

Modification proposal:	Balancing and Settlement Code (BSC) P296: Introduction of a 'fast track' modification process following the outcomes of the Code Governance Review (Phase 2) (P296)		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	National Grid Electricity Transmission Plc (NGET), Parties to the BSC and other interested parties		
Date of publication:	17 October 2013	Implementation Date:	6 November 2013

Background to the modification proposal

Ofgem's Code Governance Review³ (CGR) sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity in order to increase transparency and accessibility for all industry participants.

The CGR final proposals in March 2010 included the introduction of a self-governance process into the BSC. Under this process, a modification proposal that would be unlikely to have material impacts on, for example, consumers, competition or sustainable development, could be determined by the BSC Panel without reference to the Authority for decision. We considered that allowing such modifications to be determined by industry would reduce costs and improve efficiency by facilitating faster implementation of modification proposals, and ensure that our resources are focussed on matters that are more material to consumers (and/or our other statutory duties), which is consistent with our Better Regulation duties.

In April 2012, we initiated a second phase CGR (CGR Phase 2) with the aim of extending the arrangements implemented through the CGR to other industry codes.⁴ At the same time, we considered whether any improvements could be made to the self-governance processes introduced by the CGR. Our CGR2 final proposals,⁵ which were implemented through licence modifications,⁶ introduced the requirement for a 'fast track' self-governance process to be included within the BSC. This process is aimed at ensuring further efficiencies in order that very minor 'housekeeping' changes could be made by the BSC Panel without the requirement to follow the full code modification process.⁷

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 CGR final proposals are here: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

⁴ The CGR focussed primarily on the BSC, CUSC and UNC.

⁵ CGR Phase 2 final proposals are here: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

⁶ In effect 5 August 2013.

⁷ The Electricity Transmission standard licence condition (SLC) C3 provides that unanimous BSC Panel support is requirement and that BSC parties, NGET and the Authority can object to a 'fast track' modification, as an appropriate safeguard.

The modification proposal

P296 was raised by the BSC Panel in order to implement the new 'fast track' self-governance process into the BSC.

The modification proposal recognises that the fast track self-governance modification process would only be used for housekeeping type changes, such as correcting typographical errors and making factual amendments including updating names or addresses in the BSC. The proposed solution incorporates the relevant licence provisions, ensuring that modifications made through the fast track process would require unanimous support from the BSC Panel and that the modification may not be made via the fast track process if any party, NGET or the Authority objects to this within 15 working days of being notified.

BSC Panel⁸ recommendation

The BSC Panel voted on P296 at their meeting on 12 September 2013. The Panel considered that P296 would better facilitate applicable BSC objectives (a) and (d) and therefore recommended that the proposed modification be approved.

The Authority's decision

The Authority has considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 12 September 2013. The Authority has considered and taken into account the responses to Elexon's⁹ consultation which are attached to the FMR.¹⁰ The Authority has concluded that:

1. implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC.¹¹ and
2. directing that the modification be made is consistent with the Authority's principal objective and statutory duties.¹²

Reasons for the Authority's decision

We have considered the views of the BSC Panel and the nine respondents to the industry consultation who unanimously agreed with the BSC Panel's initial recommendation that P296 should be approved. We set out below our views on which of the applicable BSC objectives are better facilitated by the modification. We consider that the modification has no impact on the other BSC objectives.

BSC Objective (a) the efficient discharge by the licensee of the obligations imposed upon it by this licence;

The recent Electricity Transmission licence modifications made to introduce the fast track self-governance process into the BSC are now in force. The changes proposed by P296 will ensure that NGET can efficiently discharge its licence obligations relating to the fast track process through the BSC governance procedures. We therefore consider that this modification better facilitates applicable BSC objective (a).

⁸ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC.

⁹ The role and powers, functions and responsibilities of Elexon are set out in Section C of the BSC.

¹⁰ BSC modification proposals, modification reports and representations can be viewed on the Elexon website at www.elexon.com

¹¹ As set out in Standard Condition C3(3) of NGET's Transmission Licence, see: <http://epr.ofgem.gov.uk/index.php?pk=folder380751>

¹² 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.

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

One consultation respondent noted that enabling housekeeping code changes to be dealt with by the BSC Panel would reduce the administrative workload of the BSCCo and BSC parties. The respondent considered this would achieve increased efficiency in the implementation and administration of the BSC. It was further noted in the consultation responses that the fast track process is beneficial as it will allow for the speedy progression and implementation of minor housekeeping changes.

We agree that applicable BSC Objective (d) is better facilitated by P296. It will avoid unnecessary use of industry resource in undertaking and responding to consultations where a very minor housekeeping change to the code is required, for example, due to a typographical error or some factual change. We consider that the introduction of this process provides a proportionate and pragmatic way of dealing with very minor changes. The fast track self-governance criteria, set out in the licence, will ensure that there are appropriate safeguards against any changes that might have a material impact on parties being progressed in this way.

We note the comments of one respondent that the availability of the fast track process should not lead to a reduction in assessment and scrutiny of legal drafting, owing to the increased ease with which minor corrections can be made later. We agree that this modification should not lead to a decrease in scrutiny over the drafting of modifications and we do not anticipate that 'fast track' changes should be frequently required.

Decision notice

In accordance with Standard Condition C3 of NGET's Transmission Licence, the Authority hereby directs that modification proposal BSC P296: *Introduction of a 'fast track' modification process following the outcomes of the Code Governance Review (Phase 2)* be made.

Lesley Nugent
Head of Industry Codes and Licensing
Signed on behalf of the Authority and authorised for that purpose