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Dear colleagues,

### **Request for amendment to the Transmission System Operators' proposal for the Terms and Conditions related to Balancing**

On 18 June 2018, we<sup>1</sup> received a proposal from the Transmission System Operators (TSOs) in accordance with Article 18 of Commission Regulation (EU) 2017/2195<sup>2</sup> (EBGL). The proposal presents the Terms and Conditions (T&C) related to balancing (balancing T&C). The proposal was submitted to us by the Electricity System Operator (ESO) in line with our assignment of obligations<sup>3</sup>.

This letter sets out our decision to request amendments to the balancing T&C. The letter furthermore outlines the necessary next steps that must be taken.

### **Background**

In accordance with Article 18 of the EBGL, the TSOs of a Member State must develop a proposal regarding the T&C for balancing service providers (BSPs) and balance responsible parties (BRPs).

The T&C must set the rules for market suspension and restoration (Article 18(2) EBGL), and the requirements on BSPs and BRPs (Article 18(1) of EBGL) as defined in the remainder of Article 18. For Great Britain, the Balancing and Settlement Code (BSC), the Grid Code (especially the "Balancing Code" sections) and the relevant sections of the Connection and Use of System Code (CUSC) already contain some provisions related to balancing that are applicable to BSPs and BRPs. These provisions have been created by virtue of the Electricity Act 1989 and of National Grid's Transmission License.

The proposal for the balancing T&C proposes that the existing provisions relating to balancing under the BSC, the Grid Code and the CUSC, serve as the official provisions constituting the balancing T&C required by Article 18 of the EBGL. Only necessary changes required for European Network Code (ENC) compliance and organic industry-led changes are reflected within them, in line with our open letter on

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<sup>1</sup> The Gas and Electricity Markets Authority. Ofgem is the Office of the Authority. The terms "Ofgem" and "the Authority," "we" and "us" are used interchangeably in this letter.

<sup>2</sup> Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The EBGL Regulation came into force on 18 December 2017.

<sup>3</sup> See Ofgem decision on our TSO assignment at <https://www.ofgem.gov.uk/publications-and-updates/decision-assignment-transmission-system-operator-obligations-under-guideline-electricity-balancing-regulation-within-gb>

ENC implementation<sup>4</sup>. A table mapping the EBGL requirements for the balancing T&C with the existing provisions under the BSC, the Grid Code and the CUSC was provided. The table also maps some of the EBGL requirements with licence conditions and with standard contract terms.

The proposal for the balancing T&C was consulted upon in accordance with Article 10(3) of the EBGL<sup>5</sup>. The proposal was further coordinated with the TSOs and DSOs that may be affected and took into account the views of DSOs and other stakeholders throughout its development<sup>6</sup>, in accordance with Article 18(3) of the EBGL.

## Decision

We have reviewed the proposal submitted to us in line with the requirements of the EBGL, the wider objectives of the Regulation (EC) No 714/2009<sup>7</sup> and our statutory duties and obligations. We furthermore engaged with the Electricity System Operator (ESO) and Elexon to clarify our understanding of the proposed balancing T&C.

We have concluded that the proposal cannot be approved in its current form and that it needs to be amended to provide more clarity and transparency for BRPs and BSPs on their obligations. We note that some of the provisions included in the mapping in the annex to the proposal are unnecessary, as they do not place obligations on BRPs and BSPs, while other obligations are missing. We hereby request the relevant TSO to amend the proposed balancing T&C, taking into consideration the following recommendations:

