29 June 2001

URGENT MODIFICATION REPORT

MODIFICATION PROPOSAL P19

To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

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

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Name	Organisation
BSC Parties	
BSC Panel Members	
The Authority	
BSC Agents	
Core Industry Document Holders	
energywatch	

c Intellectual Property Rights and Copyright

II CONTENTS TABLE

1 SUMMARY

Purpose of the Report

This is the report on Modification Proposal P19 from the Modifications Group to the Panel. This document is drafted in such a form that, following any amendments to reflect the Panel's views, it could form the Panel's report to the Authority.

The Proposed Modification

The original proposal, P19, seeks to amend the BSC to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis. Parties would be able to submit a claim for such a correction to be made where notifications failed to reflect the true trading positions of one or more Parties.

The proposal specifies that such claims would need to be submitted within a time limit of 72 hours from the relevant Trading Period, and there would be a fee of £5000 for each claim.

The proposed modification would apply retrospectively, that is to say claims would be allowed in respect of notification errors which occurred before the adoption of the Modification. The proposal goes on to suggest that the performance of the Central systems during early operation was a factor in difficulties experienced by some Parties. ELEXON have provided some data on the performance of Central Systems. This is given in Annex 7. The Modifications Group did not discuss this data.

The proposal states that it would be for Parties to prove to the satisfaction of the Panel that there had, in fact, been a notification error. Were the Panel so satisfied, it would be required to determine the appropriate adjustments to be made to the erroneous notification. The adjusted notifications would then be used for the purposes of settlement.

The Modifications Process

Panel Members supported the recommendation that this modification proposal should be treated as an Urgent Modification: this was approved by the Authority.

A Modifications Group was established and met on 18th June 2001. The deliberations of the Group at that meeting were reflected in a report which was issued for consultation on 20th June 2001, with responses due by 25th June 2001.

A further meeting of the Modifications Group was held on Wednesday 27th June 2001. During this meeting it was identified that there would be value both in developing the legal drafting of the original proposal (to produce P19 Tidied), and in legally drafting an Alternative Proposal (P19 Optimised).

Consequently, legal drafting for P19 Tidied and P19 Optimised was developed and issued for Consultation on 28th June 2001, with responses requested by 0800hrs on 2nd July 2001.

This report from the Modifications Group is being sent to the Panel on 29th June 2001.

The Panel will consider the report from the Modifications Group at their meeting on 2nd July 2001. They will also be informed at that meeting of any comments on the legal drafting of M19 Tidied and P19 Optimised.

An Urgent Modifications report containing any recommendation's of the Panel will be issued to the Authority on Wednesday 4th July 2001

First Modifications Group Meeting and Consultation Document

At its first meeting, the Modifications Group considered a number of features arising from the proposed Modification and identified a series of matters which were cast in the form of specific questions. The Consultation document encapsulated all of these deliberations and sought views, both generally and in respect of the questions posed.

Responses to the Consultation

A total of 18 responses (representing 45 Parties) were received in total. Of these, 2 responses (representing 2 Parties) were received after the due time. Furthermore, one respondent augmented his original response by specifying, after the due time, that the response was on behalf of 4 Parties.

Overall 11 respondents, representing 21 Parties were generally in favour of P19.
On the other hand, 6 respondents, representing 23 Parties were against P19.

Regarding the retrospective application of the proposed Modification, there were 7 responses (representing 14 Parties) in favour and 10 responses (representing 30 Parties) against.

Of the 11 responses in favour of P19, 4 responses (representing 7 companies) did not support retrospection.

More significantly, the weight of argument in the responses indicated both considerable support for the Proposal and considerable opposition to it. Similarly, in respect of retrospection, there were well articulated arguments both for and against

Further Modifications Group Considerations

The Modifications Group met for a second time on 27th June 2001. Some members expressed concern over the schedule and process which had been followed for P19.

There was no consensus in the Modifications Group to support or oppose P19.

The Modifications Group considered that there would be value in developing further the legal drafting for P19: the resulting version of the Modification is referred to as P19 Tidied.

There was also a view that it would be of value to develop an Alternative Modification (termed P19 Optimised). P19 Optimised differs from P19 Tidied in the following principal ways:

a. P19 Optimised includes a requirement for a claim to be both supported by the relevant Party and by the relevant Counterparty (where applicable).

b. P19 Optimised does not assess notification errors by reference to a “Trade of Active Energy”. Instead, it requires errors to be manifest, relative to a settled intent.

c. P19 Optimised has the time limit for claims measured from the first Gate Closure, rather than the end of the settlement period as in P19 Tidied.

d. P19 Optimised specifies certain limitations on claims.

Both P19 Tidied and P19 Optimised make provision for retrospective application. The Modifications Group considered whether the Alternative could omit retrospection, but there were some arguments against this. The Modifications Group suggested that the Panel should seek from the Authority a view on whether the retrospective element of P19 Optimised and MP Tidied was acceptable.

CONCLUSIONS

The Modifications group have not reached a consensus on whether P19 Tidied or P19 Optimised should be supported.

Arguments have been made that the Proposals better support the achievement of the BSC Objectives; counter arguments have been put that they do not. A similar divergence of view exists in respect of retrospection, albeit with fewer representations in favour.

RECOMMENDATIONS

The Modifications Group can recommend neither support of, nor opposition to, P19 Tidied or P19 Optimised. The Modifications Group therefore suggests that the Panel consider putting both P19 Tidied and P19 Optimised forward, without any recommendation to the Authority.

The Modifications Group suggest that, the Panel should seek a view from the Authority specifically on the provision for retrospective application in P19 Tidied and Optimised.

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.

3 PURPOSE AND SCOPE OF THE REPORT

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

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

The modification procedures culminate in a modification report to the Authority, which normally contains the Panel's recommendation on whether or not a proposed modification should be approved and a proposed date for its implementation, together with a detailed assessment of the proposal in question. The report forms the basis upon which the Authority will decide whether to approve, direct or reject a modification proposal.

The Transmission Company or ELEXON may recommend that a Modification Proposal be treated as urgent, subject to approval by the Authority. The procedure for progressing an Urgent Modification Proposal is set out in Sections F2.9 and B4.6 of the Code. These urgent procedures allow the normal modification procedures to be circumvented as necessary to fit with the urgency of the matter. In such cases, the Authority will confirm the timetable and procedure that should apply. The timetable and procedure directed by the Authority must be adhered to, along with any other special instructions. A statement containing the reasons why the Panel (or Panel Chairman) considers the Proposal should be treated as urgent must be included in the Urgent Modification Report, together with a description of the extent to which the procedure followed deviated from the normal modification procedure.

Depending on the urgency of the matter, it may not be possible to establish a Modification Group or undertake detailed assessment of the modification proposal. The level of detail and analysis presented in this Urgent Modification Report therefore represents the full extent of relevant information regarding the modification proposal that could be collated within the time available.

4 DESCRIPTION OF PROPOSED MODIFICATION

On 11th June 2001 London Electricity submitted a proposed modification to the BSC to provide for the remedy of errors in Energy Contract and Metered Volume Reallocation Notifications.

A copy of the Modification proposal, is available on the ELEXON website (www.ELEXON.co.uk), and is appended in Annex 1.

The proposal concerns a modification to amend Section P of the Code to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis.

It suggested that where such a notification failed to reflect the true trading positions of one or more Parties, the Party/Parties concerned would be entitled, once it/they had recognised the error, to submit a claim for the Notification Error to be rectified, with a longstop for the claim of 72 hours. The Proposed Modification would, however, also allow Parties to claim rectification of Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of the Modification, even where the 72 hour limit has been passed.

To ensure that Notification Error claims are restricted to errors of genuine significance, it is proposed that a fee of £5,000 would be payable in respect of each claim. It would be for the Parties to prove to the satisfaction of the Panel that there had, in fact, been a Notification Error. Where the Panel was so satisfied, it would be required to determine that appropriate adjustments be made to the erroneous notification, in order to bring it into line with the true trading position.

