

Modification proposal:	Balancing and Settlement Code (BSC) P457: 'Replace the Electricity Arbitration Association with the London Court of International Arbitration' (P457)		
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:	1 November 2023	Implementation date:	5 Working Days after the date of this decision

Background

Section H of the Balancing and Settlement Code (BSC) sets out the procedures to be followed in the event that a dispute arises. This includes provisions for Market Participants to undertake arbitration pursuant to the arbitration rules of the Electricity Arbitration Association (EAA). Elexon is required to pay the annual overhead costs of the EAA and recover these costs from BSC Parties. However, since its inception in 1993, the EAA has not been used by any Market Participant under the BSC.

The modification proposal

P457 was raised by the BSC Panel (the Panel) on 13 July 2023 and seeks to replace the EAA within the BSC with the London Court of International Arbitration (LCIA) where applicable. It would also remove the obligation on Elexon to make regular payments for arbitration services, with payment to LCIA instead only required in the event of a dispute requiring arbitration.

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.

BSC Panel³ recommendation

At the BSC Panel meeting on 14 September 2023, the Panel unanimously considered that P457 would better facilitate the BSC Objectives, specifically Objective (d), and the Panel therefore recommended its approval.

Our decision

We have considered the issues raised by P457 and the Final Modification Report (FMR) submitted to us on 18 September 2023. We have considered and taken into account the response to the Report Phase consultation which is included in the FMR.⁴ We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable Objectives of the BSC;⁵ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁶

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

³ 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](#).

⁴ P457 documentation can be found on the [Elexon website](#).

⁵ As set out in [Standard Condition C3\(3\) of the Electricity Transmission Licence](#).

⁶ 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 Panel considers the current arbitration arrangements to be an inefficient use of resource, as Elexon is required to pay the annual overhead costs for the EAA, regardless of whether the service is used or not. The Panel therefore recommended approval of P457 on basis that it promotes efficiency in the implementation and administration of the BSC by ensuring that payment for arbitration services is only required when those services are used. We agree with this assessment and consider that this modification will therefore drive greater cost and resource efficiency in the BSC. We therefore agree that P457 would better facilitate Objective (d).

Decision notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority hereby directs that modification proposal BSC P457 '*Replace the Electricity Arbitration Association with the London Court of International Arbitration*' be made.

**Carmel Golden****Deputy Director, Industry Rules****Enforcement and Emerging Issues**

Signed on behalf of the Authority and authorised for that purpose