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The National Grid Company, BSC Signatories and  
Other Interested Parties

17 August 2004

Our Ref: MP No P159

Dear Colleague,

**Modification to the Balancing and Settlement Code (“BSC”) - Decision in relation to  
Modification Proposal P159 “Extending the Scope of E-mail communications under the Code”.**

The Gas and Electricity Markets Authority (the “Authority”)<sup>1</sup> has carefully considered the issues raised in the Modification Report<sup>2</sup> in respect of Modification Proposal P159, “Extending the Scope of E-mail Communications under the Code”.

The BSC Panel (the “Panel”) recommended to the Authority that Proposed Modification P159 should be made, and that if the Authority directed that Proposed Modification should be made, the Implementation Date should be:

- 23 February 2005 if the Authority Decision was received on or before 1 September 2004, or
- 29 June 2005 if the Authority Decision was received after 1 September 2004 but on or before 1 December 2004.

Having carefully considered the Modification Report and the Panel’s recommendation and having regard to the Applicable BSC Objectives<sup>3</sup> and Ofgem’s wider statutory duties,<sup>4</sup> the

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<sup>1</sup> Ofgem is the office of the Authority. The terms “Ofgem” and “the Authority” are used interchangeably in this letter.

<sup>2</sup> ELEXON document reference P159RR, Version No. 1.0, issued 15 June 2004

<sup>3</sup> The Applicable BSC Objectives, as contained in Standard Condition C3 (3) of NGC’s Transmission Licence, are:

- a) the efficient discharge by the licensee of the obligations imposed upon it by this licence;
- b) the efficient, economic and co-ordinated operation by the licensee of the licensee’s transmission system;
- 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;
- d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements
- e) the undertaking of work by BSCCo (as defined in the BSC) which is:
  - (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and
  - (ii) relevant to the proposed GB wide balancing and settlement code;and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

<sup>4</sup> Ofgem’s statutory duties are wider than the matters that the Panel must take into consideration and include amongst other things a duty to have regard to social and environmental guidance provided to Ofgem by the government.

Authority has decided to direct a Modification to the BSC in line with Modification Proposal P159.

This letter explains the background and sets out the Authority's reasons for its decision, and constitutes notice by the Authority under section 49A Electricity Act 1989 in relation to the direction.

A separate letter contains the direction to ELEXON to modify the BSC in accordance with Proposed Modification P159.

## **Background**

Modification Proposal P113 "E-mail Communications under the Code" was implemented on 10 July 2003. This Modification introduced provisions into the BSC (H9.2.4 – 9.2.6) enabling communication by e-mail where the communication is of a general nature given by BSCCo, the Panel, a Panel Committee, a Modification Group (or their respective secretaries) to all Parties or class of Party simultaneously.

Modification Proposal P113 did not address the provisions in H9.2 of the BSC which cover other non-general communications. H9.2 only expressly provides for communications between BSCCo, the Panel, a Panel Committee, a Modification Group (or their respective secretaries) and an individual Party to be sent by post or by fax. The existing provisions also apply to notices or communications given under a Code Subsidiary Document.

On 28 January 2004 the BSC Panel (the "Panel") raised Modification Proposal P159 under paragraph F.2.1.1 (d) (i) of the BSC. This paragraph allows the Panel to make a Modification Proposal on the recommendation of BSCCo.

The Initial Written Assessment for P159 was prepared by BSCCo and issued on 6 February 2004. It was considered by the Panel at its meeting on 12 February 2004. At that meeting the Panel submitted Modification Proposal P159 to a three-month Assessment by the Governance Standing Modification Group (the "Group").

The Group met three times, and issued an industry consultation document, the Assessment Consultation for Modification Proposal P159, on 15 March 2004. Seven responses (representing 46 BSC Parties) were provided to this Consultation. The Group also commissioned impact assessments from BSC Parties, Core Industry Documents Owners, the Transmission Company and BSCCo.

