

January 2002

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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Each BSC Panel Member	Various
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II CONTENTS TABLE

I	Document Control.....	2
a	Authorities.....	2
b	Distribution.....	2
c	Intellectual Property Rights and Copyright.....	2
II	Contents Table	3
1	Summary and Recommendations	4
1.1	Summary and Background.....	4
1.2	Recommendation.....	5
1.3	Rationale for Recommendations.....	5
2	Introduction.....	7
3	Description of Proposed Modification.....	8
3.1	The Modification Proposals	8
3.2	The Consolidated (Original) Proposal.....	9
3.3	The Alternative Modification	9
4	Legal Text to Give Effect to the Proposed Modification.....	11
5	Assessment	11
6	Summary of Representations.....	11
	Annex 1 – Representations	12

Attachment 1 – Amendment To Legal Drafting For The Alternative Modification For P28

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 Balancing and Settlement Code (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. In broad terms, the potential changes covered: the Panel and its Committees (in such areas as openness and participation); Modification Groups (in such areas as membership and responsibilities and the opportunity to discuss issues, prior to Modifications being raised) and Modification procedures (largely concerned with enhancing flexibility and efficiency). 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 which is attached to the Authority's copy of the Modification Report and is available on the ELEXON website at www.elexon.co.uk.

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.

The main reason behind such commentaries being provided by the Authority, the Panel and ELEXON was because of the close involvement of each of these organisations in the Modification arrangements.

A Consultation Document was issued to interested parties on 12 September 2001 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 October 2001 and 15 November 2001. 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, by the GMG. 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 produce such an Alternative Modification (in accordance with clause 2.6.10 of section F of the BSC), 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 December 2001 and is available on the ELEXON web-site (www.elexon.co.uk). 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 analyses. A change to the legal text was suggested by the Panel in its consideration of that Assessment Report. This change has been appended to this Modification Report in Attachment 2. The Panel directed that P28 be submitted to the Report Phase, with a recommendation that the Alternative Modification be approved.

[The Panel considered the draft Modification Report and a summary of consultation responses at its meeting on 17 January 2002, and confirmed the recommendations contained in this report.]

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 3.3 of this report, be approved and implemented 10 working days after the date of the Authority's determination.

Furthermore, on the basis that the balance of argument relating to the Alternative Modification, in relation to the Proposed Modification, suggests that the Alternative Modification better achieves Applicable BSC Objectives, as compared to the Proposed Modification, the BSC Panel recommends that:

The Proposed Modification, as described in section 3.2 of this report, be rejected.

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 available on the ELEXON web-site

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 Licence Condition 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 meet these objectives.

It should be noted, however, that approval of the Alternative Modification Proposal P28 may lead to an inconsistency with the Transmission Licence until or unless amended. The particular element of the Alternative 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. Similarly, copies of the Definition and Assessment Reports may also be found on the ELEXON website.

3 DESCRIPTION OF PROPOSED MODIFICATION

3.1 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.

3.2 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.

3.3 The Alternative Modification

Following discussion by the Panel of the two Interim Reports and the Authority's provisional thinking having being provided to the Panel, the GMG was instructed to develop the following alternative proposal in accordance with the provisions of F2.6.10 of the BSC:

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 Trading Disputes Committee and the Performance Assurance Board 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.

4 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 as found on the ELEXON web-site, except one further amendment which is given in Attachment 2. 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.

5 ASSESSMENT

The P28 Assessment Report as found on the web-site contains a full assessment of both the Proposed Modification and the Alternative Modification.

6 SUMMARY OF REPRESENTATIONS

Eight responses were received, representing the views of 45 Parties. Four of those responses (representing the views of 18 Parties) supported the recommendation in the report that the Alternative Modification should be approved. A fourth response (representing 4 Parties) reconfirmed previously stated views from which support for the Alternative Modification can be inferred. Three responses (representing the views of 23 Parties) did accept that the Alternative Modification proposal would better achieve applicable BSC objectives, relative to the current arrangements. However, all of these responses expressed a preference for the Proposed Modification (also known as the consolidated proposal).

