

INITIAL WRITTEN ASSESSMENT for Modification Proposal P127

Optional De-registration by Insolvent Party

Prepared by: ELEXON Limited¹

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This document has been distributed in accordance with Section F2.1.10² of the Balancing and Settlement Code.

RECOMMENDATIONS

On the basis of initial assessment BSCCo recommends that the Panel should:

- **DETERMINE that Modification Proposal P127 be submitted to the Assessment Procedure in accordance with Section F2.6 of the Code;**
- **AGREE the Assessment Procedure timetable such that the Assessment Report be completed and submitted to the Panel for consideration at its meeting of 11 September 2003;**
- **DETERMINE that the Assessment Procedure should be undertaken by the Governance Standing Modification Group; and**
- **AGREE any refinement to the Modification Group Terms of Reference.**

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¹ ELEXON Ltd currently fulfils the role of the Balancing and Settlement Code Company ('BSCCo'), pursuant to Annex X-1 of the Balancing and Settlement Code.

² The current version of the Balancing and Settlement Code can be found at www.elexon.co.uk/ta/bscrel_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as BSCCo has been able to assess at this stage, the following parties/documents have been identified as being potentially impacted by Modification Proposal P127³.

Parties	Sections of the Code	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input checked="" type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Unlicensed Suppliers <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Generators <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Licence Exempt Generators <input checked="" type="checkbox"/>	D <input checked="" type="checkbox"/>	Service Lines <input type="checkbox"/>
Traders <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Transmission Company <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Interconnector <input checked="" type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Distribution System Operators <input checked="" type="checkbox"/>	H <input checked="" type="checkbox"/>	MIDS <input type="checkbox"/>
Party Agents	J <input type="checkbox"/>	Core Industry Documents
Data Aggregators <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	M <input checked="" type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
ECVNA <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
MVRNA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
BSC Agents	P <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
SAA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
FAA <input checked="" type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
BMRA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
ECVAA <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
CDCA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
TAA <input type="checkbox"/>	V <input type="checkbox"/>	BSCCo
CRA <input checked="" type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	X <input type="checkbox"/>	Other Documents
SVAA <input type="checkbox"/>	Y <input type="checkbox"/>	Transmission Licence <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	Z <input type="checkbox"/>	
Profile Administrator <input type="checkbox"/>		
Certification Agent <input type="checkbox"/>		
MIDP <input type="checkbox"/>		
TFLA <input type="checkbox"/>		
Other Agents		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

Estimated cost for progressing P127 through the Modification Procedures	£ 4,000 66 ELEXON man days
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1 DESCRIPTION OF PROPOSED MODIFICATION

1.1 Modification Proposal

Modification Proposal P127 'Optional de-registration by insolvent Party' ('P127'), raised on 28 April 2003 by Enron Capital & Trade Resources Limited (in administration), seeks to allow insolvent Parties to "de-register" from the Balancing and Settlement Code (the 'Code'), to allow those responsible for managing the insolvency process to bring an end to escalating liabilities.

Currently, when a Party enters a process of formal insolvency it is in Default of the Balancing and Settlement Code, pursuant to Section H3.1.1(g)(ii). Whilst a Party is in Default of the Code (the 'Defaulting Party'), they are unable to withdraw from the Code (Section A5.1.3(e)). Currently, the Defaulting Party must continue to pay the Base Monthly Charge (Annex D-3 paragraph 3.1(a)), as they remain a Party to the Code.

Administrators/receivers/liquidators, responsible for managing the insolvency process for such Defaulting Parties, are not able to limit further loss of value to creditors in pursuance of their duty of care, due to the increasing debt to BSCCo resulting from these monthly liabilities. BSCCo continues to invoice insolvent Parties for the Base Monthly Charge in the knowledge that in some instances the amount is unlikely to be paid.

Presently, the only way for a Defaulting Party to cease to be liable for the Base Monthly Charge is for the Panel to expel them from the Code, pursuant to Section H3.2.1(e). It is not the intention of the Proposer to remove the right of the Panel to expel Parties from the Code. However, P127 seeks to allow insolvent BSC Parties to "de-register" voluntarily (which has been subsequently clarified by the Proposer to mean "withdrawal from the Code", pursuant to Section A5)⁴. The Proposer believes the withdrawal should be voluntary, as there may be grounds for an insolvent Party to retain the status of signatory to the Code; for example, in circumstances where not being a Party to the Code would result in loss of value.

The Proposer's objective in raising P127 is to bring an end to escalating liabilities in respect of the Base Monthly Charge⁵. The Proposer believes that P127 would better facilitate the achievement of Applicable BSC Objective (d), as he believes it would promote efficiency in the implementation and administration of the Balancing and Settlement arrangements, due to a reduction of BSCCo administrative costs associated with invoicing a Party for the Base Monthly Charge, when the Party may not be in a position to settle this liability. The Proposer also states that he believes that P127 would better facilitate the achievement of Applicable BSC Objective (b) - the efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System. However, BSCCo is unable to find any justification for this statement at this stage of the Modification Procedure.

