



Consultation Response

By email to licensing@ofgem.gov.uk

14 January 2013

The Office of Gas and Electricity Markets
9 Millbank
London
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ELEXON's response to Consultation on further proposed changes following the implementation of the Third Package and other miscellaneous changes

We welcome the opportunity to comment on your [consultation](#) containing your proposed changes following the implementation of the Third package and other miscellaneous changes.

Our response focuses on the changes to the proposed changes to Condition C3 (4)(ad), as the other changes do not relate to Balancing and Settlement Code (BSC). However, we appreciate some comments may apply equally to the Connection and Use of System Code (CUSC) as the wording proposed in both sections are similar.

Our comments on the proposed wording, our suggestions and subsequent questions are set out in the table below.

If you would like to discuss any areas of our response, please contact me on 020 7380 4327 or by email to david.barber@elexon.co.uk or Adam Lattimore on 020 7380 4363 or by email to adam.lattimore@elexon.co.uk.

Yours faithfully

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Senior Change Analyst



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Standard Condition C3 (4)(ad) changes

Comments on Proposed Wording

In Appendix 1 – Overview of the proposed licence changes, you state that the changes to Condition C3;

"Clarifies that only those modification proposals which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decision of the European Commission and/or the Agency cannot be withdrawn without the Authority's prior consent"

We have a concern over that the proposed revisions to Standard Condition C3 (4)(ad), doesn't quite achieve this, and the proposed wording seems to be unnecessarily repetitive, potentially causing confusion.

Suggested alternative wording

A smaller change to the existing wording used to cross reference Condition C3 (4) (a) may be more appropriate to clarify which type of Modifications are subject to the clauses C3 (4) (ad) (i)-(iii).

The suggested wording for Condition C3 (4)(ad) is below:

- (ad) for modification proposals made by the Authority [in accordance with paragraph 4\(a\)](#) and the licensee in accordance with paragraphs ~~4(a)~~, 4(aa) and 4(ae)(i) respectively:
 - (i) to be accepted into the BSC modification procedures by the panel;
 - (ii) where they are raised by the licensee, not to be withdrawn without the Authority's prior consent; and
 - (iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 4(ae);

The changes would clarify that Modifications raised by the Authority are subject to the three clauses, whereas licensee raise Modifications (those they have been directed to raise by the Authority under clauses (4)(aa) and (ae)) are also subject to the three clauses.

This avoids adding further repetition to Condition C3 that already exists, particularly (4)(a) and (4)(ae).

Further questions?

While we appreciate that this consultation concerns the changes to the Licence conditions, we have a number of questions that relate to the knock on impacts on the BSC and the BSC Modification process. Particularly how Ofgem expects the process for Electricity Regulation type Modifications to operate in practice. These questions need consideration as they would identify the necessary changes needed as part of the BSC Modification to put the Licence Condition requirement changes into the BSC.

These questions are set out below:



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1. Will all Electricity Regulation Modifications be raised by the Authority or by direction to the Licensee under Condition C3 (4) (aa)?

The Conditions allow for both, the Authority and Licensee (following a Direction from the Authority) to raise Electricity regulation Modifications. With them being subject to the clauses C3 4 (ad) (i)-(iii).

Will it be the intention of Ofgem to pursue the direction route where possible, or will the Authority be raising them, or will it be on a case by case basis?

2. How will Proposer ownership work in relation to Electricity Regulation Modifications?

Authority raised Modifications

If the Authority raises a Modification, they will be Proposer as well as the governing body making the final decision on the Modification. This gives rise to a potential conflict of interest (see Question 3 below regarding appeals) and questions over what happens if a workgroup identifies a viable alternative solution. How is it envisioned that consideration of the alternative modification will be consistent and fair by the Authority when they are also the Proposer of the original Modification?

Licensee raised Modification

If the licensee is made to raise a BSC Modification (under Standard Condition C3 (4) (aa)) will they be the Proposer with the usual powers (apart from ability to withdrawal without prior Authority consent as per SLC C3 (4)(ad)(ii)) as per BSC Section 2.1.12 or would the power to change the Proposed solution or any other normal Proposer powers be restricted?

3. How will the appeals process work for Authority raised such Modifications?

When the Authority raises a Modification in accordance with Condition C3 4(a) on Electricity Regulation matters they would be the Proposer, but would also be the governing body as the Authority making the decision on whether to direct the Modification to be made.

In these situations would the only avenue for appeal be the competition commission or would another appeal mechanism be available?

4. How will the Withdrawal process work in the case of:

A: Authority raised Modifications?

Would the Modification be subject to the normal withdrawal process where by another Party could adopt the Modification if they chose to (as per BSC Section F 2.12.2B)?

B: Modification where the Licensee has been directed to raise it?

To initiate withdrawal would the Licensee need to request permission via a formal letter (or other method) to the Authority? What would be the required format or content of such a request?



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If permission is given, would it be subject to the existing withdrawal process where by another Party can 'adopt' the Modification Proposal (as per BSC Section F 2.12.2B)?

5. BSC Panel involvement in considering Electricity Regulation related Modifications

What involvement of the Panel is expected when first considering Authority raised Modifications or Modifications raised by the Licensee following an Authority direction, as they are required to accept such Modifications and the progression timescales if directed by the Authority as per Condition C3 (4) (ad) (i) and (iii)?

Would it just be the Terms of Reference for the workgroup (BSC Section F 2.4.12) (if required) and the Phase to submit the Modification to (as per BSC Section F 2.2.3(b)) that they would be agreeing on?

Other comments

Potential Typographical Error:

We note that in Condition C3 (4) (a) there seems to be a comma missing between 'BSC parties' and 'the Authority.'