

December 2001

**MODIFICATION REPORT**  
**MODIFICATION PROPOSAL P28 -**  
**REVIEW OF GOVERNANCE AND**  
**MODIFICATION PROCEDURES**

**Prepared by ELEXON on behalf of the Balancing  
and Settlement Code Panel**

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## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Summary and Background

P28 is the amalgamation of three separate Modification Proposals (P21, P23 and P24), and seeks to improve areas of the operation of the Modification Procedures and the Panel and Panel Committees under the BSC. P28 was initially submitted to the Definition Procedure, in order to establish a specific Proposed Modification for further consideration and assessment. The Definition Procedure was completed by the Governance Modification Group (GMG) and the P28 Definition Report was presented to the BSC Panel at its meeting on 23 August 2001.

The original Modification Proposals, along with representations made by interested parties during the Definition Procedure, suggested a number of potential changes. The GMG took due account of all representations received, along with the original proposals, and set down a number of options that might be considered. Furthermore, recognising that a single proposal, or an alternative, must ultimately be determined upon, a single Proposed Modification (known as the 'consolidated proposal') was established. These potential changes and the consolidated proposal are all fully detailed within the P28 Definition Report.

At its meeting on 23 August 2001, the Panel recommended that P28 should proceed to the Assessment Procedure. The Panel also recommended that, as part of that Assessment procedure, the following specific activities should be pursued:

- A further consultation should take place with interested parties;
- An interim report should be submitted to the Panel setting out the GMG's provisional findings;
- Commentaries on the proposals from the Authority (in accordance with BSC paragraph F2.6.10), the Panel and ELEXON should be obtained; and
- Consideration of the development of an Alternative Modification should be undertaken, in light of the above.

A Consultation Document was issued to interested parties on 12/09/01 and the representations subsequently received were considered by the GMG, together with a commentary provided by ELEXON. On the basis of these representations, the GMG produced two interim reports, which were considered by the Panel at its meetings on 18/10/01 and 15/11/01. In the light of the representations and commentary provided, along with an assessment of the consolidated proposal, possible variations and refinements were identified in the reports. The Authority's provisional views were provided at the Panel meetings and, the Panel provided its views by identifying issues associated with the consolidated proposal (as refined). Where such issues were raised, the Panel identified where a variant on the particular aspect of the proposal dealt with the issue, thus identifying the composition of an Alternative Modification. The Panel instructed the GMG to assess both the consolidated proposal and the identified alternative, and to develop the proposed legal text in respect of the alternative only.

The P28 Assessment Report was considered by the Panel on 13/12/01 and forms Attachment 1 to this Modification Report. This Assessment Report includes a full description of the Proposed Modification and the Alternative Modification that arose from the Panel's consideration of the potential variations put forward by the GMG, along with appropriate legal drafting and impact analyses. The legal drafting in respect of the alternative can be found in Attachments 1 and 2 to the Assessment Report (Attachment 1 to this Report). The Panel directed that P28 be submitted to the Report Phase, with a recommendation that the Alternative Modification be approved.

## 1.2 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Assessment Phase, and the resultant findings of this report, the BSC Panel recommends that:

**The Alternative Modification, as described in Section 4.3 of this report, be approved and implemented 10 working days after the date of the Authority's determination.**

## 1.3 Rationale for Recommendations

A detailed assessment of each element of the Proposed Modification and the Alternative Modification, with reference to the Applicable BSC Objectives, can be found in the P28 Assessment Report (Attachment 1 to this report).

Overall, the Panel is of the view that Alternative Modification P28 will better achieve the objective set out in Transmission Licence Condition C3(3)(d); 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'. It is further suggested that, to a lesser extent, the proposal may better achieve Transmission Licence Condition C3(3)(c); 'Promoting effective competition in the generation and supply of electricity and (so far as is consistent therewith) promoting such competition in the sale and purchase of electricity'.

