

## 1 SUMMARY OF REPRESENTATIONS

### 1.1 Consultation and High Level Impact Assessment

Copies of the original representations received under the first consultation and HLIA carried out in November 2001 and considered by the Group can be found in the Assessment Report.

### 1.2 Second Consultation and Detailed Level Impact Assessments

Copies of the representations received to the second consultation and DLIAs, carried out in December 2001 and considered by the Group can be found in the Assessment Report.

### 1.3 Consultation on Draft Modification Report

8 representations were received in response to the consultation on the draft Modification Report representing the views of 43 Parties.

The result of this consultation is as follows:

- 6 responses representing 31 Parties supported the implementation of the Alternative Modification; and
- 2 responses representing 12 Parties provided a caveated support to the Alternative Modification.

Below are the detailed responses which have been received.

No	Company	File Number	Accept	Reject	Caveated Acceptance	No. Parties Represented
1.	TXU Europe	P44_MR_001	✓			14
2.	British Gas Trading	P44_MR_002	✓			4
3.	Powergen	P44_MR_003	✓			4
4.	SEEBOARD	P44_MR_004	✓			2
5.	British Energy	P44_MR_005	✓			3
6.	Scottish & Southern Energy plc	P44_MR_006	✓			4
7.	Scottish Power	P44_MR_007			✓	7
8.	LE Group	P44_MR_008			✓	5
<b>Total</b>						<b>43</b>

### **P44\_MR\_001 – TXU Europe**

Thank you for the opportunity to comment on the P44 Modification Report. On behalf of 14 TXU Europe companies we would like to register our support for the recommendation that the alternative proposal be implemented. We agree with the proposed timescale for implementation.

Regards  
Nicola Lea  
Market Development Analyst  
TXU Europe Energy Trading Ltd

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### **P44\_MR\_002 – British Gas Trading**

Modification Proposal 44: Correction of Notification Errors where Parties are able to satisfy a Reasonable and Prudent Operator Test

We welcome the opportunity to comment on this modification proposal. This response is on behalf of British Gas Trading, Accord Energy, Centrica King's Lynn and Centrica Peterborough. We note and support the view of the BSC Panel that the Alternative Modification should be implemented.

This modification would reduce the risk faced by all Parties and so would promote effective competition in the generation and supply of electricity. Whilst we maintain that it is inappropriate to make retrospective changes we recognise that there may be rare circumstances where it is appropriate to make such a change. The stringent criteria and tight timescales prescribed by the alternative proposal should ensure that any notification errors that are claimed and subsequently corrected will be assessed in a rigorous manner.

We support the inclusion of an Error Correction Payment (ECP) mechanism in the interest of cost recovery. We agree that this will act as an additional incentive on Parties to ensure that they correctly submit Volume Notifications.

Yours faithfully  
Danielle Lane  
Transportation Analyst

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### **P44\_MR\_003 – Powergen**

Thank you for giving us the opportunity to provide further comments on the above proposal. Our response is also made on behalf of the following BSC Parties; Powergen Retail Limited, Diamond Power Generation Limited and Cottam Development Centre Limited.

Powergen support the recommendations of the Panel set out in the P44 Draft Modification report. Nevertheless, as stated in our previous responses, we remain sceptical as to the value of an Error Correction Payment (ECP), given that this proposal is designed to allow only claims from parties that can demonstrate a high degree of prudence in managing their own systems and processes. In this context the additional incentive properties of an ECP to "get things right first time" must be questioned.

Clause 7.4.8 of the legal drafting requires the Panel to publish guidance as to the factors which it would expect to take and the assumptions which it would expect to make in relation to the tests outlined in 7.4.7. In line with the intent of P44 it is important that these guidelines are suitably robust and BSC parties have direct input into their content. This is because the guidelines essentially deal with good industry practice in the operation of participants' system and not simply the operation or interface with

the central systems. It is only market participants therefore that are in a position to realistically describe good industry practice.

We would suggest in the next few weeks Elexon reconvenes the P44 Modification Group specifically to compile a suitable set of P44 good industry practice guidelines.

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#### **P44\_MR\_004 – SEEBOARD**

We accept the recommendation of this report that alternate modification should be approved. Modification report notes that new paragraph will become paragraph 7 of section P in BSC. If no other additions are due to be made to current version of section P, version 1.1, then this new paragraph should be paragraph 6.

