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The National Grid Company, BSC Signatories and
Other Interested Parties

26 May 2005

Our Ref: MP No P185

Dear Colleague,

Modification to the Balancing and Settlement Code (“BSC”) - Decision and notice in relation to Modification Proposal P185 “Redrafting of BSC Sections U and W in relation to clauses pertaining to the processing and rectification of Trading Queries/Disputes”

The Gas and Electricity Markets Authority (the “Authority”)¹ has considered the issues raised in the Modification Report² in respect of Modification Proposal P185, “Redrafting of BSC Sections U and W in relation to clauses pertaining to the processing and rectification of Trading Queries/Disputes”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P185 should be approved.

Having considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives³ and the Authority’s wider statutory duties,⁴ the Authority has decided to direct a Modification to the BSC in line with Modification Proposal P185.

This letter explains the background and sets out the Authority’s reasons for its decision.

¹ Ofgem is the office of the Authority. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

² ELEXON document reference P185MR, Version No. Final 1.0, dated 12 May 2005.

³ The Applicable BSC Objectives, as contained in Standard Condition C3 (3) of NGC’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

⁴ Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

This letter constitutes notice by the Authority under section 49A Electricity Act 1989 in relation to the direction.

Background

At the December 2004 meeting, the Trading Disputes Committee (“TDC”) identified areas of ambiguity in Section U and W of the BSC.

In order to rectify this situation, the Panel, on the recommendation of the TDC submitted Modification Proposal P185, “Redrafting of BSC Sections U and W in relation to clauses pertaining to the processing and rectification of Trading Queries/Disputes”, on 14 January 2005.

The Modification Proposal

Extra Settlement Determinations (ESDs) may be performed between Settlement Runs in order to correct previous Settlement errors. Section U of the Code requires an ESD to be ‘unwound’ at the next Settlement Run, but does not explicitly state that the Settlement error should then be corrected in the next Settlement Run via the normal Settlement process. Rather, this correction is implicitly assumed. P185 seeks to clarify that the ESD should be ‘unwound’ and the Settlement error corrected at the next Settlement Run.

P185 seeks to redraft relevant clauses in Section W of the code to correct references to “shall” that should read “may” – and vice versa. P185 also proposes to conflate wording outlining how TDC arrives at decisions into fewer clauses.

The justification for the Modification Proposal was that it would better facilitate achievement of the Applicable BSC Objective C3 (3) (d).

It is the view of the TDC that Modification P185 would remedy deficiencies in, and improve the conciseness of, the drafting of the Code.

The Panel considered the Initial Written Assessment at its meeting of 10 February 2004 and agreed to submit Modification Proposal P185 to the Assessment Procedure. It was agreed that Modification Proposal P185 would be progressed in parallel with Modification Proposal P184, “Clarification of BSC Section W in relation to the application of the Query Deadline to Trading Queries/Disputes”. The Modification Group (the “Group”) considered the Modification Proposal at its meeting on 21 February 2005 and discussed the issues raised by the proposal. An industry consultation was issued on 8 March 2005 and the responses were discussed by the Group at its meeting on 23 March 2005.

The Assessment Report was considered by the Panel at its meeting on 14 April 2005. At the meeting, a query was raised by one Panel member as to why P184 and P185 had been raised as two separate Modification Proposals. It was noted that two Modification Proposals were raised to avoid the risk of one failed element rendering void an entire Modification Proposal. The Panel supported the recommendations of the Group and submitted P184 to the Report Phase.

Responses to ELEXON Consultation

ELEXON published a draft Modification Report on 19 April 2005, which invited respondents' views by 27 April 2005. Six responses were received. Six responses (representing 37 Parties) expressed support for the Proposed Modification. No responses opposed the Proposed Modification.

One respondent queried the need to amend the wording of clause U2.2.3(i) of the Code to refer to the relevant Settlement Run being the first one where the Settlement error was corrected. ELEXON's legal advice was that since a Settlement error may be described as having been corrected in every Settlement Run subsequent to its correction, it was necessary to explicitly state that the first Settlement Run in which the error was actually corrected is the relevant one. The respondent continued to hold the view that this clause could be open to misinterpretation, but did not wish to pursue this matter further.

The respondents' views are summarised in the Modification Report for Modification Proposal P185, which also includes the complete text of all respondents' replies.