A number of responses reiterated some of the key arguments raised during the consideration of this proposal and two responses (which both favoured the consolidated proposal) made a number of further observations in respect of the Alternative Modification. Firstly, one of the respondents suggested that the alternative proposal did not reflect the intent of the original proposals, for example, by not addressing issues raised in P23 relating to the ISG and its procedures. The second respondent concerned suggested that the Alternative Modification was a diluted version of the Proposed Modification and further suggested that one issue (namely that of Group membership and selection) was not fully addressed by the Modification Group. It should be noted in relation to the first comment, however, that the Alternative Modification does include an obligation for the ISG (and the SVG) to hold all of its non-confidential business in open session. In so far as Group membership and selection were concerned the Assessment Report does record the view that a broad interpretation of the current arrangements should be employed. The first of these respondents went on to suggest that this raised concerns that amalgamating Modification proposals did not lead to any efficiency gains. Secondly, the respondent expressed disappointment that the Authority, in expressing concern at the prospect of Modification Groups being able to discuss issues ahead of Modification proposals being raised in their provisional thinking on the proposal, did not have faith in the impartiality undertakings that Modification Group members made. Finally, the respondent expressed some concern at the potential delay to implementation of the proposal because of the prior need to change the Transmission Licence.

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 Assessment Report .

ANNEX 1 – REPRESENTATIONS

Consultation issued 19 December 2001

Representations were received from the following parties:

No	Company	File Number	No. Parties Represented
1.	Scottish & Southern Energy plc	P28_MR_001	4
2.	Innogy	P28_MR_002	8
3.	British Gas Trading	P28_MR_003	4
4.	London Electricity	P28_MR_004	4
5.	ScottishPower UK Plc	P28_MR_005	5
6.	TXU Europe Energy Trading Ltd	P28_MR_006	14
7.	Amerada Hess Gas Ltd	P28_MR_007	5
8.	SEEBOARD	P28_MR_008	1

P28_MR_001 – Scottish & Southern Energy plc

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.

Our previous comments on this Proposal (P 28); as shown in the "Responses from the P 28 Assessment Report Consultation" document that accompanied your message of 19th December 2001; still remain valid.

Regards
Garth Graham
Scottish & Southern Energy plc

P28_MR_002 – Innogy

The Innogy Group of Companies support the Panel's recommendation regarding P28.

Regards,
Terry Ballard
01905-340507
07989-493038

P28_MR_003 – British Gas Trading

Modification Proposal 28: Governance Review

(incorporating Modification Proposal 21: Review of Modification Group Procedure and Panel Procedures

Modification Proposal 23: Review of the Imbalance Settlement Group (ISG)

Modification Proposal 24: Review of the Modification Procedures)

We welcome the opportunity to comment on this modification. This response is on behalf of British Gas Trading, Accord Energy, Centrica Peterborough and Centrica King's Lynn.

Summary

We support the implementation of the alternative modification as better facilitating the Applicable BSC Objectives although we do not believe it will better facilitate the Objectives than the consolidated proposal that has been rejected by the Panel. The current modification process is cumbersome and potentially serves to alienate those participants it is trying to enfranchise. One aim of NETA was to increase transparency in the market. This is being hindered by the current modification process such is the volume of paper and restrictive nature of some meetings.

We do not believe the alternative modification proposal accurately reflects the intent of the original modifications raised by Amerada and Dynergy. As such we have serious concerns about the effectiveness of amalgamating modifications. Whilst we do support Modification Groups considering related modifications in parallel we have seen no evidence that amalgamation improves the efficiency of the modifications process.

We would also note the following issues relating to the modification proposal and its alternative.

Openness

Transparency and openness are of paramount importance in the process and we welcome the amendment to the arrangements that would allow Parties to be present for all parts of the Modification Panel meetings, apart from any limited confidential issues.

Openness of Panel and Committee meetings is as much about participation from Parties as attendance. We are concerned that there is a perception that process could be abused by Parties if they are able to contribute to any debate held. We would expect Panel and Committee members to have strength of mind to resist any lobbying and have enough regard to their obligations to be independent.

We note the concern that allowing comment on process from industry participants at Panel meetings would increase the already considerable length of the meetings. However, we would suggest that the time of the meetings could be considerably shortened if the Panel were to follow the process and not reopen detailed debates already and more appropriately held in Modification Groups.

