

Public

P374 'Aligning the BSC with EB GL'

Workgroup 1

20 February 2018
Craig Murray & Elliott Harper

ELEXON

Health & Safety

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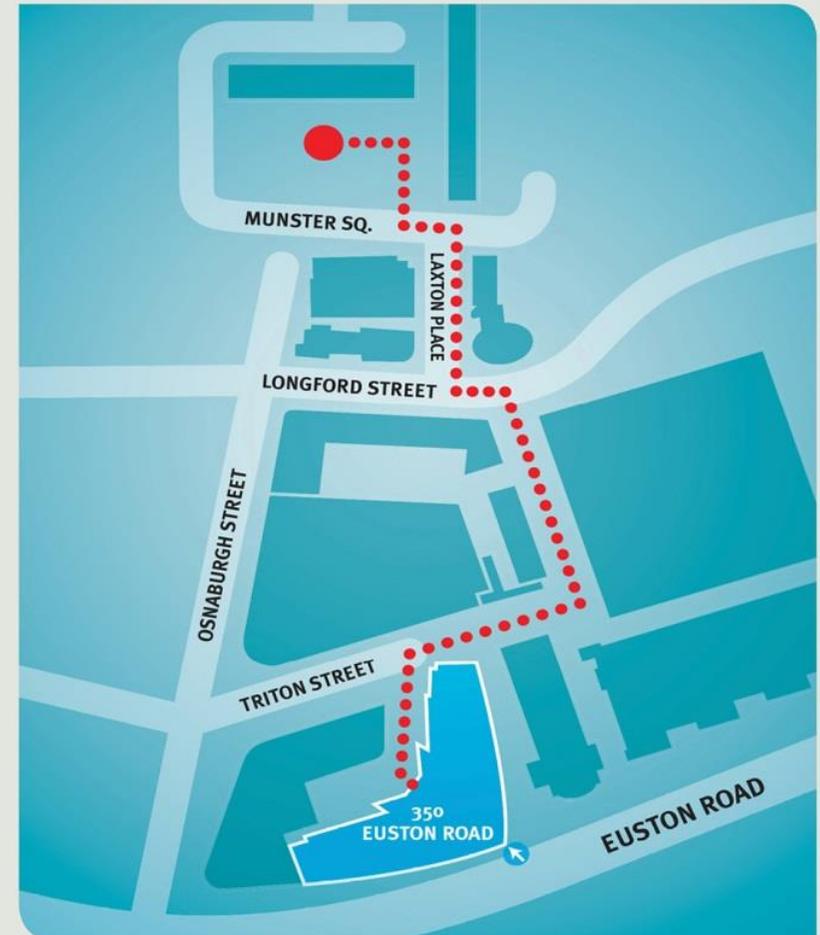
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- Please do not tackle a fire yourself.
- If you hear the alarm, please leave the building immediately.
- Evacuate by the nearest signposted fire exit and walk to the assembly point.
- Please remain with a member of ELEXON staff and await further instructions from a Fire Warden.
- For visitors unable to use stairs, a Fire Warden will guide you to a refuge point and let the fire brigade know where you are.

When evacuating please remember

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- Do not re-enter the building until the all clear has been given by the Fire Warden or ground floor security.

