

## P255 – PROPOSED LEGAL TEXT – FINAL REPORT

### SECTION C: BSCCo and its Subsidiaries (Version 11)

#### 3. POWERS AND FUNCTIONS OF BSCCO

##### 3.1 General

*Insert a new sub-paragraph 3.1.1(s) into paragraph 3.1.1 and amend paragraph 3.1.1 to read as follows:*

- 3.1.1 Without prejudice to paragraph 1.2.2, BSCCo shall have the following powers, functions and responsibilities:
- (a) to enter into, manage and enforce contracts with service providers (as BSC Agents) for the supply of the services required by BSC Service Descriptions, and negotiate and agree amendments to such contracts, as further provided in Section E;
  - (b) to advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code;
  - (c) to provide or arrange the provision of such facilities, resources and other support as may be required by the Panel to enable the Panel or any Panel Committee or Modification Group to discharge its functions and responsibilities under the Code;
  - (d) to provide secretarial and administrative services in connection with meetings of the Panel and Panel Committees and Modification Groups, including the convening and holding of such meetings, and taking and circulation of minutes;
  - (e) to provide and make available to Parties such facilities, services and information in connection with the implementation of the Code as the Code may provide or the Panel may require;
  - (f) to provide or arrange the provision of facilities, resources and other support in connection with the procedures for modification of the Code in accordance with Section F;
  - (g) to enter into contracts (in terms complying with any applicable provisions of Section B) of employment or other engagement with persons from time to time to be appointed as Panel Chairman or Panel Members under Section B2.5;
  - (h) to indemnify against liability, and to reimburse the expenses of, Panel Members, members of Panel Committees, members of Modification Groups and others as provided in the Code;
  - (i) to enter on behalf of all Parties into Accession Agreements with new Parties in accordance with Section A2.2;
  - (j) to act as BSC Agent for the purposes of the Master Registration Agreement in accordance with Annex K-1;

- (k) to act as shareholder of the BSC Clearer in accordance with paragraph 7;
- (l) to receive, collect and hold such data and information, and to prepare and maintain such books and records, as may be required under the Code or reasonably necessary to enable BSCCo to comply with its functions and responsibilities under the Code; and to provide data and information held by it to the Panel upon request and to other persons in accordance with any express provision of the Code;
- (m) without prejudice to the generality of paragraph (l), where it is not the function of a BSC Agent to do so, to maintain records of the extent to which Parties have satisfied requirements of the kind referred to in Section A4.5.3, and to provide details thereof to BSC Agents and other persons as required for the purposes of the Code;
- (n) to monitor whether any Party is, or with the lapse of time or giving of notice would be, in Default (in accordance with Section H3), and to give to any Party any notice the giving of which will result in that Party being in Default (but not for the avoidance of doubt to give any notice consequent upon a Party's being in Default unless expressly authorised to do so by the Panel or by a provision of the Code);
- (o) to act as the Performance Assurance Administrator in accordance with Annex B-1;
- (p) to prepare and/or (as the Panel may require) assist the Panel to prepare the Annual BSC Report for each BSC Year in accordance with Section B6.1;
- (q) to make recommendations to the Panel as to possible Modification Proposals in the circumstances mentioned in paragraph 3.8.8 and Section F2.1.1(d)(ii) and (iii);
- (r) to the extent provided in and in accordance with the policy from time to time established by the Panel, to act as a point of contact for persons from other countries interested in, and to explain to such persons, the arrangements for and developments in wholesale trading of electricity in Great Britain and/or Offshore, and to participate in institutional comparative discussions of such arrangements and developments in other countries; and
- (s) to provide Profile Administration Services (with the consent of the Panel) and to enter into, manage and (subject to the Code) enforce contracts with service providers for the supply of Profile Administration Services in accordance with Section C9.

## **9. PROVISION OF PROFILE ADMINISTRATION SERVICES BY BSCCO**

*Amend the heading to paragraph 9.1 to read as follows:*

### **9.1 Provision of Profile Administration Services in certain circumstances**

*Amend paragraph 9.1.1 to read as follows:*

9.1.1 Subject to the further provisions of this paragraph 9, BSCCo ~~may~~shall where ~~÷~~

- ~~(a) its good faith attempts to appoint a Profile Administrator in accordance with Section E have been unsuccessful; and~~

~~(b)~~ — the Panel's prior consent has been obtained,

provide (directly and/or via a ~~subcontractor~~service provider) the services set out in ~~paragraph~~Section S4.2 (the ~~"Profile Administration Services"~~").

*Insert new paragraph 9.1.2 directly after existing paragraph 9.1.1 to read as follows:*

9.1.2 Where the Panel's prior consent to BSCCo providing the Profile Administration Services has not been obtained, a Profile Administrator shall be appointed in accordance with Section E.

*Amend existing paragraph 9.1.2 to read as follows and renumber as paragraph 9.1.3:*

9.1.23 BSCCo shall obtain further Panel consent to continue to provide the Profile Administration Services if a material change occurs in BSCCo's provision of the Profile Administration Services and in any event not less than once every five years may not provide the Profile Administration Services for any period exceeding one year without further Panel approval.