We accept that the control of the meeting should rest with the Chairperson and agree that an obligation in the code to oblige the Chairperson to invite comment from the floor would be impractical. However, we strongly urge those who hold the position to consider the inclusiveness of the process by involving attendees at Panel meetings.

With regard to Modification Groups, we support changing the default in the Code to always having open meetings and find it hard to envisage any occasion when confidential material would be considered.

Operation of Modification Groups

We are disappointed that the alternative modification has not taken account of the P28 Modification Group's considerations on membership of Modification Groups.

Under the current arrangements all Modification Group members must provide an undertaking to be impartial and attend all meetings for the duration of the modification. The aim of these arrangements has been to provide consistency and prevent one or to participants manipulating the progress of a modification to their own advantage.

However, there are signs that these arrangements are not working. Ofgem themselves indicated this in their letter of 13 November when they expressed concern that non-attendance at Modification Groups may be used as a filibustering ploy by Parties. We share the concern that people are unable to attend all the Modification Group meetings they are required to attend, however we believe it is more likely to the burden of work on the industry as a whole rather than any attempt by Parties to deliberately disrupt the development of the BSC.

We are pleased that it has been recognised that there is the facility to send multiple modifications to a single group for consideration. We believe regular, scheduled meetings with a pre-published agenda would help all participants to manage their time more effectively. This should ensure all interested Parties should be able to actively participate in the process. We recognise that this could be done with in the existing drafting of the BSC and look forward to seeing this put into practice at an early date.

We are concerned by the persistent use of the Imbalance Settlement Group and Supplier Volume Group as Modification Groups. There is a distinction in the Code between a Committee and a Modification Group and this should be maintained. If these groups are used as Modification Groups it is essential that the appropriate notifications are issued so all industry members are afforded the opportunity to attend and contribute.

Committees

The alternative modification proposal does not address the issues raised by P23 as no review has been undertaken of ISG and its procedures. Indeed, the operation of the Panel Committees remains as opaque as ever.

Mandatory consultations

We recognise and support the pre-eminence of consultation in the BSC Modification Process. However there is a danger of over consulting on issues as there is currently a very high work load emanating from the modification process. It must be made clear to all participants what the aims of each consultation are and where their response will have most influence as there is currently a danger that some consultations will be overlooked or ignored where Parties believe they have already responded to an earlier consultation.

We also note that although the consultations are important the expertise of the Modification Group should not be ignored. These people have been selected for their expertise in an area and should not simply be used to produce and proof read reports and design consultations.

Discussion of wider issues than modification proposals

The intention behind this suggestion was to allow Parties to briefly consider an issue without prejudice and the necessity of raising a modification. Currently there are issues raised that could be dealt with outside the modification process and allowing some consideration prior to raising a modification would increase the efficiency of the process. It is intended that the wider discussion of issues should encourage the development of well defined, relevant modifications.

Carrying out this work under the auspices of the BSC is better for all Parties as it ensures transparency and avoids any concerns relating to collusion or anti competitive behaviour.

We note that the development of BETTA is anticipated to require changes to the BSC. We anticipate that the ability of Modification Groups to consider the wider issues than the modifications on the table would facilitate this process.

Ofgem express concern in their letter of 13 November, outlining their provisional thinking on P28, that the discussion of wider issues would simply allow larger and London based participants to develop modifications at the expense of the Balancing and Settlement Code Company. Whilst we acknowledge that these participants may be better placed to provide expertise to the Modification Groups we are disappointed that Ofgem do not have faith in the impartiality undertakings that Modification Group members are bound by. The purpose of these undertakings should be sufficient to ensure, and reassure, Parties that the process is to assess all proposals against applicable objectives and not manipulate the development of the Code to the advantage of a few. Also the Chairperson of the Modification Group meeting has sufficient authority that he or she will be able to call a halt to proceedings should the discussion become too detailed.

Smaller and less well resourced Parties should always be kept informed if Elexon publish an agenda before the meetings and because all the Modification Groups would be held in open session allowing any Party to attend.

Implementation Dates

We are concerned by the potential delay to implementation of this modification, should it be approved, caused by necessary changes to the Transmission Licence. A pragmatic solution that would not necessitate the need for changes to the Transmission Licence would be for the Panel and Ofgem to agree short implementation lead times and then agree extensions if necessary.

