

BSC Modification Proposal Form		At what stage is this document in the process?
<h1>P374</h1> <h2>Aligning the BSC with the EB GL change process and derogation approach</h2>		<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid green; background-color: #00a651; color: white; padding: 5px; display: flex; align-items: center; justify-content: center;">01 Modification</div> <div style="border: 1px solid blue; padding: 5px; display: flex; align-items: center; justify-content: center;">02 Workgroup Report</div> <div style="border: 1px solid purple; padding: 5px; display: flex; align-items: center; justify-content: center;">03 Draft Modification Report</div> <div style="border: 1px solid orange; padding: 5px; display: flex; align-items: center; justify-content: center;">04 Final Modification Report</div> </div>
<p>Purpose of Modification: This proposal will ensure that the BSC reflects the 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 Electricity Balancing Guideline (EB GL, Regulation 2017/2195).</p>		
	<p>The Proposer recommends that this Modification should:</p> <ul style="list-style-type: none"> be sent directly into the Report Phase <p>This Modification will be presented by the Proposer to the BSC Panel on 8 November 2018. The Panel will consider the Proposer's recommendation and determine how best to progress the Modification.</p>	
	High Impact: None	
	Medium Impact: None	
	Low Impact: BSC Panel, Ofgem, Parties and National Grid.	

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Timetable		 02073804363
The Proposer recommends the following timetable:		Proposer: Garth Graham, SSE Generation Ltd.
Report Phase Consultation	12 Nov 2018 – 3 Dec 2018	 garth.graham@sse.com
Draft Modification Report presented to Panel	13 Dec 2018	 01738 456000
Final Modification Report submitted to Authority	17 Dec 2018	Proposer's representative: Andrew Colley, SSE Generation Ltd.
Final Modification Report published	17 Dec 2018	 andrew.colley@sse.com
		 01189 534276
		Other: <i>none</i>

1 Summary

What is the issue?

The BSC does not reflect the changes introduced by the Electricity Balancing Guideline (EB GL, Regulation 2017/2195) in respect of derogations and amendments to the terms and conditions related to balancing.

Without this change the BSC will not be in compliance with the EB GL, which could lead parties and the Panel to a misunderstanding when applying the BSC.

This misunderstanding, in respect of amendments, manifested itself recently to us when we considered the recent P373 consultation (and it also arose during the GC0096 Workgroup discussion on 24th October 2018) and we felt it prudent to take immediate action to seek to correct the defect and to ensure that the related defect, in respect of BSC Derogations, was also addressed in a timely way.

Article 18 of EB GL sets out that terms and conditions related to balancing are required to be proposed for GB by the TSO. This was done by the TSO (National Grid) in its [proposal of 18th June 2018 to Ofgem](#). Annex 1 to that proposal set out those parts of the BSC (and other industry framework documents) that form the terms and conditions related to balancing for GB.

Article 62(2) of EB GL sets out that a TSO may request a derogation from certain requirements (set out under (a) to (e)). However, this does not include Article 18 of EB GL.

Therefore, the terms and conditions related to balancing, once approved by Ofgem, cannot be derogated against. This is to ensure that, for example, the recitals of the Guideline, such as the need for harmonisation and so forth are met.

The BSC Derogation arrangement, as set out in Section H 10.1, will need to be amended accordingly to make clear that those parts of the BSC listed in Annex 1 of the proposal of 18th June 2018 cannot be subject to a BSC Derogation as this would not be compatible with Article 62(2) of EB GL.

In respect of amendments to the BSC, it is important to note that there is a procedure, set out in Article 6(6) of EB GL and referring to Articles 4, 5 and 10 of EB GL, that will need to be followed in respect of amendments to the terms and conditions related to balancing (which are set out in Annex 1 to the 18th June 2018 proposal).

Accordingly, the modification procedure of the BSC, as set out in Section F 1.1.3, will need to be changed to reflect that this will need to be followed in respect of changes to those parts of the BSC listed in Annex 1 of the 18th June 2018 proposal.

What is the proposed solution?

The proposed solution, as set out in the legal text in Section 9 below, will ensure that the Section H and Section F are brought into line with the EB GL requirements.

For the avoidance of doubt, the EB GL requirements, as applicable EU law, will apply irrespective of this change. As National Grid has noted with its recent Grid Code changes¹ related to the new EU requirements arising from the Network Codes and Guidelines:

“Guidance from BEIS and Ofgem was to apply the new EU requirements within the existing GB regulatory frameworks. This would provide accessibility and familiarity to GB parties, as well as putting in place a robust governance route to apply the new requirements in a transparent and proportionate way.”

We are following this guidance from BEIS and Ofgem with this proposal.

2 Governance

Justification for proposed progression

This change should not be determined under Self Governance as it is likely to have a material effect on the Code’s governance procedures and therefore has a material impact on criterion (a) (v) of the Self-Governance criteria.

