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Dear Claire,

P373 'Reversing the changes relating to Approved Modification P297' – decision on urgency

P373 was raised by National Grid, as the Electricity System Operator (ESO), on 4 October 2018.¹ It proposes to reverse the changes introduced by BSC modification P297 'Receipt and Publication of New and Revised Dynamic Data Items'², which the Authority approved in April 2014 but has yet to be implemented. On 11 October 2018, Elexon contacted us on behalf of the BSC Panel (the Panel) to recommend that P373 be treated as an Urgent Modification Proposal, in order to enable a decision before 1 November 2018 (when P297 is due to be implemented).

We have decided that P373 should not be progressed on an urgent basis. We believe there is insufficient justification for urgency and that the proposed urgent timelines would not be in consumers' interests.

Background to the proposal

The ESO is responsible for the safe and efficient operation of the electricity transmission system. The Balancing Mechanism (BM) is one of the key tools the ESO uses to balance electricity supply and demand close to real time. As the BM is now several decades old, a new system called the Electricity Balancing System (EBS) was developed to replace it. EBS proposed to include, amongst other things, automated dispatch to provide significant improvement to frequency control as the number of balancing providers increases.³

In 2013, National Grid raised Grid Code Modification GC0068 'New & Revised Unit Data & Instructions'.⁴ This would enable market participants to submit new and revised dynamic data to the ESO for it to take advantage of EBS's functionality. GC0068 was approved in March 2014, with an implementation date linked to the 'go-live date' for EBS (at the time anticipated to be Q2 2015). However, the full proposed EBS solution has yet to be implemented and the ESO has been unable to confirm an implementation date for GC0068.

BSC modification P297 was approved in April 2014. This would allow data gathered under GC0068 to be sent to Elexon for publication to industry on the Balancing Mechanism

¹ P373 is available on Elexon's website: <https://www.elexon.co.uk/mod-proposal/p373/>

² P297: <https://www.elexon.co.uk/mod-proposal/p297/>

³ EBS update: https://www.nationalgrid.com/sites/default/files/documents/8589937158-05_EBS%20Update.pdf

⁴ GC0068: <https://www.nationalgrideso.com/codes/grid-code/modifications/gc0068-grid-code-new-and-revised-unit-data-and-instructions>

Reporting Service (BMRS). The initial implementation date for P297 was November 2015. However, in light of delays to EBS we approved extensions to this deadline in March 2015, August 2016 and most recently in June 2017.⁵ As agreed in June 2017, the current implementation date for P297 is 1 November 2018.

On 11 September 2018, the ESO wrote to the Panel to request a further extension to the implementation date for P297 and highlighted their intention to seek revisions to the requirements, potentially through new a modification process. The Panel wrote to us on 21 September with concerns about this request, given the desire to amend P297 and the length of time since the original implementation date. Following further discussions with Elexon, the ESO wrote back to the Panel on 4 October suggesting that an Urgent Modification to remove P297 entirely was the best way forward for industry, but that in the absence of an urgency decision, an extension should still be requested. On the same date the ESO raised P373, which proposes to reverse P297, and requested that this modification is treated as urgent. We responded to the Panel's letter on 8 October and expressed our concerns about the situation.⁶

The proposal

P373 proposes to reverse the requirements of P297. The Proposer suggests an urgent timetable with a decision made before 1 November 2018 (when P297 is due to be implemented).

The Proposer also noted that if further work demonstrated any benefits from delivering P297 requirements through existing ESO systems, then a further modification could be raised to achieve this.

Panel discussion

The Panel considered the request for urgency for P373 at its meeting held on 11 October 2018. The Panel unanimously recommended that P373 is treated as urgent and asked the Authority to consider this recommendation with immediate effect after the discussion.

In reaching this recommendation the Panel considered Ofgem's criteria for urgent modifications. They considered criterion (c) in relation to party being in breach of legal requirements. They noted that without remedial action, Elexon would be in a position of non-compliance with P297 through no fault of its own.

The Panel also considered criterion (a) regarding a significant commercial impact. In particular, they noted queries to Elexon where parties had highlighted system development costs in preparation for P297. The Panel considered it imperative that market participants be provided with certainty and clarity over P297 provisions at the earliest opportunity, to prevent further unnecessary resource spend on P297 provisions that it does not believe will be implemented.

The Panel also noted that our guidance on urgency is not an exhaustive list and urged us to make a decision that is within the best interests of the wider industry.

Our views

In reaching our decision, we have considered the details contained within the proposal, the Proposer's justification for urgency and the views of the Panel. We have assessed the request against the criteria set out in our published guidance⁷, in particular whether it is

⁵ <https://www.elexon.co.uk/wp-content/uploads/2013/07/P297-Authority-approval-letter-to-ID-v1.0.pdf>

⁶ <https://www.elexon.co.uk/wp-content/uploads/2013/07/P297-Ofgem-response-to-BSC-Panel-letter-8-Oct-18.pdf>

⁷ The guidance document is available here: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria-0>

"linked to an imminent issue or current issue" that if not urgently addressed may cause "a significant commercial impact on parties, consumers or other stakeholder(s)" or "a party to be in breach of any relevant legal requirements". We have also considered our overarching duty to protect the interests of consumers.