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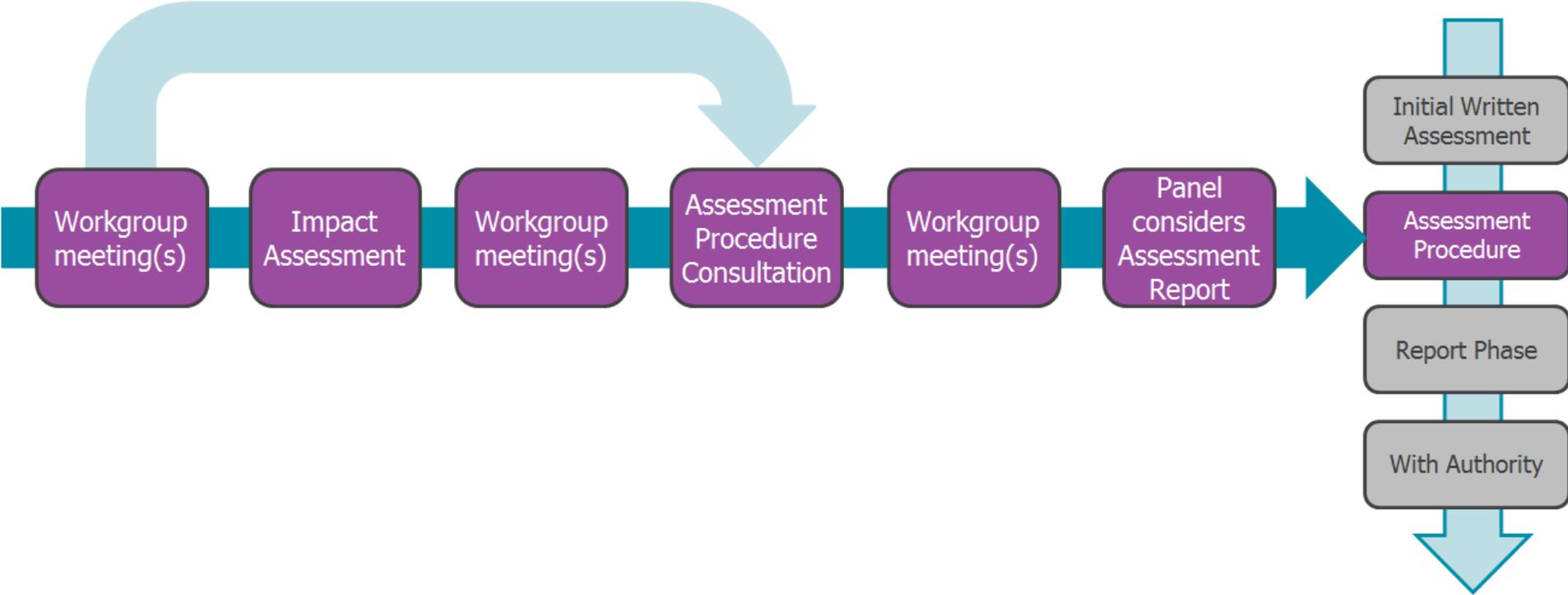
Meeting Agenda

Agenda item	Lead
1. Welcome and meeting objectives	Elliott Harper (Chair)
2. Overview of P374	Aditi Tulpule & Garth Graham (Proposer)
3. Ofgem's formal request for amendment	Craig Murray
4. Key Issues & Interpretation	Aditi Tulpule
5. Impact on BSC Change Process	Aditi Tulpule
6. Proposed Solution	Aditi Tulpule
7. EBGL T&C: Implementation	Aditi Tulpule
8. Terms of Reference	Craig Murray
9. A.O.B	Workgroup
10. Meeting close	Elliott Harper

Meeting Objectives

- Describe the context and background of this Modification;
- Discuss the interpretation of key EB GL Articles;
- Discuss the issues identified by the proposer;
- Discuss proposed solutions; and
- Discuss and agree the next steps for P374.

Meeting Objectives





Overview of P374

Aditi Tulpule

Background

■ European Balancing Guidelines (EB GL)

- Drafted by European Network of Transmission System Operators for Electricity (ENTSO-E) to a framework set by the Agency for the Cooperation of Energy Regulators (ACER)
- Aims to facilitate a pan-European balancing market by creating a common rulebook.



Background

■ TSO obligations under the Regulations

- TSO's of Member States (National Grid ESO) have an obligation to develop and submit, proposals setting out the terms and conditions or methodologies that fulfils the requirements as set out in Article 5, to Ofgem for approval within the specified deadlines.
- The proposed terms and conditions/methodologies and any amendments to them are subject to Ofgem (as the GB market National Regulatory Authority (NRA)) approval.

The logo for Ofgem, consisting of the word "ofgem" in a lowercase, orange, sans-serif font.

Making a positive difference
for energy consumers

The logo for National Grid, consisting of the words "nationalgrid" in a lowercase, blue, sans-serif font.The logo for ELEXON, consisting of the word "ELEXON" in a bold, uppercase, blue, sans-serif font, with a stylized blue shape behind the letters.