We believe that as the change is self evident, as it relates to a legal requirement, that progressing to Report Stage is appropriate in this case.

At this time we do not believe this proposal, if sent directly to the Report Phase, should be treated as Urgent.

Requested Next Steps

This Modification should be:

- sent directly into the Report Phase.

3 Why Change?

What is the issue?

The BSC does not explicitly reflect the changes introduced by the EB GL in respect of derogations (Article 62(2)) and amendments (Articles 4, 5, 6 and 10) to the terms and conditions related to balancing.

¹ See, for example, GC0100, GC0101, GC0102, GC0104 and GC0106.

Derogations

BSC Modification [P362](#) introduced the ability to grant BSC Derogations against provisions of the BSC upon application and consideration of the merits of the case. The terms and conditions related to balancing submitted in accordance with Article 18 however cannot be derogated against, in accordance with Article 62(2), once they have been approved by the National Regulatory Authority (Ofgem).

A BSC change is necessary therefore to limit any potential misunderstanding; on the part of stakeholders, and especially new entrants, smaller parties and potential innovators etc.; when considering BSC Derogation requests that could result in nugatory work by applicants or an inadvertent breach of European Law; and as such provide increased surety that GB national arrangements comply with European Law when administering BSC Derogation requests that impact upon the Article 18 terms and conditions relating to balancing.

Amendments

Article 6(3) of EB GL (referring to Articles 4, 5 and 10) sets out a process that will need to be followed in respect of amendments to the terms and conditions related to balancing (as set out in Annex 1 to the 18th June 2018 proposal submitted by the TSO). The BSC does not currently cater for this additional process.

Accordingly, the modification procedure of the BSC, as set out in Section F 1.1.3, will need to be changed to ensure that the additional change process is applied to those parts of the BSC listed in Annex 1 of the 18th June 2018 proposal.

For the avoidance of doubt, with this proposal the existing BSC change procedure would remain, but be augmented (as required by EB GL) with the application of the Articles 4, 5, 6 and 10 process where that BSC change concerns the terms and conditions related to balancing (as listed in the Annex to the 18th June proposal and set out in the legal text changes to Section H shown in section 9 below). To this end we have suggested, in the legal text, placing a duty on Elexon to coordinate with and assist the TSO (National Grid ESO) when the TSO is undertaking their duties under Articles 4, 5, 6 and 10 of EB GL.

4 Code Specific Matters

Technical Skillsets

Knowledge of the BSC Governance and Modification processes.

Knowledge of EB GL (Regulation 2017/2195).

Reference Documents

BSC <https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/>

EB GL https://electricity.network-codes.eu/network_codes/eb/

National Grid's 18th June 2018 Article 18 EB GL Terms and Conditions Proposal Letter

<https://www.nationalgrideso.com/sites/eso/files/documents/EBGL%20Art%2018%20%20Terms%20%26%20Conditions%20related%20to%20Balancing%20with%20mapping.pdf>.

5 Solution

Proposed Solution

The proposed solution, as set out in detail in the draft legal text provided in Section 9 below, is to ensure that Section H and Section F of the BSC are brought into line with the EB GL requirements in order to avoid any unintended non-compliance.

This change is already applicable, as European law in GB. This proposal will reflect this by updating the BSC to bring it into line with that legal requirement.

6 Impacts & Other Considerations

Impacts

Who is impacted

The BSC Panel;

The BSCCo;

The Transmission Company;

Parties seeking a BSC Derogation against provisions of the BSC that form part of the terms and conditions related to balancing under EB GL Article 18; and

Parties seeking change to provisions of the BSC that form part of the terms and conditions related to balancing under EBGL Article 18.

Which processes are impacted

The BSC Derogation processes.

The BSC modification processes.

Which documents are impacted

The BSC (Section H and Section F).

Which systems are impacted

No system changes have been identified.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This proposal does not impact any ongoing SCR or other significant industry change projects.

Consumer Impacts

No direct consumer impacts have been identified, however the proposal is intended to mitigate the risk of inadvertent failure to comply with European Law and any potential remedies as a consequence.

Environmental Impacts

None identified.

7 Relevant Objectives

Impact of the Modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Positive
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(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	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]	Positive
(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

SSE believe that the modification will primarily positively impact objective (e) by ensuring BSC compliance with EB GL provisions relating to derogations against and amendments to the NRA (Ofgem) approved terms and conditions related to balancing as well as meeting the requirements, in Article 3(2)(b) of EB GL, on the TSO (National Grid ESO) and NRA (Ofgem) to ensure transparency by allowing stakeholders to easily see, up-front, within the BSC Derogation process those elements of the BSC that cannot be derogated against (as they form the terms and conditions related to balancing) .

The changes are also likely to be beneficial to both National Grid ESO and ELEXON in providing more clarity and certainty in fulfilling their obligations under EB GL and managing BSC Derogation requests and change proposals, thereby realising benefits under objectives (a) and (d).

