



24 October 2001

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Dear Roger

Further consultation on P37

Thank you for your communication of today's date, following publication yesterday of the further consultation on the legal text for P37. This consultation exercise was envisaged by the urgent modification procedure agreed by the Authority. As you are aware, it is customary (and good) practice in the modifications process to consult on the draft legal text, particularly where (as with P37) some of the finer drafting points may be of commercial significance. In addition, in the case of P37, a number of new issues emerged after the previous consultation, notably as a result of the preliminary view sought from and given by the Authority. It would seem only fair that interested parties should have an opportunity to comment on these issues.

We do not accept that the account given of the legal issue relating to LC7A.2 in the consultation document was misleading, unclear or unfair, nor that any new points were raised in the most recent Modifications Group meeting which had not been raised many times before, both in the context of P19 and otherwise. On the contrary, the Panel and ELEXON have co-operated with London Electricity at every stage in order to give you an opportunity to put your point of view across, including acceding to your request that we should publish your legal opinion from Mr Goudie on the BSC website. We are sensitive to the history of P37 and have sought at all times to conduct this process as fairly and openly as possible.

In your letter, you rehearse the arguments put forward by Mr Goudie. I would note that interested parties will have had the chance to read Mr Goudie's opinion and to form their own view as to its scope and merits.

As to the further legal arguments which you are seeking to raise about the relationship between LC7A.2 and LC7A.3, if (as you contend) there is, as a matter of law, "*an overriding obligation on Ofgem, in deciding whether to direct that a particular proposed modification to the BSC should be adopted, to perform its functions so as to ensure, first of all, that the BSC does fulfil the requirements of Condition 7A(2)*", then no amount of consultation on the strength of the modification proposal would be relevant to help determine that question. It is for Ofgem to form a view on whether it is subject to such a legal obligation.

You have requested that we publish your letter in order to assist respondents in formulating their responses to the P37 consultation. We are extremely concerned that requests of this sort serve to undermine the consultation process by making it more, rather than less, difficult for interested parties to evaluate the salient issues, particularly where these requests appear so late in the modification process. In the interests of co-operation, and bearing in mind the importance of this modification, we have decided to comply with this further request from you to publish your views. However, as I mentioned, we are anxious to avoid prejudicing the consultation process by sowing confusion. If you have any further comments to make, whether on this or any other issue, we would therefore be grateful if you would channel them by way of response to the consultation exercise. We do not feel it is appropriate that LE should be afforded a special platform beyond that afforded to other trading parties, or other interested parties.

You also comment on the approach proposed by ELEXON in assessing P37 in the light of the legal issue raised by LE on LC7A. There is no suggestion (by you or anyone else) that the approach which ELEXON has adopted (as described in the consultation document), and which the Panel plans to adopt in considering P37, is unfair or inappropriate. That process was described to you very carefully and in detail at the last Modifications Group, and you raised no objection to it. On the contrary, you appeared to agree that it was a sensible way forward.

We note the position you have taken in the last paragraph of your letter. For all the reasons stated above, we do not accept any implication from you that the process followed by the Panel and ELEXON could be tainted in any way.

Yours sincerely

Brian Saunders

Chief Executive