

Responses from P127 Assessment Consultation

Consultation issued 30 June 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	YEDL/NEDL	P127_ASS_001	2	0
2.	Aquila Networks	P127_ASS_002	1	0
3.	British Energy	P127_ASS_003	3	0
4.	Innogy	P127_ASS_004	9	0
5.	British Gas Trading	P127_ASS_005	1	0
6.	NGT	P127_ASS_006	1	0
7.	LE Group	P127_ASS_007	9	0

P127_ASS_001 – YEDL/NEDL

Respondent:	<i>Joseph Hart</i>
No. of BSC Parties Represented	<i>2</i>
BSC Parties Represented	<i>NEDL/YEDL</i>
No. of Non BSC Parties Represented	<i>None</i>
Non BSC Parties represented	<i>None</i>
Role of Respondent	<i>BSC Party</i>

C	Question	Response	Rationale
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	It is not appropriate that the debts of a company in insolvency continue to mount up. Objectives C and D would appear to be better facilitated.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 No	Does not enable consideration of accrued and contingent liabilities to be factored into the decision
		Option 2 Yes	Enables consideration of accrued and contingent liabilities to be factored into the decision
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	It is inappropriate that insolvency practitioners are unable to discharge their statutory obligations due to a constraint within the BSC

C	Question	Response	Rationale
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	Yes	The administrative burden of managing the relationship seems to outweigh the benefit of recovering the money
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	Yes	Each case requires individual consideration and the necessary checks and balances put into place prior to withdrawal taking place – the Panel is best placed to achieve this.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	No	Not through selection of Option 2 – Option 1 would as it doesn't make it a part of the decision making process
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	Option 1 Yes	See answer to 8
		Option 2 No	See answer to 8
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	

C	Question	Response	Rationale
11.	Are there any further comments on P127 that you wish to make?	No	

P127_ASS_002 – Aquila Networks

Respondent:	<i>Aquila Networks Plc Metering Services</i>
No. of BSC Parties Represented	
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>NHHDC / NHHDA</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes / No	There is a chance the party will be expelled from the code at a later date. Voluntary de-registration from the code will decrease the party's outgoings.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 Yes / No	NHHDA / NHHDC has no preference at this time but reserves the right to express opinions and preferences during later consultations.
		Option 2 Yes / No	NHHDA / NHHDC has no preference at this time but reserves the right to express opinions and preferences during later consultations.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes / No	No comment
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes / No	Any accrued charges should be paid as per any other commercial business when they accrue debt.

C	Question	Response	Rationale
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	Yes / No	Withdrawing from the code before expulsion decreases the party's outgoings and liabilities
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes / No	Any accrued charges should be paid, but consideration should be given to allowing the party to pay any of these outstanding charges following withdrawal from the code
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	Yes / No	Each situation should be judged on its own merits. If a party is unable to pay the BSCCo charges, continuing to increase their unpaid liabilities will have a negative impact on all other interested parties.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes / No	Unable to offer a qualified opinion
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	Option 1 Yes / No	Unable to offer a qualified opinion
		Option 2 Yes / No	Unable to offer a qualified opinion
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	Yes / No	Consideration to the actual processes involved regarding the registered MPANs should take place, taking note the impact this may have upon the revenue of the party's agents.

C	Question	Response	Rationale
11.	Are there any further comments on P127 that you wish to make?	Yes / No	Consideration to the actual processes involved regarding the registered MPANs should take place, taking note the impact this may have upon the revenue of the party's agents.

P127_ASS_003 – British Energy

Respondent:	<i>Name</i>
No. of BSC Parties Represented	<i>Rachel Lockley</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	<i>British Energy Generation, British Energy Power and Energy Trading and Eggborough Power Ltd</i>
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Generator</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	Although the value of the Base Monthly charge may be relatively small by allowing a Party to withdraw from the BSC will mean that it will become harder to claim any outstanding Trading charges that a company may owe which may be a substantial sum.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 No	If the insolvent company's outstanding charges are written off as a bad debt then it is left for the remaining BSC parties to pick up a share of these charges. We do not believe that this is acceptable.
		Option 2 No	If the base monthly charge and trading charges are written off to zero then the chances of claiming any of the outstanding charges back will be greatly reduced.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	No	

Q	Question	Response	Rationale
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	We do not believe that any Party should be allowed to withdraw from the code if they have any charges outstanding
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	No	We do not believe that other BSC members should be left to pick up the insolvent companies remaining charges.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	No	BSCCo should always continue to pursue outstanding charges from all companies.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	By allowing a company to withdraw from the BSC, BSCCo would move down the pecking order of Creditors and therefore its chances of receiving any payment would reduce.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	Option 1 Yes	See question 8
		Option 2 Yes	See question 8
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P127 that you wish to make?	No	