8 Implementation Approach

We propose that implementation is as soon as reasonably practical after an Authority decision, whilst noting that in the intervening period prior to implementation that stakeholders will be aware of the EB GL requirements which will prevail.

9 Legal Text

Text Commentary

Amendments to Section H seek to ensure that BSC Derogations cannot be granted in respect of Sections of the BSC that constitute the terms and conditions related to balancing under EB GL provisions. Listed sections mirror those submitted by the TSO to the NRA on 18th June 2018 (as set out in Annex 1 of that submission).

Amendments to Section F seek to ensure that the additional consultation and approval processes (required by EB GL) are catered for where Modification or Change Proposals relate to balancing terms and conditions submitted by the TSO and approved by the NRA. It also includes a duty on Elexon to coordinate with and assist National Grid ESO when they (ESO) are undertaking their duties in terms of Articles 4, 5, 6 and 10 when proposing to amend the terms and conditions related to balancing in the future.

SECTION H: GENERAL (V20.0)

10.1 BSC Derogations

10.1.1 The Authority may, in accordance with this paragraph 10, grant any person, other than a BSC Company, a derogation from one or more provisions of the Code; **except those provisions of the Code listed in paragraph 10.1.4 and paragraph 10.1.5 for which no derogation may be granted;** in which case paragraph 10.4 shall apply (a "**BSC Derogation**").

10.1.2 **In accordance with Article 18 and Article 62 of Commission Regulation (EU) 2017/2195 ('Electricity Balancing Guideline') it is not possible for any derogation to be granted in respect of any of the terms and conditions relating to balancing as notified to the Authority for approval by the TSO (in accordance with Article 5(4)(c) of the Electricity Balancing Guideline) in its letter of 18th June 2018 (as listed in Annex 1 to that letter, as amended from time to time in accordance with Article 6 of the Electricity Balancing Guideline).**

10.1.3 **Pursuant to 10.1.2, no BSC Derogation will be granted to any person in respect of any of the provisions of the Code set out in the Sections of the Code listed in paragraph 10.1.4 or paragraph 10.1.5**

10.1.4 **No BSC Derogation may be granted in respect of any provision set out in the following Sections of the Code:**

(i) Section A;

(ii) Section G, Part 3;

- (iii) Section H3;
- (iv) Section J;
- (v) Section K;
- (vi) Section L;
- (vii) Section N;
- (viii) Section O;
- (ix) Section P;
- (x) Section Q;
- (xi) Section T;
- (xii) Section U;
- (xiii) Section W; and
- (xiv) Section Z.

10.1.5 No BSC Derogation may be granted in respect of any provisions of the Code relating to 'Project TERRE', first implemented into the Code by modification proposal P344, in the following Sections of the Code:

- o BSC Section A;
- o BSC Section D;
- o BSC Section H;
- o BSC Section J;
- o BSC Section K;
- o BSC Section M;
- o BSC Section N;
- o BSC Section P;
- o BSC Section Q;
- o BSC Section R;
- o BSC Section S;
- o BSC Section S; Annex S-2
- o BSC Section T;
- o BSC Section V;
- o BSC Section X Annex X-1;
- o BSC Section X Annex X-2; and

o BSC Section Z.

SECTION F: MODIFICATION PROCEDURES BSC/V28.0

1.1.3 Subject to paragraph 2.11.8, a modification of the Code shall take effect from the time and date specified in the notice referred to in paragraphs 1.1.2 and 6.3.3 or, in the absence of any such time and date, from 00:00 hours on the day next following the date of service of such notice to the Modification Secretary (without prejudice to the Implementation Date,² the Self-Governance Implementation Date or the Fast Track Self-Governance Implementation Date (as the case may be), if different), **except with respect to all Modification Proposals and/or Change Proposals that relate to any Section of the Code listed in paragraph 10.1.4 and / or paragraph 10.1.5, where the modification or change shall not take effect until such time as:**

(i) the Transmission Company [NETSO/ESO] has requested an amendment (in accordance with Article 6 of Regulation 2017/2195 the 'Electricity Balancing Guideline') to the terms and conditions related to balancing, determined in accordance with Article 18 of Regulation 2017/2195, after issuing a public consultation (in accordance with Article 10 of Regulation 2017/2195); and

(ii) the Authority has approved the amendment to the terms and conditions related to balancing (in accordance with Article 4 and Article 5 of Regulation 2017/2195) proposed by the Transmission Company.

BSCCo shall coordinate with, and assist, the Transmission Company when the Transmission Company is discharging its duties under (i) and (ii) above.

[end]

10 Recommendations

Proposer's Recommendation to the BSC Panel

The BSC Panel is invited to:

- Agree that P374 not be progressed as a Self-Governance Modification Proposal; and
- Agree that P374 be sent directly into the Report Phase.