The Group then prepared the P159 Assessment Report, which (among other recommendations) recommended that Modification Proposal P159 should be made. The Assessment Report was presented to the Panel meeting of 13 May 2004. At that meeting the Panel agreed that Modification Proposal P159 should proceed to the Report Phase, and the Panel made a provisional recommendation that P159 should be made.

The draft Modification Report for P159 was issued for consultation on 17 May 2004. Eight responses (representing 49 BSC Parties) were received. At the Panel meeting on 10 June 2004, the Panel considered the responses received to consultation, and the Panel confirmed its

recommendation that Proposed Modification P159 should be made. The Modification Report for Modification Proposal P159 was issued for Authority decision on 15 June 2004.

### **The Modification Proposal**

Modification Proposal P159 seeks to modify the BSC so that it will explicitly state that notices and communications in relation to any matters contemplated by the BSC (and any Code Subsidiary Document) may be sent by e-mail, except where the BSC expressly provides otherwise.

The Proposer suggested that Modification Proposal P159 would clarify the provisions of the BSC relating to e-mail. The Proposer suggested that the Modification would confirm existing practice and extend the current rules.

The Proposer justified Modification Proposal P159 by stating that sending certain communications by e-mail may be more efficient than using other forms of communication. The forms of communication which could be addressed by e-mail, were P159 to be implemented included BSCCo Invoices, communications regarding Trading Disputes and Manifest Error Claims, the submissions of questions by Parties to the Annual BSC Meeting, and a Party's statement to the Panel Secretary that it believes data to be commercially sensitive such that it should not be disclosed. In addition, a number of communications specified within the BSC Procedures could also be dealt with by e-mail.

Although P159 would enable several forms of communication to be dealt with by email, it would also introduce several exceptions in addition to those currently expressed in Section O1.2 of the BSC. These included:

- A Parties' submission of the Accession Agreement
- Transmission Company execution of the Accession Agreement
- BSCCo's notice of withdrawal to a Party which does not commence trading.
- Parties' submission of Withdrawal Notice to BSCCo.
- Panel's expulsion notice to a Party.
- Panel Chairman notices to the Panel Secretary of appointment, reappointment or removal of Panel Members or Alternates.
- Certain communications between Panel Members and BSCCo.
- Submission of Panel election nomination and voting forms by Parties.
- Party notification to the Panel that it considers its Trading Dispute to justify adjustments in respect of Volume Allocation data used in determining funding shares.
- Transmission Company's notice to BSCCo to modify/not modify the BSC in respect of a Modification Proposal.
- Transmission Company's notification to BSCCo that the Authority has directed it to assume responsibility for the BSC Modification Procedures.
- Notification from BSCCo to a Party that the Panel has refused to accept submission of a Modification Proposal.
- Modification Group member's release letter from their employer to BSCCo.
- Default notices from BSCCo to Parties.
- Party notice to BSCCo that it has referred a dispute between Parties to arbitration.
- Parties' first nomination of Authorised Persons.

Certain issues relating to the implementation of P159 such as deemed receipt rules and choice of communications medium were identified in the P159 Initial Written Assessment and the Terms of Reference for the Group. The Group considered these issues, and presented agreed solutions to these issues in the P159 Assessment Report. The Assessment Report contains details of the Group's consideration of these issues. The Group's solutions included:

- E-mail as the sole form of communication is not appropriate for certain communications (e-mail maybe used for these communications, but post or fax must also be used, and the deemed receipt will only result from the post or fax version).
- The choice of whether to use e-mail for suitable communications is at the sender's discretion.
- Existing deemed receipt rules (in H9.2) will cover e-mail communication, however a new provision will required to provide that deemed receipt will not occur if an undeliverable receipt is received by sender before the time at which receipt would otherwise deemed. (ie if receipt is deemed an hour after an e-mail is sent, and an undeliverable receipt is received within this hour, receipt will not be deemed).