Elexon

In the commentary Elexon provided on P28 it was stated that consideration was being given to a number of potential changes to improve the Modification Process, including streamlining of reports and consultation documents. Elexon says that 'Elexon would suggest, therefore, that any assessment of modified arrangements against the existing arrangements should take due account of these potential improvements.'

We support any changes to the administration of the Modification Procedures that will improve the efficiency of the process. However Modification Groups are required to assess the Code against current arrangements and cannot be expected to assess how well modifications will further the Applicable BSC Objectives against potential and future changes. Despite this we are disappointed that Elexon has not

been forthcoming in providing details of what changes they will be implementing as we agree that knowledge of the potential improvements Elexon may make might have circumvented much of the debate at the Modification Group meetings. In any event we would encourage Elexon to bring forward the proposals as soon as possible.

In conclusion, although P28 may better achieve the Applicable BSC Objectives we believe an opportunity has been missed to bring more wide ranging changes that would have benefited all Parties. We look forward to further modification proposals in this area.

Yours faithfully
Danielle Lane
Transportation Analyst

P28_MR_004 – London Electricity

London Electricity Group is pleased to confirm that it supports each of the elements in: P28 - Alternative Modification, as outlined in Section 4.3 of the draft Modification Report (file name P28_MR_DRAFT.pdf)

We are 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'.

This reply is made on behalf of the following BSC Parties: London Electricity plc; Sweb Ltd; Sutton Bridge Power; Jade Power Generation.

Paul Chesterman
for Liz Anderson, General Manager Energy Strategy & Regulation
London Electricity Group

P28_MR_005 – ScottishPower UK Plc

With reference to the above request, we offer our support to the recommendation of the Panel that the P28 Alternative Modification be approved. We also wish to reiterate the views which we have provided in respect of previous P28 consultations and emphasise the following points in support of those views:

- We believe that openness and transparency is a requisite for the efficient operation of the BSC Panel and Panel Committees (excluding the TDC and PAB, where confidentiality requirements override the need for openness). However, we recognise that, in the interests of good governance, by which we mean the efficient management of the Panel and committees' business, an element of trust is required on how that openness is exercised. We, therefore, agree that trust should be placed in the independent Panel and committee chairmen and on their discretion whether to allow participation from the floor during meetings.
- We agree that the current arrangements in respect of the appointment of Modification Groups should be retained (impartiality, indemnity, etc.). We would continue to argue, however, that the wording of the BSC regarding the use of "experts" and "expertise" should be given as wide an interpretation as possible because of the practical limits to such expertise when NETA has only

recently been introduced. We believe that BSC Parties, especially new entrants and small players, should put forward representatives for Mod Groups and that the Panel should strive, where possible, to establish as broad a degree of representation in the composition of those Groups.

- In respect to Mod Group discussions, we agree that Groups should discuss issues within the context of suitably defined Terms of Reference. This will undoubtedly promote efficiency in the trading arrangements as it should help to better define potential mod proposals and cut costs in respect of the number of proposals raised. The regular timetabling of Group meetings should also help to reduce costs. **ScottishPower.**
- We agree that changes to bring forward implementation dates will promote efficiency and ensure that the recognised benefits of earlier implementation are felt more quickly by BSC Parties. We would be disappointed if P28 Alternative could not be approved simply because of inconsistencies in this regard with the Transmission Licence and hope that changes to the Licence could be effected prior to, or concurrent with, any decision to approve P28 Alternative.
- We have considered the legal drafting accompanying P28 Alternative and generally agree that it meets the requirements of the proposal.

I trust that you will find these comments helpful. If you require further information with regard to this response, please do not hesitate to contact either myself or Abid Sheikh (0141 568 3113).

Yours Sincerely, Man Kwong Liu
Calanais Ltd.

For and on behalf of: - ScottishPower UK Plc, SP Energy Trading Ltd, SP Generation Ltd, Scottish Power Energy Retail Ltd, Emerald Power Generation Ltd.

P28_MR_006 – TXU Europe Energy Trading Ltd

Thank you for the opportunity to respond to the above modification proposal. TXU Europe Energy Trading Ltd would like to make the following comments on behalf of all TXU Europe Companies (TXU Europe Energy Trading Ltd; TXU Europe Energy Trading BV; TXU Direct Sales Ltd (formerly Eastern Energy); Norweb Energi; TXU Europe Merchant Generation Ltd; TXU Europe Drakelow Ltd; TXU Europe High Marnham Ltd; TXU Europe Ironbridge Ltd; TXU UK; Citigen; Shotton CHP Ltd; Anglian Power Generators Ltd; Peterborough Power Ltd).

