

NOTE:

On 14 September 2007 the Gas and Electricity Markets Authority (the “Authority”) published a letter concerning six modification proposals to the Balancing and Settlement Code (BSC) (namely P198, the P198 Alternative, P200, the P200 Alternative, P203 and P204) (the “Proposals”). That letter indicated that the Authority would not be taking its final decisions concerning the Proposals until after 20 September 2007. The Authority’s decision not to take its final decisions concerning the Proposals until after 20 September 2007 is the subject of an application to the High Court for judicial review.

This document contains the witness statement of Sarah Harrison, the Managing Director of the Corporate Affairs Division of Ofgem, which the Authority submitted to the High Court in the context of the proposed judicial review challenge.

Having considered the nature of the issues raised by the proposed challenge, Ofgem considers that it is appropriate in this case to publish its detailed grounds of resistance, together with Sarah Harrison’s witness statement, on its website until judgement is given. This decision should not, however, be interpreted as indicating that Ofgem would be likely to adopt the same or a similar approach in the context of any subsequent litigation. The Authority would need to assess the relevant circumstances of any subsequent litigation and determine whether or not, in the context of that litigation, such an approach would be appropriate.

Information which is or maybe confidential has been redacted from the witness statement of Sarah Harrison.

CLAIM NO. CO/11010/2007

IN THE HIGH COURT OF JUSTICE

QUEEN’S BENCH DIVISION

IN THE ADMINISTRATIVE COURT

B E T W E E N:

THE QUEEN
on the application of

- (1) TEESSIDE POWER LIMITED
- (2) IMMINGHAM CHP LLP
- (3) DRAX POWER LIMITED
- (4) BRITISH ENERGY GROUP PLC

Claimants

- v -

GAS AND ELECTRICITY MARKETS AUTHORITY

Defendant

WITNESS STATEMENT OF SARAH HARRISON

References are made to the Claimants' Bundle as follows: (CB/tab/page)

For ease of reference, this witness statement adopts the definitions used in the Claimants' Detailed Statement of Facts and Grounds.

I, Sarah Harrison of 9 Millbank, Westminster, London, SW1P 3GE will say as follows:

A INTRODUCTION

1. I am the Managing Director of the Corporate Affairs Division within Ofgem and an Executive member of the Gas and Electricity Markets Authority ("the Authority"). I am duly authorised by the Authority to make this statement on its behalf.
2. I make this witness statement in support of the Authority's response to the Claimants' application for judicial review challenging the legality of the Authority's decision of 14 September 2007 ("the Decision") to delay reaching a final decision regarding six Modification Proposals ("the Proposals") to the Balancing and Settlement Code ("BSC") until after 20 September 2007.
3. The facts and matters referred to in this statement are either within my own knowledge or are based on documents and information acquired by me in my capacity as a person, amongst others, with responsibility for the Decision, and are true to the best of my knowledge, information and belief.
4. In this statement I refer to various documents which are included in the exhibit to this witness statement marked SH1 at tab 9 which are true copies of documents in my possession.
5. I have read a copy of the Defendant's Detailed Grounds of Resistance. Insofar as the contents of that document are factual, I confirm their accuracy
6. I joined Ofgem in September 1999 as Director of Communications, and acted in that role until I was promoted to my current position in April 2005. I am responsible, with the Managing Director of the Networks Division, for the Ofgem teams working on the Modification Proposals which relate to transmission losses.

7. The structure of this statement is as follows:

Section A -	Introduction
Section B -	The role of the Authority and Ofgem
Section C -	The electricity market
Section D -	Transmission losses
Section E -	The Proposed Modifications
Section F -	The licence and the BSC
Section G -	The process in respect of the Proposals
Section H -	Previous Modification Proposals
Section I -	Choice of procedure
Section J -	Expedition

B THE ROLE OF THE AUTHORITY AND OFGEM

8. The legal powers and duties of the Authority, insofar as they are relevant to this claim, are set out in the Authority's Detailed Grounds of Resistance.
9. The Authority is an independent regulator funded largely by some of the companies which are licensed by the Authority to participate in the gas and electricity markets.¹ The Authority consists of non-executive and executive members and a non-executive chair. Non-executive members bring experience and expertise from a range of areas including industry, social policy, environmental work, finance and Europe. The Executive members of the Authority are Ofgem's Chief Executive and three Managing Directors.
10. At SH1, tab 9, page 380, I exhibit an organisational chart showing the structure of the Authority and of Ofgem.