1.2 Issues raised by the Modification Proposal

An initial assessment of Modification Proposal P127 has identified the following potential areas of impact and issues:

- Whether or not removing the Base Monthly Charge for insolvent Parties better facilitates the Applicable BSC Objectives;
- Whether alleviating the Default status of a BSC Party would be sufficient to enable them to withdraw from the Code;
- The circumstances under which insolvent Parties could be allowed to withdraw from the Code;
- Whether the criteria for withdrawing from the Code for Parties not in Default should be different for insolvent Parties;
- The consequences of allowing an insolvent Party to withdraw from the Code; and

⁴ The Proposer is also open to further suggestions as to how the defect may be addressed.

⁵ Clarified by the Proposer, subsequently to the submission of the Modification Proposal.

- Any alternatives to withdrawal as a means to address the perceived defect in the Code.

1.2.1 Removing the Base Monthly Charge for insolvent Parties

The Modification Group will need to consider whether or not they believe that insolvent Parties should have their liability to the Base Monthly Charge terminated, or suspended, since insolvent Parties continue to receive a service from BSCCo.

1.2.2 Enabling insolvent Parties to withdraw from the Code by alleviating their Default status

The Modification Group will also need to consider whether lifting the Default status of Party for reasons of insolvency alone (Section H3.1.1(g)) would be sufficient to enable a Party to withdraw from the Code. It is possible that the insolvency of the Party has led to it being in Default for other reasons pursuant to Section H3.1.1.

The Modification Group will need to consider whether developing a solution that removes insolvency as a reason for Default better facilitates the Applicable BSC Objectives and whether or not this would address the defect identified in P127.

1.2.3 Circumstances under which insolvent Parties could be allowed to withdraw from the Code

P127 proposes that insolvent Parties be able to voluntarily de-register from the Code "at any time". The Modification Group will need to assess the implications of the phrase "at any time". Section A5, sets out the conditions under which a Party can withdraw from the Code. Several of these criteria are time dependent, such as Section A5.1.3(b), which states that a Party cannot withdraw from the Code until the Final Reconciliation Run for the Party's last day of trading has occurred.

Therefore, if P127 were developed to enable a Party to withdraw at any time, this Section of the Code would need to be amended. "At any time" could also be taken to mean that a Party should be allowed to withdraw while it is still in Default. This would mean that the criteria for which Parties not in Default can withdraw are different from insolvent Parties. The Modification Group will need to assess this issue.

1.2.4 Consequences of allowing an insolvent Party to withdraw from the Code

The Modification Group will need to assess the consequences of allowing an insolvent Party to withdraw from the Code. The Letter of Credit, or cash deposit, covers the Energy Indebtedness of Parties for 29 days after the day they last traded. However, the consequences for recovery of certain liabilities would need to be considered by the Modification Group, including:

- Reconciliation Charges that become due between the Initial Settlement Run and the Final Settlement Run;
- Past Notification Error Claims;
- Trading Dispute Claims; and
- BSCCo Charges – including the Base Monthly Charge – none of which are covered by Letter of Credit or cash deposit.

1.2.5 Any Alternative Modification

The Modification Group may wish to consider other means by which an insolvent Party could terminate its liability for the Base Monthly Charge (hence addressing the defect), whilst remaining a Party to the Code. The Group will need to assess whether the Default status of an insolvent Party should be retained, but that its liability to the Base Monthly Charge be suspended. The Group would also need to consider the conditions under which this would take place.

2 INITIAL ASSESSMENT OF IMPACTS OF MODIFICATION PROPOSAL

2.1 Impact on BSC Systems and processes

The following potential impacts have been identified:

Item	Potential Impact of Proposed Modification
Registration	It is possible that there may be an impact on the Central Registration Agent's software, Code Subsidiary Documents and other configurable items. This will be assessed further by the Modification Group during the Assessment Procedure.
Clearing, Invoicing and Payment	Depending on the solution chosen by the Modification Group, it is possible that there may be an impact on the FAA.

2.2 Impact on other systems and processes used by Parties

Parties may be impacted as the process of withdrawal from the Code could be changed. It may be that P127 will result in insolvent Parties finding that they have reduced liabilities in respect of BSCCo Charges.

2.3 Impact on documentation

2.3.1 Impact on Balancing and Settlement Code

At this point details of the Proposed Modification have not been identified. The following Sections of the Code may be impacted as the Modification Proposal may result in changes to one or more of them.

Item	Potential Impact of Proposed Modification
H3.1	Events of Default
A5.1	Withdrawal
Annex D-3 paragraph 3.1	Specified BSC Charges
H3.2	Consequences of Default
M2.2	Letter of Credit
N2.5	Conditions for Payment by the BSC Clearer

2.3.2 Impact on Code Subsidiary Documents

The following potential impacts have been identified:

Item	Potential Impact of Proposed Modification
BSCP38	Authorisations : may require amendment depending on the exact solution chosen.
BSCP65	Registration of Parties and Exit Procedures: may require amendment depending on solution chosen.

2.4 Impact on Core Industry Documents

No impacts have been identified.

2.5 Impact on other configurable items

No impacts have been identified.

