

Government Response to ‘Offshore Electricity Transmission – A further Joint Ofgem/DECC Regulatory Policy Update’

Annex 2

Balancing & Settlement Code (BSC)

URN 09/690 (DECC) & 23b/09 (Ofgem)

23 March 2009

This annex sets out further change proposals for the Balancing and Settlement Code (BSC) that have been developed by ELEXON for the implementation of the proposed offshore transmission regime.

We consider that the changes proposed in this annex are robust and accurately reflect the policy position set out in the consultation documents. **We propose that the Secretary of State makes the changes set out in the annexes to this consultation, subject to evidence to the contrary. We would welcome respondents' views.**

These change proposals have been developed in light of responses to our June 2008 and November 2008 Policy Update, further development of offshore transmission policy and consideration of practicalities of this matter.

We noted in our November 2008 Policy Update that there was a dependency between the BSC definition of Great Britain and Schedule 1 of NGET's electricity transmission licence and that any review of that term may lead to the withdrawal or amendment of some changes that have been proposed in each of the relevant documents. We have revised the definition of Great Britain and removed the proposed changes to section H3.2.1 c) and K5.4.8 a).

There have been two decisions to approve BSC modification proposals¹. ELEXON has advised that changes made under normal governance rules, since our November 2008 Policy Update have not resulted in different treatment being required offshore.

Details on the changes made since our November 2008 Policy Update can be found in Chapter 7 of this consultation document. Detail on the responses received to the November 2008 Policy Update can be found in Chapter 8.

Change proposals have been developed for the following parts of the BSC. ELEXON do not consider that changes were required to other parts of the BSC to implement the proposed offshore transmission regime.

BSC Section	Version of Baseline Text	Changes proposed to:
Section B 2.6.1	14.0 9.0	Extend the BSC to include Offshore Transmission
Section C 2.1.4, 3.1.1(r)	15.0	
Section F 2.1.11	13.0	
Section H 4.6.5, 4.7		

¹ P228 (Replace Balancing Mechanism Reporting Service (BMRS) High Grade Service charge amounts/rates with references to a BSC Website schedule'), planned for implementation on 1 April 2009 and P 226 (Improving Large Combustion Plant Directive Information Disclosure), planned for implementation in June 2009.

Section K 1.3.2 Section X, Annex X-1	13.0 26.0 39.0	Text amended to facilitate NGET as the customer for an offshore transmission system connected to an onshore distribution system.
Section X, Annex X-1	39.0	New definitions concerning Offshore including the introduction of Offshore Transmission Connection Point

OFFSHORE TRANSMISSION – PROPOSED DRAFTING CHANGES TO BSC

Section B (Version 14.0)

Paragraph 2.6.1(a) shall be amended as follows:

2.6 Appointment of further industry member

2.6.1 If, at any time at which no person is appointed as Panel Member pursuant to this paragraph 2.6, in the opinion of the Panel Chairman:

(a) there is any class or category (by type of Plant or Apparatus or otherwise) of person generating or supplying electricity in Great Britain [and/or Offshore](#), whose members (as such a class or category):

(i) are exempt from the requirement to hold a Licence; and

(ii) have interests in respect of the Code; and

(b) those interests:

(i) are not reflected in the composition of Panel Members for the time being appointed, but

(ii) would be so reflected if a particular person were appointed as an additional Panel Member

then the Panel Chairman may appoint that person as a Panel Member by giving notice of such appointment to the Panel Secretary.

Section C (Version 9.0)

Paragraph 2.1.4 shall be amended as follows:

2.1 Constitution of BSCCo

2.1.1 Subject to paragraph 2.1.2, the Memorandum and Articles of Association of BSCCo shall be in the form designated pursuant to the Implementation Scheme.