The adjusted notifications would then be used for the purposes of settlement.

5 PROPOSERS VIEW ON EXTENT TO WHICH THE PROPOSED MODIFICATION WOULD BETTER FACILITATE THE APPLICABLE BSC OBJECTIVES

The Applicable BSC Objectives are set out in Annex 4.

The Proposer states that the proposed Modification would:

(a) provide for settlement of imbalance obligations to be undertaken by reference to Parties' true contract positions, as required by Condition 7A.2(b)(ii) of NGC's transmission licence. It would therefore promote the attainment of the objective specified in Condition 7A.3(a) of that licence (the efficient discharge by NGC of its licence obligations); and

(b) promote efficiency in the implementation and administration of the balancing and settlement arrangements (Condition 7A.3(d))

In addition the Proposer states that the retrospective application of the proposed modification would also:

(a) provide for Parties' imbalances in respect of past Settlement Periods to be settled by reference to their true contract positions, as required by Condition 7A.2(b)(ii). This will contribute to the efficient discharge by NGC of the obligations imposed on it by its licence (Condition 7A.3(a));

(b) promote effective competition in the generation and supply of electricity, by allowing Parties, and new entrants in particular, to place reliance on the effectiveness of the BSC in addressing unfairness (Condition 7A.3(c)). To the extent that new entrants to the market may be more likely to make Notification Errors, then the Proposed Modification may further serve to promote competition from new entrants, by protecting them from the disproportionate consequences of such Errors; and

(c) promote efficiency in the implementation of the balancing and settlement arrangements (Condition 7A.3(d)), by reducing the risk to Parties of participating in the BSC, and thereby reducing the risk-related costs of balancing and settlement activity

Whilst not raised at the either of the Modification Group meetings, ELEXON received legal advice as follows:

"Some of the arguments in the Proposal rely on their assertion that the BSC does not fulfil the 'objects' described in Condition 7A.2 of the Transmission Licence. Condition 7A.2 defines the scope or boundary of the BSC. It does not establish the objectives of the BSC (which are set out in Condition 7A.3).

Moreover, since the document designated by the Secretary of State at go-active is taken, for the purposes of NGC's licence, to be consistent with the scope defined in Condition 7A.2, we think there is a strong argument that 'contracted' would be interpreted to give effect to the Secretary of State's intentions. Indeed, if one applied a literal interpretation to the word 'contracted' in Condition 7A.2, it would exclude ECVNs between the two energy accounts of a single Party, which is expressly permitted by the Code.

6 STATEMENT OF URGENCY

Section F2.9 of the Balancing and Settlement Code makes provision for proposals to be treated as Urgent Modification Proposals upon the recommendation of the Transmission Company and BSCCo (ELEXON). Following representations from London Electricity ELEXON recommended to the Panel Chairman that Modification Proposal P19 be treated as an Urgent Modification Proposal.

The BSC Panel Chairman sought the views of Panel Members, the majority of whom supported the recommendation that the Modification Proposal be treated as urgent.

The Authority granted the modification urgent status for the purposes of Section F2.9 of the BSC on 12th June 2001.

7 THE PROCESS FOLLOWED

The key steps that have been adopted in progressing this Urgent Modification Proposal are as follows:

i) On 11th June 2001 London Electricity raised Modification Proposal P19 (to provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications) with ELEXON.

ii) The BSC Panel Chairman sought the views of Panel Members the majority of whom supported the recommendation that the Modification Proposal be treated as urgent (in accordance with the procedures set out in F2.9 of the BSC).

iii) The Panel recommendation to treat the Modification as Urgent was subsequently approved by the Authority. A Modification Group was established (based on the membership of the group that considered Modification Proposal P9 – Error Processing Group) with the membership agreed by the Panel Chairman and the Group were subsequently notified of a meeting date the following week;

iv) The Authority agreed the process and timescale as described below:

- The issues raised were discussed with the Modifications Group on the 18th June 2001. The Group comprised the Proposer (London Electricity), Ofgem representatives, industry experts and ELEXON technical experts;

- Following discussion at the Modification Group meeting, a draft of the consultation Report was produced and reviewed by the Modifications Group;

- The report was issued for consultation on Wednesday 20th June 2001, requesting that responses be submitted to ELEXON by 08.00hrs on Tuesday 26th June 2001. These were collated and, together with tabular summaries, provided to the Modification Group on the Wednesday 27th June 2001;

- This document is the report from the Modifications Group to the Panel (sent on the 29th June 2001). The Panel will consider the modification proposal at a special meeting on 2nd July 2001 ; and

- The Urgent Modifications report containing the recommendation of the Panel will be issued to the Authority on Wednesday 4th July 2001.

Deviations from the normal Modification Procedures (as prescribed in Section F of the BSC) were as follows:

- Views on how the Modification Proposal should be progressed were sought directly from Panel Members by the BSC Panel Chairman. Given the urgency of the Proposal no Initial Written Assessment was undertaken;

- A majority of Panel Members recommended treating the proposal as an Urgent Modification;

- The BSC Panel delegated agreement to the membership of the Modification Group to the BSC Chairman;

- At the first Modification Group meeting, the group reviewed the proposal and identified a number of key topics for consultation. A consultation report which was issued to BSC Parties for consultation.

- Due to the agreed timescales and the proposed changes to the BSC, the legal drafting was sent out separately for consultation, with responses due by 08.00hrs on 2nd July 2001; and

- The Report from the Modification Group is being sent to the Panel on 29th June 2001.

- At its second meeting the Modifications Group agreed there was value in developing legal drafting for the Proposal, and for an Alternative Proposal.

8 MODIFICATION GROUP DISCUSSIONS AND REPORT

The Modifications Group met on the 18th June 2001 in order to consider the proposed Modification. The approach taken and the consideration of specific aspects of the proposal were discussed and formed the basis of the consultation exercise (undertaken over the period 20th June 2001 to 26th June 2001). An extract of the information provided in the consultation document which detailed the deliberations of the Modifications Group is given in Annex 2.

9 CONSULTATION

9.1 The Consultation Process

The matters raised by the Proposal were discussed at the first meeting of the Modifications Group and included in a document for consultation (see section 8). A draft of this document was then sent to Modifications Group members for comment. The Consultation document invited views on any matter relating to P19. It also included a number of individual questions seeking views on particular topics. These questions are reproduced in a Table of Consultation Responses to Specific Questions on P19 (in Section 9.5). They comprise three questions on key features, and a further nine questions on more detailed issues.

The Consultation document itself can be found on the ELEXON website www.ELEXON.co.uk (P19_UMR_CON).

The Consultation document was published on 20/06/01, to all interested Parties. Responses were requested by 0800hrs on 26/06/01. By this time, ELEXON had received 16 responses; these respondents stated that they were replying on behalf of 35 Parties.

ELEXON received a further two responses after the Consultation deadline and before the second meeting of the Modifications Group. In accordance with previous practice these responses have been included in this report but have been separately identified. This allows the Panel to decide whether they wish to take account of these later responses.

As had been identified in the Consultation document, legal drafting for the proposal had not been included. However this drafting has now been circulated to interested Parties and responses will be considered and reported to the BSC Panel at its meeting on the 2nd July 2001.

Subsequent to the second meeting of the Modifications Group, an attendee at that meeting made a submission to ELEXON further to their earlier response to the consultation document. This further submission stated that the original response was made on behalf of four Parties. Once again this further information has been shown separately in this report.

9.2 Views of Respondents

This report presents and summarises the responses to the consultation in the following forms:

- A summary of all of the representations made (this section).
- Analysis and consolidation of the responses (Annex 3.1).
- A full text of all consultation responses (Annex 3.2).

