



# Consultation Response

By email to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk)

28 August 2013

The Office of Gas and Electricity Markets  
9 Millbank  
London  
SW1P 3GE

## **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 latest [consultation](#) (on consequential changes to a number of licence conditions following the implementation of the Third Package and other miscellaneous changes). We also note your responses to our comments from the previous consultation (November 2012).

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

Our comments on the proposed wording and other observations are set out in the table below.

If you would like to discuss our response, please contact me on 020 7380 4327 or by email to [david.barber@elexon.co.uk](mailto:david.barber@elexon.co.uk); or Adam Lattimore on 020 7380 4363 or by email to [adam.lattimore@elexon.co.uk](mailto:adam.lattimore@elexon.co.uk).

Yours faithfully

**David Barber**  
**Senior Change Analyst**



# Consultation Response

## Standard Condition C3 (4)(ad) changes

### Comments on Proposed Wording

As per our previous response to the 'November 2012 consultation' we reiterate the view that the proposed wording is unnecessarily repetitive and still potentially confusing. We think that our proposed wording set out below would clarify:

- the circumstances in which the Authority can raise changes; and
- what must occur if the licensee is directed to raise the Modification by the Authority instead.

The suggested revision still meets the aim of the proposed changes - that where the Authority has directed the licensee to raise a Modification, it cannot withdraw the Modification without the consent of the Authority. Also our proposed change would clarify that Modifications raised by the Authority are subject to the three clauses 4(ad) (i)-(iii), whereas licensee raised Modifications (those it has 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 of *'which the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency'* to Condition C3 as it already exists elsewhere, particularly in (4)(a) and (4)(ae).

### Suggested alternative wording

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);

## Further questions?

We note your response to our questions, which we raised as part of our November 2012 consultation response, regarding how it is expected that the licence changes will need to operate in practice in the BSC.



# Consultation Response

While we understand that it is up to the *'relevant licence holder to bring forward appropriate code modifications to ensure the code is in line with the licence condition'*, these questions will still need to be discussed by a Modification Workgroup.

Therefore any guidance on the appropriate approach to take with the areas that the licence changes are silent on would aid the efficient progression of the required Modification. If no guidance can be provided through responses to the questions below as part of this consultation, it will be very important to have Ofgem representation at the associated Modification Workgroup meetings to ensure the solutions developed by the Workgroup are fit for purpose.

The questions raised previously are provided again below for reference:

## **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, it will be Proposer as well as the governing body making the final decision on the Modification. This gives rise to a potential or perceived 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 it is 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 it 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 it 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?



# Consultation Response

## 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 it 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?

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, if 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 it would be deciding on?