2.1.2 The form of the Memorandum and Articles of Association of BSCCo (as amended by paragraphs 2.1.4 and 2.1.5) shall be treated as incorporated in and forming part of the Code for the purposes of enabling such form to be modified, and such form shall accordingly be capable of being modified, by way of Code Modification made pursuant to a Modification Proposal and otherwise in accordance with Section F; and the Memorandum and Articles of Association of BSCCo shall be amended so as to be in any such modified form.

2.1.3 The authorised and issued share capital and accounting reference date of BSCCo shall be those prevailing at the Code Effective Date.

2.1.4 All references to "England and Wales" in the Memorandum and Articles of Association of BSCCo shall be deemed to be references to "Great Britain [and Offshore](#)".

- 2.1.5 For the purposes of the Articles of Association of BSCCo, the terms "Transmission Company" and "Transmission Licence" shall have the meaning given to those terms in Annex X-1 of the Code.

Paragraph 3.1.1(r) shall be amended as follows:

3.1 General

- 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.

Section F (Version 15.0)

Paragraph 2.1.11 shall be amended as follows:

2.1 Modification Proposals

2.1.11 It shall be a condition to the right to make a proposal to modify the Code under this paragraph 2.1 that the Proposer:

- (a) assigns fully, irrevocably and unconditionally any and all present and future rights, IPRs or moral rights it may have in such proposal (as regards use or application in Great Britain and Offshore) to BSCCo and each Proposer acknowledges and agrees that any such rights, IPRs and moral rights shall vest in BSCCo unconditionally; and

- (b) warrants that, to the best of its knowledge, information and belief, no other person has asserted to the Proposer that such person has any IPRs or moral rights or rights of confidence in such proposal.

Section H (*Version 13.0*)

Paragraph 3.2.1(c) shall be amended as follows:

3.2 Consequences of Default

3.2.1 Upon the occurrence of a Default by a Defaulting Party, the Panel may take one or more of the following steps while such Default persists and for the duration of such Default (in each case at such time as it sees fit and having regard to all the circumstances of the Default):

- (a) notify each other Party of such Default;
- (b) suspend one or more of the rights or take one or more of the steps referred to in paragraph 3.2.2 (subject to any prior consultation or approval as specified in paragraph 3.2.2) in respect of the Defaulting Party, either generally or progressively and either wholly or partially and for such period as the Panel considers appropriate;
- (c) in the case of a Default by an Interconnector Error Administrator of the type referred to in paragraph 3.1.1(a), remove the registration of the Interconnector Error Administrator and require the Interconnected System Operator (with the prior approval of the Authority or, in the case an Interconnector connected to an External System outside [the National Electricity Transmission System Operator Area Great Britain](#), the Secretary of State) to assume the future responsibilities of such Interconnector Error Administrator acting in that capacity;
- (d) with the prior approval of the Authority, require the Defaulting Party and the Transmission Company or the Distribution System Operator (as the case may be) to de-energise the Plant or Apparatus comprising one or more of the BM Units (other than Interconnector BM Units) for which the Defaulting Party is the Lead Party (and each Party hereby irrevocably and unconditionally consents to such de-energisation);
- (e) expel the Party from the Code subject to and in accordance with Section A5; and/or
- (f) notify the FAA on behalf of the BSC Clearer to treat the Party as a Defaulting Party for the purposes of Section N.

Paragraph 4.6.5 shall be amended as follows:

4.6 Data Ownership

4.6.5 So far as there are any IPRs in any relevant BSC data created, produced or acquired by or on behalf of any relevant person:

- (a) all IPRs in the relevant BSC data in Great Britain [and in relation to Offshore](#) shall (as between BSCCo and all other relevant persons but

without prejudice to the provisions of any BSC Agent Contract as to such ownership) be the property of and vest in BSCCo;

- (b) subject to the other provisions of this paragraph 4, to the extent to which such data is (pursuant to provisions of the Code) provided to or available to any relevant person, that relevant person is authorised to use and disclose such data for purposes contemplated by the Code and in connection with its operations under the Code; and
- (c) the other relevant person shall do all such things and sign all documents or instruments reasonably necessary in the opinion of BSCCo to enable BSCCo to obtain, perfect and prove its rights in the relevant BSC data.

