

Modification proposal:	Balancing and Settlement Code (BSC): Improving efficiency and clarity of the Trading Disputes Process (P256); Removal of the concept of Trading Queries (P257) & Party Agent inclusion in the Trading Disputes process (P258)		
Decision:	The Authority ¹ directs that modification proposals P256 and P257 be made. The Authority has rejected P258.		
Target audience:	National Grid Electricity Transmission plc (NGET), parties to the BSC and other interested parties		
Date of publication:	20 September 2010	Implementation Date (for P256 & P257 only):	4 November 2010

Background to the modification proposal

A Trading Query or Trading Dispute can arise as a result of errors in the data, processes and/or application of the rules used for the purposes of Settlement, where such errors affect the determination of Trading Charges paid to or from Parties.

The Trading Query and Trading Disputes process allows for incorrectly derived Settlement data to be re-calculated, and for the corrected Trading Charges to be adjusted accordingly. These processes are set out at a high level in Section W of the BSC and in more detail in BSC Procedure (BSCP) 11: 'Trading Queries and Trading Disputes'.

While Elexon will investigate the validity of any Trading Query, it operates under the aegis of the Trading Disputes Committee (TDC). The current procedures², envisage that subject to the Trading Query being considered valid, i.e. it was raised within the applicable deadline, it involves an amount greater than £500 and that there is evidence that a settlement error exists, the TDC may agree to that error being corrected. However, in the event that the TDC does not accept Elexon's findings, a Trading Dispute will be raised.

A Party raising a Trading Query which Elexon, and subsequently the TDC, do not consider to be valid may also escalate it to a Trading Dispute. This Dispute will also be considered by the TDC. If the Party disagrees with the TDC's subsequent decision, or the TDC fails to reach a majority decision, either the TDC or the Party may refer the matter to the BSC Panel for determination. If the BSC Panel decides not to review the matter or if the Party disagrees with its decision, that Party may refer the matter to further arbitration. The decision of the arbitrator is final and binding.

Although the current process is considered to be transparent, the TDC has become increasingly concerned that the timeliness requirements, the £500 materiality threshold and the general complexity of the procedures may be limiting the usefulness of the Trading Disputes Process. The TDC notes in its report that the average number of Disputes upheld per year prior to the current procedures being introduced has halved, from an average of 22 Disputes per annum to around 10.

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² introduced by modification P131: 'Introduction of further provisions relating to the determination of Trading Disputes'

Given the concerns set out above, the TDC launched a review of its procedures and identified twelve changes that could streamline the Disputes procedures and encourage effective participation. Eight of the TDCs recommendations have been taken forward through modification proposals, raised by the BSC Panel as P256, P257 and P258, while the remaining four involve changes to the Code Procedures document only.

Modification Proposal 256

P256 seeks to address five of the TDCs recommendations to make the Disputes Process more user-friendly and efficient, as follows:

- (1) Allowing the TDC to decide the outcome of all types of dispute before it, with an ability to refer their decision to the panel. This would remove the need to refer some decisions to the panel with a recommendation, thus shortening and standardising the process;
- (2) Allowing the TDC to amend the end date given for a dispute where the error is on-going. This would avoid subsequent disputes having to be raised and dealt with separately in relation to the same error;
- (3) Aligning the Supplier Volume Allocation (SVA) Half Hourly (HH) Query Deadline with the SVA Non Half Hourly (NHH) Query Deadline. This aims to make the process easier to understand and provide greater opportunity to correct errors, resulting in more accurate data for settlement;
- (4) Remove the concept of Precautionary Queries to help make the process more understandable and avoid unnecessary steps; and,
- (5) Clarification of the definition of settlement error to aid understanding.

Modification Proposal 257

P257 seeks to progress a further two of the TDC's suggestions, as follows:

- (6) The removal of the concept of Trading Queries in an attempt to make the Disputes Process more user-friendly and efficient. The TDC felt that Queries duplicated much of the Disputes Process and were used just in case a known error was not resolved prior to the deadline for raising a dispute. The TDC noted that if the proposal to extend this deadline were implemented then the query process would essentially become redundant. The proposal therefore seeks to streamline the process and make it more user friendly; and,
- (7) Enabling Elexon to reject/close invalid disputes where the Party agrees with its findings, without prior reference to the TDC. Elexon would still report to the TDC on the closed Trading Disputes, but no further TDC action would be required.