*Insert new paragraph 9.1.4 to read as follows:*

9.1.4 A "material change" for the purposes of this paragraph 9 means a change to BSCCo's systems, processes or resources which is of such a type or magnitude as to raise the reasonable expectation of an impact on BSCCo's ability to efficiently meet its obligations to deliver the Profile Administration Services.

## **9.2 BSCCo's capacity and obligations**

9.2.1 Where the Profile Administration Services are provided by BSCCo, they are provided in its capacity as BSCCo and not as a BSC Agent.

9.2.2 For the duration of any period where BSCCo provides the Profile Administration Services, Section E shall not apply in respect of the provision of those services.

*Insert new paragraph 9.2.3 to read as follows:*

9.2.3 Subject to paragraphs 9.2.1 and 9.2.2, BSCCo shall provide the Profile Administration Services in accordance with the Code.

*Insert new paragraph 9.2.4 to read as follows:*

9.2.4 Where the Profile Administration Services are provided by BSCCo, all obligations and requirements on Parties and other persons in the Code with respect to Profile Administration Services and/or the Profile Administrator shall continue unaltered (mutatis mutandis) notwithstanding that the Profile Administration Services shall be provided by BSCCo.

*Amend existing paragraph 9.2.3 to create new paragraph 9.2.5 and amend the text to read as follows:*

9.2.35 For the duration of any period where BSCCo provides the Profile Administration Services, the following provisions of ~~paragraph~~Section S4 shall be deemed to have been amended as follows:

(a) ~~paragraph~~Section S4.2.1(f) shall not apply;

(b) ~~paragraph~~Section S4.2.2 shall read:

BSCCo shall prepare a set of Regression Coefficients, Group Average Annual Consumption values and Profile Coefficients for each BSC Year on or before 30th November before the beginning of the relevant BSC Year, using data collected from the load research programme carried out by it or its appointee, augmented with data provided by Suppliers which is consistent with the overall sample design;

- (c) ~~paragraph Section~~ S4.2.3 shall read:

BSCCo shall prepare:

- (a) on a quarterly basis, a breakdown by GSP Group of each Profile Class sample, together with a statement of the daily average number of customers for which monitoring equipment has been successfully installed and commissioned for each Profile Class in respect of the previous quarter (a quarter being a period of 3 months commencing on 1st January, 1st April, 1st July and 1st October in any year); and
- (b) an annual report and data analysis plan (in such form as may be specified by the Panel) setting out what load research data it proposes to use, together with a load research plan (in such form as the Panel shall specify) setting out the proposed sample design and sample sizes in respect of the following BSC Year; ~~and.~~

- (d) for the purposes of ~~paragraph Sections~~ S4.2.4, S4.2.5, S4.26, S4.27 and S4.2.8 "Profile Administrator" shall be read as "BSCCo".

Insert a heading for new paragraph 9.3 to read as follows:

### **9.3 Contracts for Profile Administration Services**

Insert new paragraph 9.3.1 to read as follows:

- 9.3.1 Where BSCCo provides the Profile Administration Services, in whole or in part, via a service provider(s), BSCCo shall enter into each contract for the provision of Profile Administration Services in accordance with this paragraph 9.3 (a "Profile Administration Services Contract") and for these purposes:
- (a) a service provider providing Profile Administration Services shall not be considered to be a 'BSC Agent' under the Code; and
- (b) notwithstanding paragraphs 9.2.2 and 9.3.1(a), the provisions of Section E2.4 and Section E3 shall apply to each Profile Administration Services Contract as if references to a BSC Agent included the service provider and references to a BSC Agent Contract included all Profile Administration Services Contracts subject to the provisions of Section E3.2 applying to a service provider of Profile Administration Services in its capacity as such and not in any other capacity which it may have under the Code.

Insert new paragraph 9.3.2 to read as follows:

- 9.3.2 Each Profile Administration Services Contract shall contain terms which provide that the service provider shall make provision for the BSC Auditor to access those things required by Section H5.5.2.

Insert new paragraph 9.3.3 to read as follows:

9.3.3 It is recognised that where paragraph 9.3.1 applies, a service provider of Profile Administration Services may be a Party. Where a service provider of Profile Administration Services is a Party:

- (a) such Party shall have no rights, benefits, obligations or liability in its capacity as a service provider to or against any other Party under the Code, but without prejudice to its rights and obligations:
  - (i) as service provider under its Profile Administration Services Contract; and
  - (ii) in any other capacity under the Code;
- (b) references to a Party or Parties in the Code shall be construed as excluding any service provider of Profile Administration Services (which is a Party) in its capacity as a service provider (but as including such person in any other capacity it may have under the Code); and
- (c) the provision, disclosure and use of any data relating to a Party which is used in or in connection with the Profile Administration Services by a service provider shall not be considered or construed as being made pursuant to any provision of the Code.