9.3 Responses to Consultation on P19 (key issues)

Table 9.3 summarises the individual responses to each of the questions 1-3 in the Consultation document, that is those on key features of the Proposal. The table distinguishes between responses made on behalf of one Party and those responses on behalf of a number of Parties, and shows when responses were received. The commentary below is based on overall totals.

Question 1 sought views on whether in general P19 was supported. Overall, 11 responses (on behalf of 21 Parties) supported the Proposal; opposing the proposal were 6 responses (on behalf of 23 Parties)

Question 2 asked more generally whether the BSC should allow for the correction of notifications after gate closure. Overall, 11 responses (on behalf of 21 Parties) supported the idea; 6 responses (on behalf of 23 Parties) opposed the idea.

Question 3 asked whether, were P19 to be adopted, it should be applied retrospectively back to Go-live, as P19 proposes. Overall, 7 responses (on behalf of 14 Parties) supported the proposal; 10 responses (on behalf of 30 Parties) opposed the Proposal. Amongst those 11 respondents (representing 21 Parties) in favour of P19, 4 respondents (representing 7 Parties) did not support the retrospective aspect of the Proposal.

The summaries above illustrate that on the issues central to P19 there is no consensus amongst respondents to the Consultation. Rather, there are two views, each well-supported.

No	Company	Preference for P19	Preference for Ex-post Adjustment	Preference for Retrospection
1.	Axia Energy Europe Ltd	Yes	Yes	Yes
2.	Magnox Ltd	Yes	Yes	No
3.	Seeboard	Yes in parts	Yes	No
4.	Scottish & Southern *(representing 4 Parties)*	Yes	Yes	No
5.	Innogy	No	No	No
6.	Powergen	No	No	No
7.	Enron	Yes	Yes	Yes
8.	Dynegy	Yes	Yes	No
9.	Edison Mission Energy (representing 3 Parties)	No	No	No
10.	TXU Europe Energy Trading (representing 14 Parties)	No	Only in the case of System Failure	No
11.	London Electricity (representing 5 Parties)	Yes	Yes	Yes
12.	Humber Power Ltd	Yes	Yes	Yes
13.	Northern Electric & Gas	No	No	No
14.	Scottish Power (representing 4 Parties)	Yes	Yes	Yes
15.	British Gas Trading	Yes, as Interim Solution	Yes, as Interim Solution	Yes, but with lower recovery rate.

16.	British Energy (representing 3 Parties)	No	No	No
17.	*Bridge of Cally*	*No view*	*No view*	*No view*
18.	*TotalFinaElf*	*Yes*	*Yes*	*Yes*
	Total	11 yes (representing 21 Parties), 6 no (representing 23 Parties), 1 no view	11 yes (representing 21 Parties), 6 no (representing 23 Parties), 1 no view	7 yes (representing 14 Parties), 10 no(representing 30 Parties), 1 no view

It should be noted that responses from Bridge of Cally and TotalFinaElf were received after the deadline. Furthermore, Scottish and Southern indicated, after the deadline, that their response also represented the views of Southern Electric, Keadby Generation Limited and SSE Energy Supply Limited. These responses have been italicised in the table.

Responses to the Consultation Questions on Specific Features of P19

Reference should be made to the table below for a summary of views on specific issues of P19, as elicited by questions 4-12 in the Consultation.

In response to Question 4 (application fee), £5000 was the most quoted figure, there were a number of suggestions above and below this.

In response to Question 5 (time required to resolve issues relating to contractual arrangements outside the BSC) , 1 month or below encompassed approximately half the responses.

In response to Question 6 (reference point for measuring the time limit for any application) there were a variety of responses, with first gate closure being the most supported.

In response to Question 7 (time limit for making an application) , 72 hours was the most supported option, with a number of responses commenting that the time limit should be in terms of business days.

In response to Question 8 (evidence to support a claim), there was support from many respondents for the Panel to be allowed discretion. A further set of respondents said that evidence should include declarations by the Parties involved in the notification.

In response to Question 9 (any circumstances for which claims should be precluded) most respondents considered that none should be excluded.

In response to Question 10 (assurance that the Panel might require), there were a variety of views, with “at the discretion of the Panel” being most mentioned.

In response to Question 11 (time limit for making claims retrospectively back to go-live), of those responding, the largest group supported a time limit of 5 days.

In response to Question 12 (special provision for future new entrants), the largest group of those responding did not favour such a provision.

Consultation Responses to Specific Questions on P19

Organisation	Question 1	Question 2	Question 3	Question 4	Question 5	Question 6
Axia Energy Europe Ltd	Yes	Yes	Yes	Not to exceed £5000	No more than 30 days	First Gate Closure
Magnox Ltd	Yes	Yes	No	£5000	No view	The time from which settlement report received
Seeboard	Yes in parts	Yes	No	£5000, see note 2	3 to 6 months	End of last settlement period
Scottish & Southern	Yes	Yes	No	£5000	4 Weeks	Midnight 2nd working day.
Innogy	No	No	No	£5000	Several weeks	1st 7 Day report or 1st Gate Closure
Powergen	No	No	No	See note 4	1 Month	6 Hours after a notification has been made.
Enron	Yes	Yes	Yes	£5000	1 Month	Last Settlement Period.
Dynegy	Yes	Yes	No	£10000-£15000.	No Comment	No Comment
Edison Mission Energy	No	No	No	No Comment	No Comment	No Comment
TXU Europe Energy Trading	No	Only in the case of System Failure	No	£5000 or 10%	3 Months	End of 1st Settlement Period
London Electricity	Yes	Yes	Yes	£5000	No significant delay.	1st Gate Closure
Humber Power Ltd	Yes	Yes	Yes	No charge	None	End of Settlement Period
Northern Electric & Gas	No	No	No	£5000	Significant	None required
Scottish Power	Yes	Yes	Yes	See note 8	6 to 8 Weeks	1st Gate Closure
British Gas Trading	Yes, as Interim Solution	Yes, as Interim Solution	Yes, but with lower recovery rate.	£15000	No comment	Based on when a prudent operator would notice.
British Energy	No	No	No	No view	No comment	No comment
Bridge of Cally	No comment due to short timescale	No comment	No comment	See note 9	No comment	No comment
TotalFinaElf	Yes	Yes	Yes	£5000	Should be implemented at Earliest	End of the Settlement Period.

					Opportunity	

Organisation	Question 7	Question 8	Question 9	Question 10	Question 11	Question 12
Axia Energy Europe Ltd	72 Hours	Accepted, if supported by relevant Parties. If not, then Panels discretion	No	Any Panel require.	30 days	No
Magnox Ltd	72 Hours	Please see note 1	No	No view	No respective claims should be made.	No
Seeboard	72 Hours (if includes weekends)	All	None	Signed Statements	Yes	3 Months
Scottish & Southern	72 provided they are on business days	ECVNA supported by 2 Parties	No	No, but it would be desirable to have an independent view.	See note 3	No
Innogy	72 Hours	Discretion of the Panel	Evidence of a genuine ex-ante trade	Evidence of a genuine ex-ante trade	Do not support Retrospection	No
Powergen	3.5 Hours	Declarations from Parties	No	No view	Yes	No view
Enron	72 Hours	Discretion of the Panel	No, leave to the Panel	No, leave to the Panel	Yes	No
Dynegy	48 Hours	No Comment	No Comment	No Comment	No Comment	No Comment
Edison Mission Energy	No Comment	No Comment	No Comment	No Comment	No Comment	No Comment
TXU Europe Energy Trading	Midday next working day.	Party and Counterparty and discretion of the Panel.	See Note 5	Discretion of the Panel	No Comment	No Comment
London Electricity	72 Hours	See note 6	See note 7	See note 7	5 days	3 Months
Humber Power Ltd	72 Hours	Discretion of the Panel	No	Discretion of the Panel	5 Days	None
Northern Electric & Gas	3.5 Hours	Party and Counterparty and discretion of the Panel.	When no notification is made	No comment	Do not support retrospection	No comment
Scottish Power	3 business days after settlement	Discretion of the Panel	No	None	5 Days	Yes

	day.					
British Gas Trading	3 working days	Declarations from Party & Counterparty	No	Directors Statement	Needs further consideration	No
British Energy	No comment	No comment	No comment	No comment	No comment	No comment
Bridge of Cally	No comment	No comment	No comment	No comment	No comment	No comment
Total Fina Elf	72 Hours	Discretion of the Panel	No	Discretion of the Panel	Yes	No view

Notes from table summarising responses to specific questions

Note 1: Magnox stated that, the documents to be submitted with a claim should be prescribed in advance and should be from both the party and counterparty. There may be times when other evidence (entirely at the discretion of the panel) may be required to satisfy the panel of the true contractual position at Gate Closure and that no abuse of this condition is occurring.