Modification Proposal 258

P258 seeks to obligate Suppliers to ensure that their Agents inform Elexon of potential settlement errors in the Final Reconciliation Run that have not already been reported or rectified via a Trading Dispute. Elexon would then investigate the error and if it was deemed to be genuine, Elexon would raise a Dispute.

The proposer considers that these changes will better facilitate Applicable Objective (d) by increasing the efficiency, transparency and effectiveness of the Disputes Process. They believe this will in turn increase the accuracy of settlement data.

BSC Panel³ recommendation

On 12 August 2010, the BSC panel voted by a majority to accept P256, unanimously to accept P257 and unanimously to reject P258.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report dated 13 August 2010. The Authority has considered and taken into account the responses to Elexon's⁴ consultation which are attached to the Final Modification Report⁵. The Authority has concluded that:

- (i) implementation of modification proposal P256 will better facilitate the achievement of the relevant objectives of the BSC⁶;
- (ii) implementation of modification proposal P257 will better facilitate the achievement of the relevant objectives of the BSC;
- (iii) implementation of modification proposal P258 will not better facilitate the achievement of any of the Applicable Objectives of the BSC⁷, in particular Applicable Objective (d), and
- (iv) directing that the modification proposals P256 and P257 be made is consistent with the Authority's principal objective and statutory duties⁸.

Reasons for the Authority's decision

Whilst we note the findings of the TDC that Trading Disputes have halved in recent years, averaging less than a dozen a year, there is little evidence to suggest that this is entirely down to the administrative burden of pursuing a Dispute through the existing arrangements, or that an improvement to those arrangements can therefore be expected to lead to an increase in Trading Dispute activity. Without such evidence, we are unable to consider whether these proposals would lead to an improvement in settlements accuracy, the benefits of which may ordinarily be considered to further effective competition between suppliers and other trading parties. We therefore agree with the BSC Panel that these proposals should be considered solely against Applicable BSC Objective (d): – *'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'*

P256

- (1) Expanding the TDC's decision making remit

³ The BSC Panel is established and constituted pursuant and in accordance with Section B of the BSC.

⁴ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

⁵ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.com

⁶ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151

⁷ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151

⁸ 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.

We agree with those respondents who suggested that the current procedures need further clarity. We also consider that they may impose an unnecessary restriction on some Parties' ability to escalate matters. Trading Dispute decisions of the BSC Panel will generally follow a referral from the TDC and relate to matters which the TDC could itself have decided upon, i.e. whether the criteria for a Trading Dispute have been met and a determination on whether to replace offending data.

While Section W of the BSC sets a process by which a Party will have a right of appeal (via arbitration) of a decision made by the BSC Panel, the current drafting assumes that the decision will also follow a TDC referral. However, the BSC Panel has powers above and beyond those of the TDC, for instance allowing it to rectify matters outside of the normal schedule Settlement Runs through authorising either a Post-Final Settlement Run or an Extra-Settlement determination. While these powers will be used following consideration of any recommendation of the TDC, they do not appear to be captured by the current Section W drafting and are therefore not considered subject to arbitration.

This anomaly could have been addressed by additional text confirming that the BSC Panel's additional powers may also be subject to appeal through arbitration. However, we also note the comments suggesting that where the panel makes such a decision, it almost always follows a TDC recommendation, giving recognition to the technical knowledge and expertise of the TDC. Adding a potential further layer of arbitration may therefore do little to effect the decision making process. Further, allowing the TDC to make the decision on how to resolve all trading disputes with a right for parties to refer the decision to the panel for review will streamline the Disputes Process and allow all disputes to be treated the same with respect to referral rights. This could make the Disputes Process more efficient and understandable for parties, which may in turn encourage their participation in the process.

(2) Amending trading dispute end dates

Currently, if an end date is put in the raising form, but the error is ongoing, a second form will need to be raised and a new Dispute pursued. P256 would instead give the TDC the ability to revise end dates in these circumstances. We agree with respondents that this has the ability to reduce the administrative burden of the current process and avoid duplication of actions. As with other elements of this proposal, this could make the Disputes process more efficient and accessible.

(3) Extending the SVA HH Query Deadline

The current deadlines were imposed in order to encourage parties to spot errors and try to rectify them in a timely manner. However, we note the TDC view that the SVA HH Query Deadline of R2⁹+20 Working Days may be too strict. Some TDC members felt that this has discouraged some Parties from participating in the process as they felt that it would be likely to be 'timed out'.