Paragraph 4.7.1, 4.7.2 and 4.7.3 shall be amended as follows:

4.7 Other Intellectual Property Rights

- 4.7.1 The Intellectual Property Rights in and title to the BSCCo Materials in Great Britain [and in relation to Offshore](#) shall, as between BSCCo and all other Parties, be owned by BSCCo (or by a Subsidiary of BSCCo on behalf of BSCCo).
- 4.7.2 Each Party hereby assigns to BSCCo by way of assignment of all present and future rights all IPRs it may have at any time in the BSCCo Materials in Great Britain [and in relation to Offshore](#) (except to the extent those rights are already owned by BSCCo).
- 4.7.3 By virtue of this paragraph 4.7, all IPRs in the BSCCo Materials in Great Britain [and in relation to Offshore](#) will vest in BSCCo on their creation or acquisition.

Section K (Version 26)

Paragraph 1.3.2 shall be amended as follows:

1.3 Obligations of Parties in relation to Systems Connection Points

- 1.3.2 For the purposes of paragraph 1.3.1, the Party responsible for a Systems Connection Point shall be:
 - (a) in the case of a Grid Supply Point [other than an Offshore Transmission Connection Point](#), the Distribution System Operator whose System is directly connected to the Transmission System at that point;
 - (b) in the case of a Distribution Systems Connection Point, the Distribution System Operator nominated in accordance with paragraph 1.3.3; [and](#)
 - (c) [in the case of an Offshore Transmission Connection Point, the Transmission Company.](#)

Paragraph 5.4.8 shall be amended as follows:

5.4 Appointment of Interconnector Administrator and Interconnector Error Administrator

5.4.8 In relation to paragraph 5.4.5(c)(ii):

- (a) the Transmission Company may only de-energise the Interconnector with the approval of the Panel and with the approval, in relation to an Interconnector connected to an External System in the National Electricity Transmission System Operator Area–Great Britain, of the Authority or, in relation to an Interconnector connected to an External System outside the National Electricity Transmission System Operator AreaGreat Britain, of the Secretary of State;
- (b) subject to paragraph (a), each Party hereby consents to such de-energisation;
- (c) each relevant Interconnector User shall indemnify and keep indemnified the Interconnected System Operator on demand against any and all liability, loss or damage which it may suffer by reason of effecting such de-energisation (but without prejudice to any agreement or arrangement between the relevant Interconnector Users and the Interconnected System Operator outside the terms of the Code in respect of such matters).

Section X, Annex X-1 (Version 39.0)

The following new terms/expressions shall be inserted in Table X-1 such that they appear in alphabetical order:

<u>"Offshore":</u>	<u>means in Offshore Waters;</u>
<u>"Offshore Transmission Connection Point":</u>	<u>means a Systems Connection Point at which the Offshore Transmission System is connected to a Distribution System;</u>
<u>"Offshore Transmission System":</u>	<u>has the meaning given to that term in the Grid Code;</u>
<u>"Offshore Waters":</u>	<u>has the meaning given to "offshore waters" within Section 90(9) of the Energy Act 2004;</u>
<u>"National Electricity Transmission System Operator Area":</u>	<u>has the meaning set out in Schedule 1 to the Transmission Licence;</u>

The following terms/expressions shall be amended as follows within Table X-1

"Great Britain":	<u>means the landmass of England, Wales and Scotland, including internal waters;</u> has the meaning given to that term in Schedule 1 of the Transmission Licence;
"Grid Supply Point":	means a System Connection Point at which the Transmission System is connected to a

	Distribution System and includes an Offshore Transmission Connection Point ;
"Transmission System":	has the meaning given to the term 'GB National Electricity Transmission System' in the Transmission Licence except that prior to the BETTA Effective Date every reference to Great Britain and Offshore in such term shall be deemed to be a reference to England and Wales;