Note 2: Seeboard supports the idea of a barrier that seeks to prevent routine use of the process. Given the size of some cashout prices it is difficult to arrive at a price that would always discourage the correction of notifications when a participant believes he will be significantly exposed. A figure of £5000 per half hour creates a barrier which could be supplemented by a rule that limited the number of half hours that could become a part of an error claim. e.g. 3 times 48 per year. Also it is not clear to us what exactly what fee is proposed. The possibilities would appear to be £5000 per half hour, £5000 per notification file (i.e. up to 48 half hours) or even £5000 for a series of notification files all subject to the same error. Clearly this creates barriers of very different size.

Note 3: Scottish and Southern believes that whilst the proposals in the modification for a 5 day claim "window" do represent a practical way of limiting back claims, there may be a deluge of claims brought in anticipation of the Modification being introduced. The key safeguard in ensuring that only genuine errors are corrected is the short qualifying period for claims to be made.

Note 4: Powergen state that, A fee of £5,000 or say [10%] of the 'uncorrected' cost of the error, whichever is the greater smeared back through residual cash flow. To discourage too many claims it may be appropriate to limit the number of claims to say [2] per BSC Party in any continuous 12 month period. In addition to prevent a proliferation of retrospective claims back to Go-live the fee for such claims should be set at £50,000.

Note 5: Although TXU do not support this modification and believe that there exist sufficient means for Parties to remove or at least mitigate the risks associated with the ECVNA role, TXU believe that intra-company/group ECVNs should be excluded from the scope of this proposal if implemented. The effects of these ECVNs are wholly internalised and Parties should be incentivised to manage their own internal risks, not seek changes to the BSC to manage it for them. Whereas ECVNs for bi-lateral trades will have an effect on the position of another party if they are inaccurately notified.

Note 6: London Electricity stated that, this question was misconceived. Ultimately, the onus is on the Party making a claim of Notification Error to prove to the satisfaction of the Panel that a trade of Active Energy took place in advance of Gate Closure for the relevant Settlement Period(s) and that the trade was not accurately notified under the BSC. Typically, the Party will be able to do this through the presentation of appropriate records and by the making of a declaration as to the accuracy of those records. In certain circumstances, something more might be required before the Panel is satisfied. In either case, it would be wrong to prescribe the evidence that would be needed to satisfy the Panel as to the validity of the claim. Either the evidence provided by the Party concerned will satisfy the Panel, or it will not. The Panel will be entitled to call for additional evidence, if it is clear

that the evidence provided by the Party making the claim is insufficient to make out its case.

Note 7: London Electricity stated that, there is no reason in principle to exclude particular types of Notification Error claim. In particular, there is no justification for disallowing claims in relation to a failure to make a notification. A failure in a Party's notification and settlement systems and procedures is just as likely to result in a failure to notify a trade at all as it is to result in an inaccurate notification. Indeed, because of the complex way in which such systems and procedures operate, it will often be difficult to distinguish between a Notification Error resulting from a failure to notify and a Notification Error resulting from an inaccurate notification (for example, where a previously notified trade is overwritten by a notification that omits reference to that trade). It would be irrational to distinguish between these two (or indeed any other) types of Notification Error.

If any type of Notification Error claim is to be excluded, it should only be on the basis that the failure to notify a particular trade resulted from a positive decision not to notify on the part of the Party or Parties concerned (perhaps as part of some complex trading or hedging strategy). If it were felt appropriate to exclude this type of Notification 'Error', it would be necessary for the Party making a Notification Error claim to provide a declaration to the effect that its notification of a different amount (or its omission to notify any amount) was not a deliberate commercial decision to notify some amount other than the true contractual amount. In practice, however, there are likely to be very few instances in which a Notification 'Error' would result from a positive decision not to notify the true contract amount.

Note 8: ScottishPower believes that the size of the fee should be related to the size of the party and suggests that it be related to the magnitude of the party's daily energy cost exposure at the credit assessment price, i.e.,

Fee = {(DC*CALF) + (GC*CALF)} * 24 * CAP * X

where X is either 0.1% if the fee is a non-refundable charge, or 0.2% if the fee is a deterrent which is refundable to successful claimants.

Note 9:Bridge of Cally assert that, the imposition of a fixed charge of #5000 is discriminatory towards Parties with small portfolios, and favours larger Parties. The charge would be more fairly levied as a percentage of the saving to be made by the party making the claim, e.g. 10%. This charge should be levied whether the claim is successful of not, to ensure only bona fide claims are made. Consideration should be given to increasing the percentage charge for each subsequent claim per year to provide an incentive to improve systems.

10 FURTHER MODIFICATIONS GROUP DISCUSSIONS

The Modifications Group met for a second time on the 27th June 2001 to consider the responses to consultation and to consider what should be reported to the BSC Panel. The Modifications Group also provided views on the BSC Panel report and legal drafting for the proposal subsequent to this meeting. The following reflects these deliberations.

10.1 Timetable and Process

A concern was raised at the second Modifications Group meeting that the timescales were compressed to such an extent that it was not possible to undertake an adequate review of the responses to consultation. This difficulty was exacerbated by the lack of continuity evident in the changed representation at the meeting, compared to the first meeting of the Modifications Group, held on the 18th June 2001.

Notwithstanding the above, the Modifications Group acknowledged that the timescales were approved by the Authority and were prepared to continue with an analysis of the responses to consultation and to consider what should be reported to the BSC Panel, as a consequence.

There was also some discussion as to precisely which BSC signatories had responded to consultation, given that certain responses had stated that they had been submitted on behalf of a number of Parties. Conversely, certain Parties had not themselves responded, but were affiliated in some way to Parties that had responded. ELEXON stated that the approach adopted was that where a response was explicitly stated to be on behalf of a number of Parties then that number of responses would be duly recognised. However, where a single Party had responded, then no presumption could be made as to whether any other Parties necessarily concurred with the response made. A further question was then raised in respect of late submissions (which might include a Party explicitly reflecting that their views are encapsulated by a response already received). ELEXON noted that, ordinarily, responses that were some hours late could be accommodated. However, consideration of responses that were significantly late could be regarded as deviating from the agreed process. ELEXON proposed that, if responses were received late, they would endeavour to note the response in the documentation, but clearly would draw attention to the fact that the response had missed the deadline. This approach was acknowledged by the Modifications Group.

10.2 Analysis of Responses

In the first instance, ELEXON provided the Modifications Group with a summary of the responses received to the consultation, in which certain key arguments used by respondents were cited. The Modifications Group considered what conclusions might be drawn both from a consideration of the key features discussed in the consultation and from a consideration of other aspects of the proposal, in the light of the responses to consultation.

10.3 Key Features

The two key features described in the consultation concerned views on the principle of enabling ex-post adjustments to notifications (and more particularly, views on P19 itself) and views on the retrospective application of the proposal.