P127_ASS_004 – Innogy

Respondent:	<i>Name: Terry Ballard</i>
No. of BSC Parties Represented	9
BSC Parties Represented	Innogy plc, Innogy Cogen Ltd, Innogy Cogen Trading Ltd, Npower Ltd, Npower Direct, Ltd, Npower Yorkshire Ltd, Npower Northern Ltd, Npower Yorkshire Supply Ltd, Npower Northern Supply Ltd
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	The issue is one of charging the BSCCo Monthly Charge. A better solution may be that where an Insolvency Practitioner is appointed, the Panel should have the discretion to reduce the charge to zero.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 No	See answer to question 3 below.
		Option 2 No	See answer to question 3 below
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes	A procedure that allows the Panel to reduce the monthly charge of a party to zero when an Insolvency Practitioner has been appointed prevents the accrual of additional charges but leaves then as a BSC signatory until all other invoices have been raised and payments made or otherwise.

C	Question	Response	Rationale
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	The present situation leads to charges being accumulated because insolvent parties are still required to pay them.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	Allowing an insolvent party to withdraw could raise more issues and complicate the recovery of any outstanding charges.
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	No	Charges could be set to zero but the Party should remain within the Code.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	No	Panel should only have discretion to reduce an insolvent Party's monthly charge to zero.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	It could complicate the issue of recovery of charges unnecessarily.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	Option 1 Yes	See response to question 8.
		Option 2 Yes	See response to question 8.

C	Question	Response	Rationale
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	N/A	
11.	Are there any further comments on P127 that you wish to make?	No	

P127_ASS_005 – British Gas Trading

Respondent:	Mark Manley
No. of BSC Parties Represented	1
BSC Parties Represented	British Gas Trading
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)</p>	No	<p>BGT do not believe the proposed modification better facilitates the Applicable BSC Objectives. Allowing an insolvent Party to withdraw from the BSC with outstanding liabilities accrued from Trading Charges cannot better facilitate the Applicable BSC Objectives.</p> <p>The Modification Proposal proposes that the BSCCo Charge be set to zero for insolvent Parties. BGT do not have any significant concerns with this aspect of the proposal, as it is unlikely to represent a significant proportion of the outstanding liability. BGT's main concern is the change of BSCCo's status as a creditor once the Party has withdrawn from the BSC. After that process has been completed BSCCo become an unsecured creditor as opposed to a secured creditor.</p>

C	Question	Response	Rationale
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 No	This allows a BSC Party to withdraw and crystallise their losses without incurring any liabilities that may accrue from future reconciliation runs including Post Final Settlement Runs or Extra Settlement Determinations. Smearing that liability amongst the remaining BSC Parties does not better facilitate the Applicable BSC Objectives.
		Option 2 No	If the BSC Party requesting withdrawal from the Code has outstanding liabilities which cannot be paid by the Party or by utilising the credit cover lodged, the Party should not be able to withdraw.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale		BGT believes a potential alternative solution could be developed based on Option 2. Option 2 proposes to allow the Panel to set an exit date for the Party, which factors in the reconciliation cycle. BGT believe this exit date could be conditional on the Party paying all its outstanding liabilities. After the reconciliation run process has been completed and prior to the payment date, the credit cover lodged by the Party could be cashed and used to pay the Parties debts that have accrued from Trading Charges. If the credit cover is sufficient to pay the Parties debt then the original exit date is used. If it is not sufficient then the credit cover is cashed to pay the maximum percentage of the debt possible. The BSC Party will then remain a signatory to the Code with the remaining debt and its BSCCo Charges set to zero.

C	Question	Response	Rationale
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	From an efficiency perspective it would seem prudent for BSCCo not to invoice an insolvent Party with the knowledge that the invoice will not be paid. In view of the fact that the BSCCo Charges are likely to represent a relatively minor element of any outstanding liability it would be sensible to set the BSCCo Charge to zero. Also any credit posted by a Party can only be utilised to cover Trading Charges and the BSCCo Charge does not constitute a Trading Charge. Therefore the credit posted cannot be used to pay outstanding BSCCo Charges.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	No	An insolvent Party should only be able to withdraw from the Code if the Party can pay all outstanding Trading Charges.
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	BGT believe it is appropriate for the BSCCo Charges to be set to zero on the basis that the outstanding Trading Charges are paid prior to withdrawal from the BSC.