3 IMPACT ON BSCCO

The following potential impacts have been identified:

Area of Business	Potential Impact of Proposed Modification
BSCCo Systems	<ul style="list-style-type: none"> ▪ Depending on the solution chosen to address the defect identified by P127, there may be an impact on the Finance Department. For example, if insolvent Parties are allowed to withdraw from the Code then the FAA may find certain liabilities are uncollectible and it would fall to BSCCo to resolve this. ▪ There will be an impact on BSCCo's invoicing and credit control processes. ▪ Depending on the solution chosen by the Modification Group, it is possible that there may be an impact on PARMS. ▪ There will be an impact on the BSC Website, specifically the Market Entry area of the BSC Website. ▪ ELEXON Business Process Model may require some amendment depending on the solution chosen. ▪ The BSC Summary may need to be revised.

4 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

No impacts have been identified.

5 RATIONALE FOR BSCCO'S RECOMMENDATIONS TO THE PANEL

BSCCo recommend that the Panel submit P127 to the Assessment Procedure. The Modification Proposal identifies the defect that the Proposer wishes to address clearly.

BSCCo believe that the issues raised by the Modification Proposal have been clearly identified and are explained in sufficient detail in this initial assessment for the Panel to make its recommendations.

To address the issues raised, and to assess a number of possible solutions to address the defect identified in P127, BSCCo believe that 3, or possibly 4, Modification Group meetings will be required. For this reason, as well as the fact that the industry consultation will fall during the holiday period, BSCCo recommend P127 is submitted to a 3 month Assessment Procedure.

6 PROCESS, TIMETABLE AND COST FOR PROGRESSING THE MODIFICATION PROPOSAL

BSCCo recommends that P127 be submitted to the Governance Standing Modification Group (GSMG) for further assessment. The GSMG should be actioned to present the Assessment Report to the Panel on 11 September 2003.

It is estimated that the progression of this Modification will require:

- Four Modification Group meetings
- One industry consultation (14 Working Days, since it will fall during August)
- One detailed level impact assessment (14 Working Days)
- One request for Transmission Company analysis (14 days)

The proposed timetable for progression of this Modification is given in annex 2.

The cost of progressing P127 through the Modification Process is estimated to be £4,000 and take 66 ELEXON man days.

The cost of implementing any Proposed or Alternative Modification will be determined during the Assessment Procedure.

7 DOCUMENT CONTROL

7.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	28/05/03	Change Delivery	Change delivery	For Review
0.2	03/06/03	Change Delivery	Stakeholder Services	For Review
0.3	03/06/03	Change Delivery	Change Delivery	For Review
1.0	06/06/03	Change Delivery	The Panel	For Decision

7.2 References

None.

ANNEX 1 MODIFICATION PROPOSAL

Modification Proposal	MP No: P127 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Optional de-registration by insolvent Party.	
Submission Date <i>(mandatory by proposer):</i> 29 April 2003	
Description of Proposed Modification <i>(mandatory by proposer):</i> Modification to enable Parties who have entered a process of formal insolvency to have the option at any time during their insolvency to de-register.	
Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i> Currently voluntary de-registration by insolvent Parties is not possible, and the administrators/receivers/liquidators responsible for the insolvency process are not able to crystallise liabilities, and thus are not able to limit further loss of value to creditors in pursuance of their duty of care. The de-registration needs to be voluntary as there may be grounds for retaining that registration, for example where the business continues to trade or any other circumstances where de-registration will result in loss of value.	
Impact on Code <i>(optional by proposer):</i>	
Impact on Core Industry Documents <i>(optional by proposer):</i>	
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i>	
Impact on other Configurable Items <i>(optional by proposer):</i>	
Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by proposer):</i> <ul style="list-style-type: none"> • The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System; this objective achieved by provision of a mechanism to ensure insolvent companies may de-register, reduction of consequent costs for the Transmission Company, adoption of a mechanism that is logical and desirable from a practical perspective • Promoting efficiency in the implementation and administration of the balancing and settlement arrangements; by enabling insolvent entities to exit from the Code, reducing administrative costs in addressing queries and other approaches from said entities, reduction in administrative expenses in accounting for registration fees that will not be paid 	
Details of Proposer: <p style="margin-left: 40px;">Name: Enron Capital & Trade Resources Limited (in administration)</p> <p style="margin-left: 40px;">Organisation:</p> <p style="margin-left: 40px;">Telephone Number:</p> <p style="margin-left: 40px;">Email Address:</p>	

Modification Proposal	MP No: P127 <i>(mandatory by BSCCo)</i>
Details of Proposer's Representative:	
Name: Duncan Cochrane-Dyet, for SA Pearson joint administrator acting as agent on behalf of Enron Capital & Trade Resources Limited (in administration) without personal liability	
Organisation: PricewaterhouseCoopers (administrators)	
Telephone Number: 020 7804 9590	
Email Address: Duncan.g.cochrane-dyet@uk.pwcglobal.com	
Details of Representative's Alternate:	
Name:	
Organisation:	
Telephone Number:	
Email Address:	
Attachments: NO	
If Yes, Title and No. of Pages of Each Attachment:	

ANNEX 2 GANTT CHART

