

Modification proposal:	Balancing and Settlement Code (BSC) P395: Aligning BSC Reporting with EMR Regulations - an enduring solution (P395)		
Decision:	The Authority ¹ directs that this modification be made ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties		
Date of publication:	06 October 2022	Implementation date:	2 November 2023

Background

Final Consumption Levies ('FCL') are charges which recover the costs associated with schemes such as Contracts for Difference ('CfD') and the Capacity Market ('CM'). The CfD and CM element of these charges is calculated by the Electricity Market Reform Settlement company ('EMRS') based on BM Unit Demand volumes provided by BSC systems. As clarified by BEIS³ and Ofgem⁴, FCLs should be recovered via Final-Demand⁵ only, and as such should not be recovered via demand that is used by licenced generation (including storage) for the purposes set out in their licence. This is compatible with the definition of 'supply' in the Electricity Act 1989.

In light of this, P383 (as amended by P419) and P375 (the combination of which is also called "the interim solution") introduced changes that addressed that clarification. Namely, these modifications exempted some sites with licensed generation and storage from the CfD and CM element of FCLs. They achieved this by excluding the demand volumes in those sites from the

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 [Transitioning to a net zero energy system: smart systems and flexibility plan 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021)

⁴ [electricity storage licence consultation final.pdf](https://www.gov.uk/government/consultations/electricity-storage-licence-consultation-final-pdf)

⁵ The distinction between demand and Final-Demand must be noted. The former may relate to electricity demand which is utilised for purposes under the licence e.g. electricity 'consumed' by Storage facilities which is then re-exported. This electricity should be exempt from FCLs.

data set that is used by EMRS. However, the scope of these modifications was limited to “simple sites”, that is, Supplier Volume Allocation (‘SVA’) sites which do not have Final-Demand present. P395 seeks to extend the effects of the “interim solution” to Central Volume Allocation (‘CVA’) sites and “complicated” SVA sites i.e. SVA sites with Final-Demand (colloquially termed “complex sites” or “co-located sites”).

The modification proposal

Centrica plc (‘The Proposer’) raised P395 on 7 November 2019. This modification proposal seeks to introduce the necessary system and process changes to ensure FCLs are more accurately calculated and levied. The processes which are currently used for FCL calculation include demand volume that should not be liable for the purposes of FCL payments. In other words, electricity provided to generation and storage facilities which is used for activities specified in their Generation licence should not be used as demand volume to charge FCLs on, but currently there are cases in which it is. This results in Suppliers being wrongly charged for FCLs relating to demand volume provided to those sites which should be exempt from FCLs.

P395 seeks to introduce the system and process changes to ensure that the data utilised to calculate FCLs does not include electricity imported by generators and storage facilities for licensed generation activities. In plain terms, P395 will ensure that it is possible to identify and exclude electricity consumed under the provisions of the Generation licence from the data report that is used by EMRS to calculate FCLs.

The Proposer and the Workgroup consider that the main benefit of P395 is compliance with BEIS regulations. This refers to the Electricity Market Reform Regulations 2014, as clarified by BEIS and Ofgem on their joint statement which states that imports to licence-operated generators fall outside the definition of “supply” in the Electricity Act 1989⁶. Furthermore, they believe that this Proposal is positive against BSC objective (f)⁷. The Proposer also thinks that P395 brings other benefits such as the removal of barriers to the use of storage and improved

⁶ <https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021>

⁷(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

competition. Neither the Proposer nor Workgroup members identified negative impacts against the BSC objectives.

This Proposal utilises the processes developed by P383 (as updated by P419) and P375 for asset registration and 'Behind the Boundary Point' metering, and will expand those processes to CVA sites and SVA sites where Final-Demand is present. Under this Proposal, Suppliers and CVA Registrants will be required to declare the details of the sites they wish to have the volumes adjusted using three distinct declarations. The process is detailed in the FMR and the "Business Requirements" file which is attached to the FMR.

The main procedural difference between the "interim solution" and P395 is that the latter will make Suppliers liable to Asset registration, whereas the former relies on Asset Metering Virtual Lead Parties ('AMLVPs'). This proposal also migrates the responsibility for operating the EMRS "interim solution" to BSCCo.