¹ In the electricity market, the Authority has statutory responsibility for issuing electricity supply licences, electricity generator licences, electricity interconnector licences, electricity distribution licences, and electricity transmission licences.

11. Ofgem, the Office of Gas and Electricity Markets, supports the Authority in its work. Ofgem is divided into three policy Divisions, namely Corporate Affairs, Networks and Markets. Each Division is headed by a Managing Director. Below the Managing Director in each Division are Directors and Associate Directors with particular areas of responsibility.
12. The Authority normally meets once a month to discuss Authority business, and occasionally meets more frequently and at short notice when there are urgent matters of Authority business to consider. By way of example the Authority met in quick succession on 30 August and 6 September to take the Decision.
13. In this witness statement I distinguish between Ofgem and the Authority, in order to set out as a factual matter how the Decision was taken. I understand that, for the purposes of this case, the two entities do not have separate legal personality, and that they are both the Defendant.

C THE ELECTRICITY MARKET

14. The electricity supply chain typically consists of four distinct components: generation; transmission; distribution and supply. In general, generators produce electricity and sell it to suppliers which in turn sell the electricity to consumers. Electricity is transported to consumers from generators through a high voltage transmission system (the national grid) and lower voltage distribution systems. The transmission system in England and Wales is owned by National Grid Electricity Transmission plc. ("NGET"), whilst ownership of the transmission system in Scotland is split between Scottish Hydro-Electric Transmission Limited in the north of Scotland and SP Transmission Limited in the south.
15. Following privatisation and related reforms, the wholesale market for electricity now operates in a similar manner to any other trading market. In summary, generators and suppliers can trade electricity through individual commercial contracts and through power exchanges. However, although most electricity is now bought and sold freely, the transmission system still has to be physically balanced, matching generation and consumption of electricity, to maintain security and quality of supplies.

16. It is NGET, as the operator of the national grid, which has responsibility for ensuring that the system is physically balanced. The mechanisms for balancing the system are set out in the BSC. The BSC is a code which NGET is required to have in force under Standard Licence Condition C3 of its transmission licence (CB/4/148). Under C3(3) the objectives of the BSC are:
- 16.1. the efficient discharge by NGET of the obligations imposed upon it by its licence;
 - 16.2. the efficient, economic and co-ordinated operation of the GB transmission system;
 - 16.3. 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;
 - 16.4. promoting efficiency in the implementation and administration of the balancing and settlement arrangements.
17. Under the terms of their licences, electricity supply, distribution, interconnector and generation licensees must be signatories to the BSC (reference: electricity generation licence standard condition 9(1); electricity supply licence standard condition 11(2); electricity distribution licence standard condition 10(1); electricity interconnector licence standard condition 3(1). I exhibit these conditions at SH1, tab 9, pages 381-384.
18. The BSC also sets out the role and powers of Elexon Limited ("Elexon"), a wholly owned, but uncontrolled, subsidiary of NGET. Elexon is the company referred to in the BSC as the, "Balancing and Settlement Code Company (BSCCo) for Great Britain." Elexon's principal role is to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC.

D TRANSMISSION LOSSES

19. The Decision related to six Proposals to modify the BSC in respect of its treatment of electricity transmission losses on the national grid. The Proposals relevant to this case are known as P198 and the P198 Alternative (CB/4/157),

P200 and the P200 Alternative (CB/4/199), P203 (CB/4/230) and P204 (CB/4/262). In this section, I set out what causes transmission losses, and how those losses are paid for under the current system.