There were also some Parties who considered that the strict nature of the current deadline may result in some Queries being raised prematurely on a 'just in case' basis, which were subsequently proven to be unnecessary. We also note the comments that most SVA HH errors are only discovered following a site visit, making it unlikely they will be picked up during the current window.

⁹ Second Reconciliation Run

While we have sympathy with those respondents who suggested that an extension may weaken the incentives for prompt provision of accurate data, we agree that the extension of the SVA HH Query Deadline of R2+20 working days with the SVA non-HH Query Deadline of Final Reconciliation + 70 working days should ensure that the efforts of the TDC are targeted more appropriately. This should also simplify the arrangements and allow Parties more time to properly consider whether a Trading Query is appropriate. We consider that these potential benefits outweigh the possibility that parties will have less incentive to provide accurate data.

(4) Removal of Precautionary Queries

As mentioned above, some Queries are raised 'just in case' the error will not be resolved before the deadline for raising a Dispute. Matters which are subsequently resolved have still had to be put before the TDC and formally closed. In light of the change to the SVA HH Query Deadline, we agree that this process is likely to become redundant. Removal of this superfluous step will both be more efficient and simplify the arrangements, making them more accessible to Parties.

(5) Settlement error definition

We consider that steps to aid the understanding of definitions and use of plain English should be encouraged as best practice. By helping parties to better understand code processes, this should encourage participation and efficiency.

P257

(6) Trading Queries and Trading Disputes

The Trading Disputes process can be split into two broad stages, a Trading Query stage and a Trading Dispute stage. We understand that the original intention of a Trading Query was to act as a precursor to the Trading Disputes process, to determine that there was an actual Dispute. However, the Trading Query stage seems to have become a fully fledged process in itself, and has proven to be ineffective as a preliminary filter, with the vast majority of Queries also being considered by the TDC and/or subsequently escalated into Trading Disputes. The data collection and analysis involved is the same regardless of whether the matter is raised as a Query or Dispute. We therefore agree that it would be more administratively efficient and clearer to remove this step.

(7) Closing invalid Trading Disputes

Currently, when a claim is found to be invalid by Elexon and the Party agrees with the decision, it still needs to be presented to the TDC before it can be formally closed. Allowing Elexon to close invalid Disputes will mean that they do not need to be taken to the TDC for closure. We consider this will help save time and effort that will be spent instead investigating and resolving valid Disputes.

P258

(8) Obligation on Suppliers Agents to inform Elexon of settlement errors

Whilst we consider that Agents can have an important part to play in the identification and resolution of settlement errors, we do not consider that it would be appropriate to

codify this role, particularly through an obligation targeted upon suppliers. We consider that this could be counter-productive to the efficiency of the process, particularly through the duplication of effort; unlike Suppliers, Agents may not be in a good position to confirm whether an issue has already been raised, its status, or the outcome of that Dispute. It may also require a renegotiation of contracts between Suppliers and their Agents and the imposition of more compliance monitoring and communication lines about potential disputes, irrespective of which this would be difficult to enforce.

We consider that the additional effort involved in the process would outweigh any small benefit of improved settlement accuracy.

Conclusion

It remains to be seen whether the improvements to the Trading Dispute process will lead to a greater use of the arrangements and any consequential improvements in settlement accuracy. However, it is apparent that several of the steps in the current process impose an administrative burden upon Parties, Elexon and the TDC itself while seeming to offer little in terms of further transparency or rigour. We therefore consider it appropriate that these proposals be considered against applicable objective (d) alone.

We consider that P258 would increase the burden upon Suppliers' Agents and potentially generate lots of erroneous Disputes, which would need to be investigated by Elexon. Moreover, we consider that this information could alternatively be obtained via a Technical Assurance (TA) check and/or audit. For these reasons, we consider that the burden of P258 would be disproportionate to any additional settlement accuracy that may result.

Decision notice

The Authority has concluded that:

- implementation of modification proposal P256: '*Improving efficiency and clarity of the Trading Disputes Process*' will better facilitate the achievement of the Applicable Objectives of the BSC;
- implementation of modification proposal P257: '*Removal of the Concept of Trading Queries*' will better facilitate the achievement of the Applicable Objectives of the BSC;
- implementation of modification proposal P258: '*Including Party Agents in the Trading Disputes process*' *will not* better facilitate the achievement of the Applicable Objectives of the BSC;

therefore, in accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that modification proposals P256 and P257 be made.

Mark Cox

Associate Partner, Transmission and Governance

Signed on behalf of the Authority and authorised for that purpose