- a) The mapping in the TSO submission should be reviewed to remove references that do not place an obligation on BSPs and BRPs or set rules for market suspension and restoration as defined in Article 18. In the submitted mapping, a number of provisions that were deemed to be T&C do not place an obligation on BSPs and BRPs. For example, references to C16 place obligations on the ESO but not these parties. Moreover, the mapping should include only the obligations rather than their justifications. For example, the references to the Grid Code CC.8.2 and ECC.8.2 mapped to Article 18(4)(b) do not place obligations on BSPs and BRPs but explain such decision.
- b) The mapping in the TSO submission should be reviewed to include all the provisions in the GB regulatory framework that set obligations on BSPs and BRPs or set rules for market suspension and restoration that are missing in the current submission. For example, the current mapping includes BSC section J3 as delivering the obligation under Article 18(5)(a) EBGL. While we agree that this section helps define the qualification process under that article, it also sets the details of the 'qualification requirements' which are required by Article 18(4)(a) EBGL. However, in the initial submission, the mapping to Article 18(4)(a) is missing. It is important that all obligations on BSPs and BRPs are captured within the appropriate section of Article 18, as the requirements must be as easy to understand as possible for market participants.
- c) The relevant provisions contained within the Standard Contract Terms (SCTs) and required for compliance with Article 18, need to be transposed into the GB network codes so that we can have a clear and transparent role in approving and amending them in the future. This could either be through incorporation of the actual terms to the codes or through the creation of a subsidiary document to the codes which contains those terms. While SCTs are common to all BSPs in a given balancing service, they remain a bilateral contract between the ESO and the BSP. We believe that it would not be appropriate for us to have a role in the approval or amendment of contractual terms between market participants. Moreover, it would be unclear on which basis we would rely on to approve amendments to the terms of those contracts in accordance with our powers under EBGL. Nevertheless, only references to SCTs that are needed for compliance with Article 18 should be transferred to the GB codes.

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<sup>4</sup> See Ofgem open letter on ENC Implementation at [https://www.ofgem.gov.uk/system/files/docs/2018/02/open\\_letter\\_setting\\_out\\_minded\\_to\\_decision\\_tso\\_obligations\\_ebgl\\_er\\_sogl\\_final2.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/02/open_letter_setting_out_minded_to_decision_tso_obligations_ebgl_er_sogl_final2.pdf)

<sup>5</sup> See consultation here: <https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-article-18-electricity-balancing-guideline-eb-gl>

<sup>6</sup> See for instance the EBGL code mapping sessions held in October 2017 and the webinar setting out the approach for the balancing T&Cs in April 2018. A link to the webinar and proposed approach can be found at <https://www.nationalgrideso.com/sites/eso/files/documents/EB%20GL%20Article%2018%20approach.pdf>

<sup>7</sup> Regulation (EC) No 714/2009 here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>

We note that the examples listed in paragraphs a), b) and c) are not an exhaustive list. We expect the relevant TSO to run a detailed exercise to ensure that all and only the necessary provisions are identified.

In addition to the review of the mapping of the provisions of Article 18 with the provisions of the GB regulatory framework, it is important that the necessary code modifications are initiated. It must be ensured that any future amendment of the balancing T&C will be compliant with the process set in the EBGL.

We would also encourage the TSOs to consider the format of their submission. We understand that the balancing T&C for GB will be incorporated into the different GB codes. Therefore, the previously submitted letter *referred* to the actual balancing T&C, but did not *constitute* them. As shown in the mapping, the arrangements that together form the balancing T&C would be found in the GB codes. The TSOs' submission should be clear that the existing GB codes provisions form the balancing T&C required by Article 18 of EBGL. This clarity would avoid any confusion in regards to our approval of the T&C

#### *Decision not to undertake an Impact Assessment*

We have not undertaken an Impact Assessment for this proposal. This is because we consider that the proposal would not constitute a significant change to existing GB requirements and arrangements. The adoption of Article 18 is furthermore a requirement of the EBGL, which has already been subject to an impact assessment<sup>8</sup>. Accordingly, we consider that an impact assessment is unnecessary in this situation.

#### **Next Steps**

In accordance with Article 6(1) of the EBGL, the relevant TSOs must make the necessary amendments to the Article 18 proposal to address the points set out in the text above and re-submit an amended proposal to us within two months of this decision.

If you have any queries regarding the information contained within this letter, please contact Jordan Clarke at [Jordan.clarke@ofgem.gov.uk](mailto:Jordan.clarke@ofgem.gov.uk).

Yours faithfully

Grendon Thompson  
Head of ESO Regulation

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<sup>8</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0410>