It is also noted that any proposal to modify elements of the Modification Procedures themselves must fulfil the underlying requirements in Transmission Licence Condition C3(4) which also sets down certain requirements for modification of the BSC in general. Unlike proposed modifications to the rest of the Code, therefore, the Applicable BSC Objectives in relation to the proposed amendment of the modification procedures are the requirements of LC C3(4) (to the extent that they do not conflict with C3(3), along with the requirements of C3(3). The Panel is of the view that those elements of the alternative proposal that seek to amend the BSC Modification Procedures would better these objectives.

It should be noted, however, that approval of P28 may lead to an inconsistency with the Transmission Licence until or unless amended. The particular element of P28 that leads to this conclusion is that of the Panel being able to apply to bring forward implementation dates for Approved Modifications. Under the current drafting of the Transmission Licence, reference is made (in Licence Condition C3(4)) to implementation dates being extended only. By implication, the bringing forward of such dates is precluded. Hence, this condition would need to be changed. This would be a matter for the Authority to progress with NGC.

## 2 INTRODUCTION

This Report has been prepared by ELEXON Ltd., on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the BSC.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC website, at [www.elexon.co.uk](http://www.elexon.co.uk)

## 3 PURPOSE AND SCOPE OF THE REPORT

BSC Section F sets out the procedures for progressing proposals to amend the BSC (known as 'Modification Proposals'. These include procedures for proposing, consulting on, developing, evaluating and reporting to the Authority on potential modifications.

The BSC Panel is charged with supervising and implementing the modification procedures. ELEXON provides the secretariat and other advice, support and resource required by the Panel for this purpose. In addition, if a modification to the Code is approved or directed by the Authority, ELEXON is responsible for overseeing the implementation of that amendment (including any consequential changes to systems, procedures and documentation).

A Modification Report must be prepared and submitted to the Authority in respect of each proposed modification and must contain:

- (a) The recommendation of the Panel as to whether or not the Proposed Modification or any Alternative Modification should be made;
- (b) The proposed Implementation Date for implementation of the Proposed Modification or any Alternative Modification;
- (c) The matters set out in Annex F-1 of the BSC. This will usually be in the form of the relevant Assessment Report where the Proposal has been submitted to a Modification Group prior to the Report Phase;
- (d) An explanation of the Panel's rationale should the Panel form a different view of any matters contained in the Modification Group Report; and
- (e) A summary of the representations made by Parties and interested third parties during the consultation undertaken in respect of the Proposed Modification and any Alternative Modification.

## **4 DESCRIPTION OF PROPOSED MODIFICATION**

### **4.1 The Modification Proposals**

Modification Proposal P28 is an amalgamation of three Modification Proposals:

- P21: Review of Modification Group and Panel Procedures;
- P23: Review Of The Imbalance Settlement Group (ISG); and
- P24: Review Of The Modification Procedures

These proposals all seek to improve the operation of the BSC governance arrangements, specifically in relation to the operation of the Panel, Panel Committees, Modification Groups and the Modification Procedures. Given the common ground of these modifications and the desirability of developing a consistent package of proposals in this area, the Panel directed that the three proposals should be amalgamated and progressed as a single modification.

#### **P21**

P21, raised on 20 June 2001 by Amerada Hess Gas Ltd., seeks to initiate a review of the Modification Procedures and the operation of the BSC Panel and associated subgroups to ensure maximum transparency to the industry and the efficient operation of the processes. Suggestions for change include:

- Specifying that all Modification Group and (non-confidential) Panel, ISG and SVG business should be held in open session;
- Revising the procedures for formation of Modification Groups; and
- Streamlining aspects of the Modification Procedures, including consideration of how issues may be identified prior to being submitted as Modification Proposals.

#### **P23**

P23, raised on 22 June 2001 by Dynegy, focuses on the ISG Panel Committee, suggesting that all meetings of the group should be held in open session and should allow attendees to make contributions. It is also suggested that the group's remit should be developed such that it becomes a standing 'workstream' to consider modifications and other energy and imbalance issues.