20. The transmission of electricity results in a proportion of energy being lost as heat. Because of this, more electricity has to be generated than is supplied to consumers. For the financial year to 31 March 2007, NGET estimated that this mismatch equalled 5.82 terawatt-hours, which amounts to approximately two percent of annual demand. These transmission losses carry a financial cost in terms of lost energy, as well as an environmental cost in respect of the carbon dioxide and other emissions associated with the additional generation for the energy that is lost.
21. Transmission losses comprise both fixed losses and variable losses. Fixed losses arise due to the energisation of the system as a whole and are not dependent on the amount of flows carried on the system. Variable losses increase with power flow and the length of line over which electricity flows. Therefore the extent to which parties cause variable losses on the system differs depending on where a party puts energy onto or takes energy off the transmission system.
22. The current geographical pattern of electricity generation and demand is such that there is an excess of generation relative to demand in Scotland and the north of England, and an excess of demand relative to generation in the south. As a result, putting energy onto the system in the north increases power flows and therefore increases the level of variable losses relative to the impact of the same amount of energy being put onto the system in the south. Conversely, taking energy out of the system in the south of the country also increases power flows and therefore increases the level of variable losses relative to the impact of removing the same amount of energy from the system in the north.
23. Under the current BSC, the costs of transmission losses are recovered from generators and suppliers on a uniform basis, and allocated in proportion to the amount of energy they put onto or take off the national grid. This means that the volume of losses allocated to a person bound by the BSC (a "Party") does not vary depending on that Party's location.

E THE PROPOSED MODIFICATIONS

24. The Proposals all seek to alter the way in which transmission losses are allocated to Parties. The Proposals have some differences, but they are all based on using a load flow model² to calculate “marginal loss factors”, which reflect the relative extent to which Parties at each location on the network cause variable losses. Under the Proposals, these factors would be used to derive “Transmission Loss Factors”, which would be used in the settlement calculation to allocate a proportion of transmission losses to Parties on a locational basis. Each proposal would result in the allocation of transmission losses being dependent on the location at which electricity was put onto or taken from the transmission network.
25. Compared to the current rules which charge losses independently of a Party’s location, under the Proposals it is likely that network users at certain locations would see higher costs, whilst users at other locations would see lower costs. In very general outline, it is likely that, if implemented, the Proposals would lead to higher charges for generators in the north of England and in Scotland and lower charges for generators in the south of England, with the opposite applying to suppliers. I note that the generators owned by the Claimants in this case are predominantly based in the north of England and in Scotland.

F THE LICENCE AND THE BSC

26. The terms of the transmission licence and the BSC which are relevant to this case have been set out fully in the Defendant’s Detailed Grounds of Resistance. I also understand that the interpretation of these terms is a matter for legal argument. I therefore do not repeat them here.
27. However, it is helpful to set out in more detail how, in practice, Modification Proposals are made and come to be approved or rejected by the Authority.
28. The governance arrangements of the BSC require a panel (“the Panel”) to supervise the management, development and implementation of the BSC. At

² A load flow model is a computational representation of the transmission system. It models the relationship between flows on the system and the generation output and demand offtake at different locations.

SH1, tab 9, pages 385-388, I exhibit extracts from Section B of the BSC, which establishes the Panel.