Panel's recommendation

The Panel met on 12 May 2005 and considered the Modification Proposal, 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 on 2 November 2005 if an Authority decision is made by 2 August 2005; or 22 February 2006 should an Authority decision be made after this date but on or before 25 October 2005.

Ofgem's view

Having considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that Proposed Modification P185 will better facilitate achievement of Applicable BSC Objective (d).

Ofgem notes that P185 was prompted in part by consideration of Modification Proposal P179, "Housekeeping Modification". The BSC makes provision for the BSCCo to recommend that the Panel raises a Modification Proposal to rectify manifest errors, correct minor inconsistencies and/or make other minor consequential changes to that code, pursuant to F2.1.1(d)(iv). Such amendments are informally referred to as "housekeeping" changes, and the Modification Proposal submitted for P179 contained 28 suggested housekeeping changes. Subsequent to its submission, two of these changes, relating to clauses W3.4.6 and W4.1.1, were identified as being sufficiently significant that they might not fall within the scope of F2.1.1(d)(iv) and were removed from P179 at the Panel's direction for this reason. Both clauses related to activities conducted in relation to Trading Queries and Trading Disputes under the auspices of the TDC.

The TDC has the right to recommend that the Panel raise a Modification Proposal in circumstances set down in F2.1.1(d)(v); W2.2.1; W5.3.1; and W5.3.2. These powers were used to raise P184 and P185, each of which sought to address one of the problem clauses taken out of P179: W3.4.6 in the case of P184; and W4.1.1 in the case of P185. Both Modification Proposals additionally sought a wider remit to remedy perceived deficiencies and improve the conciseness of provisions relating to Trading Queries and Trading Disputes.

Ofgem notes that the scope of P185 is restricted to the clarification of current provisions and does not result in any more significant shift in the principles underlying the Trading Disputes process. Unlike P184, there is not an element of formalisation of current interpretations of provisions where multiple interpretations exist. This may call into question why P185 was progressed via the Assessment Procedures rather than directed through to Report Phase, when a recommendation to approve a purely clarificatory Modification Proposal might be argued to be self-evident. This is particularly the case when P185 only results in amendments to two clauses, and the deletion of one clause, in the BSC.

Ofgem considers that it would be unwise to set a general precedent whereby purely clarificatory Modification Proposals are routinely sent into the Assessment Procedures, given the higher costs and slower timescales associated with this approach when compared to the Report Phase route.

Notwithstanding this general concern, Ofgem considers that in this specific circumstance this approach may have been prudent. The parallel assessment of P184 resulted in a natural forum whereby other amendments to Sections U and W of the BSC could be considered by affected stakeholders. Ofgem considers that had P184 not been raised, the progression of P185 via the Assessment Procedure route would likely not have been merited.

Ofgem considers that it is in the interests of all BSC Parties for the provisions of the BSC to be as clear as possible. It is noted that there was unanimous agreement from all market respondents during both the Assessment Procedure and Report Phase consultations that P185 would result in greater clarity and the removal of ambiguity from provisions relating to the progression of Trading Queries and Trading Disputes. Whilst noting that only a subset of industry responded to either consultation, the unanimity of both subsets suggests that P185 would provide better clarity, thereby giving Parties, the BSCCo, and the TDC, a greater degree of confidence that the provisions of the BSC are both efficient and are being correctly applied.

The arguments for P185 have been framed against Applicable BSC Objective (d). There is a requirement under that objective to promote efficiency in the implementation and administration of the balancing and settlement arrangements. If administration is to be carried out in an efficient and economic manner, it is desirable that any perceived ambiguities are removed from the existing requirements. Ofgem considers that a persuasive case has been made that P185 would achieve this, and that it therefore better facilitates achievement of objective (d).

Ofgem notes that no arguments have been put forward either for or against the facilitation of Applicable BSC Objectives (a), (b) and (c) and is in agreement that this perception of their application is reasonable in this case. In addition, Ofgem does not consider that any of its wider statutory duties would be either better met, or impeded, by the approval of the Proposed Modification.

It is noted that both P184 and P185 affect section W of the Code and BSCP11, and that their proposed Implementation Dates, and associated decision cut-off dates, are aligned. Ofgem considers that the parallel implementation of P184 and P185 would be desirable, in order both to best realise any efficiency gains that may result from combined implementation; and to remove the potential for ambiguity as to what provisions are being applied that might result from staggered implementations. The Group preferred this approach.

If you have any questions, please contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson

Director, Modifications

Signed on behalf of the Authority and authorised for that purpose by the Authority