#### **P24**

P24, also raised on 22 June 2001 by Dynegy, seeks to initiate a review of the Modification Procedures to improve the efficiency and inclusivity of the BSC governance process. Specific suggestions for change include:

- Establishing Standing Groups to consider modifications in the same area;
- Opening all groups to attendees and allowing all attendees to contribute, removing any distinction between group members and attendees; and
- Reducing the number of stages during the lifecycle of a Modification Proposal to ensure timely progress.

## 4.2 The Consolidated (Original) Proposal

Under the Definition Procedure, The GMG developed a consolidated (original) proposal, a full description of which can be found in the P28 Definition Report. However, the consolidated (original) proposal may be summarised as follows:

**a) Panel;**

- i) All non-confidential Panel business to be held in open session
- ii) Any Panel Member to be able to invite comment from the floor

**b) Panel Committees;**

- i) ISG and SVG to operate in the same way to the Panel.

**c) Modification Groups;**

- i) Standing Groups to deal with Modifications in general areas
- ii) Standing Groups to consider issues in advance of specific Modification Proposals being raised
- iii) No core membership, self-selection, no impartiality and no indemnity for Standing and Modification Groups
- iv) ELEXON to be responsible to the Panel for delivery of reports etc.

**d) Modification Procedures;**

- i) Evaluation procedure to replace Definition and Assessment
- ii) Only one mandatory consultation
- iii) Panel recommendation to be made after consultation

Following consideration of consultation responses, the GMG also incorporated two refinements:

- iv) Re-consultation to be mandated if material changes arise for a Pending Modification.
- v) Panel to be able to bring forward implementation dates.

## 4.3 The Alternative Modification

Following discussion by the Panel of the two Interim Reports and the Authority's provisional thinking having been provided to the Panel, the GMG was instructed to develop the following alternative proposal:

**a) Panel and Committees**

- i) All non-confidential (Panel and Committee) business to be held in open session, where practical. The default position and presumption would be that a meeting would be in open session and it would be for the relevant Chairman to determine otherwise on grounds of practicality or confidentiality. The TDC and the PAB will remain entirely confidential.

**b) Modification Groups**

- i) All Modification Group business to be held in open session by default subject to confidentiality/practicality, as per Panel/Committees above.



- ii) The Panel may establish standing Modification Groups.
- iii) Modification Groups will be able to consider issues, ahead of there being any formal Modification Proposal. Terms of Reference will prescribe the scope and budgetary controls for such discussions and the Modification Group Chairman will exercise discretion in considering whether new issues are within scope. Routine reporting to the Panel will enable review of such business to be undertaken.

**c) Modification Procedures**

- i) Re-consultation and a commensurate extension to the Report Phase will be allowed for, if late material changes arise, at the Panel's discretion. The Panel's decision to extend the Report Phase will be subject to Authority consent.
- ii) The Panel may apply to the Authority to bring forward the proposed implementation date of an Approved Modification. Any such application will be preceded by consultation with parties to assess the impact of the revised date.

## **5 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION**

The legal drafting in respect of the Alternative Modification can be found in Attachments 1 and 2 to the Assessment Report (which forms Attachment 1 to this Report). The Panel has consulted the Authority on the requirement to produce legal text in respect of the Proposed Modification. The Authority has confirmed that this is not required.

## **6 ASSESSMENT**

The P28 Assessment Report (Attachment 1 to this report) contains a full assessment of both the Proposed Modification and the Alternative Modification.

## **7 SUMMARY OF REPRESENTATIONS**

[Insert summary of responses to consultation on Draft Modification Report. Insert copies at Annex 1.]

A summary and copies of the original representations received and considered by the Modification Group under the earlier consultation on this proposal can be found in the attached Assessment Report (Attachment 1).

## **ANNEX 1 – REPRESENTATIONS**

[Insert copies of representations on Draft Modification Report]