29. The procedures for modification of the BSC are contained in Section F of the BSC. The Claimants have exhibited an extract from Section F (CB/4/117-140). For ease of reference, I exhibit the full Section F at SH1, tab 9, pages 389-421.
30. Modifications to the BSC can be proposed by (a) a BSC Party; (b) energywatch; (c) any other body representative of interested third parties designated by the Authority; or (d) in certain limited circumstances, the Panel (BSC F2.1.1).
31. The procedure for a modification to the BSC is as follows:
 - 31.1. *Submission of a modification proposal* – when a Modification Proposal is first received by Elexon, it is circulated to, amongst others, all BSC parties, published on the Elexon website and placed on the agenda for the next Panel meeting.
 - 31.2. *Establish a Modification Group* – the Panel can establish or designate a Modification Group to progress the Modification Proposal.
 - 31.3. *The Definition Procedure* – a procedure to clarify and define a Modification Proposal.
 - 31.4. *The Assessment Procedure* – after the Definition Procedure, or in circumstances where there is no need for the Definition Procedure, the Panel can submit the Modification Proposal to the Assessment Procedure. The Panel will either establish or designate an existing Modification Group to carry out the work in order to assess fully the proposal, and to evaluate whether the Proposed Modification identified in the Modification Proposal, if implemented, would better facilitate achievement of the applicable BSC Objectives. As part of this procedure, a detailed assessment and evaluation of the Modification Proposal is undertaken. This may include one or more consultations with interested parties. During this phase, an Alternative Proposal may be developed by the Modification Group if it considers that the Alternative Proposal would better facilitate achievement of the applicable BSC objectives

compared to the original Modification Proposal. At the end of the Assessment Procedure, the Modification Group submits an assessment report to the Panel.

31.5. *The Report Phase* – the Panel then considers the Modification Group’s assessment report and unless it considers that further analysis is necessary, will direct that the Modification Proposal proceed to the Report Phase. The Panel will then decide whether it proposes to recommend to the Authority that the original Modification Proposal or any Alternative Proposal should be made.

31.6. A draft modification report, which includes the Panel’s recommendation, will then be produced and consulted upon with industry. Taking into account any such consultation, the Panel determines its recommendation and proposed implementation date for the Modification Proposal and any alternative. The Modification Report is then finalised and submitted to the Authority.

32. Once the Modification Report has been submitted to the Authority, the Authority then commences the process of deciding whether to approve or reject the Proposed Modification.

33. The process followed by the Authority in reaching its decision is flexible depending on the nature of the particular proposal. In certain circumstances, there is a duty on the Authority under section 5A of the Utilities Act 2000 for it to publish and consult on an impact assessment prior to reaching a decision. Apart from this statutory duty to consult, the Authority may also choose to consult on particular proposals, or on particular aspects of those proposals.

G THE PROCESS IN RESPECT OF THE PROPOSALS

The Modification Reports

34. The Modification Proposals were originally made on 16 December 2005 (P198), 21 April 2006 (P200), 26 June 2006 (P203) and 3 July 2006 (P204). Modification Groups were established in respect each of the Proposals and held their first meetings between January and July 2006.

35. As part of the Assessment Procedure, Elexon commissioned analysis from Oxera Consulting Limited (“Oxera”), an economic consultancy firm. This analysis (“the Oxera Analysis”), or parts of it, was taken into account by the Modification Groups in writing the Assessment Reports and by the Panel in writing Modification Reports.
36. The Authority received Modification Reports for P198 (and the P198 Alternative), P200 (and the P200 Alternative) and P203 on 22 September 2006, and for P204 on 16 November 2006.
37. In their Modification Report for P198 and the P198 Alternative, the Panel stated:
- “Having considered and taken into due account the contents of the P198 draft Modification Report, the BSC Panel recommends: ...*
- *an Implementation Date for both the Proposed Modification and Alternative Modification of 1 April 2008 if an Authority decision is received on or before 22 March 2007, or 1 October 2008 if the Authority decision is received after 22 March 2007 but on or before 20 September 2007. ...”* (CB/4/163)
38. The Panel used the same language in respect of the other Proposals (CB/4/205, 238, 270).

The Impact Assessment Consultation

39. On 20 November 2006, Ofgem published an open letter, exhibited at SH1, tab 9, pages 422-423, confirming its intention to undertake an impact assessment on the Proposals.
40. On 23 February 2007, Ofgem published its impact assessment and consultation on the Proposals. It invited responses by 10 April 2007.
41. A number of the parties which responded to the impact assessment consultation considered that Ofgem had over-relied on the Oxera Analysis for its assessment of the financial and environmental impacts of the proposals. Several respondents commented that they did not consider the Oxera Analysis to be robust. It was criticised, for example, for using out-of-date input assumptions and a simplified modelling approach.