Timeline of events relating to P374

1. EB GL came into effect – **18 December 2017**
2. National Grid ESO submitted its proposal for the balancing terms and conditions to the Authority – **18 June 2018**
3. SSE raised BSC Modification P374 - **5 November 2018**
4. P374 Initial Written Assessment (IWA) presented to Panel who deferred decision pending further information requested from the Authority - **8 November 2018**
5. ELEXON set out 5 alternative legal interpretations of EB GL and Panel requested Ofgem for a steer –**12 November 2018**
6. Ofgem provided formal written response to Panel’s questions – **11 December 2018**
7. Panel progressed P374 to Assessment Phase – **13 December 2018**
8. The Authority published its formal request for amendment to the National Grid ESO proposed balancing terms and conditions – **4 February 2019**



P374 Aligning the BSC with the EB GL change process and derogation approach

Garth Graham, SSE Generation Ltd.

BSC Panel 8th November 2018

What is the issue (1)?

- **BSC does not reflect the changes introduced by the Electricity Balancing Guideline (EB GL) 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.**

What is the issue (2)?

- **Article 18 of EB GL sets out that terms and conditions related to balancing are required.**
- **These were proposed by the TSO (National Grid) in June 2018.**
- **TSO proposal sets out the parts of the BSC (and other industry framework documents) that form the terms and conditions related to balancing for GB.**

What is the issue (3)?

- **Two aspects:**
 - **Derogations**
 - **Amending the BSC going forward**

What is the issue (4)?

- **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.**
- **So no BSC Derogation(s) permissible for those parts of the BSC that form the terms and conditions related to balancing.**

What is the issue (5)?

- **Amendments to the parts of the BSC that form the terms and conditions related to balancing have to follow the EB GL change procedure, set out in Article 6(3) of EB GL (linked to Articles 4, 5 and 10 of EB GL).**

What is the proposed solution(1)?

- **Amend BSC Derogation arrangement to make clear the parts of the BSC that form the terms and conditions related to balancing - which then cannot be subject to a BSC Derogation, in accordance with EB GL Articles**
- **Amend BSC change procedure to reflect that changes to certain parts of the BSC will have to go through a revised change process, in accordance with EB GL Articles.**

What is the proposed solution(2)?

- **Why not wait? Precedent from recent Grid Code changes relating to requirements arising from Network Codes and Guidelines:-**

National Grid - “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.”

What is the proposed solution(3)?

- We have provided draft legal text for Section H (10.1) and Section F (1.1.3).

Justification for proposed progression

- **Change is not Self-Governance.**
- **Change is self evident, as it relates to a legal requirement, that progressing to Report Stage is appropriate in this case.**
- **If sent directly to the Report Phase, should not be treated as Urgent.**

Impacts (1)

- Who is impacted

- BSC Panel;
- Elexon;
- TSO;
- Parties seeking a BSC Derogation against 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.

Impacts (2)

- Which processes are impacted
 - BSC Derogation processes.
 - BSC modification processes.
- Which documents are impacted
 - BSC (Section H and Section F).

Applicable objectives (1)

- a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence – **Positive**
- (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**

Applicable objectives (2)

- **Positive for objective (e) by ensuring:-**
 - **BSC compliance with EB GL provisions for derogations and amendments to the NRA (Ofgem) approved terms and conditions related to balancing; and**
 - **Increased transparency for stakeholders by allowing them to easily see, up-front, within the BSC Derogation process those elements of the BSC that cannot be derogated against by virtue of European Law.**

Applicable objectives (3)

- **Beneficial to both TSO 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).**

Implementation

- **Propose implementation as soon as reasonably practical after an Authority decision.**
- **Note that in the intervening period, prior to implementation, stakeholders will be aware of the EB GL requirements which will prevail.**



Thank you





P374 Aligning the BSC with the EB GL change process and derogation approach

Garth Graham, SSE Generation Ltd.

BSC Panel 13th December 2018 - Update

Update

These slides provide an update to the December BSC Panel meeting and should be read in conjunction with the slides provided for the November BSC Panel meeting (addended for completeness).

Legal Interpretation (1)

- Five options identified.
- Over three months ago SSE raised a series of questions around Option 3 (as well as Options 4 and 5) with Ofgem, National Grid and Elexon.
- No answers so far to those questions.

