

Modification proposal:	Balancing and Settlement Code (BSC) P247: Proposer 'ownership' of Modification Proposals (P247)		
Decision:	The Authority ¹ directs that the Alternative proposal be made ²		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	14 May 2010	Implementation Date:	28 May 2010

Background to the modification proposal

In the BSC modification process, the Proposer does not 'own' their Proposal. The Proposer is therefore no more influential over development of the solution than the rest of the Modification Group ('Group') set up to progress the Proposal. Proposals may consequently be developed in a way unintended by the Proposer if the drafting of the Proposal is open for interpretation.

If the Proposal is drafted narrowly to avoid ambiguity, the Group may be required to raise an Alternative to make any changes; even minor refinements supported by the Proposer may not be made.

Finally, Proposals cannot be withdrawn once the Panel has considered the Proposal for the first time.

The modification proposal

P247 was raised to address these points. First, the Proposer retains 'ownership' of the Proposal until the Group makes a final recommendation to the Panel. Ownership allows the Proposer to either make changes or reject suggestions from the Group. Reasons must be given for any changes or rejections. Changes must address the original 'issue'. The Modification Group will continue to collectively develop any Alternative Modification(s).

Secondly, the Proposer could withdraw their Proposal up until the Modification Group makes its final recommendation to the Panel. Any withdrawn Proposal could be 'adopted' by another Party within a 5-business day window. Thirdly, the Proposer gets the right to address the Panel when the Group's report is presented.

The Proposer believes that the above points will better facilitate BSC Objectives (c) and (d)³. This is because the changes would:

- make the process clearer and more user friendly, which would encourage greater participation and in turn competition;
- remove the potential need for an Alternative if the Proposer and Group agree refinements to the Proposal, making the process more efficient; and,
- increase efficiency/reduce wasted effort by allowing withdrawal of Proposals no longer supported.

The Alternative is the same as the Proposal, but without the right to address the Panel.

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 This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see:

http://epr.ofgem.gov.uk/document_fetch.php?documentid=4151

BSC Panel⁴ recommendation

On 8 April 2010, the BSC Panel voted unanimously to reject the Proposal and accept the Alternative. The Proposal was rejected, as the right for only one Group member (the proposer) to address the Panel was considered potentially discriminatory.

The Alternative was accepted as better facilitating Applicable Objectives (c) and (d), as it would:

- make the process clearer and more user friendly, which would encourage greater participation and in turn competition;
- remove the potential need for an Alternative if the Proposer and Modification Group agree refinements to the Proposal, making the process more efficient; and,
- increase efficiency/reduce wasted effort by allowing withdrawal of Proposals no longer supported.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 13 April 2010. The Authority has considered and taken into account the responses to Elexon's⁵ consultation which are attached to the FMR⁶. The Authority has concluded that:

1. implementation of either the modification proposal or the alternative will better facilitate the achievement of the relevant objectives of the BSC⁷;
2. out of the two modifications, implementation of the alternative modification proposal will better facilitate the achievement of the relevant objectives of the BSC⁸; and
3. directing that the alternative modification be made is consistent with the Authority's principal objective and statutory duties⁹.

Reasons for the Authority's decision

Applicable BSC Objective (c) - promoting effective competition in the generation and supply of electricity

We agree that including Proposer 'ownership' in the BSC is likely to encourage more participation in the change process due to a more 'user friendly' process and the ability for the Proposer to control the development of their modification. We note that both the Proposal and the Alternative provide for the Proposer appointing a representative if they are unable to attend Group meetings, which may help smaller parties. More inclusion of smaller participants could encourage competition.

One respondent was concerned about Elexon's role as a Proposer's last resort representative at the Group stage. The Group discussed the view that Elexon should not be advocating for any change, as this could be interpreted as a biased view and because Elexon would neither be familiar with the Proposers business, nor able to agree/reject

⁴ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

⁵ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

⁶ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.com

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 Ibid.

⁹ 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, as amended.

Group revision suggestions without further instructions. This concern has been addressed by making it clear that Elexon will not be advocating for the change. Elexon will facilitate the discussion and act so that the Proposer's views as expressed to Elexon are taken into account in the Group meeting. The Group stage would, in these circumstances, continue as it does currently, with the Proposal being developed by Group majority decisions. In our view, a representative of last resort could facilitate competition by aiding some resource constrained participants.

