



Andrew Pinder
Chairman
Elexon Limited
4th Floor
350 Euston Road
London
NW1 3AW

By e-mail

*Promoting choice and
value for all customers*

Our Ref: Panel and Code Objectives
Telephone: 020 7901 7458
Email: mark.cox@ofgem.gov.uk

25 October 2010

Dear Andrew,

Re: Paper on 'Panel Recommendations on Modification Proposals Arising from Licence Conditions'

I write concerning the above panel member paper discussed at the BSC panel meeting on 14 October 2010. I set out below Ofgem's position regarding panel recommendations, which I hope you and the panel find helpful. I note in this regard that our position on the application of objectives is consistent with that presented by Elexon.

Our views

The BSC exists and has its objectives as a result of a licence requirement¹. Part of the panel's remit is giving effect to the BSC in a manner that facilitates achievement of the objectives set out in the licence². The panel is obliged by code to 'endeavour' to operate the modification procedures with a view to ensuring the BSC facilitates achievement of the applicable objectives³. Accordingly, the applicable objectives are not optional. The panel must consider whether each one is, or isn't, better facilitated by a modification (and alternative where appropriate). They should use this consideration to form the basis of their recommendation on implementation or otherwise of a particular code modification.

When assessing against the objectives, the panel cannot treat modification proposals raised by certain BSC parties differently to those raised by other BSC parties (for example, because a party has raised a modification proposal to meet its licence obligation).

Consequently the panel cannot decide to simply give no credence to objective (a) because of the drivers for the modification being raised. For instance on proposals raised as a result of a direction under the licence or an obligation set by a licence condition. Nor can the panel decide that objective (a) is only to be considered in respect of a selection of obligations imposed by licence conditions, as this objective refers to the licence in its entirety.

Finally, we note the possibility of the panel having to give recommendations on modifications arising from a licence obligation is not new and these arrangements were in

¹ Standard Licence Condition C3(1) of National Grid Electricity Transmission plc's Electricity Transmission licence.

² BSC Section B 1.2.1(b).

³ BSC Section F 1.2.2.

place prior to The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (SI 2005/1646).

Recommended Way Forward

We consider that the panel must make recommendations on all modifications by considering whether or not they better facilitate each of the applicable BSC objectives. The panel cannot select for certain modifications to give no consideration or weight to one of the objectives. Should the panel decide to do this, we consider it highly likely to be acting ultra vires.

I hope that you and the panel find this letter helpful in its future consideration of modification proposals.

Kind regards,

Mark Cox
Associate Partner, Industry Codes and Licensing