TXU believe that whilst the alternative proposal is indeed an improvement on the current arrangements, it is only a marginal improvement. TXU believes that the consolidated proposal significantly better achieves the relevant objectives, through allowing all attendees at a standing group to have an equal voice and removing impartiality and indemnity; streamlining the reporting process by amalgamating the definition and assessment stages into one evaluation stage; ensuring that the Panel does not make a recommendation until after all representations have been received. We find it difficult to understand how the Panel is able, to make a recommendation when they have not received comments from all interested parties.

TXU does not believe that implementing the alternative proposal will satisfy the requirements of many parties who believe that it is possible to have a much more effective modifications process as laid out in the consolidated proposal.

Furthermore we believe that only making the minor tweaks that are in the alternative proposal will mean that a further review of the modification process and governance of the BSC will be required in the near future.

We hope that you have found our comments useful and should you have any questions about this response do not hesitate to contact me.

Yours sincerely
Nicola Lea
Market Development Analyst
TXU Europe Energy Trading Ltd.

P28_MR_007 – Amerada Hess Gas Ltd

Representations in respect of Modification Proposal P28 – Review of Governance and Modification Procedures

Thank you for the opportunity to make representations in respect of the Modification Report as detailed above, unfortunately we did not receive the original e-mail, hence the lateness of the response. We understand Elexon was having some e-mail difficulties at the time of circulation.

This response represents the views of Amerada Hess Gas Ltd, Amerada Hess Gas (Domestic) Ltd, Amerada.co.uk Ltd, Western Gas Ltd and Midlands Gas Ltd.

As one of the original proposers of the modifications which were amalgamated to form P28, we have taken an active part in developing the modification and its alternate. We have made a number of our concerns known in previous consultations.

As a new entrant in electricity, we found the processes around the BSC complex and onerous, in particular the lack of any forum in which to raise our concerns short of issuing a modification proposal. We were concerned at the apparent lack of transparency around the activities of many of the groups involved in the administration and development of the industry, for example, the Modification Panel, its subsidiary committees and the modification groups. We were further worried by the lack of provisions around the selection of members of these group, rotation of members and the ability of new entrants or smaller players to contribute to the membership of these groups.

In order to facilitate these concerns being addressed, we raised modification proposal P21, which was intended to provide a framework for the discussions.

The key elements of P21 were:

- Specifying that all Modification Group and non confidential Panel, ISG and SVG business should be conducted in open forum
- Revising procedures for the formation of Modification groups
- Streamlining aspects of the Modification procedures, including consideration of how issues may be identified prior to being submitted as Modification Proposals

Dynegy also proposed two modifications, both addressing similar concerns, but specifically directed towards ISG (P23) and Standing Groups, removal of distinctions between group members and attendees and reducing the number of stages in a modification lifecycle (P24).

In developing the consolidated proposal, P28, the group attempted to address most of the issues raised in the proposals, the key omission being that of group membership and selection. This was not,

however, a major issue in respect of Modification Groups/Standing Groups as the consolidated proposal contained a recommendation that they should be self-selecting, thus removing the problem.

When the Panel directed that this element should not form part of the Alternative Modification Proposal, the issue resurfaced but was not fully addressed by the group. In addition, the group failed to address the issue of how members of the panel committees are selected. Amerada believes this issue is especially important where such groups carry out their business (making decisions that affect their peers either directly or by establishing precedent) in closed session. Should Standing Groups be created, and a Governance Group be included, we believe this issue should be addressed promptly.

With the exception of the above, we believe that the Consolidated Proposal addresses most of the shortcomings of the process that the Modifications were intended to highlight, and as such we strongly support the consolidated proposal, believing it will better facilitate the relevant objectives as described in the report. We also believe it will improve the transparency of the process, making the industry and its Groups more accessible, aid in widening the pool of skilled resource on which the industry may draw and reduce the burden of the process upon individual participants.

In view of this we believe the Consolidated Proposal should be implemented and the Alternative Proposal should be rejected.

