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for energy consumers

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Date: 22 February 2018

Dear Douglas,

P361 'Revised treatment of BSC Charges for Lead Parties of Interconnector BM Units' – decision on urgency

On 31 October 2017, Nord Pool Spot ('the Proposer') raised P361 'Revised treatment of BSC Charges for Lead Parties of Interconnector Balancing Mechanism (BM) Units' modification proposal ('P361').¹ This proposal seeks to amend the Balancing and Settlement Code ('BSC') in order to remove Interconnector Balancing Mechanism Units ('BMUs') Credited Energy Volumes from the BSC Charge calculations. On 9 February 2018, Elexon² wrote to us on behalf of the BSC Panel to recommend that P361 be treated as an Urgent Modification Proposal.³

We have decided that P361 should not be progressed on an urgent basis. While we acknowledge the Proposer considers this is to be an important issue, and the views of the Panel, we do not consider that a case for urgency has been demonstrated.

The proposal

Elexon's costs and the contracted costs of BSC Agents are paid for by the BSC Parties⁴ (referred to as 'BSC Charges'). The amount each BSC Party pays for certain BSC Charges depends on the volume of energy they generate, supply or trade.

Currently, in the BSC Interconnector flows are treated as production or consumption for the purposes of calculating BSC Charges. As an Interconnector User⁵, the Proposer argues that it, and other Interconnector Users, have no control over the volumes assigned to these BMUs, and no ability to recover these costs from the market. P361 seeks to amend the BSC to exclude Interconnector BMU's Credited Energy Volumes from the BSC Charges calculations.

When the proposal was originally raised in October 2017, we understand that the Proposer considered requesting it be treated as an Urgent Modification proposal but chose to wait and assess whether the issue became significant enough during the 2017/18 winter to

¹ <https://www.elexon.co.uk/mod-proposal/p361/>

² Elexon is responsible for administering the BSC.

³ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

⁴ As defined in the BSC.

⁵ As defined in the BSC.

justify requesting urgency. The Proposer considers that P361 should now be treated as an urgent modification because these charges have become, in the Proposer's view, significant enough that they are having a material impact on Nord Pool's ability to meet its ongoing obligation as a Nominated Electricity Market Operator (NEMO)⁶, under the Capacity Allocation and Congestion Management Guideline (CACM)⁷. Further to this, the legal guidance sought by the workgroup suggests there could be a risk that BSC Charges on Lead Parties⁸ of Interconnector BMUs are contrary to EU Law.

The Proposer has not proposed any amendment to the current approved P361 progression timetable.

BSC Panel view

The BSC Panel considered the Proposer's request on 8 February 2018 in accordance with Section F, paragraph 2.9 of the BSC. The BSC Panel unanimously agreed that P361 should be treated as an Urgent Modification Proposal for the reasons set out by the Proposer.

Reflecting the Proposer's position, the BSC Panel recommended P361 progress on the current approved timetable.

Our views

In reaching our decision, we have considered the details contained within the proposal, the Proposer's justification for urgency and the views of the BSC Panel. We have assessed the request against the urgency criteria set out in Ofgem's published guidance, in particular, whether it is linked to "an imminent issue or a current issue that if not urgently addressed may cause a significant commercial impact on parties, consumers or other stakeholder(s)".⁹

We acknowledge that the Proposer considers that this is an important issue that should be proceeded without further delay. However, the fact that a matter may be considered important, does not equate to a need to progress a modification proposal on an urgent basis. Our view is that the Proposer, while they have argued that they are facing an issue that may have (or potentially is already having) a significant commercial impact on it, has not adequately demonstrated a case for why the issue must be urgently addressed.

This is compounded by the fact that neither the Proposer or BSC Panel have proposed an urgent timetable. Elexon also notes that the current approved timetable is on track. In general, a request for a modification proposal to be treated as urgent is made to allow for an expedited process compared to the standard modification process timescales. If no change to the current approved timetable is needed at this time, it appears that the Proposer and BSC Panel agree that the original timetable should be followed. It also follows that if no change to the timetable is proposed, granting the urgency request would have no practical effect. It is therefore our view that P361 not proceed as an Urgent Modification Proposal.

Next steps

On 2 January 2018, the Proposer amended their proposal to seek recovery of the relevant costs retrospectively from 31 October 2017.

As stated in our published guidance on urgency, the general principle is that rules ought not to change the character of past transactions, completed on the basis of the existing rules. That said, there may be exceptions to this general rule, and each modification with a

⁶ A Nominated Electricity Market Operator or 'NEMO' is an entity designed by the competent authority to perform tasks related to single day-ahead or single intraday coupling.

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R1222>

⁸ As defined in the BSC.

⁹ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria-0>

proposed retrospective effect will be assessed on a case-by-case basis. As also set out in our published guidance, notwithstanding the points raised above, we recognise that a retrospective application of a modification may negate the need for its development to follow an urgent or otherwise contracted timetable, and vice versa.

We understand that Elexon is already taking steps to raise awareness of P361 and the potential for retrospective application, were it to be approved. We encourage such action to continue in line with our published guidance.

For the avoidance of doubt, in not granting this request for urgency, we have made no assessment of the merits of P361 and nothing in this letter fetters the discretion of the Authority in respect of this modification proposal.

If you have any comments or questions about this letter, please contact Anna Fenton at anna.fenton@ofgem.gov.uk.

Yours sincerely

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For and on behalf of the Authority