

Mr Nicholas Durlacher  
Chairman, BSC Panel  
c/o Elexon Ltd  
Third Floor, 1 Triton Square  
London NW1 3BX

RB/MVB

11 September 2001

Dear Mr Durlacher

### **RETROSPECTIVE REMEDY OF NOTIFICATION ERRORS**

When London Electricity ('London') put forward the BSC modification proposal known as P19 earlier this year, we covered our submission with a public letter, addressed to you and other members of the BSC Panel. In that letter, we revealed that, after making notification errors in relation to its contract position for the day of 3 April, London's net financial liability for that particular day was increased by £7.5 million above the level corresponding to its true contract position.

As the Panel was well aware of the magnitude of the losses we had suffered, by virtue of the way in which settlement liabilities are currently calculated under the BSC, its members will not be surprised to know that we were disappointed both by their decision not to recommend P19 to Ofgem and, of course, even more by Ofgem's subsequent decision to reject P19.

However, in considering our options in the light of that determination, we have found Ofgem's P19 decision document to be very helpful. This is particularly the case where it articulates ideas or principles which point towards a form of BSC modification which Ofgem would be content to adopt, and which could be applied retrospectively in such a way as to allow us to recover some, if not substantially all, of the sums which we have lost.

Paragraphs 25, 36, and 37 of the decision document are especially pertinent in these respects, since in combination they point to features which Ofgem has indicated should form part of any acceptable BSC modification designed to deal with the correction of notification errors. Following a meeting with Ofgem to clarify its approach to such modifications in the light of that document, London is now submitting a specific proposal (herewith) in respect of past notification errors. We request that this be dealt with on an urgent basis, in advance of a separate proposal designed to address future errors.

In formulating our proposal, we have used what finally came to be known as P19 Optimised as the basis, with necessary adaptations, for the legal drafting of this modification. To the extent possible in relation to retrospective claims, we have tried our best to reflect, and we hope satisfy, Ofgem's concerns at a number of points in its decision document that parties should have sufficient incentives to submit accurate notifications.

We also argue that the circumstances giving rise to our proposal clearly warrant a retrospective rule change, having regard to paragraph 36 of the Ofgem decision document and, also, to retrospective modifications approved by Ofgem in relation to the early Gas Network Code. As for the requirement for a 'more stringent cap' on retrospective recovery (see Ofgem's paragraph 37), we believe that this would be properly satisfied by allowing only 80 per cent of the value of correction claims up to the £1 million level to be recoverable (that is, the maximum unrecovered, or penalty, amount would be £200,000). Above £1 million, having first incurred that penalty, full recovery would then, in principle, be permitted.

This letter seeks to add background to the modification now proposed, which we have submitted separately in the prescribed manner, and should be treated by the Panel as an integral part of the modification proposal. As with the original P19 proposal, the ultimate justification for this new modification is that, under present arrangements, the requirements set out in Condition 7A.2 of the NGC licence are not achieved. Remedying this defect would, therefore, facilitate the better achievement of the applicable BSC objectives.

For the avoidance of doubt, I confirm that we will wish to make a retrospective claim to rectify the consequences of London's notification error in respect of its contract position for the day of 3 April, if this modification is adopted.

We are ready to assist the Panel and its advisers as much as we can to process this proposal in an efficient and timely manner.

Yours sincerely

**Roger Barnard**

Regulatory Lawyer  
London Electricity Group