*Insert new paragraph 9.3.4 to read as follows:*

9.3.4 Notwithstanding paragraph 9.3.1(a):

- (a) Section H4.6 shall apply to service providers of Profile Administration Services as if references to BSC Agents included service providers and references to BSC Agent Contracts included Profile Administration Services Contracts;
- (b) references to BSC Agents and BSC Agent Contracts in Section W shall be deemed to include, respectively, service providers referred to in paragraph C9.3.1 and Profile Administration Services Contracts; and
- (c) references to BSC Agents in Section W1.4.1 shall be deemed to include BSCCo.

## **SECTION H: General (Version 15)**

### **5. AUDIT**

#### **5.1 BSC Audit**

- 5.1.1 The BSC Auditor shall be appointed in order to undertake, subject to paragraph 5.1.6, an operational audit in relation to each BSC Year (the "**Audit Year**"), or such other period of time as the Panel may determine, on behalf of Parties (the "**BSC Audit**") and such other ad hoc operational audits as the Panel may direct from time to time.
- 5.1.2 The objective of the BSC Audit is to provide assurance (to such level as the Panel considers appropriate) that the provisions of the Code and Code Subsidiary Documents in relation to Settlement and in relation to the calculation of Funding Shares have been complied with in the Audit Year.

*Amend paragraph 5.1.3 to read as follows:*

- 5.1.3 The scope of the BSC Audit (save to the extent covered by the scope of the audit to be carried out by the BM Auditor under paragraph 5.1.6) shall include:
- (a) the submission and application of standing and periodic data, used in connection with Settlement, by Parties and Party Agents;
  - (b) the processes applied to such data pursuant to the Code and Code Subsidiary Documents;
  - (c) the determinations and calculations made by Market Index Data Providers in the provision of Market Index Data (but only to the extent provided in the relevant Market Index Data Provider Contract);
  - (d) the determinations and calculations made by BSC Agents and BSCCo where it provides the Profile Administration Services for the purposes of Settlement;
  - (e) the systems, processes and procedures used and applied (by BSC Agents and BSCCo) for the purposes of or in connection with the foregoing,

provided that from the Performance Assurance Effective Date the Panel may determine a different scope for the BSC Audit with respect to Supplier Volume Allocation.

### 5.3 Required contract terms

*Amend paragraph 5.3.1 to read as follows:*

- 5.3.1 The terms of the relevant BSC Agent Contract shall require the BSC Auditor:
- (a) to disclose to the Panel the existence and nature of all assignments of the BSC Auditor with any Party or BSC Agent or Market Index Data Provider or service provider of Profile Administrative Services referred to in Section C9.3.1 for the carrying out of financial audits;
  - (b) to permit the external auditors of each Trading Party and the Transmission Company to liaise with the BSC Auditor in accordance with normal professional standards, including provision of access to working papers;
  - (c) to require the BSC Auditor to report forthwith any material concerns with respect to matters forming the subject of a BSC Audit;
  - (d) as a condition precedent to its appointment, to execute a confidentiality undertaking, in such form as may be reasonably required from time to time by the Panel, in favour of:
    - (i) each BSC Agent;
    - (ii) each Market Index Data Provider; and
    - (iii) BSCCo on behalf of each Party;
  - (e) with (and only with) the consent of the Panel, to execute a confidentiality undertaking, in such form as may be reasonably required from time to time by the Panel, in favour of such other person as may request the BSC Auditor to do so in connection with the BSC Audit.

### 5.5 Access/co-operation

*Amend paragraph 5.5.2 to read as follows:*

5.5.2 Without prejudice to any specific rights of access provided for elsewhere, each BSC Agent (other than the BSC Auditor) and any service provider of Profile Administration Services referred to in Section C9.3.1 shall be required to provide to the BSC Auditor access to:

- (a) the systems, system specifications and other systems documents used by that BSC Agent or service provider in connection with performing its obligations and functions as BSC Agent or service provider of Profile Administration Services; and
- (b) its premises, personnel, data, information and records.

sufficient to enable the BSC Auditor properly to undertake the BSC Audit in accordance with its terms of reference.

## **5.6 Corrective Action**

*Amend paragraph 5.6.1 to read as follows:*

5.6.1 BSCCo shall instruct the relevant BSC Agent(s) ~~and/or~~ Market Index Data Providers and/or service provider of Profile Administration Services referred to in Section C9.3.1 (as applicable) to carry out, or shall carry out, such corrective action as may be required by the Panel consequent on receipt of the BSC Audit Report.

*Amend paragraph 5.6.2 to read as follows:*

5.6.2 Each relevant BSC Agent ~~and~~ Market Index Data Provider and service provider of Profile Administration Services referred to in Section C9.3.1 shall promptly take such corrective action as may be required by BSCCo in accordance with paragraph 5.6.1.

## **ANNEX X-1: GENERAL GLOSSARY (Version 46)**

*Insert a new definition of “Profile Administration Services Contract” into the general glossary in alphabetical order to read as follows:*

**“Profile Administration Services Contract”:** has the meaning given to that term in Section C9.3.1;