Legal Interpretation (2)

Option 1 {P374 delivers this}

- Run BSC and EB GL change processes successively
 - Covers risk of non-compliance

Option 2 {P374 delivers this}

- Run EB GL change process in parallel with BSC modification process
 - Covers risk of non-compliance

Legal Interpretation (3)

Option 3 {P374 does not deliver this}

- Existing BSC processes are deemed to meet the EB GL process
 - Who is ‘deeming’: TSO? NRA?
 - On what EU law basis are they ‘deeming’?
 - Is this compatible with the Tempus Cap Mech State Aid judgement (para 99-100)?
 - Issues remain (see below)

Legal Interpretation (4)

Option 4 {P374 does not deliver this}

- Interpret the methodology/terms and conditions referred to in EB GL as the wider framework of documents (not the detailed provisions in, for example, the BSC)
 - No clear legal position that says this is the case

Legal Interpretation (5)

Option 5 {P374 does not deliver this}

- Interpret the Article 10 process as only applying to changes to the methodology/terms and conditions that the TSO/NRA seek to impose on industry
 - No clear legal position that says this is the case

Legal Interpretation (6)

Option 3 - Issues remain (i): Evaluation process

- The BSC consultation(s) considers the Applicable Objectives
- They do not consider the terms and conditions related to balancing
- They are not conducted by the TSO and don't provide sound justification
- They may (in certain circumstances) not lead to a decision by the NRA on the proposed change
- Elexon cannot substitute the national (BSC) procedures for the procedure required by (EU) EBGL

Legal Interpretation (7)

Option 3 – Issues remain (ii): Tempus judgement

99 In the second place, in parallel to the discussions referred to above between the United Kingdom and the Commission, the United Kingdom organised a national public consultation from 10 October to 24 December 2013 relating to the planned capacity market. However, that consultation did not relate to the matter of compatibility of that measure with the applicable rules on State aid. It merely alluded to the requirement of authorisation from the Commission prior to the implementation of the planned measure. *[emphasis added]*

Legal Interpretation (8)

Option 3 – Issues remain (iii): Tempus judgement

100 In that regard, it cannot be held, as is suggested at times by the arguments submitted by the United Kingdom and the Commission, that a national consultation can be treated in the same way as a procedure allowing the interested parties to submit their observations, as would have been the case if the Commission had initiated the formal investigation procedure. In the context of State aid control proceedings, the relevant Member State providing the aid cannot substitute itself for the Commission, which must, as the guardian of the Treaties and in accordance with Article 108 TFEU, examine all projects intending to establish schemes of aid.
[continues on next slide]

Legal Interpretation (9)

Option 3 – Issues remain (iv): Tempus judgement

[continues from previous slide] It is for the Commission, rather than the Member State, where relevant and in the context of the procedure envisaged to that end, to gather all information necessary to allow it to assess the compatibility of the aid. Further, it is to the Commission, rather than to the Member State intending to provide the aid, that the interested parties must submit their observations, if they consider it necessary, in order to allow the Commission to come to a decision with full knowledge of the facts. *[emphasis added]*

Legal Interpretation (10)

Option 3 Issues remain (v): Article 13(1) EBGL

- The TSO can, under EBGL, delegate to a Third Party
- For GB the TSO has not done this so far
- Even if delegated, the tasks of the TSO have to be performed by the Third Party – plus still TSO remains responsible for ensuring compliance

Legal Interpretation (11)

Option 3 Issues (vi): Article 13(1) EBGL

“A TSO may delegate all or part of any tasks with which it is entrusted under this Regulation to one or more third parties in case the third party can carry out the respective function at least as effectively as the delegating TSO. The delegating TSO shall remain responsible for ensuring compliance with the obligations under this Regulation, including ensuring access to information necessary for monitoring by the relevant regulatory authorities in accordance with Article 37 of Directive 2009/72/EC.” *[emphasis added]*

Legal Text

- Revisions to the draft legal text provided to the Panel in November have been discussed between SSE and Elexon, resulting in amendments which are presented for Panel consideration.

Ofgem Response

[place holder]



Thank you





Ofgem's formal request for amendment

Craig Murray

Ofgem's formal request for amendment

On 4 February 2019, Ofgem published its formal Request for Amendment of the EB GL Article 18 proposals made by GB Transmission System Operators (TSOs). In summary, Ofgem requested:

- More clarity for Balance Responsible Parties (BRPs) and Balancing Service Providers (BSPs) on their obligations.
- That the mapping from Article 18 requirements to GB codes, including to the BSC, needs to be amended so that it includes only obligations on BRPs and BSPs or sets the rules for market suspension and restoration; but also it needs to include all mappings that meet these requirements. Some were missing and need to be added to the amended proposal.
- That relevant parts of balancing service Standard Contract Terms are transposed into GB network codes to allow Ofgem to have a clear and transparent role in amending these terms in future. This can be achieved either through direct inclusion in the GB codes, or in a code subsidiary document.