Dave Morton  
SEEBOARD Energy Limited  
SEEBOARD Power Networks plc  
0190 328 3465

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#### **P44\_MR\_005 – British Energy**

BE support the principle that participant notification errors should be capable of correction, provided that

- a) appropriate financial incentives are in place to promote accurate and timely notification, initially,
- b) monitoring and control of error correction is in place to prevent the abuse of the facility,
- c) corrections should only be possible for errors arising from the time of implementation of relevant rule changes, which should not be retrospective.

The original proposal P44 only met conditions (b) and (c) and so was not supported by BE.

Alternative modification P44 now meets all the above conditions (now that an Error Correction Payment Mechanism has been included which satisfies (a) above) and this proposal has British Energy's support.

Rachel Ace  
on behalf of  
British Energy Generation  
British Energy Power and Energy Trading  
Eggborough Power Ltd

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#### **P44\_MR\_006 – 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.

Further to your note of 22nd January 2002, and the associated Modification Report, concerning Modification Proposal P44; we support the recommendation from the Panel; that the Alternative Modification as set out in Section 6 of the Modification Report for P44; be approved for implementation within five business days of the Authority's decision.

Regards  
Garth Graham  
Scottish & Southern Energy plc

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#### **P44\_MR\_007 – Scottish Power**

In response to this DMR consultation, we would wish to indicate our disappointment that the view, which we expressed in a previous response relating to the need for an ECP as part of this proposal, has been considered but rejected. We had suggested a higher administrative fee of £20,000 as an adequate deterrent against frivolous claims being raised by Trading Parties in respect of their notifications rather than an ECP. We also note that the Panel had a robust debate about the need for an ECP before reaching its current recommendation.

In view of this rejection, we feel that, while we still consider our suggestion to be a worthy one, in the circumstances, we must recognise that there has been support from the Mod Group and the Panel for the introduction of an ECP. As we would like to see P44 introduced in some form rather than not at all, we would reluctantly agree with the Panel's recommendation to support the Alternative modification.

We have also considered the legal drafting required to implement this proposal and agree with these changes.

I trust that you will find these comments helpful. Nonetheless, should you require further clarification of any of the above, please do not hesitate to contact me.

Yours Sincerely,  
Man Kwong Liu  
Calanais Ltd.

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

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#### **P44\_MR\_008 – LE Group**

Thank you for the opportunity to comment on draft Modification Report on Modification Proposal P44.

We note the recommendation of the draft Modification Report that the original version of P44 be rejected, and that the Alternative version of P44 be approved, with a recommended implementation date of 5 days after an Authority decision.

We note that the modification in both guises requires Parties to be able to satisfy a 'Reasonable and Prudent operator test'

The alternative differs from the original proposal in that the original contained no error correction payment (ecp), which had been a feature of discussion and Ofgem guidance for P37, as well as being a feature of Ofgem's formal deliberations in its ruling on Modification P19.

There was strong support for the Modification overall in the consultation process and at the group. Consultation views on the ecp were mixed and we note that the recommendation to incorporate one of 10% was only made after discussion with Ofgem and a further consultation.

A manual solution is envisaged, at least initially.

We signalled in our previous consultation response that we supported the original modification, and this remains our primary stance. In respect of applicable objective 7A3(a), this is better facilitated in the context of 7A2(b)(ii) (see LE's legal Opinion, in the context of P37, from leading counsel James Goudie QC). P44 demonstrates effectiveness in dealing with unfairness and therefore better facilitates 7A3(c). P44 also reduces risk (and cost) to participants and therefore better facilitates 7A3(d).

We would comment that the criteria for a claim to succeed are extremely rigorous. The modification will only apply, if approved, prospectively, and parties will by now have considerable operating experience of NETA, so we would not expect the test to be the same as that in P37.

Our only adverse comment on the report's recommendation is that we believe that the original modification better meets the applicable BSC objectives to a greater extent than the alternative modification; this arises from the Opinion given by J Goudie QC in the context of mod 37, referred to above. In simple terms, there should not be an error correction payment. However, we do believe that the alternative modification does in absolute terms better meet the applicable BSC objectives than not having either version of P44 in place.

Yours sincerely

Liz Anderson

(London Electricity, South Western Electricity, Jade Power, Sutton Bridge Power and TXU West Burton Power Limited)