The “Minded-To” Consultation

42. On 24 May 2007 the Authority considered the Proposals in light of the responses to the impact assessment consultation. It reached a “minded-to” position to approve Modification Proposal P203 and to reject the other proposals, exhibited at SH1, tab 9, pages 424-425.
43. On 26 June 2007 Ofgem issued a consultation on the minded-to position. The Authority stated that it would consider any responses to the minded-to consultation before reaching its final decisions and that it was its then current intention to publish final decisions on each of the Proposals by 20 September 2007 (CB/4/299). It invited responses by 31 July 2007.
44. The Authority also set out in its minded-to consultation the reasons why it considered it had appropriately used the Oxera Analysis and why it considered that the matters raised by respondents to the impact assessment consultation did not undermine the validity of the Authority’s conclusions.
45. Several of the respondents to the minded-to consultation again raised concerns relating to the Oxera Analysis. Of particular importance, Oxera itself sought to address some of the issues which had been raised concerning the modelling methodology which it had used in its analysis. Notably, Oxera stated that it considered that, in arriving at its minded-to position, the Authority had placed “more weight than appropriate” on the Oxera Analysis. I exhibit Oxera’s response to the minded-to consultation at SH1, tab 9, pages 426-428.

The Authority’s Decision

46. At meetings on 30 August 2007 and 6 September 2007 (CB/4/301 and CB/4/303 respectively), the Authority gave further consideration to the Proposals in the light of all relevant information available to it, including responses to the minded-to consultation. The Authority took careful note of the many criticisms raised concerning the Oxera Analysis. The Authority further noted Oxera’s own comments made in response to the minded-to consultation.
47. Although the Authority did not consider that the information available to it, including Oxera’s comments on its analysis and the Authority’s use of that analysis, would necessarily cause it to alter its previous assessment of the Proposals or its minded-to position, it considered that, in view of the concerns

raised by Oxera, it would be appropriate for it to delay taking its final decisions concerning the proposals until a further review of the Oxera Analysis, and the reliance which the Authority placed upon it, had been undertaken.

48. At its 6 September 2007 meeting, the Authority noted that the Modification Reports for each of the Proposals proposed an Implementation Date of 1 October 2008 if the Authority made its decision by 20 September 2007. The Authority recognised that, in the context of previous BSC Modification Proposals, namely P80 and P82, it had taken the view that it did not have the power to take a decision concerning a Modification Proposal after the date (if any) set out in the Modification Report. However, the Authority noted that this position could have surprising and undesirable consequences. In particular, in this case, it would mean that the extensive development work and input by a range of industry participants (including the Claimants) since the first of the Proposals was raised in December 2005 would be lost simply because further limited analysis and consultation was needed. The Authority also noted that there is no reason why any of the Proposals could not be implemented after 1 October 2008, as none of the Proposals are time-sensitive. The Authority therefore sought further legal advice. The Authority concluded that it does have the power to make a decision concerning a Modification Proposal after the date for a decision set out in the Modification Report.
49. The Authority therefore decided that it would be appropriate, before making final decisions concerning the Proposals, to undertake a further review of the Oxera Analysis, and the reliance placed upon it, and to consult upon the findings of that further review. The Authority noted that it would therefore not be in a position to take its final decisions concerning the Proposals on or before 20 September 2007.
50. On 14 September 2007, Ofgem published an open letter (CB/4/74) explaining the Authority's decision that it would be appropriate, in view of the concerns raised by Oxera, to delay taking its final decisions on the Proposals until after a further review of that analysis, and the reliance placed upon it, had been undertaken. It also noted that, if the Authority were subsequently to decide to

approve one of the Proposals, it would be very likely that the implementation date would require extension.