Ofgem's formal request for amendment

- That necessary code modifications should be initiated; and that any future amendment of the Article 18 balancing terms and conditions should be compliant with the EB GL process. (P374 addresses the question of how the BSC change process should operate to be compliant with the EB GL Article 18 change process.)
- That TSOs should consider the format of their submitted proposal and should clarify that the Article 18 terms and conditions are formed of provisions within the existing GB codes.

GB TSOs now have two months to submit an amended proposal to Ofgem.



Key Considerations & Interpretation

Aditi Tulpule

Is the BSC currently non-compliant?

- It is proposed that the BSC does not reflect the changes introduced by the Electricity Balancing Guideline (EB GL) in respect of derogations and amendments to the terms and conditions related to balancing.
- **BSC Panel requested answers to 7 questions in November:**
 - One of these was whether the balancing terms and conditions proposed by National Grid ESO are already subject to the EB GL change process.
- **Ofgem as the GB Authority's Response**
 - The proposals have not been approved and so are not currently in effect.
- **Conclusion**

The changes introduced by the EB GL are not yet approved and therefore not in effect. The BSC is therefore not currently non-compliant.

Article 62: Derogations

- Article 62 provides for a derogation to be granted to a Transmission System Operator (TSO) from fulfilling some of its obligations under the Regulation (set out under (a) to (e) of 62(2)).
- This does not include Article 18 of EB GL which requires the TSO to develop a proposal regarding the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs) and sets out what the terms and conditions for each must contain.
- The derogation is therefore not available to a TSO from performing its obligations under Article 18.
- The ambit of Article 18 does not include derogations which form the subject of the Sandbox programme as they cannot be granted to the TSO in respect of its obligations under Article 18.
- Also, it would be prudent to make a distinction between derogation from Article 18 obligations, which stipulate the requirement to have rules, versus a derogation from the rule itself which is likely to result from the Sandbox programme.

Article 10: Change Process

- Amendments to the parts of the BSC that form the terms and conditions related to balancing are governed by Article 6(3) of EB GL.
- Article 6(3) requires any such amendments to be submitted to consultation in accordance with the procedure set out in Article 10 and approved by the Authority in accordance with the procedure set out in Article 4 and 5
- Article 10 requires the TSO responsible for submitting proposals for terms and conditions or methodologies or their amendments to carry out a one month consultation prior to submitting them for approval.
- Therefore:
 - Article 10 obligations only apply in respect of Modifications that seek to amend the terms and conditions approved under the Regulation and not otherwise;
 - the BSCCo running a consultation process in respect of a Modification under the BSC will not meet the requirements placed on the TSO by Article 10; and
 - The public consultation requirements will not apply where a Modification is raised by a party other than the TSO.

Concerns

- The wording applies inconsistently to amendments to the terms and conditions or methodologies proposed by the TSO to those proposed by other Parties.
- It is also a concern that BSCCo running a consultation process will not be able to discharge the TSO's obligations under Article 10, as the function has neither been delegated nor assigned to BSCCo.