A significant commercial impact / industry uncertainty

We have not seen sufficient evidence from the Proposer or the Panel's discussion to demonstrate that there would be a significant commercial impact on parties if a decision on whether or not to remove P297 is not urgently made by 1 November.

We agree with the Panel that industry uncertainty on this matter is very undesirable and we are concerned to hear that parties may have invested in unnecessary system changes in advance of this November. We consider that the industry uncertainty in this area is primarily driven by the wider context of the ESO not implementing the full EBS solution and the overall lack of transparency and communication about this project to date.

Progressing P373 urgently would not change the fact that GC0068 (which requires parties to submit the data relevant to P297) is still an approved modification with an implementation date linked to the 'go-live date' for EBS. In our decision on GC0068 we were clear that we expected the ESO to communicate the implementation date of this modification to all affected users and interested parties in a timely manner to avoid industry uncertainty.⁸

We have asked the ESO to be as open and transparent as possible about EBS issues and developments. It is vital that the ESO has an effective dialogue with industry stakeholders before any further industry costs are inefficiently spent. We note that the ESO sent an update on EBS to industry on 12 October. Although this is a positive and welcomed step, we strongly encourage the ESO to build on this update to ensure that all parties have a clear and advanced picture of plans on EBS and any related processes and requirements.

A party to be in breach of relevant obligations

It does not appear that the ESO will be able to deliver the required P297 system changes by 1 November 2018. In this instance, assuming the requirements remain, the ESO could be in a position of non-compliance with the BSC. Failure to deliver the system changes would also have a consequential impact on Elexon, who would not be able to publish the relevant data on the BMRS as required under the BSC.

In relation to the ESO, we do not consider this situation has been caused by an imminent issue that could not have been reasonably anticipated. The latest P297 implementation date has been known since June 2017. In our view, the ESO's failure to raise a modification at an earlier date and manage wider industry concerns about the process it has taken does not now justify following a condensed modification process to potentially remove these requirements altogether.

We agree that Elexon being unable to implement the P297 changes by the 1 November would be through no fault of its own. Whilst it would be undesirable for Elexon to be placed in this position, we do not consider this provides sufficient justification to follow the proposed urgent timetable. We believe it would be unlikely for there to be any material consequences for Elexon.

In general, we note that we are not obliged to take enforcement actions and we make all enforcement decisions on a case-by-case basis, considering the specific facts of the matter, the legal context and our available resources.⁹ We also note that, where there are good

⁸ https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/gc0068_d_0.pdf

⁹ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

reasons, we can approve extensions to code implementation deadlines. We are currently considering a request for the further extension of the P297 deadline which was submitted to us on 12 October 2018.

Following a robust process for P373 which is in the interest of consumers

Overall, we do not consider that following the urgent timetable proposed for P373 would be in consumers' interests. We do not believe this would follow a robust process as it would not allow time for the appropriate level of industry and Authority scrutiny, nor a full consideration of some key interactions with P373.

In our view the Proposer has not provided a clear assessment of the costs and benefits of removing the P297 obligations. In its original letter to the Panel on 11 September, the ESO explained that whilst the P297 requirements could be delivered through existing ESO system architecture, the changing context and lack of full EBS functionally meant it felt that consumer benefits could be maximised by delivering the original requirements in a different way. For some areas the ESO believed the same outcomes would be delivered anyway through other projects, whilst for others, it did not believe the changes would be cost effective any more. For one area the ESO suggested further thinking was needed. In the P373 proposal, the ESO also notes that *"if further work demonstrates a benefit to the market of delivering any of the data set revisions under P297 through existing ESO systems a further modification could be brought forward"*.

It is vital that this analysis and planning is fully completed and properly scrutinised by ourselves and stakeholders before any decision on P373 is made. We do not believe the proposed urgent timetable would allow this, and that a rushed decision creates risks for consumers. We also believe that the timetable for P373 should allow for a more thorough and explicit consideration of the interactions between this modification and GC0068, as well as the status of EBS and other relevant IS projects in development.

We note that the ESO's recent update on EBS to industry on 12 October says that EBS has already been implemented. This includes the statement that *"the full EBS solution has been implemented, however the Dispatch function has been disabled."* We would like to better understand how these statements link to the commitment to implement GC0068 following the confirmation of the 'go-live date' for EBS. If the GC0068 and P297 requirements are only relevant to the disabled Dispatch function of EBS, then the ESO should more clearly explain and evidence this.

For the avoidance of doubt, in not granting this request for urgency, we have made no assessment on the merits of the proposal and nothing in this letter in any way fetters the discretion of the Authority in respect of this proposal.

Yours sincerely,

Grendon Thompson,
Head of SO Regulation, Systems and Networks
For and on behalf of the Authority