In so far as the merits of P19 were concerned, the Modifications Group acknowledged that there was a difference of opinion as to whether the proposal better achieved BSC objectives, or not. This was the perception both in terms of the numbers of respondents supporting or objecting to the proposal and in respect of the balance of argument supporting these views. It was further observed that all of those respondents that were not in favour of P19 were also not in favour of the general concept of ex-post adjustments to notifications. This suggested that P19 did provide a broadly acceptable mechanism for providing an ex-post adjustment arrangement, for those that believed that such arrangements better achieved BSC objectives.

The Modifications Group also acknowledged that, within the sub-set of respondents that supported P19, there was a difference of views as to the merits (with respect to BSC objectives) of applying P19 retrospectively.

In the light of these considerations, a similar range of opinions emerged from the Modifications Group. In other words, that some Modification Group members accepted that P19 better achieved relevant BSC objectives, whilst other members of the Group did not accept that view. In so far as retrospection was concerned, given the split of views amongst the Modifications Group, there was some consideration given to the possibility of formulating an alternative proposal. Advice suggested that this would be allowed under the BSC. However, a contrary view argued on the basis that, in this particular case, the retrospective aspect of the Modification formed an integral and fundamental element of P19. Therefore, the possibility of creating an Alternative Modification which excluded retrospection would not be possible, since the exclusion of retrospection would imply that the proposal would then constitute an entirely new Modification. The Modifications Group acquiesced to this latter view, but suggested that the Panel seek views from the Authority on retrospection in its determination of this Proposal

10.4 Other Features

The Modifications Group accepted that there were a number of further aspects of the proposal that required consideration, either as a consequence of views expressed by respondents to consultation, or because certain aspects of P19 remained incomplete, or where refinements to the basic approach might be judged to be beneficial. These other features may be summarised as follows:

- Details of the impact on credit cover arrangements: it was noted in the consultation document that subsequent consideration of this issue would be required

- Drafting for the retrospective aspects of the proposal and the period of time allowed following any decision by the Authority for retrospective claims to be

made: The Modification proposal itself, whilst providing views on retrospection, noted that such drafting would be required. The time allowed for retrospective claims was the subject of a specific question in the consultation (question 11).

- The level and form of fee payable on making a notification error claim: This issue was raised in the consultation and was the subject of a specific question (question 4).

- Timescale for the proposal to become effective (following any relevant decision of the Authority), given the potential impact on other contractual arrangements: This issue was raised in the consultation and was the subject of a specific question (question 5).

- Time limits for making notification error claims and the point of reference against which such a time limit is set: These issues were raised in the consultation and were the subject of specific questions (questions 6 and 7).

- Requirements for evidence to support a notification error claim and assurances to support such evidence: This issue was raised in the consultation and was the subject of two specific questions (questions 8 and 10).

- Any specific circumstances (other than time limits) whereby notification error claims would be excluded from consideration: This was the subject of a specific question in the consultation (question 9).

- Special arrangements for new entrants: This was the subject of a specific question (question 12).

- Finally, it was noted that drafting would be required for Meter Volume Reallocation Notifications.

The conclusions of the Modifications Group in respect of the above were as follows:

- Given that no specific responses to consultation had been received in respect of credit cover arrangements in the light of P19 (although one respondent did note a concern that this issue had not been considered), the Modifications Group gave some consideration to the issue. On the basis of such consideration, the Modifications Group asked ELEXON and its legal advisors to provide legal drafting as part of the wider task of producing legal drafting for P19 generally. The views of the Modifications Group were that;

    - A previous rejection or refusal would not be revisited, nor would there be any compensation paid if such a rejection or refusal related to an erroneous notification.
    - However, a notification error claim would be allowed, regardless of whether the notification had been rejected, refused, or accepted.
    - Where the correction of an erroneous notification would have caused any rejections or refusals, no retrospective rejections or refusals would be undertaken and no compensation would be payable.
    - The effect of any correction of notifications would take effect in energy indebtedness calculations (for the previous 29 day period) from the time that the ECVAA implements the corrected values in the ECVAA systems.

- Few comments were received on the mechanics of retrospection had been raised during the consultation. Therefore, the Modifications Group were content that ELEXON, in consultation with their legal advisors would develop legal drafting for the specific requirements to allow retrospective application of the notification error claim facility, as part of the wider task of producing legal drafting for P19. In so far as the time allowed for making retrospective claims was concerned, a majority of those responses that supported retrospection also supported a period of five days for such claims to be lodged.

- The Modifications Group felt that there were no compelling arguments for a fee structure other than the fixed fee of £5k per claim.

- In so far as the impact on other contractual arrangements was concerned, the Modifications Group noted the range of views expressed in the consultation (from requiring six months to accommodate P19, to no impact). The Modifications Group took the view that none of the responses indicated any potential for other contractual arrangements to be irreconcilable with P19 and that the above range of timescales for making any such accommodation largely reflected the need, or otherwise, to negotiate contract changes. On this basis, the Modifications Group judged that the most widely held view of needing four weeks appeared to be reasonable.

- The Modifications Group were sympathetic to the view that referencing the limiting time period for making notification error claims to the last settlement period relating to the notification in question might be problematical, for example in respect of 'evergreen' notifications. Given that a range of suggestions had been made by respondents, the Modifications Group were content with the alternative suggestion of referencing back to the first relevant Gate Closure (or the relevant settlement period relating to the Modification). In so far as the actual time limit was concerned, the Modifications Group felt that there were no compelling arguments to support deviations from the limit proposed in P19 of 72 hours.

- On the basis of consultation responses, the Modifications Group accepted the view that, in terms of evidence to support a notification error claim, both Parties (if two Parties were involved) should support the claim. A further significant issue related to this point concerned the basis on which an error might be deemed to have been made. P19 makes reference to 'trades of active energy' and, where two Parties are concerned, 'an agreement ... for the sale and purchase of a quantity ... of active energy'. From a legal perspective, it was suggested that it might be preferable to avoid any references to agreements or trades not currently within the ambit of the BSC. The alternative that was considered to have some merit was that of seeking to reflect a similar concept to that employed in the BSC Manifest Error provisions. In particular, legal advice suggested referring to a demonstrably settled and shared intent to make a certain notification as the basis for determining whether an actual notification could be regarded as erroneous.

- In so far as reasons for excluding claims, the Modifications Group were amenable to the suggestion made at the meeting that there might be circumstances in which a claim could be disallowed. Three sets of circumstances were postulated:

  - A claim may not be made if a previous claim relating to the same notification has already been made.
  - A claim may not be made in respect of Settlement Periods for which Gate Closure has not yet occurred.
  - At the Panel's discretion, rectification may not be allowed if a claim by a Party reflects a previous claim (within the last 12 months) with the same underlying cause.
- The Modifications Group considered that there were no compelling arguments for the provision of any alternative arrangements for new entrants.

10.5 Conclusions

In the first instance, the Modifications Group recognised that, in the absence of consensus, the most appropriate course of action would be to suggest that the proposal should be presented to the Authority without any recommendation, either negative or positive. It was further concluded that, whether or not any Alternative Modification might be contemplated, retrospective application would necessarily need to be included.

The Modifications Group also considered the legal drafting that should form the basis of additional consultation on P19 (as identified in the original consultation paper). The sensitivity for this particular proposal was that it already contained legal drafting, albeit with some gaps and any change to legal drafting might, therefore, be argued to be an Alternative Modification (of which the BSC allows only one). However, the Modifications Group concluded that the changes to drafting emerging from their deliberations should fall into two categories. The first category should contain those features which tidied-up the drafting that formed part of the P19 proposal (filling gaps in drafting, improving consistency, conforming with BSC style and improving clarity). Such enhancements could be regarded as merely finalising the detail of the proposal and would not constitute an Alternative Modification to P19 as originally presented. The second category should contain those features which constituted a material impact on the drafting in P19 and should, therefore, be regarded as an Alternative Modification. The first of these is referred to as P19 (tidied) and the second is referred to as P19 (optimised).

