

Modification proposal:	Balancing and Settlement Code (BSC) P298: Consequential amendments to the BSC modification process following the implementation of Third Package and other miscellaneous changes		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	4 July 2014	Implementation Date:	18 July 2014

Background to the modification proposal

The EU Third Energy Package³ (the Third Package) was implemented in Great Britain on 10 November 2011 by making amendments to relevant domestic legislation. The Electricity and Gas (Internal Markets) Regulations 2011 (the Regulations) gave effect to these changes. The Regulations made changes to gas and electricity licences once they came into force.⁴

The licence changes included changes to Standard Licence Condition C3 (SLC C3) 'Balancing and Settlement Code (BSC)' of the electricity transmission licence. These changes enable us to raise a BSC modification proposal which we reasonably consider is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators (ACER). They also enable us to direct or amend the timetable for relevant modifications, and that such modifications cannot be withdrawn without our consent. The BSC does not currently reflect these provisions.

The modification proposal

NGET raised modification P298 in December 2013. A similar modification to the Connection and Use of System Code, CMP225⁵, was raised in November 2013 and the two modifications were assessed together by a joint workgroup.

P298 seeks to align the BSC modification procedures (in Section F of the BSC) with the licence changes made to implement the Third Package. The modification:

- reflects that the Authority may raise, or direct NGET to raise, a BSC modification which the Authority reasonably considers is necessary to comply with or implement

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ The term 'Third Package' refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Electricity Directive); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Electricity Regulation); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Gas Regulation); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

⁴ SI 2011/2704 which can be found here: <http://www.legislation.gov.uk/uksi/2011/2704/part/1/made>. We made further Third Package licence changes, which came into force on 17 December 2013 (see our licence modification decision here: <https://www.ofgem.gov.uk/publications-and-updates/decision-modify-gas-and-electricity-licence-conditions-following-implementation-third-package-and-other-house-keeping-changes>)

⁵ More details about CMP225 are available on National Grid's website: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP225/>

the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or ACER

- sets out that NGET and the BSC Panel is to comply with any Authority-directed timetable in respect of a modification which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the ACER. Compliance includes completion of the relevant modification process steps and implementation of the modification in accordance with the Authority's directed timetable, if any
- reflects that where NGET raises a modification which the Authority reasonably considers is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the ACER, it cannot be withdrawn or amalgamated with another BSC modification without prior Authority consent, and
- provides definitions for 'ACER', 'Electricity Regulation' and 'European Commission' in Section X-1 of the BSC.

The workgroup that assessed P298 suggested some further changes to the code drafting to address practical effects of the licence changes, e.g. that Authority raised or directed modifications cannot be prevented by the BSC Panel from being progressed through the modification process, and may only be amalgamated with the Authority's consent.

BSC Panel⁶ recommendation

The BSC Panel considered the draft Final Modification Report (FMR) for P298 at its meeting on 12 June 2014. The Panel unanimously recommended that the modification better facilitates Applicable BSC Objectives (a), (d) and (e). The views of Panel members are set out in full in the FMR.

Our decision

We have considered the issues raised by the modification proposal and the FMR dated 13 June 2014. We have considered and taken into account the responses to Elexon's⁷ consultation which are attached to the FMR.⁸ We have concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC⁹; and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.¹⁰

Reasons for our decision

We have considered the views of the BSC Panel and the respondents to the industry consultation who unanimously agreed that P298 should be approved. We agree with the views of the Panel that P298 better facilitates Applicable BSC Objectives (a), (d) and (e)

⁶ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

⁷ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

⁸ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.co.uk/

⁹ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see:

<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹⁰ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed in the Electricity Act 1989 as amended and in other relevant legislation.

for the reasons set out below. We consider the modification has no impact on the other Applicable BSC Objectives.

Applicable Objective (a) 'the efficient discharge by the licensee of the obligations imposed upon it by the licence'

The electricity transmission licence was modified as a result of introducing the Third Package into domestic legislation. The aim of the changes proposed by P298 is to align the BSC modification procedures with the licence requirements set out in Condition C3 of the licence. This ensures that NGET can efficiently discharge its licence obligations. For this reason, we consider that the modification does better facilitate this objective.

Applicable Objective (d) 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'

We consider that the proposed changes promote efficiency in the implementation and administration of the BSC. The modification aligns the code provisions with the relevant licence changes and establishes greater transparency around the processes for BSC parties as a result. For this reason, we consider that the modification does better facilitate this objective.

Applicable Objective (e) 'compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency'

Changes introduced by this modification will help ensure that the BSC modification procedures reflect the appropriate governance processes that allow future compliance to take place. For this reason, we consider that the modification does better facilitate this objective.

Proposed legal text

We note that the proposed legal text in paragraph 2.1.10A refers to the Authority informing the BSC Panel if the Authority reasonably considers that a modification raised by the licensee is necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the ACER. We also note that the relevant licence condition, SLC C3, is silent on this point.

Should the Authority consider that a modification falls into this category, the actions we may take, including how we may inform the Panel of our views if appropriate, will depend on the circumstances of each case. For example, where we direct NGET to raise a modification or direct a timetable for a modification, we would expect to publish our direction in line with our normal processes and our publication would inform the BSC Panel of our decision. Similarly, we would expect it to be apparent to NGET, as the proposer of a modification, whether a modification was aimed at complying with or implementing the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or ACER, and for them to seek our consent before withdrawing it. If there is any uncertainty, NGET can seek confirmation from Ofgem.

Furthermore, there may be circumstances in which we do not choose to exercise any powers under SLC C3 in relation to a modification whilst it is going through the industry process. However, we may assess in our decision on that modification that it does better facilitate objective (e), i.e. compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

It is important that licensees do not rely solely on code processes to ensure that they are acting in accordance with their licence obligations. If it becomes clear that the text

included at paragraph 2.1.10A results in industry uncertainty or misunderstanding around the Authority's role, we suggest that this text could be removed in the future, potentially through a self-governance modification.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that BSC modification proposal P298: *'Consequential amendments to the BSC modification process following the implementation of Third Package and other miscellaneous changes'* be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose