposal P332: Revisions to the Supplier Hub Principle (P332)		
Decision:	The Authority ¹ has decided to reject this modification proposal ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	25 March 2022	Implementation date: N/A	N/A

Background

Suppliers are obligated by their licence to accede and comply with the Balancing and Settlement Code (BSC).³ Suppliers have overall responsibility to perform BSC obligations, however, these code provisions allow Suppliers to appoint Agents to carry out functions or perform BSC obligations on their behalf. These Agents fulfil the role of Data Collectors, Data Aggregators and Meter Operator Agents.

Where a Supplier is a Registrant of a Metering System⁴ it is responsible for the operation of that system and is required to appoint an Agent for that system to fulfil specific roles defined in BSC Section J 'Party Agents and Qualification Under the Code'.⁵ This is known as the Supplier Hub Principle. The Supplier Hub Principle involves a Supplier appointing and managing these Agents to meet its BSC obligations including performance targets. Agents appointed by a Supplier enter a contractual relationship with that supplier.

¹ 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.

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

³ [Electricity Supply Standard Licence Conditions](#)

⁴ A Registrant of a Metering System is required to ensure that the Metering Equipment is installed, commissioned, maintained, and operated.

⁵ [BSC Section J](#)

Customers are also permitted to appoint their own Agent, known as Customer Preferred Agents (CPA), outside of the Supplier Hub Principle. CPAs, under some circumstances, may not have a contractual relationship with the Supplier but the supplier remains overall responsible for compliance with BSC obligations. The issue identified through P332 is that when a customer appoints a CPA and there is no contractual relationship with the Supplier, this may leave the Supplier exposed to potential additional risk such as an inability to manage CPAs against industry targets or the non-delivery of specific BSC obligations. Commercial arrangements between CPAs and suppliers are not within the scope of the BSC which is why the BSC is silent on these arrangements.

The modification proposal

On 28 January 2016, SmartestEnergy (the Proposer), raised P332 'Revisions to the Supplier Hub Principle'.⁶ The initial proposal sought to require CPAs to become signatories to the BSC in order to help ensure CPA performance is held accountable. However, the modification's proposed solution has changed considerably over the last six years. The Proposer believes that the appointment of Agents outside of the Supplier Hub Principle makes the Supplier management of Agent performance and delivery of obligations within the BSC more difficult than managing Agents with whom it has a contract. The Proposer explains that this results in a reduction in a Supplier's ability to manage performance against industry targets and risking non-delivery of specific obligations.

In August 2017, Ofgem provided provisional thinking to the BSC Panel when presented with the P332 interim report.⁷ We noted the potential significant cost and impact on BSC Parties as a result of P332, which was outlined in the interim report, and asked for the Panel to provide a more robust evidence base that a modification to the BSC is required to address CPA performance to be able to assess whether respective costs and impact are justified.

P332 was then paused in 2017 due to Ofgem's Market-wide Half-Hourly Settlement (MHHS) Significant Code Review (SCR). Following this pause, P332 recommenced in 2019 and focussed on non-domestic customers who are settled half-hourly (HH) and sought to propose

⁶ [P332 Proposal Form](#)

⁷ [Ofgem Provisional thinking on BSC modification P332](#)

an alternate solution to making CPAs signatories to the BSC due to the potential high cost and impact of the modification.

P332 initially sought to apply to Supplier Volume Allocation (SVA) Data Collectors (DCs) and SVA Meter Operator Agents (MOA), however, SVA Metering activities transferred from the BSC to the Retail Energy Code (REC) from 1 September 2021.⁸ Therefore, P332 only applies to SVA DCs as MOA governance is now under the REC.

The revised P332 modification proposed an alternate solution, which would require CPAs to sign a side letter allowing Suppliers to enforce, against SVA DCs all applicable obligations of SVA DCs specified in the BSC, Balancing and Settlement Code Procedures (BSCPs) and Code Subsidiary Documents (CSDs).⁹ The side letter would be between the DC and Elexon and enable a Supplier who does not have a direct contract with the DC to enforce the side letter as a proxy contract under the terms of the Contracts (Rights of Third Parties) Act 1999.¹⁰

If successful in court, the Supplier would be able to recover losses it had suffered as a result of the breach of the proxy contract (side letter). The damages would be calculated to put the claimant in the same position as if the contractual obligation(s) had been performed.

Under the current arrangements, BSC Section J: 'Party Agents and Qualification Under the Code' sets out the SVA Qualification process. Qualification and Re-Qualification applications are considered by the Performance Assurance Board (PAB).¹¹ To operate as a SVA DC, Market Participants need to complete SVA Qualification. The PAB can remove a Qualified Person's Qualification if the organisation fails to comply with certain requirements and standards. SVA DCs, who would be required to sign the side letter under P332, can go through the Removal of Qualification (RoQ) process.¹² When the PAB is informed of an organisation's performance or compliance failures it can start the RoQ process.

⁸ [Retail Energy Code](#)

⁹ [P332 Second Final Modification Report](#)

¹⁰ [Contracts \(Rights of Third Parties\) Act 1999](#)

¹¹ [BSC Section J](#)

¹² [SVA Removal of Qualification](#)

When an organisation's Qualification is removed, it cannot operate in its previously Qualified capacity and cannot be appointed Agent for any Metering System in that role. To date, the RoQ process has never been used.

BSC Panel¹³ recommendation

On 11 November 2021, the BSC Panel agreed by majority that P332 would better facilitate BSC Objectives (c)¹⁴ and (d).¹⁵ A Final Modification Report (FMR) was subsequently sent to Ofgem on 17 November 2021.

