

Proposed modification:	Balancing and Settlement Code (BSC) P370: 'Move Section F designation of third parties from Authority to Panel' (P370)		
Decision:	The Authority ¹ directs that the alternative modification be made ²		
Target audience:	National Grid Transmission Plc (NGET), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	27 March 2019	Implementation date:	Five working days after decision date

Background

The energy sector is experiencing a period of unprecedented change, and the current system of industry codes and code governance may be a barrier to innovation and market entry. Increasingly, new types of market participants, that may not be code parties, find themselves impacted by the code rules and may identify a possible need for the BSC to change, which could potentially benefit consumers and competition. While the BSC currently enables Ofgem to designate a non-BSC party to raise a modification, the BSC Panel (the Panel) considers the process could be improved and is not consistent with one of the outcomes of our Code Governance Reviews (CGR)³, to encourage greater self-governance under the industry codes, where appropriate.

The proposed modification

The Panel, as the proposer, raised P370 on 5 July 2018. P370 seeks to improve the current provisions in the BSC for allowing a non-BSC party to raise a modification. The proposed modification will amend the relevant text of the BSC to replace "the Authority" with "the BSC Panel". The proposer considers this change will increase process transparency and reduce the time taken to designate a non-BSC party to raise a modification. The proposer suggested that P370 will reduce barriers by having a clearly defined designation process and published criteria.

The proposed modification also opens up the existing Issues process⁴ to non-BSC parties. Issues are raised where problems or potential improvements to the current arrangements have been identified, but it's not known how best they should be resolved. Issues are discussed by an Issue Group to potentially find solutions or to define the scope and issue further. Currently a non-BSC party cannot raise an Issue. A new Issue Group Terms of Reference is proposed and an Issues process will be defined in the BSC subsidiary document BSCP40⁵.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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

³ <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review>

⁴ BSC Change Process: https://www.elexon.co.uk/wp-content/uploads/2018/02/bsc_change_process_v9.0.pdf

⁵ BSCP is Balancing Settlement Code Procedure: <https://www.elexon.co.uk/bsc-and-codes/bsc-related-documents/bscps/?show=all>

The proposer considers that P370 will better facilitate objectives⁶ (c)⁷ and (d)⁸ and have a neutral impact on the other objectives. The proposer states that P370 benefits objective (c) because it will improve the ease by which non-BSC parties can potentially progress beneficial and innovative changes. They consider that this could allow a greater number of organisations to offer an increased variety of solutions in serving customers in the electricity market. The proposer considers that objective (d) is better facilitated by improving accessibility of the Modification Procedures to non-BSC parties, removing any perceived barriers to innovation and change; and by addressing any perception that the BSC is a “closed shop”, only accessible to BSC parties.

The alternative modification

The Workgroup developed an alternative solution. The alternative modification is identical to the proposed modification but additionally allows the non-BSC party and existing BSC parties to appeal the designation decision to the Authority.

Under the alternative modification, where the Panel rejects a non-BSC party's request for designation they can appeal to the Authority. If we uphold the non-BSC party's appeal, the non-BSC party will be designated. Our decision will then permit the non-BSC party to raise the modification. Where the appeal is rejected, the Panel's decision not to designate is maintained.

Where the Panel designates a non-party to raise a modification, a BSC party may appeal the Panel decision to us. BSC parties will only be allowed to appeal to the Authority within 15 working days following the date of notice of the Panel's decision to designate. Elexon as BSC code administrator would notify industry of any objection lodged with the Authority and its subsequent decision. During the appeal process, the designated non-BSC party's modification will continue to progress as normal until such time as the Authority upholds the appeal.

BSC Panel⁹ recommendation

At the BSC Panel meeting on 14 February 2019, the Panel unanimously agreed that both P370 proposed modification and P370 alternative modification better facilitated relevant BSC Objectives (c) and (d) compared to the current baseline.

At voting the Panel was split equally in favouring both modification proposals, requiring the Chair to cast a determining vote. The Chair voted in favour of the alternative modification. Therefore, the BSC Panel recommended approval of P370 alternative modification.

Our decision

⁶ The applicable BSC objectives are set out in standard condition C3(3) of NGET's Transmission Licence: <https://epr.ofgem.gov.uk//Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

⁷ promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

⁸ promoting efficiency in the implementation and administration of the balancing and settlement arrangements

⁹ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and Standard Special Licence Condition C3 of the Electricity Transmission Licence available at: <https://epr.ofgem.gov.uk//Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 20 February 2019. We have considered and taken into account the Workgroup and Panel discussions and responses to the industry consultation(s) which are attached to the FMR¹⁰. We have concluded that:

- implementation of the alternative modification will better facilitate the achievement of the relevant objectives of the BSC;¹¹
- the alternative modification is better than the proposed modification; and
- directing that the alternative modification be made is consistent with our principal objective and statutory duties.¹²

Reasons for our decision

We agree with the Panel that the alternative modification will better facilitate BSC objectives (c) and (d) with a neutral impact on the other objectives.

(c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

We agree with the majority of consultation respondents, the Workgroup and the Panel that both the original and the alternative modification better facilitate objective (c). The amended process for non-BSC parties to seek to raise BSC modifications under P370 should facilitate the consideration of a broader range of potential code change, which should support effective competition and the potential for innovation.

We note the opposing minority view that P370 allows non-BSC parties to benefit from the code modification process without having to pay for this, and that it burdens existing BSC parties with a greater cost. We would expect potential additional cost to be minimal and ultimately to be offset by greater competition and innovation. We also note that the Panel will keep under review the costs of administering the designation process and take appropriate action if necessary.

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

We share the views of the Workgroup and majority of Panel members that both the original and the alternative modification better facilitate objective (d). We agree it is appropriate, and in-line with our CGR aim to encourage greater self-governance under the industry codes, where appropriate, that decisions on designating non-BSC parties to raise BSC modifications are made by the Panel. Publishing the Panel's designation criteria, designation requests and associated Panel papers should provide for a transparent and efficient process.

We consider that the alternative better facilitates this objective compared to the original proposal, as we agree that it is appropriate that affected parties have an option to appeal Panel decisions to Ofgem, in line with other similar processes under the BSC (for

¹⁰ BSC proposed modifications, modification reports and representations can be viewed on the Elexon website at www.elexon.co.uk

¹¹ See footnote 6, above.

¹² The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

example, appeals on code modification decisions made under the BSC self-governance process).

We note the opposing minority view that P370 will increase the workload of the Panel. We expect any potential additional workload on Panel members to be minimal. The requirement for the non-BSC party to present a valid proposed modification and other undertakings set out in the BSCP40 form provides an initial vetting process before an application is made to the Panel. We consider this should be an effective measure to prevent Panel from being presented with frivolous and/or vexatious designation requests.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that the alternative modification for BSC P370: Move Section F designation of third parties from Authority to Panel, be made.

Lesley Nugent
Deputy Director, Licensing Frameworks

Signed on behalf of the Authority and authorised for that purpose