51. The Authority concluded by stating that it expected to be in a position to make its final decisions on the Proposals in spring 2008. It stated that it, “[would] suggest that the BSC Panel proposes an alternative implementation date that would be consistent with this timetable,” and that, “[should] the Authority decide to approve any of the proposals, it would consult with affected parties before directing an alternative implementation date” (CB/4/76).
52. On 19 October 2007, Ofgem issued an Invitation to Tender for consultancy work to undertake a review of the Oxera Analysis. On 3 December 2007 Ofgem wrote to Elexon confirming that it had appointed the Brattle Group Limited to undertake that review. That review is currently being undertaken in parallel to this litigation. The Authority intends to take the findings of the review, together with any responses to the consultation on those findings, into account in making its final decisions on the Modification Proposals.

The Panel’s Views on Timing

53. In this section, I draw attention to the considerations which led the Panel to recommend the proposed Implementation Date in the manner in which it did. In my view, this background shows that it was not the Panel’s intention to tie the Authority to a particular ‘Decide-by Date’.
54. I address first the considerations in respect of P198 and the P198 Alternative.
55. The P198 Modification Group conducted a total of three consultations. The relevant one for the purposes of matters relating to timing was the Second Assessment Procedure Consultation, in respect of which the Modification Group consultation document was issued on 30 June 2006. I exhibit the relevant extracts at SH1, tab 9, pages 429-434.
56. The P198 Modification Group stated in that consultation document that the reason that the Proposer had originally suggested an Implementation Date of 1 April 2007 was that it, *“believed it to be essential for the Implementation Date to coincide with Parties’ contractual rounds”* (SH1, tab 9, page 430, para. 4.5.1). A

contractual round represents the standard time during the year when contracts between generators and suppliers, and suppliers and their larger customers, are negotiated in the electricity sector. For many parties, the annual contracting round normally occurs around April or October each year, although this is not binding and parties may elect to contract at different times. The Modification Group also stated that it had conducted an impact assessment which established that the proposal would require a 12-month lead time (SH1, tab 9, page 431, para. 4.5.2). I exhibit the results of that impact assessment, which were appended to the Second Assessment Procedure Consultation, at SH1, tab 9, pages 435-442.

57. The Modification Group reported its discussions on the Implementation Date. It stated:

"The Group noted that, given the twelve-month lead time, the Implementation Date of 1 April 2007 which had originally been suggested by the Proposer would not be achievable. The Group therefore initially considered an Implementation Date of 1 October 2007 with a fall-back of 1 April 2008. The Group agreed that, whilst an October implementation might not be tied to Parties' full annual contract rounds, it would allow TLFs to be factored into autumn contracts and would prevent delaying implementation until the following April. However – following its agreement to subsequently extend the Assessment Procedure such that the TLF modelling and cost-benefit analysis could be completed – the Group noted that a 1 October 2007 implementation would also no longer be achievable, since it would require a decision by the end of September 2006." (SH1, tab 9, page 434, para. 4.5.4)

58. The Modification Group went on to propose provisional Implementation Dates of 1 April 2008 if an Authority decision is received on or before 22 March 2007, and 1 October 2008 if an Authority decision is received after 22 March 2007 but on or before 20 September 2007 (SH1, tab 9, page 434, para. 4.5.4).
59. The Modification Group then repeated this recommendation for both P198 and P198 Alternative in the Assessment Report which it submitted to the Authority on 18 August 2006, exhibited at SH1, tab 9, pages 443-449. That Report again highlighted the desirability of tying the Implementation Date to contract rounds SH1, tab 9, page 447, para. 4.5.1.
60. Following the submission of the Modification Group's Assessment Report to the Panel, the Panel itself then issued a Draft P198 Modification Report for

consultation, exhibited at SH1, tab 9, pages 450-452. That draft report essentially repeated the reasons given in the Assessment Report for the proposed Implementation Dates.