Ofgem Send-Back

In response to the FMR, Ofgem issued a Send Back Direction on 14 December 2021.¹⁶¹⁷ The Send Back Direction stated that we were unable to form a decision to approve or reject P332 and asked for the FMR to be revised to include:

- Quantitative evidence or further analysis which fully explains and demonstrates the scale of the issue that P332 is attempting to resolve, the impacts upon industry of remaining with the status quo, and what positive differences the implementation of this modification would have on the applicable BSC objectives.
- A summary of the BSC Panel's rationale for making their recommendation in the FMR.
- A summary of how P332 has been amended to reflect Ofgem's considerations from our 2019 letter responding to the BSC's provisional thinking on P332.

At its meeting on 13 January 2022, the BSC Panel provided their final views on the points raised in our Send Back Direction and once again agreed by a majority that P332 would better facilitate BSC Objectives (c) and (d), and the Panel therefore recommended its approval with the FMR sent to Ofgem for the Authority's decision.

¹³ 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

¹⁴ Promoting effective competition in the generation and supply of electricity, and (so far as consistent whether therewith) promoting such competition in the sale and purchase of electricity

¹⁵ Promoting efficiency in the implementation of the balancing and settlement arrangements

¹⁶ As per BSC Section F 2.7A

¹⁷ [Ofgem Send-Back](#)

Our decision

We have considered the issues raised by the modification proposal and the FMR dated 24 January 2022. We have considered and taken into account the responses to the industry consultations on the modification proposal which are attached to the FMR. We have concluded that the implementation of the modification proposal will not better facilitate the achievement of the applicable BSC objectives.

Reasons for our decision

Following review of the updated FMR, we consider this modification will not better facilitate BSC Objectives (c) and (d).

(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

We believe that the proposed solution does not improve upon the BSC obligations specifically related to BSC Objective (c) or to the provisions that already exist within the BSC to manage CPA performance such as the RoQ process. We are of the view that existing provisions in the BSC should provide sufficient options for Suppliers to ensure that CPAs comply with BSC obligations and that we have not been presented with enough explanation as to why the existing provisions are not sufficient. We do not consider that the FMR contains sufficiently robust evidence to support the P332 solution, nor how it would mitigate against poor CPA performance levels, identified as putting Suppliers at a commercial disadvantage. We consider that no sufficient evidence has been provided to demonstrate that the proposed solution better addresses the challenges faced by Suppliers in the absence of a contractual relationship with the CPA. As such, we do not believe P332 to better facilitate BSC Objective (c).

(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements

We believe that P332 does not better facilitate BSC Objective (d). The requirement of CPAs to sign a side letter would add additional administration and complexity to existing arrangements and would not promote efficiency in the implementation of balancing and settlement arrangements. Furthermore, we note that the revised solution would only have an impact on SVA DCs and not MOAs.

We believe that there is a lack of evidence regarding the costs and benefits of this modification to show that the issues identified by the Proposer could not be addressed under the current arrangements. In our provisional thinking, we advised that a more robust evidence base was required which showed that the BSC is the best vehicle to address any issues arising from CPAs.¹⁸ This was further reiterated in our send back letter where we asked for the inclusion of additional substantive evidence or analysis in support of the modification. Any modification which is submitted by industry to the Authority should be fully developed, with a clearly defined problem statement, robust assessment including a comprehensive evidence base for Parties, industry, the Panel, and the Authority to analyse.

The information provided to Ofgem highlights that there are a number of CPAs operating in the market. However, there is limited qualitative evidence which shows that CPAs are not working effectively. There is limited evidence on the impact CPAs have on costs, settlement performance and consumer detriment. In the absence of further analysis and evidence to demonstrate in detail why the modification is required, it is not possible to conclude that this modification will better facilitate the relevant BSC Objectives. Our correspondence in 2019 and our send-back letter were very clear that we expected direct evidence of the issue and the solution.

We note that the FMR states that it is difficult to quantify the impact of P332, or it would be prohibitively costly to do so, and therefore would be difficult to quantify the impact on the Settlement Risks. However, the inclusion of robust evidence or a business case in support of a modification is an important part of our decision-making process. We have, therefore, been unable to conclude that P332 better facilitates BSC Objectives (c) and (d) given the lack of evidence put forward to support this modification. Whilst we understand that qualitative

¹⁸ [P332 BSC Panel letter to Ofgem September 2019](#)

evidence can play a part in building the arguments in favour or against a modification, we would not expect this to be the sole basis of the explanation of the argument and would also expect to see a business case in support of the modification. As stated within the FMR, the view was that this modification was difficult to quantify in terms of evidence, or very costly to do so. We would have expected this to prompt the Working Group to decide how best to proceed, identifying the risk that by not providing direct evidence as stated within our correspondence in 2019, there would be a risk to the overall progression of this modification.

We also note the view by a Panel member that if Ofgem were to reject this modification, we would be implying there was no issue. We do not agree with this view. Our decision to reject this modification is based on the fact that the FMR does not contain the required levels of evidence, definition and assessment we would expect. If the industry feels that this issue remains, we encourage them to discuss and develop a solution at an appropriate forum and provide sufficient evidence in support of any solution. As part of this, we would suggest liaising with the Market Wide Half Hourly Settlement programme.

Decision Notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority has decided that modification proposal P332: 'Revisions to the Supplier Hub Principle' should not be made.

Michael Walls

Senior Policy Manager

Metering and Market Operations

Signed on behalf of the Authority and authorised for that purpose