In respect of the Alternative Proposal, whilst we concur that in comparison to the status quo, if fully utilised, it would better facilitate the relevant objectives, we do not believe that it should be either recommended or implemented in preference to the Consolidated Proposal.

Amerada has a number of concerns in respect of the Alternative, most of which centre on the proposed lack of definition and active direction in the BSC. For example, the Consolidated Proposal states "Standing Groups to deal with Modifications in general areas", whereas the Alternative reduces this element to "The Panel may establish standing Modification Groups". Amerada therefore regards the Alternative as a diluted version, which may not provide many of the intended benefits of the original.

With regard to attendees being able to address the panel, whilst we agree such matters must be carefully managed, we do believe this issue should be reconsidered. During the Modification group discussions, Amerada suggested that perhaps a reasonable way forward would be for participants to be able to request by prior arrangement (perhaps via the Chairman or Secretary) a short slot on the agenda to raise issues of importance where the participant believes due process has not been followed or some other major concern. We believe that participants would only use this provision in such a public forum in cases of real importance, and the prearrangement, together with the public forum should reduce the Panel's anxiety that they might be individually lobbied inappropriately.

In addition, whilst accepting that appropriate terms of reference are both necessary and desirable for Standing Groups, we believe that such terms of reference should be drawn up by the groups themselves and presented to the Panel, rather than the Panel alone determining the content.

Finally, we continue to believe it is inappropriate for the Panel to issue a recommendation on any Modification Proposal until the consultation process is complete, as they are not in possession of all relevant views. Amerada believes the pre-eminence of consultation is called into question when the Panel signals its opinion part way through the process, whereas a recommendation made in the light of a completed consultation, when all views expressed have been duly considered, is appropriate. We believe that consultees may be discouraged from responding with contrary views, or at all, if they feel a decision has already been made and that views presented after such a recommendation will not impact the outcome.

We trust our comments have been helpful, but should you wish to discuss any points in more detail, we would be happy to assist.

Yours sincerely, Alison Kuck

P28_MR_008 – SEEBOARD

Firstly, thank you for extending the deadline on this modification to allow us to provide a response. As a general point we support the recommendation in section 1.2 of this modification report. Our only slight area of concern being with changes to modification groups. If we can have confirmation of our understanding, summarised below, this concern would be addressed.

As we understand these changes modifications groups will still be established by BSC Panel when required. However, for areas likely to be prone to change BSC Panel can create a standing group that will meet on an on-going basis. Membership of these groups will be drawn from a list of industry experts, but meetings will be held in open session to allow interested parties to attend. Modification group members, as determined by BSC Panel, will operate independently and not as a member of a particular company. A company can provide representations to a modification group specifically covering their position by providing an attendee to that meeting.

Our confusion on this issue is can a full time member of a modification group, who has to be independent, also represent their company. We do not think that this is possible but do not feel this is specifically ruled out under the changes proposed.

Dave Morton
SEEBOARD
0190 328 3465

ATTACHMENT 1: AMENDMENT TO LEGAL DRAFTING FOR THE ALTERNATIVE MODIFICATION FOR P28

The following amendment should be made to the drafting given in Attachment 2 of the Assessment Report for Modification P28:

Section F

2.4.23 With a view to facilitating consideration, by persons and bodies entitled to do so, of whether to propose modifications of the Code and how to frame such proposals, the Panel may, in the terms of reference for a standing Modification Group, authorise the group to consider generally issues relating to the Code, its application or implementation, or any manner in which the Code might be modified, falling within the area(s) specified by the Panel in such terms of reference; and where the Panel has so authorised a standing Modification Group:

- (a) the group may consider any such issue put to it by any person or body entitled to propose a modification of the Code;

- (b) the chairman of the relevant meeting of the group shall decide in his absolute discretion whether to consider any such issue so put to the group;
 - (c) the group shall keep its consideration of any such issue separate from the transaction of its business in relation to any Modification Proposal;
 - (d) the group shall publish its views and deliberations on the issue in such manner as the Panel shall direct;
- provided that neither the views of the group nor anything done by it in relation to such an issue shall have any consequence or significance in relation to the Code or its implementation or operation or interpretation, and the Panel shall not be required to have regard thereto or act in any way in consequence thereof.