



Making a positive difference  
for energy consumers

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Dear Michael,

**Progression of BSC modification P374 'Aligning the BSC with the EB GL change process and derogation approach'**

I am writing in response to your letter dated 12 November 2018, in which the BSC panel requested our<sup>1</sup> guidance regarding seven questions that the BSC Panel considers important to be able to make an informed decision on the further progression of BSC modification P374.

In accordance with Article 18 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing<sup>2</sup> (hereafter EBGL), the Transmission System Operators (TSO) of a Member State are required to propose terms and conditions related to balancing (hereafter "Article 18 submission"). This obligation was assigned to the TSO acting as System Operator (SO) for Great Britain (GB), who in practice is National Grid as National Grid Electricity System Operator (NGESO), in the TSO allocation dated 14 September 2018<sup>3</sup>.

We received the Article 18 submission on 18 June 2018 and have since engaged with both Elexon and NGESO on a regular basis in order to collect more information and further our understanding ahead of taking a decision on whether or not to approve the Article 18 submission. Whilst discussions are still ongoing, SSE has raised BSC modification P374 with the intention to align the BSC with the EBGL amendment process and derogation approach<sup>4</sup>. Specifically, P374 aims at reflecting changes to the code governance arising from the application of the terms and conditions related to balancing from Articles 4, 5, 6, 10 and 18 of the EBGL.

Without fettering the Authority's discretion, we are currently of the opinion that some aspects of the current Article 18 submission would still require further work and changes to ensure its compliance with the requirements of the EBGL. We are thus currently contemplating issuing a request for amendment.

**Authority's response to the BSC Panel's questions**

The BSC panel raised seven questions on which they would like advice from the Authority to help inform its considerations moving forward. These questions are listed below together with the Authority's response.

*1. Whether the balancing terms and conditions proposed by National Grid Electricity System Operator (ESO) on 18 June 2018, and not yet approved, are already subject to the EB GL change process.*

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<sup>1</sup> The terms "we", "us", "our", "Ofgem" and "the Authority" are used interchangeably in this document and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

<sup>2</sup> Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2195&from=EN>

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

<sup>4</sup> The code modification proposal can be found here: <https://www.elexon.co.uk/mod-proposal/p374/>

*This would inform the Panel whether 'in-flight' Modifications are currently caught by the EB GL change process and hence influence the appropriate P374 timelines.*

We are currently assessing the Article 18 submission. It is only once we are confident that the Article 18 submission is robust that we would approve it and that the existing provisions in the current regulatory framework would become the official terms and conditions related to balancing as referred to in Article 18 EBGL. At this stage, we expect that any amendment to those terms and conditions would comply with the amendment processes set in the EBGL. While submitted to the Authority, the current Article 18 submission is not yet approved and, as a result, does not yet constitute the terms and conditions related to balancing as referred to in Article 18 EBGL.

*2. Whether EB GL prevents BSC Derogations being granted through ELEXON's BSC Sandbox where the derogated BSC provisions relate to the Article 18 terms and conditions. This would provide the Panel with clarity on the different interpretations of derogations.*

Article 62 EBGL does not provide the ability to derogate from the obligation set in Article 18. We would like nevertheless to highlight that the provisions of the BSC which would be terms and conditions related to balancing as defined by Article 18 EBGL can continue to evolve after their initial approval through the amendment process. Hence, we encourage the industry to consider how those provisions of the BSC may need to evolve to retain their necessary flexibility and, among others, to remove barriers for new market participants.

*3. Since Ofgem has advised the Panel that it is minded to direct changes to the ESO's proposed terms and conditions, we request information on the nature of those amendments. This will inform the P374 progression timescales and implementation approach. For example, where amendment is required to the proposed terms and conditions for balancing, National Grid ESO has two months to amend its proposal and Ofgem a subsequent two months to approve.*

As mentioned at the November BSC panel meeting, we are currently minded to issue a request for amendment as we believe that further changes are necessary in order for the Article 18 submission to be compliant with the requirements of the EBGL. Those further changes would relate to the scope of the provisions of the existing regulatory framework that should be included in the Article 18 submission: some provisions currently under the scope should be excluded while others should be brought under. Changes would also be necessary to align the adoption and amendment process with the requirements of the EBGL.

*4. Whether Ofgem is likely to set an implementation date for the terms and conditions, and if so what the lead time might be. This information will inform the appropriate progression timetable for P374.*

At this stage, we have not yet reached a decision on a potential implementation date. We will however aim to be pragmatic and provide sufficient time for parties to adjust the necessary systems to comply with this decision. While no implementation period has been proposed at this stage, we have the ability under EBGL to extend the implementation timetable if needed.

*5. Whether Ofgem is time bound to make a decision on the proposed terms and conditions. This will inform the progression timetable of P374.*

The EBGL does not set any deadline for the Authority to adopt its decision on the Article 18 submission. Once we have firmed our view on the proposed Article 18 submission, we will issue a decision as soon as possible in order to provide market participants with the clarity they require. In accordance with Article 6(1) EBGL, should we issue a request for amendment, it would trigger a new process whereby an amended Article 18 submission would have to be proposed within two months from the request for amendment and we would have two months to adopt a decision on that basis.

*6. Guidance on the possible interpretations of the EB GL change process and derogation process. Understanding the interpretations of the EB GL change process and derogations process will help inform the appropriate changes required to the BSC if necessary.*

We cannot provide an interpretation of the EBGL amendment process and derogation process. We encourage you to form your own interpretation on this in a pragmatic manner and for industry to work together to implement a view that is clear, transparent and compliant. Without fettering our discretion, we encourage you in this regard to consider the work undertaken for the implementation of similar Commission Regulations, such as Regulation (EU) 2015/1222 and Regulation (EU) 2016/1719.

*7. When a decision on the Article 18 terms and conditions proposed by ESO on 18 June 2018 is likely to be made. This will inform the progression timetable for P374.*

As explained in answer to question five, we aim at issuing a decision as soon as possible, once we have firmed our view on the proposed Article 18 submission, in order to provide market participants with the clarity they require. We hope to issue this decision at the latest in January.

If you have any questions in relation to this letter, please contact Leonardo Costa at [Leonardo.Costa@ofgem.gov.uk](mailto:Leonardo.Costa@ofgem.gov.uk).

Yours faithfully

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