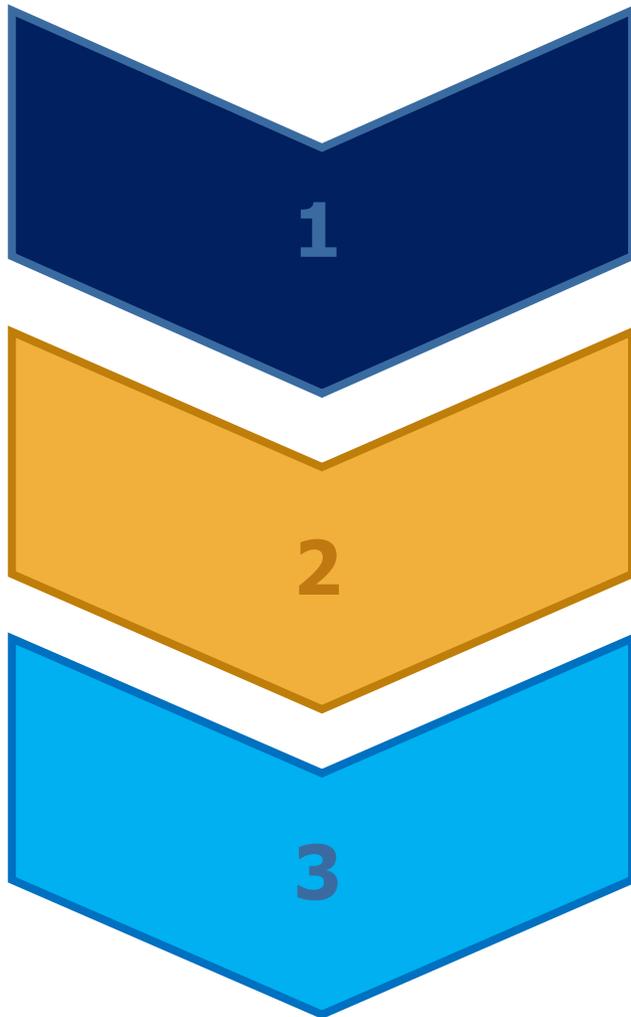
Impact on BSC Change Process

Aditi Tulpule

Impact on BSC Change process

- Ofgem's letter of 4 February 19, draws a distinction between TSO's letter dated 18 June 18 "referring" to the actual balancing T&C as opposed to "constituting" them. Ofgem further states that the "*TSO's submission should be clear that the existing GB codes provisions **form the balancing T&C** required by Article 18 of EBGL*".
- It therefore follows that any amendments to the BSC provisions constituting EB GL terms and conditions must follow the BSC Modification process in addition to Regulation requirements.
- Therefore, where a TSO has proposed an amendment to the EB GL terms and conditions two consultation processes will need to be carried out – one by BSCCo pursuant to the BSC requirements and one by the TSO under Article 10 of the EB GL.
- The consultation processes could be run in parallel or consecutively to each other.
- Alternatively, TSO may choose to delegate/assign this function to BSCCo such that only a single consultation process need be run enabling the TSO to fulfil its Article 10 obligations.

EB GL Change process



Run BSC and EB GL change processes successively

Run EB GL change process in parallel with BSC Modification process

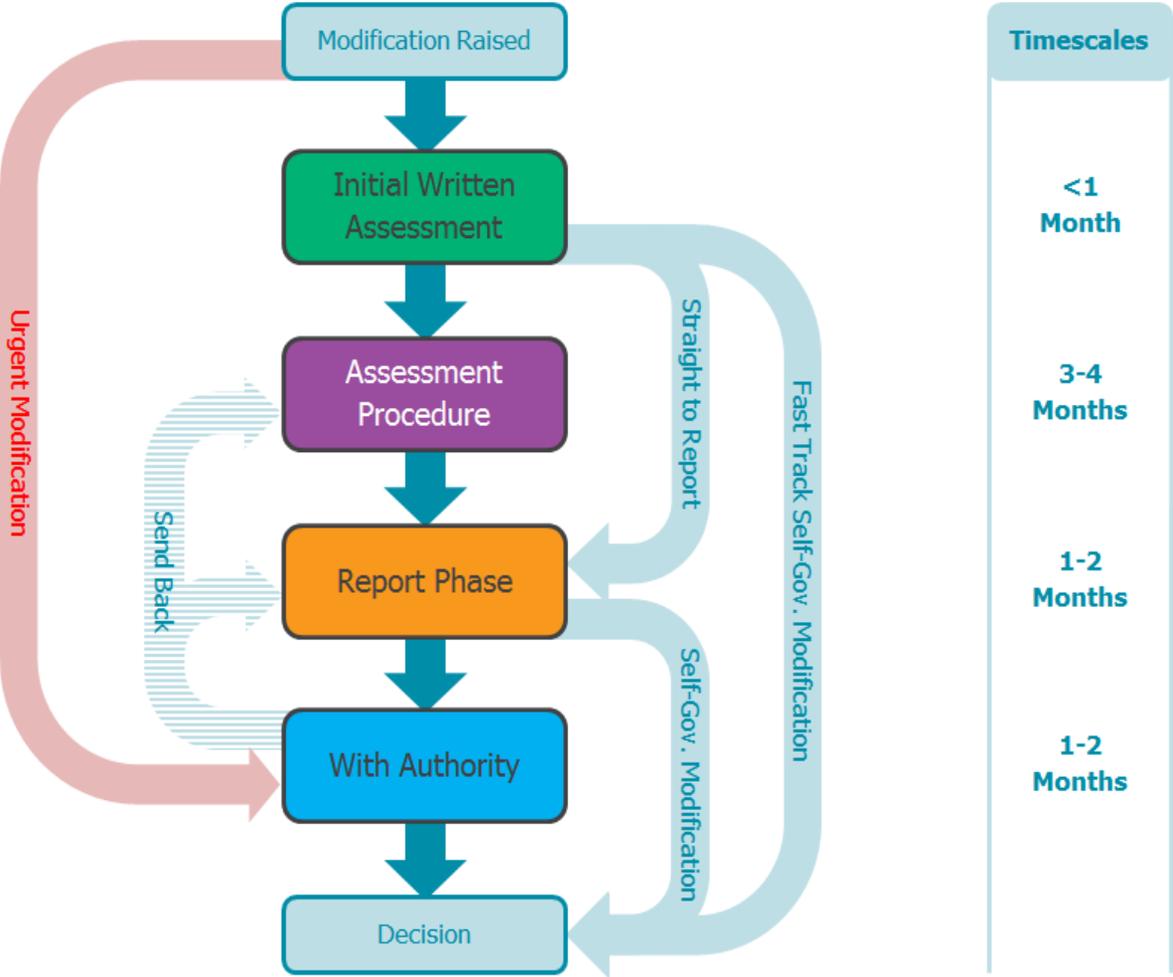
Delegate/assign TSO's Article 10 obligations to BSCCo – BSCCo will consult on TSO's behalf