The Proposer suggested that the Modification would better facilitate the achievement of Applicable BSC Objective (d). The Group unanimously held the view that Modification Proposal P159 would better facilitate Applicable BSC Objective (d) as well as Applicable BSC Objective (c). This was for various reasons, described in the P159 Assessment Report, mainly concerning the efficiency, cost savings and certainty which would be achieved by P159 (more detail about these reasons is provided below).

### **Responses to Consultation**

The GMSG issued an Assessment Consultation for Modification Proposal P159 on 15 March 2004, seeking responses by 2 April. Seven responses (representing 46 Parties) were received.

In relation to the consultation question of whether Proposed Modification P159 would better facilitate achievement of the Applicable BSC Objectives, six respondents (representing 45 Parties) agreed with the question and one respondent (representing one party) made no comment. The responses are summarised in the Assessment Report for Modification Proposal P159, which also includes the complete text of all respondents' replies.

The draft Modification Report was issued for consultation by the Panel on 17 May 2004, seeking responses by 27 May. Eight responses (representing 49 parties) were received. Responses were sought on three questions. The first question sought views as to whether respondents agreed with the Panel's views on P159 and the provisional recommendation to the Authority in the draft Modification Report that P159 should be made. Six of the respondents (representing 45 parties) agreed with the question, one disagreed (representing three parties) and one (representing one party) expressed no opinion.

Respondents who supported the recommendation that Modification Proposal P159 should be made provided differing rationale for their recommendation. Three of the respondents who supported P159 stated that they did so because it would reflect or formalise current practice. One of these respondents additionally supported P159 because it would still safeguard communications for which e-mail was not appropriate.

The respondent who did not support the recommendation that Modification Proposal P159 be made stated that they believed it should be the duty of the sender of an e-mail to confirm or verify that an e-mail has been delivered, and that the recipient should not bear the consequences of an e-mail which was sent but not received.

The respondents' views are summarised in the Modification Report for Modification Proposal P159, which also includes the complete text of all respondents' replies.

### **Panel's recommendation**

The Panel met on 13 May 2004 and considered the Modification Proposal. One Panel Member requested that BSCCo report back to the Panel if Parties raised any material concerns regarding the post-implementation operation of P159. BSCCo confirmed that it would provide such feedback as part of its ongoing review of internal procedures for communications with Parties. The Panel then agreed the provisional recommendation that Modification Proposal P159 should be made. This provisional recommendation was consulted upon as part of the P159 draft Modification Report.

At the Panel meeting on 10 June the Panel considered the draft Modification Report, and the consultation responses received. The Panel unanimously confirmed its previous recommendation that Modification Proposal P159 should be made.

The Panel recommended that the Implementation Date for the Modification Proposal should be:

- 23 February 2005 if the Authority Decision was received on or before 1 September 2004, or
- 29 June 2005 if the Authority Decision was received after 1 September 2004 but on or before 1 December 2004.

The Panel agreed with the view of the Group that implementation of the P159 would better facilitate the achievement of Applicable BSC Objectives (c) and (d), for various reasons described in full in the Draft Modification Report, which can be summarised as:

- P159 would confirm existing use of e-mail, and therefore remove the risk of any question as to whether current practice was compliant with the BSC;
- P159 would therefore provide greater certainty for Parties and BSCCo regarding authorised methods of communication;
- Although actual cost and efficiency savings from P159 would be small, Parties and the BSCCo might incur significant costs if P159 were not approved and existing practice was required to change;
- Even if e-mail had not been existing practice, the implementation of P159 would better facilitate efficiency than the existing Code baseline, as e-mail has proven itself to be as reliable as post or fax and may provide greater efficiencies and cost savings than post or fax.

The Panel considered the responses provided to consultation on the P159 Draft Modification Report, and noted that while the majority of respondents had agreed with the Panel's provisional

recommendation that P159 should be implemented, one respondent had disagreed with this recommendation.

