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| Modification proposal: | Balancing and Settlement Code (BSC) [P374]: Aligning the Balancing and Settlement Code (BSC) with the European Balancing Guideline (EBGL) (P374) | | |
| Decision: | The Authority ¹ directs that this modification be made ² | | |
| Target audience: | National Grid Electricity System Operator (NGESO), Parties to the BSC, the BSC Panel and other interested parties | | |
| Date of publication: | 14 November 2019 | Implementation date: | 21 November 2019 |

Background

The European Electricity Balancing Guideline (EU) 2017/2195 (EBGL), came into force on 18 December 2017. It aims at enhancing the efficiency of European and national balancing markets, as well as contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the European Union.

On 8 October 2019, we published our decision to conditionally confirm that the national terms and conditions related to balancing (balancing T&C) proposed by the Electricity System Operator (ESO) are the terms and conditions required by Article 18 of the EBGL.³ Implementation of related code changes such as those proposed under P374, is one of the conditions of our decision to confirm the balancing T&C.

Article 6 EBGL contains a process for the amendment of the balancing T&C. It runs alongside the change process of the Balancing and Settlement Code (BSC). As several of the balancing T&C required by the EBGL are at the same time provisions of the BSC, they would be subject to two amendments processes.

P374 was raised on 5 November 2018 to ensure the alignment of the BSC with the provisions of the EBGL, specifically with regard to the change process of the BSC and to its derogation process.

Subsequent code modifications have since been raised to ensure a full alignment with the EBGL requirements. For example, P392 has been raised to align the EBGL amendment process and consultation requirements. The final goal is to have only one amendment process and one consultation process, which satisfy both the BSC and EBGL requirements.

The modification proposal

As part of the P374 final modification report, we have received a proposed modification and an alternative modification for our assessment.

Proposed modification

The proposed modification seeks to amend Sections H10.1.1 and H10.4.3(d) of the BSC so that derogations cannot be granted from any BSC provision that constitutes balancing T&C.

The proposed modification also seeks to amend the definition of "Self-Governance Criteria" as laid out in Annex X-1 of Section X of the BSC. The modification would preclude any modification to BSC provisions that constitute balancing T&C from being progressed as Self-Governance. The only exception would be for housekeeping modifications.

¹ 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.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ Our decision on the balancing T&C can be found at: <https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing>

Alternative modification

The alternative modification differs from the proposed modification as it does not preclude derogations from BSC provisions that constitute balancing T&C. Under the alternative modification, the status quo is maintained in that each derogation application would be assessed on a case-by-case basis against the existing derogation criteria, which includes consideration of compliance with requirements arising from EU regulations.

The alternative modification does align with the proposed modification in that it provides the same change with regards to the Self-Governance criteria.

BSC Panel⁴ recommendation

At the BSC Panel meeting on 12 September 2019, the BSC Panel unanimously agreed that the P374 alternative modification better facilitates the applicable BSC objectives (c) and (e) and unanimously recommended to the Authority that the alternative modification should be approved.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 18 September 2019. We have considered and taken into account the responses to the industry consultation which are attached to the FMR⁵. We have concluded that:

- the implementation of the alternative modification will better facilitate the achievement of the applicable BSC objectives;⁶ and
- directing that the alternative modification be made is consistent with our principal objective and statutory duties.⁷

Reasons for our decision

We consider that the alternative modification would better facilitate BSC objective (e) and has a neutral impact on applicable objective (c). Conversely, we consider that the proposed modification overall better facilitates neither applicable objective (c) nor applicable objective (e). We consider that both the proposed and alternative modifications have a neutral impact against the other BSC objectives.

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

Derogations

We believe that the proposed modification would have a negative impact on applicable BSC objective (c) in comparison to the baseline of the current BSC. Under the objective of maintaining compliance with the EBGL, we consider that the proposed modification would adopt an overly restrictive approach to derogations. It would prohibit all derogations from any BSC provision which is captured within the balancing T&C and could risk limiting potential innovation.

⁴ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and Standard Special Licence Condition C3 of the Electricity Transmission Licence available at: www.epr.ofgem.gov.uk

⁵ All documents related to the BSC modification proposal, including the FMR, can be found at the following address: <https://www.elexon.co.uk/mod-proposal/p374/>

⁶ As set out in Standard Condition C3(3) of the Electricity Transmission Licence: <https://epr.ofgem.gov.uk>

⁷ 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.

In comparison, the alternative modification relies on the already existing safeguards to ensure compliance with the EBGL. It does not limit the BSC derogations that may be granted to BSC Parties, requiring instead to have each application assessed on a case-by-case basis as per the existing arrangements. This would therefore have a neutral impact on applicable objective (c) in comparison to the baseline of the current BSC.

We note that the proposer asserts that the balancing T&C cannot be derogated against once approved by the Authority, as Article 18 EBGL is not listed as a provision that can be derogated from under Article 62(2) EBGL. While we agree that the TSO cannot seek a derogation from having balancing T&C, we do not believe EBGL precludes the balancing T&C from having a derogation process for BRPs and BSPs. Section H10 is meant to be an integral part of the balancing T&C, which therefore contain their own derogation process.

Self-governance criteria

We believe that both the proposed modification and alternative modification will have a neutral impact on the applicable BSC objective (c), with regards to the proposed changes to the self-governance criteria definition. This is because changes to the self-governance criteria while it may affect the timing of a decision, it does not impact the content of the decision and its impact on competition.

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

Self-governance criteria

We agree that the self-governance criteria must be amended to exclude any modification seeking to amend BSC provisions that constitute the balancing T&C. Self-governance modifications are not subject to Authority approval whereas Article 6(3) EBGL states that the Authority must approve all amendments to balancing T&C. Both modifications would ensure that this is achieved and would therefore better facilitate objective (e) in comparison to the baseline of the current BSC.

Derogations

With regards to the derogation process, we believe that the alternative modification would have a neutral impact on the applicable BSC objective (e) as it would maintain the status quo. Conversely, the proposed modification would have a negative impact on the applicable BSC objective (e) as it would apply stricter criteria than those required by EBGL which does not prohibit the balancing T&C from containing a derogation process. The alternative modification would therefore have a more beneficial impact than the proposed modification in this regard.

Decision notice

In accordance with Standard Condition C3 of the Transmission Licence, the Authority hereby directs that the alternative modification proposal BSC P374 'Aligning the BSC with the EBGL' be made.

Leonardo Costa
Senior Manager SO/DSO

Signed on behalf of the Authority and authorised for that purpose