The proposed modification has an estimated implementation cost of approximately £2m, according to the latest estimate provided to the Authority by Elexon on 29th September 2022. This estimate is the same as that provided in the FMR. Although we consider this to be a significant cost, especially given the backdrop of rising costs in other areas of the industry, we consider that this cost is in line with the cost of previous similar BSC system changes and that it is proportionate to the estimated benefits. EMRS estimated that in the period comprising April 2018 to September 2020, without the interim solution, as much as £7.5m could have been wrongly charged to Suppliers.

BSC Panel⁸ recommendation

At the sixth Workgroup meeting on 25 February 2022, the Workgroup considered that P395 better facilitated BSC objective (f) and the Panel therefore agreed at its meeting on 9 June 2022 to recommend it for approval to us.

⁸ 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](#).

Impact assessment

We determined that an Impact Assessment (IA) was not required for this modification as the resources required to do an IA would be disproportionate to the expected impact of the Proposal. Moreover, a further IA would not add value as all parties with an interest in this modification proposal had sufficient opportunity to share their views in the P395 industry consultation as part of the code modification process.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report ('FMR') dated 13 June 2022. We have considered and taken into account the responses to the industry consultation which are attached to the FMR⁹. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC;¹⁰ and
- directing that the modification be made is consistent with our principal objective and statutory duties.¹¹

Reasons for our decision

We consider this modification proposal better facilitates BSC objectives (c), and (f) with a neutral impact on the other applicable 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

⁹ BSC modification proposals, modification reports and representations can be viewed on the [Elexon website](#).

¹⁰ As set out in [Standard Condition C3\(3\) of the Electricity Transmission Licence](#).

¹¹ 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.

The Proposer believes that this modification is positive against objective (c), but a majority of Workgroup members disagreed, and claim that it is neutral.

We believe that P395 is positive against this objective. We believe that P395 addresses a distortion whereby demand is treated differently as between different classes of generator. We consider that this modification will improve competition by supporting a consistent charging regime, which should then be reflected in the sale and purchase of electricity. We note that, particularly in the case of storage, the exposure to these costs may act as an impediment to their business model.

(f) implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

According to the Proposer, the main benefit of this Proposal is its positive impact on this objective. Currently it is not possible to accurately calculate and levy FCLs in a manner that is consistent with the relevant regulatory instruments, including primary legislation. The Workgroup unanimously agreed with this assessment.

We agree with the Proposer. We think that P395 positively impacts this objective in that it will make FCL charging compliant with the relevant regulatory requirements, such as the EMR Regulations and the Electricity Act 1989, as clarified by BEIS¹² and Ofgem¹³.

Further considerations & correction of legal text

In agreement with Elexon's assessment, we note that the FCL data reporting risk identified by LCCC, and captured on page 36 of the FMR, is mitigated by the BSCCo's responsibility to provide the data in question. As noted in the FMR, failure to provide this data would amount to non-compliance. Therefore, there is a strong incentive for the data to be provided. We note

¹² <https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021>

¹³ <https://www.ofgem.gov.uk/publications/decision-clarifying-regulatory-framework-electricity-storage-changes-electricity-generation-licence>

that the stated risk exists under the “interim solution” and we do not believe that P395 will exacerbate it. We expect Elexon to work collaboratively with LCCC and EMRS to ensure this risk continues to be closely monitored and managed.

Furthermore, we note typographical errors¹⁴ in the legal text which we have previously detailed and communicated to Elexon¹⁵. We expect the BSC Panel to correct these legal text errors as soon as practicable by way of raising a house-keeping modification or by other appropriate means.

We agree with the Panel that P395 does impact EBGL Article 18 terms and conditions held within the BSC, but that it is neutral impact. We note that a consultation took place, and accept the changes to the relevant sections.

Decision notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority hereby directs that modification proposal BSC P395: *Aligning BSC Reporting with EMR Regulations – an enduring solution* be made.

Harriet Harmon

Head of Electricity Network Charging and Connections

Signed on behalf of the Authority and authorised for that purpose

¹⁴ The Authority identified minor typographical errors in paragraph 14 of section S of the Legal Text changes, where the words “Delaration” refer to “Declaration”.

¹⁵E-mail sent to Elexon’s Policy Analysts on 06/10/2022.