The Modifications Group concluded that P19 (tidied) should incorporate general re-drafting, in respect of style and format, along with all of the points raised as other features (as above), except four points that were judged to constitute a material change to P19. These four points relate to: the need for both Parties to agree a notification error claim, the removal of any reference to contractual arrangements outwith the BSC and with time limits being referenced to the first relevant Gate Closure and with exclusions whereby claims could be disallowed. P19 (optimised) should include everything that is in P19 (tidied) along with the four points excluded from P19 (tidied).

The ultimate conclusion of those members of the Modifications Group who accepted the view that P19, in principle, better achieved BSC objectives was that P19 (optimised), as an Alternative Modification, might improve the better achievement of BSC objectives but that they could not reach a firm conclusion in the absence of the two legal drafts. On that basis, the Modifications Group took the view that the BSC Panel should put P19 (tidied) and P19 (optimised) to the Authority, without any recommendation (negative or positive).

The Modifications Group recognised that the question of retrospective application was important: they believed that the Panel should seek a view on this matter from the Authority.

11 SUGGESTED RECOMMENDATIONS

On the basis of the conclusions of the Modifications Group, it is suggested that no recommendation be made by the panel and that both the Original and Alternative Modification are put forward for determination.

Further, it is recommended that the Panel seek a view from the Authority on the provision for retrospective application included in P19 (Tidied) and P19 (Optimised).

ANNEX 1 MODIFICATION P19

Modification Proposal – F76/01	MP Number: P19

Title of Modification Proposal

To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications.

Submission Date

11 June 2001

Date Logged

12th June 2001

Description of Proposed Modification

London Electricity ('London') proposes a modification which would amend Section P of the Code to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis.

Where such a notification failed to reflect the true trading positions of one or more Parties, the Party/Parties concerned would be entitled, once it/they had recognised the error, to submit a claim for the Notification Error to be rectified, with a longstop for the claim of 72 hours. (The Proposed Modification would, however, also allow Parties to claim rectification of Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of the Modification, even where the 72 hour limit has been passed.)

To ensure that claims for rectification of a Notification Error are restricted to errors of genuine significance, a fee of £5,000 would be payable in respect of each claim.

It would be for the Parties to prove to the satisfaction of the Panel that there had, in fact, been a Notification Error.

Where the Panel was so satisfied, it would be required to determine that appropriate adjustments be made to the erroneous notification, in order to bring it into line with the true trading position.

The adjusted notifications would then be used for the purposes of settlement.

Description of Issue or Defect that the Modification Proposal Seeks to Address

Condition 7A.1 of NGC's transmission licence requires NGC to have in force a document (the BSC) setting out the terms of the balancing and settlement arrangements. Those arrangements are defined in condition 7A.2(b)(ii) to include arrangements for the settlement of obligations between the BSC Parties**:**

> '*arising by reference to the [physical quantities of electricity allocated to BSC Parties], including the imbalances **...** between such quantities and the quantities of electricity contracted* [our emphasis]

for sale and purchase between BSC Parties'.

The Modification Proposal is designed to ensure that the BSC fulfils the requirements of condition 7A.2(b)(ii) of NGC's licence, by providing for each Party's imbalance position to be settled by reference to its true contract position, rather than by reference to a notified position which turns out to have been erroneous.

The BSC places on contracting Parties the onus of notifying to the Energy Contract Volume Aggregation Agent details of its contractual position in respect of each Settlement Period. Once Gate Closure has been reached for any given Settlement Period, there is no facility for Parties to correct any errors in their contract notifications. This means that, in cases where an erroneous notification has been made, and has not been corrected before Gate Closure, the settlement of imbalances will be effected by reference to the difference between the Party's physical production (or consumption) and the notified amount, rather than by reference to the difference between the Party's physical production (or consumption) and the contract amount.

This means that the objects described in Condition 7A.2 are not achieved, and that the affected Party may consequently suffer substantially higher imbalance charges than would apply if the correct contract volumes had been used to calculate settlement liabilities.

In order to achieve final settlement, the BSC must provide an effective mechanism for the Settlement Administration Agent to collate information as to each Party's contract position for each Settlement Period, and to calculate settlement liabilities accordingly. In practice, the contracting Parties are best placed to provide information as to their contract position, and it is appropriate that they should be required and incentivised to provide accurate information. In particular, in order to achieve finality of settlement, it is desirable that there should come a point, in respect of each Settlement Period, at which Parties' notified contract volumes must be treated as definitive of their contractual position.

However, there is no good reason why Parties should be denied the opportunity to correct erroneous notifications, provided that**:**

(i) the Parties do so sufficiently soon to avoid any delay in final settlement;

(ii) the opportunity for Parties to rectify erroneous notifications does not unduly diminish incentives to provide accurate notifications in the first place; and

(iii) the opportunity to rectify erroneous notifications is used for its proper purpose – namely, to rectify erroneous notifications of Parties' true trading positions, and not to effect and notify changes in a Party's contract position which occur after Gate Closure.

The Proposed Modification is designed to introduce into the BSC a provision enabling Parties to rectify notification errors within these limits.

Given that there has been a greater risk of notification errors during the early period of the operation of the BSC, the Proposed Modification is designed to allow the rectification of all past notification errors, including those in respect of Settlement Periods for which initial settlement has been completed prior to the publication or adoption of the Proposed Modification.

The Proposed Modification also embodies a similar modification to deal with erroneous notifications of Metered Volume Reallocation Notifications.

Impact on Code

Section P should be amended by the insertion of a new paragraph 2.3.6A as follows**:**

2.3.6A

(1) For the purposes of this Section P, a Notification Error occurs where and only where:

(a) the information contained in an Energy Contract Volume Notification (taken

together with any prior Energy Contract Volume Notification that remains in force pursuant to paragraph 2.3.5(b)) does not, at Gate Closure for any Settlement Period to which that notification relates, accurately reflect a trade of Active Energy; or

(b) a trade of Active Energy is not, at Gate Closure for any Settlement Period to which that trade of Active Energy relates, reflected in an Energy Contract Volume Notification.

(2) In relation to a claim under paragraph (3) for rectification of a Notification Error, ***a trade of Active Energy*** *is:*

(a) an agreement between two Trading Parties for the sale and purchase of a quantity (or quantities) of Active Energy in relation to one or more Settlement Periods; or

(b) a resolution on the part of a single Trading Party to transfer Energy Contract Volume(s) from one of its Energy Accounts to the other which has been implemented within the Trading Party's own books or other records of account.

(3) Where a Party considers that there has been a Notification Error in relation to any trade of Active Energy to which it is Party, it may, subject to paragraph (4), as soon as reasonably practicable after becoming aware of the Notification Error and, in any event, no later than 72 hours after the end of the Settlement Period(s) to which the trade of Active Energy relates, make a claim for rectification of the Notification Error by giving notice of such claim to the Energy Contract Volume Aggregation Agent, together with details of the other Party (if any) to the relevant trade of Active Energy;

(4) Where a Party makes a claim for rectification of a Notification Error, it shall pay a fee to BSCCo, the amount of which (for each such claim) shall be £5,000, or such other amount as the Panel may from time to time, after Consultation with Parties, determine upon not less than 30 days' notice to Parties – which fee shall not be reimbursed in any circumstances.

(5) Where a Party gives notice of a claim for rectification of a Notification Error to the Energy Contract Volume Aggregation Agent, that agent shall within 24 hours of receiving such notice forward the notice to BSCCo, and to all Contract Trading Parties and Volume Notification Agents.

(6) The Panel shall consider claims for rectification of Notification Errors in accordance with this paragraph (6):

(a) For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 2.3.6A; and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so.