Another element of both the Proposal and Alternative which could help to promote competition is preventing the Proposer or an affiliate adopting a withdrawn Proposal. This addresses the issue discussed by the Group of potential abuse of the withdrawals process as a delaying tactic to avoid a Proposal being properly progressed, or delay other parties from raising a similar proposal.

We also consider that by aligning processes across the different industry codes it is likely to help participants in managing code modifications. This could aid resource constrained participants who would therefore not have to familiarise themselves with differing processes. This may help to encourage greater participation and competition.

With regard to the Proposal's third element of a new right of audience, the majority of the Modification Group believe that allowing:

- the Proposer to address the Panel would introduce discrimination contrary to BSC Objective (c); and,
- if the Proposer and another member of the Group were permitted to address the Panel could result in a repeat of the Group's discussions, which would be inefficient contrary to BSC Objective (d).

The Modification Group noted that the Panel Chair can recognise comments from the floor. The Proposer therefore already has the ability to speak (if recognised by the Panel Chair) to explain any variations/refusals to vary and correct any misunderstandings. While the proposer acknowledged this provision, we note the desire of the proposer that the Chair recognise more comments from the floor.

We agree that an ability to address the Panel already exists. This applies equally to the Proposer and to anyone who feels their views on a modification have not have been addressed, or correctly recorded. We therefore do not consider that there is a defect in the current arrangements in this regard.

Applicable BSC Objective (d) – promoting efficiency in the implementation and administration of the balancing and settlement arrangements

Allowing Proposers to make changes to their Proposal could reduce the need for Alternatives, or second Proposals, especially where the Group including the Proposer support the changes. This should make the process more efficient in line with BSC Objective (d). This ability is checked by the requirements that:

- Changes must address the original 'issue', which helps to stop scope creep.
- Reasons must be given for any changes or rejections of Group suggestions.

One respondent was concerned that allowing a Proposer to alter their Proposal at a late stage could result in a substantial variation after all assessment had taken place and that no further consultation, or development of alternatives, would be available to take into account such last minute changes. The respondent felt that this could encourage Proposers to withhold more contentious elements of a Proposal until a late stage. In our view, it is important that a proposer is able to take account of new issues that arise

during the process and therefore should not be unduly constrained within the modification group stage.

In addition the risk of late developments is addressed by the ability of the Group to request further time from the Panel. They also have the ability to vote against a Proposal if it is not sufficiently justified. Further, under proposed paragraph 2.1.12A of the Proposal and Alternative, the Panel can require withdrawal of a Proposal if a Proposer is 'deliberately and persistently disrupting or frustrating' the modification process.

We also note the Group discussion around the impact of this proposal on the amalgamation of modifications. In the event that the Panel seeks to amalgamate two Proposals, the Proposers must either co-operate in agreeing who is the Proposer going forward, or withdraw their Proposal. This is a very similar process to the current arrangements and we do not consider that this is a material issue.

We agree that withdrawal of Proposals that are no longer supported would reduce wasted effort and streamline the modification process in line with BSC Objective (d).

Choosing between the Proposal and the Alternative

On the whole, the Proposal is better than the baseline. However, as discussed above, the current BSC process allows for a non-discriminatory right to address the Panel in the circumstances suggested by the Proposer. Accordingly, the case of a defect to be solved in respect of a new right of audience has not been proven. We therefore reject the Proposal and accept the Alternative.

We consider that approval of the P247 Alternative is consistent with our principal objective and wider statutory duties as it contributes to a more efficient process and potentially facilitates more competition.

Comments on Proposal and Alternative considering draft Code Administration Code of Practice (CoP)

We note that both the Proposal and the Alternative were developed so that: (i) a proposal could be revised or withdrawn during the same stage, namely within the Group stage (i.e. during the time when Alternatives could be raised/developed); and, (ii) alternatives could be developed collectively by the Group.

In our view, this reflects high-level principles set out in the CoP consultation issued on 31 March 2010. However, depending upon the final format of the CoP, minor consequential changes may in practice be necessary to fully reflect all of the elements of the CoP principles. For example, it may be necessary to extend the ability to withdraw a proposal beyond the timescale for raising alternatives and up to immediately prior to the Panel making its final recommendation.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority, hereby directs that the alternative modification proposal BSC P247: *Proposer 'ownership' of Modification Proposals* be made.

Mark Cox, Associate Partner, Industry Codes and Licensing

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