C	Question	Response	Rationale
7.	<p>Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale</p>	No	<p>BGT do not believe the Panel should be given the additional power necessary to waive BSC Parties liabilities under the BSC. Withdrawal from the Code is a mechanistic process that ensures amongst other things that a BSC Party has paid all outstanding debts. The integrity of this process should be maintained. BGT do not support a subjective approach being developed that allows the Panel the discretion to waive a Parties unpaid liabilities.</p> <p>BGT is opposed to this power being vested in the Panel, however if this approach was approved, BGT would expect as a minimum requirement the Panel being obligated to consult with BSC Parties. On the basis it is BSC Parties who will assume responsibility for the outstanding debt.</p>
8.	<p>Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale</p>	Yes	<p>BGT believe the ability to recover outstanding debt will be dependent upon the status of BSCCo as a creditor. If an insolvent Party is allowed to withdraw from the BSC and remove their credit cover then the BSCCo will become an unsecured creditor. If the Party remains a BSC signatory and BSCCo hold the credit cover lodged and this can be utilised to offset any outstanding or contingent liabilities.</p>
9.	<p>Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2?</p>	Option 1	<p>The ability to recoup outstanding and contingent liabilities will be dependent upon BSCCo status as a debtor. If BSCCo remains as a secured debtor then the chances of recovering the debt are increased. If BSCCo become an unsecured debtor then the probability of recovering the liability is reduced.</p>

C	Question	Response	Rationale
	Please give rationale	Option 2	The ability to recoup outstanding and contingent liabilities will be dependent upon BSCCo status as a debtor. If BSCCo remains as a secured debtor then the chances of recovering the debt are increased. If BSCCo become an unsecured debtor then the probability of recovering the liability is reduced.
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
11.	Are there any further comments on P127 that you wish to make?	No	

P127_ASS_006 – NGT

Respondent:	<i>Name National Grid Transco</i>
No. of BSC Parties Represented	<i>One</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). National Grid</i>
No. of Non BSC Parties Represented	<i>None</i>
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant). N/A</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state) BSC Party</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	We believe that P127 as proposed would not better facilitate the BSC Objectives and specifically objective (d), as it may hinder the BSCCo recouping any outstanding liabilities from an insolvent Party.
2.	Do you believe either potential Alternative Modification option 1 or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification? Please give rationale and state objective(s)	Option 1 Yes	This option does better facilitate BSC Objective (d) when compared with the Proposed Modification, as it proposes to reduce the administrative burden on the BSCCo whilst still allowing it the ability of recouping outstanding liabilities. (see answer to Q9)
		Option 2 Yes	This option does better facilitate BSC Objective (d) when compared with the Proposed Modification, as it proposes to reduce the administrative burden on the BSCCo whilst still allowing it the ability of recouping outstanding liabilities. (see answer to Q9)
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	

C	Question	Response	Rationale
4.	Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated? Please give rationale	Yes	We believe it is appropriate to bring to an end the escalating liabilities in the form of the Base Monthly Charge on an insolvent Party.
5.	Do you believe that an insolvent Party should be allowed to withdraw from the Code? Please give rationale	Yes	Given that the BSC Panel will have discretion over whether Parties will be allowed to withdraw from the code (see Q7), we believe that there will be limited circumstances where liabilities will effectively be written off as bad debt.
6.	Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code? Please give rationale	Yes	Given the relative size of the BSCCo Charges as compared to Trading Charges and that the BSC Panel will be exercising its discretion (see answer to Q5), then this appears to be a pragmatic solution.
7.	Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code? Please give rationale	Yes	By allowing the BSC Panel discretion, within general Code guidelines, will negate the need for overly stringent rules being written and allow each case to be considered on an individual basis.
8.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification? Please give rationale	Yes	We agree with the rational of the GSMG that the Proposed Modification would not be a viable solution.
9.	Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from	Option 1 No	This option offers the most direct interpretation of the original proposal whilst preserving the ability to recoup outstanding liabilities.

Q	Question	Response	Rationale
	insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2? Please give rationale	Option 2 Maybe	This option widens the scope (from option1) for allowing Parties to withdraw and may prejudice the BSCCos ability to recoup outstanding liabilities to a small degree.
10.	Does P127 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	However, we would wish to see an assessment on the materiality of the difference between option 1 & option 2 potential alternatives (see answer to Q9)
11.	Are there any further comments on P127 that you wish to make?	No	

P127_ASS_007 – LE Group

Respondent:	Paul Chesterman
No. of BSC Parties Represented	9
BSC Parties Represented	LE Group plc, London Electricity plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd,
No. of Non BSC Parties Represented	None that we consider applicable
Non BSC Parties represented	
Role of Respondent	Supplier / Generator / Party Agent / Distribution Business

I can summarise EDF Energy's position on P127 as being: "Relatively indifferent to this issue". However, we would prefer to see a solution where the Base Monthly Charge is waived for the insolvent Party and they are kept bound by all other conditions of the Code as this will provide a more satisfactory means of addressing the recovery of any potential trading liabilities (accrued and contingent liabilities (including Reconciliation Run Charges and Past Notification Error Claims)).