(b) Where a claim for rectification of a Notification Error is made:

i. *the Panel Secretary shall arrange for the claim to be placed on the agenda of the Panel (consistently with paragraph (6)(b)(iii)), and shall request:*

- *the Party claiming rectification of the Notification Error to provide such evidence and information supporting its claim as it may consider appropriate to resolve the claim; and*
- *the Energy Contract Volume Aggregation Agent to provide comments in relation to the claim;*

ii. *the Panel shall determine in its opinion whether there was a Notification Error and (if so) shall also determine what adjustments are to be made to the relevant Energy Contract Volume Notification or (in the case of a Notification Error under paragraph (1)(b)) what Energy Contract Volume Notification should be treated as having been submitted in respect of the relevant Settlement Period(s);*

iii. *the Panel shall wherever practicable consider and determine the claim in time for any such adjustments to be taken into account in the Initial Settlement Run;*

iv. *the Panel Secretary shall notify the Panel's determinations to the Energy Contract Volume Aggregation Agent and to all Contract Trading Parties and Volume Notification Agents;*

v. *the fee under paragraph (4) shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph (6)(b)(iv), and shall be paid accordingly.*

(c) The determination of the Panel (or any Panel Committee established or appointed under paragraph (6)(a)) as to whether there was a Notification Error, and (if so) what adjustments are to be made under paragraph (6)(b)(ii), shall be final and binding on all Parties.

(7) Where the Panel has determined pursuant to paragraph (6)(b)(ii) that adjustments are to be made to the relevant Energy Contract Volume Notification or that an Energy Contract Volume Notification should be submitted, a notification in such terms shall be treated as having been submitted by the relevant Energy Contract Volume Notification Agent in respect of the relevant Settlement Period(s) in accordance with paragraph (8) below.

*(8) An Energy Contract Volume Notification submitted in accordance with paragraph (7)**:***

*(a) shall be deemed (for the purposes of the Code) to have been received**:***

(i) in the case of a Notification Error under paragraph (1)(a), at the time at which the original such notification was received; or

(ii) in the case of a Notification Error under paragraph (1)(b), in the period immediately before Gate Closure for the first Settlement Period to which the relevant trade of Active Energy relates; and

*(b) if valid in accordance with paragraph 2.3.4, shall, notwithstanding that it may be submitted after Gate Closure for any Settlement Period, be in force and (subject to paragraph 2.4) effective for Settlement Periods for which**:***

(i) in the case of a Notification Error under paragraph (1)(a), the original Energy Contract Volume Notification would (consistent with paragraph 1.2.4) have been in force; or

(ii) in the case of a Notification Error under paragraph (1)(b), the trade of Active Energy relates.

A similar, but separate, provision will need to be included under Section P (as a new paragraph 3.3.6A, after 3.3.6) for Metered Volume Reallocation Notifications.
A supplemental provision will be needed to deal with the making of claims for Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of this Proposed Modification. London proposes that claims in respect of such Notification Errors should require to be made within five days of the adoption of the Proposed Modification.
A number of consequential and supplementary amendments may also need to be made as a result of the addition of new paragraphs 2.3.6A and 3.3.6A.

Impact on Core Industry Documents
None

Impact on BSC Systems and other Relevant Systems and Processes used by Parties
None

Justification for Proposed Modification with Reference to Applicable BSC Objectives
The Proposed Modification is justified on the following grounds**:**

(i) It will ensure that, in principle, settlement will be conducted by reference to Parties' true contract positions, rather than by reference to erroneously notified positions. This requires that Parties should be allowed to correct erroneous notifications. However, they should not be entitled to do so if, by doing so, they would undermine the finality of settlement, or introduce inefficiency into the settlement process, to such an extent (in either case) as to prevent the BSC from operating efficiently or to introduce doubts into the market.

London submits that the Proposed Modification strikes an appropriate balance between (1) securing that settlement is effected by reference to accurate data, while ensuring that Parties are incentivised to provide accurate data at the outset, and (2) securing that settlement is effected efficiently.

It is reasonable to require Parties to adopt effective measures to ensure that they make accurate notifications under the BSC. However, if Parties were to be confident of *never* making a notification error, then they would have to spend disproportionate amounts on the design and operation of their notification systems and procedures. Moreover, if there is no facility to correct notification errors, Parties are likely to manage their trading operations in such a way as to minimise the risk of notification errors, in preference to optimising their trading position**:** for example, they might aim to complete their trading and notify (and check) their contract position well before Gate Closure, instead of trading up to Gate Closure. This would unnecessarily curtail available trading time. (In fact, there is some evidence that this is what is happening now.)

Overall, it is likely to be less costly, and therefore more efficient, to allow Parties to correct notification errors.

However, there are costs to other Parties in dealing with notification errors. These fall into two main categories**:**

(a) the cost of processing/determining a Party's claim that there has been a notification error and correcting settlement information if the claim is made out; and

(b) the cost to other Parties which might arise if there were an open-ended possibility of having settlement of previous Settlement Periods re-opened, by virtue of notification errors discovered long after the event.

The first of these costs can be addressed by requiring a Party claiming rectification of a notification error to pay a fee, to cover the costs of processing the claim. The obligation to pay a fee to have errors rectified will also serve to incentivise Parties to avoid making errors at the outset.

The second of these costs can be substantially avoided, or mitigated, by imposing a

longstop date for claims for rectification of notification errors (being a longstop date consistent with the present timetable for final settlement) and/or by ensuring that, as soon as a claim for rectification of an alleged notification error is made, all Parties are notified of the claim (and can therefore factor it into their forecasts of their settlement liabilities).

It is proposed that, for claims in respect of notification errors made after the adoption of the Proposed Modification, a longstop for making a claim be adopted of 72 hours after the Settlement Period(s) to which the claim relates. This will provide Parties with an incentive to check their notifications promptly. There is no justification for an even shorter longstop, since Parties to the BSC do not rely on the notified contract position of other Parties for the purposes of their own trading decisions. (Parties will only be concerned that the figures used for the Initial Settlement Run are as accurate as possible.) This position can be contrasted with that of claims of Manifest Error in the submission and/or acceptance of Bids and Offers in the Balancing Mechanism (paragraph 7 of Section Q). In those specific circumstances, a longstop for making claims of four hours is appropriate since Parties will be making important trading decisions on the basis of Bids and Offers being made by other Parties and accepted by NGC. Any errors in the submission and/or acceptance of Bids and Offers must be corrected at the earliest opportunity to avoid misleading the market.

London submits that, in the light of all the above considerations, the Proposed Modification would**:**

(a) provide for settlement of imbalance obligations to be undertaken by reference to Parties' true contract positions, as required by Condition 7A.2(b)(ii) of NGC's transmission licence. It would therefore promote the attainment of the objective specified in Condition 7A.3(a) of that licence (the efficient discharge by NGC of its licence obligations); and

(b) promote efficiency in the implementation and administration of the balancing and settlement arrangements (Condition 7A.3(d)).

(ii) The Proposed Modification is also intended to allow Parties who have already made notification errors in respect of past Settlement Periods to submit claims for correction of those errors. To this extent, the 72-hour longstop in relation to making claims for Notification Error should be relaxed, and a different longstop time applied (for example, as we have proposed above, five days after adoption of the Proposed Modification).

London proposes that the Proposed Modification should apply retrospectively to take account of the fact that, in the period immediately following the introduction of NETA, Parties have found it unusually difficult to validate notification data in a timely manner. In particular, problems arising from the operation of systems employed by central Parties have frequently led to inaccurate data being fed back to the Parties for validation. (This is clear from ELEXON circulars issued at or around that time, notably numbers 11 to 13, 15 to 17, 19 to 21, 24, 27, 28, 33, and 41, and the Logica bulletin dated 11 April relating to settlements for 3 April.) In consequence, it was often unusually difficult for Parties to distinguish errors arising from central systems from errors in Parties' own notifications. This meant that Parties were often unable to identify and correct errors before Gate Closure, with errors becoming apparent only on the provision of data in respect of the initial settlement run.