The Panel noted that this respondent had argued that it should be the duty of the sender of an e-mail communication to confirm or verify that the e-mail has been delivered, rather than relying on deemed receipt. This respondent had stated that this would ensure that the recipient would not be disadvantaged if the e-mail was sent but not received. In regard to the issues raised by this respondent, the Panel noted that the issue of deemed receipt for e-mail had been considered by the GSMG during the Assessment Procedure for P159, but further noted that the respondent did not support the GSMG's approach. In relation to this consultation response, one Panel Member commented that the response related to communications being sent to the incorrect individuals, which was a separate issue which would not be resolved by altering the e-mail deemed receipt rules.

A summary of the Panel's comments and views regarding the consultation on the P159 Draft Modification Report can be found in the Modification Report for P159.

### **Responses to Ofgem GB Consultation**

On 5 December 2003 Ofgem undertook to invite responses on additional implications that a Proposed Modification may have, were it to be applied on a GB wide basis, as opposed to being limited to England and Wales. In order to discharge this undertaking Ofgem published a GB Consultation Paper on 25 May 2004 which invited respondents' views by 5pm on 21 June 2004. One response was received. The response did not identify any such additional implications.

The Consultation Paper can be found on the *BETTA GB Consultation* section of the Ofgem website.<sup>5</sup>

### **Ofgem's view**

Having carefully considered the Modification Report and the Panel's recommendation, Ofgem considers, having regard to the Applicable BSC Objectives and its statutory duties, that Proposed Modification P159 will better facilitate achievement of the Applicable BSC Objectives.

Ofgem has noted the view of one respondent to consultation that it is inappropriate to assume deemed receipt of an e-mail, and that it should be the duty of the sender to confirm or verify that an e-mail has been delivered. Ofgem considers that e-mailed and posted communications are both potentially liable to go astray, and does not consider that e-mail is significantly different from the post in this regard. Ofgem notes that the BSC currently provides for deemed receipt for communication sent by first class post, and therefore considers that it would be appropriate to provide for deemed receipt for e-mail in the circumstances outlined in P159.

Ofgem further notes that certain significant categories of communication have been excluded from the scope of P159, so the adverse effects of deeming receipt for non-received e-mails have been minimised. Additionally Ofgem notes that nothing in P159 would prohibit senders from

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<sup>5</sup> <http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/betttagbcons>

additionally seeking to verify receipt of a particular e-mail if they wished to do so. Ofgem considers that if P159 required a verification of receipt for all e-mails, this would limit the efficiency savings of P159.

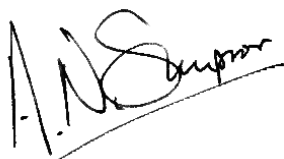
The Proposer suggested that the Modification Proposal would better facilitate achievement of Applicable BSC Objective (d), because sending communication by e-mail may be more effective than using other forms of communication, P159 would facilitate the promotion of efficiency in the implementation and administration of the balancing and settlement arrangements. The Panel and the GMSG both held the view that Modification Proposal P159 would better facilitate achievement of Applicable BSC Objectives (c) and (d). The reasons for this view have been summarised above in this letter.

Ofgem considers that implementation of Modification Proposal P159 would better facilitate the achievement of the Applicable BSC Objective (d). Ofgem considers that Modification Proposal P159 will encourage the use of e-mail communication for certain correspondence. The use of e-mail, within the parameters set down by P159, will enable faster and cheaper communication. Ofgem considers this will facilitate the achievement of Applicable BSC Objective (d) by promoting efficiency in the implementation and administration of the balancing and settlement arrangements by permitting the use of an efficient and cost-effective method of communication in administering these arrangements. Ofgem considers that P159 will facilitate Applicable BSC Objective (d) by promoting the efficient administration of the balancing and settlement arrangements for BSCCo and BSC parties.

Ofgem further considers that Modification Proposal P159 will, to a lesser extent, facilitate achievement of Applicable BSC Objective (c) by promoting competition in the generation and supply of electricity by ensuring that all parties to the BSC can use quick and inexpensive e-mail communication (in certain situations).

If you have any questions, please contact me on the above number.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

**Nick Simpson**  
**Director, Modifications**

Signed on behalf of the Authority and authorised for that purpose by the Authority