61. Finally, the Panel published its P198 Modification Report on 22 September 2006 (CB/4/163-198). That report essentially adopted the reasoning and recommendations of earlier reports. In particular, it stated that the Implementation Date should coincide with Parties' contractual rounds, and that given the required 12-month lead time, the earliest possible Implementation Date would be 1 April 2008. It agreed a "fall-back" Implementation Date of 1 October 2008, "on the basis that, whilst an October implementation might not be tied to Parties' full annual contract rounds, it would allow TLFs to be factored into autumn contracts and would prevent delaying implementation until the following April" (para. 4.1.2 at CB/4/171).
62. I would stress that nowhere in any of this background material is there any mention of any desire on the part of the Modification Group or the Panel to ensure that the Authority should be prevented from taking a decision after 20 September 2007, or to impose a so-called 'Decide-by Date'. Indeed, if anything the Panel seemed concerned to ensure that the Authority would not be bound by dates: they explicitly highlighted, for example, the mechanism by which the Panel could suggest a Conditional Implementation Date should there be a Relevant Challenge (para. 6.1.1 at CB/4/186).
63. The same considerations were relevant in relation to the other Modification Proposals. In summary, in respect of P200 and Alternative, the Modification Group in its Assessment Report suggested provisional Implementation Dates of 1 April 2008 or 1 October 2008, exhibited at SH1, tab 9, pages 453-457. It referred to contractual rounds and the 12-month lead in time. The main point in support of the approach was that, "[t]he majority believed it was a pragmatic or practical approach" (SH1, tab 9, page 457, para. 5.5). The dates were adopted by the Panel in its Modification Report (CB/4/205-229), which referred to the above-cited extracts from the Assessment Report by way of explanation (para. 4, CB/4/213, and para. 5.3, CB/4/219).

64. The same considerations were relevant in respect of P203: see relevant sections of the P203 Assessment Report, which I exhibit at SH1, tab 9, pages 458-462, and the Panel's Modification Report at para. 4 (CB/4/245) and para. 5.3 (CB/4/250).
65. The same considerations were also relevant in respect to P204: see relevant sections of the P204 Assessment Report, which I exhibit at SH1, tab 9, pages 463-465, and the Panel's Modification Report at para. 4 (CB/4/278) and para. 5.2 (CB/4/283).

The Claimants' Involvement

66. The Claimants have been actively involved in the process relating to the Proposals.
67. Following the submission of the first Modification Proposal, P198, the First Claimant proposed Modification Proposal P200. The Fourth Claimant proposed Modification Proposal P204. The Panel stated in its P200 Modification Report that the Proposer of P200 (the First Claimant) expressed the view in its response to the Assessment Procedure consultation that P200 would not better facilitate the achievement of the applicable BSC objectives (CB/4/220).
68. All four Claimants responded to the impact assessment consultation and the minded-to consultation, and all four Claimants criticised and/or raised concerns relating to the Oxera Analysis and/or Ofgem's use of the Oxera Analysis.
69. I note that the effect of the Claimants' claim would be that the Authority would be prevented from properly considering concerns which the Claimants themselves have raised during consultations.

H [REDACTED]

70. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

71. [REDACTED]
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72. [REDACTED]
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73. [REDACTED]
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I CHOICE OF PROCEDURE

74. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

75. [REDACTED]

76. I note that the Claimants have stated in their Detailed Statement of Facts and Grounds that the Authority has, “encouraged and required the Claimants” to bring this legal challenge (para. 46). I can confirm that this is incorrect. The Authority had hoped to cooperate with the Claimants in resolving this dispute through the most appropriate procedural route. The Claimants have instead chosen to bring judicial review proceedings. For the avoidance of doubt, I can confirm that the Authority has not at any stage considered or proposed bringing any claim for a Declaration of its powers other than in order to resolve this particular dispute which has arisen between the Authority and the Claimants.

J EXPEDITION

77. The Authority and the Claimants are in agreement that the claim should be dealt with in an expeditious manner. It is important that the Authority should be free to consider the Proposals expeditiously so that the potential benefits to consumers and industry participants of any proposal which the Authority decides to approve (should the Authority decide to approve any proposal) should not be further delayed.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Name: _____

Signed: _____

Date: _____