Impact on BSC change process (2)

- Even where the amendments to the EB GL terms and conditions are proposed by the TSO the finalised proposal following consultation shall be submitted to Ofgem by the Panel for approval, as is the case with Modifications currently.
- This interpretation is consistent with the “approval” requirements stipulated in Articles 4 and 5 of the Regulations as the wording does not require the TSO to submit the proposed amendments to the EB GL terms and conditions for approval to Ofgem directly. Neither does it preclude any other body from submitting the proposal on the TSO’s behalf where the amendments have been proposed by the TSO.

EB GL Change process

Existing BSC Modification process



EB GL Change Process

Areas to consider:

Any implications on less common BSC Modification processes:

- Self-Governance
 - Urgent
 - Fast Track
-
- How the Authority will consider industry views captured in the EB GL change process vs. the BSC Modification process and how any send-back provisions would work
 - Implications on the Significant Code Review (SCR) procedure that must be followed as part of a Modification process
 - The implications of each interpretation on the GB market arrangements
 - What is the level of risk that is appropriate to take?



Solution

Aditi Tulpule, Garth Graham &
Workgroup

Solution

- It would be prudent to mirror the public consultation requirements stipulated in respect of any amendments to the EB GL terms and conditions proposed by the TSO to those proposed by other Parties.
- This would allow the Article 10 public consultation requirements to be applied consistently across the board in respect of any amendments proposed to the EB GL terms and conditions, albeit the consultation would still need to be carried out by the TSO where it is the proposing party.
- It is proposed that an assignment or delegation be sought to BSCCo in respect of TSO's Article 10 public consultation requirements. This would avoid the TSO having to run a parallel consultation process which may cause confusion within the industry and cause delays to implementation of Code modifications.



EBGL T&C: Implementation

Implementation Deadline

- P374 will have to be implemented no later than **18 January 2020**. This is because paragraph 5 of Article 12 requires the TSO to publish the information set out in paragraph 3 no later than two years after entry into force of the Regulation.
- Paragraph 3 information includes the initial terms and conditions related to balancing referred to in Article 18 at least one month before the application with any amendments to the terms and conditions immediately following approval by Ofgem.
- As EB GL came into force on 18 December 2017, the latest date by which the initial terms and conditions related to balancing referred to in Article 18 must be implemented is **18 January 2020**.



Terms of Reference

Craig Murray

ELEXON

Terms of Reference

- How should derogations be treated within the BSC on items related to the balancing terms and conditions?
- How should the balancing terms and conditions be treated within the BSC?
- Is any other information required to better inform a legal position?
- What are the implications of the legal interpretations on the GB market arrangements?
- What is the level of risk that is appropriate to take in regards to the processes and legal interpretations?
- What changes are needed to BSC documents, systems and processes to support P374 and what are the related costs and lead times?
- Are there any Alternative Modifications?
- Should P374 be progressed as a Self-Governance Modification?
- Does P374 better facilitate the Applicable BSC Objectives than the current baseline?



Next Steps



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Thank you

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