

Modification proposal:	Balancing and Settlement Code (BSC) P438: Amending the BSC to address sanction orders (P438)		
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:	14 July 2022	Implementation date:	15 July 2022

Background

The current wording of the Balancing and Settlement Code (“BSC”) includes no reference to sanction orders. Therefore, it is reasoned that if a BSC Party and/or BSCCo³ is required to comply with a sanctions order, there would be no defined process within the BSC to do so.

The proposer considers this to be a risk that may result in a breach of its obligation under the BSC, potentially leaving it open to legal claims from parties subject to the sanctions or any counterparty to the BSC.

The proposal also seeks to give clarity under the BSC in circumstances where BSSCo is required to comply with a vaguely-worded sanctions order; creating a defined process that mitigates the risk that it may take a step that goes beyond the scope of that sanctions order or conversely not go far enough.

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 Means Elexon Limited (or any successor to that company acting in the capacity as BSCCo

The modification proposal

The proposal was granted urgency on 20 April 2022 and was raised by National Grid Electricity Systems Operator (“NGESO”) on 29 March 2022. The proposal was presented to an urgent Panel meeting held on the same day. The proposer considers the proposal to facilitate objective (d)⁴ of the BSC Objectives.

The proposal aims to mitigate the risk to BSCCo when complying with sanction orders by introducing a sanction event into the BSC Party Default arrangements. Specifically, the proposal covers the steps that should follow a sanction order being issued to a BSC party, including, for example: suspension of payments, suspension of notifications, suspension of registrations or any associated governance to enable such suspensions.

Default Process

The proposer considers the existing Default mechanism to be best placed to include sanctions as it is an established and transparent process that also provides a degree of flexibility in the way sanctions are dealt with, whilst having a clear contractual basis under the code.

The modification defines a BSC Party as a Defaulting Party if it becomes a “designated person” under the Sanctions and Anti-Money Laundering Act 2018, or Regulations made under that Act, and where carrying out activities as a BSC party would result in a breach of any sanctions relating to the designation.

In the event of a Default, the Panel convenes to consider possible actions under Section H.3.2.1 of the Code. The modification also includes the discretion for the Panel to suspend the right to receive payment from the BSC Clearer or BSCCo of any amount becoming due and payable to the Defaulting Party under the Code.

⁴ Promoting efficiency in the implementation of the balancing and settlement arrangements
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BSC Panel⁵ recommendation

At the BSC Panel meeting on 25 May 2022, all members of the BSC Panel unanimously considered that P438 would better facilitate the BSC objectives, and the Panel therefore recommended its approval.

A Panel Member questioned whether a sanctioned BSC Party could still operate in the UK energy market and asked whether this would go against a sanction order. Elexon responded that P438 may not prevent a sanctioned party from operating as it would depend on the specific wording of the sanction itself. However, it would stop them from receiving payments from BSCCo.

At the urgent Panel meeting on 29 March 2022 a Panel member noted that other Code Bodies consider Force Majeure ("FM") clauses to be a sufficient mechanism when dealing with sanction orders and questioned whether this was considered in the context of the BSC. Elexon highlighted that FM was not included in the BSC as it is not clear what the impact on Settlement would be and could be difficult to implement.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report ("FMR") dated 26 May 2022. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC;⁶ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁷

⁵ 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](#).

⁶ As set out in [Standard Condition C3\(3\) of the Electricity Transmission Licence](#).

⁷ 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.

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Reasons for our decision

We consider this modification proposal will better facilitate BSC objective (d) and has a neutral impact on the other applicable objectives.

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

We consider P438 to better facilitate objective (d) of the BSC Objectives as it provides a mechanism for the steps that follow a sanction order through utilisation of the existing Default mechanism. The Default mechanism is an established and transparent process that is well known to BSC Parties and provides a degree of flexibility when dealing with unclear sanctions orders.

The modification also benefits BSC Parties as any claim against BSCCo will ultimately be paid as a liability by all of the BSC Parties. Therefore, it is in the interest of BSC Parties to have the term 'sanctions' defined within the BSC to reduce the possibility of a legal claim.

P438 does not prevent sanctioned parties from operating in UK Energy Markets. However, P438 will prevent these parties from receiving payment for their services which should be a sufficient deterrent to operation. Accordingly, the proposer acknowledges that should a sanctions order be placed the panel would be advised, and consideration may be needed as to whether a further BSC Modification may be required to prevent the sanctioned party from operating in UK electricity markets.

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Decision notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority hereby directs that modification proposal BSC P438: Amending the BSC to address sanction orders be made.

Grendon Thompson

Head of Wholesale Markets Management – Energy Systems Management and Security

Signed on behalf of the Authority and authorised for that purpose

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