By way of example, initial validation reports received by London on 3 and 4 April 2001 bo indicated substantial imbalances but were accompanied by a warning from ELEXON that malfunction in its systems might have led to errors, and that apparent imbalances would corrected automatically, without intervention by London. In the event, however, only t figures for 4 April resolved themselves. The figures for 3 April represented a significa imbalance resulting from a Notification Error which, by the time it became apparent, it w then too late for London to correct.

The plethora of data errors was compounded by the Parties' initial lack of familiarity with the reports in the early days of trading. These factors have resulted, in some cases, in the

use of erroneous notification data to calculate settlement imbalances. This has, in turn, led to substantial imbalance liabilities. The adoption of the Proposed Modification, allowing these past errors to be corrected, would serve the general purpose of ensuring that settlement liabilities in respect of past Settlement Periods are calculated by reference to Parties' true contract positions.

The Proposed Modification is therefore justified on the basis that it contributes to the bett attainment of the objectives of the BSC, as detailed above. It is also consistent with t approach taken in recent Trading Disputes, where difficulties encountered by Parti immediately following Go-Live have led to a temporary (three-month) relaxation of t requirements for the timely notification of disputes.

A question may arise as to whether retrospective application of the Proposed Modificat appropriate. In some cases, the retrospective application of new rules may be regard inappropriate. This may be the case where, for example**:**

(a) the retrospective application of new rules may be unfair to Parties who would have acted differently, if they had known that the new rules would apply;

(b) the retrospective application of new rules on one occasion may create a perception among present and future participants that there will be other occasions where new rules are adopted and applied retrospectively to the detriment of Parties, thereby causing them to regard participation in the arrangements as carrying additional risk, which will feed through into higher prices; or

(c) the retrospective application of rules may re-open settled financial transactions.

Taking these three issues in turn**:**

The first of these issues does not arise in this case**:** no Party would have conducted itself differently in the balancing market if it had known that erroneous contract notifications could be rectified, since balancing trades are based on notifications of physical positions, and not contract positions. (This also means that, where some Parties have benefited from errors in others' notifications, that benefit has been a windfall.)

The second issue is of a more general nature, and is based on a common concern that *all* retrospective application of new rules creates increased risk. This is a misconception. It may equally be argued that a refusal to implement retrospective changes to address unfairnesses is a risk factor which participants must factor into their decision-making. Indeed, London submits that, in this case, the BSC has caused unnecessary unfairness by exposing Parties to substantial imbalance settlement liabilities, which were not foreseen at the time when the BSC was concluded. If the BSC is now amended to provide for retrospective correction of such unfairnesses, then that would send a signal to participants that Parties are protected from unforeseen unfairnesses in the operation of the BSC. Parties can therefore be expected to regard a retrospective application of the Proposed Modification as in fact decreasing, rather than increasing, the risks associated with participation in the BSC.

The third of these issues need not be of concern in the present case because**:**

(a) the retrospective application of the Proposed Modification will not interfere with transactions which have been finally settled, since final settlement in respect of any given Settlement Period is not completed until 14 months after its close;

(b) there is no absolute rule of law prohibiting the re-opening of transactions whi have been fully settled**:** see, for example, *Kleinwort Benson Ltd v Lincoln City Cour* [1998] 4 All ER 513 (HL);

(c) the retrospective application of the Proposed Modification should therefore be permitted if the benefits of retrospective application (as outlined above) are likely to outweigh any detriments.

London submits that, in this case, retrospective application of the Proposed Modification wi be beneficial overall. Any detriments can be avoided by ensuring that the rationale for

retrospective application of the Proposed Modification is fully explained in any report or decision document, to allay concerns that new rules might be applied retrospectively in ot materially different, cases.

The retrospective application of the Proposed Modification can therefore be expected to**:**

(a) provide for Parties' imbalances in respect of past Settlement Periods to be settled by reference to their true contract positions, as required by Condition 7A.2(b)(ii). This will contribute to the efficient discharge by NGC of the obligations imposed on it by its licence (Condition 7A.3(a));

(b) promote effective competition in the generation and supply of electricity, by allowing Parties, and new entrants in particular, to place reliance on the effectiveness of the BSC in addressing unfairnesses (Condition 7A.3(c)). To the extent that new entrants to the market may be more likely to make Notification Errors, then the Proposed Modification may further serve to promote competition from new entrants, by protecting them from the disproportionate consequences of such Errors; and

(c) promote efficiency in the implementation of balancing and settlement arrangements (Condition 7A.3(d)), by reducing the risk to Parties of participating in the BSC, and thereby reducing the risk-related costs of balancing and settlement activity.

(iii) It may be argued (as it was recently in the context of Modification Proposal P9) that the balance of fairness lies in favour of making no Code modification (or no retrospective modification) because Parties had an opportunity to address these considerations before the BSC was signed. London submits that such an argument would be incorrect because**:**

(a) discussions of the proposed terms of the BSC prior to its signature expressly contemplated that the question of notifications post-Gate Closure would be reconsidered in the light of the operation of the BSC, and also that Parties would be free to make a modification proposal post Go-Live to address errors in Energy Contract Volumes or in Metered Volume Reallocation (see, respectively, page 48 of the Ofgem/DTI 'conclusions document' on NETA dated October 1999, and pages 2 and 3 of the joint NETA Programme/ELEXON working group paper dated October 2000 on Manifest Errors in Balancing Mechanism Transactions);

(b) discussions before signature of the BSC focused on whether Parties should be allowed to notify trades conducted after Gate Closure, whereas the Proposed Modification relates only to the notification after Gate Closure of trades effected (but not correctly notified) before Gate Closure;

(c) experience of the operation of the BSC shows that, in the weeks immediately after the commencement of the BSC, it has been more difficult than might previously have been expected for Parties to validate contract notification data, because of the large numbers of unrelated errors in the data put to them for validation, so that any conclusion on these issues reached through discussions conducted prior to the start date of the BSC could properly be re-opened in the light of experience; and

(c) discussions as to the terms on which the BSC should be adopted focused on the adoption of terms which would be appropriate to cater for the normal functioning of the market, and were not addressed to the exceptional circumstances which would apply in the period immediately following the introduction of NETA. There should therefore be no objection to adopting a retrospective modification to cater for the exceptional difficulties arising from the exceptional circumstances of the period immediately following Go-Live.

Details of Proposer

Name: Roger Barnard
Organisation: London Electricity plc
Telephone: 0207 331 3398
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Attachments

For completeness, London details in its letter covering this application a recent instance of contract notification error in respect of which it will wish to make a retrospective claim for rectification, if the Proposed Modification is adopted.

London asks that that letter be treated as an integral part of this Modification Proposal.

Attached Letter

Mr Nicholas Durlacher
Chairman, BSC Panel
c/o ELEXON Limited
Third Floor, 1 Triton Square
London NW1 3BX

RB/MVB

11 June 2001

Dear Mr Durlacher

ERRONEOUS NOTIFICATIONS: MODIFICATION PROPOSAL

London Electricity ('London') wishes to propose a modification to the Balancing and Settlement Code to ensure that the Code fulfils the objectives of Condition 7A.2 of NGC's transmission licence by providing that each Party's imbalance position is settled by reference to its true contract position rather than by reference to a notified position which turns out to have been erroneous.

This letter adds some background to the proposed modification, which we have submitted separately in the prescribed manner, and should be treated by the Panel as an integral part of our submission.

London is a Trading Party to the BSC, which governs the operations of the NETA market. These new arrangements commenced on 27 March 2001. As you and other Panel members will know, many BSC Parties had some initial problems with their business processes or systems during the first few weeks of operation of NETA. As you also know, these problems were compounded in the early days of NETA by the feedback to Parties, from the central Parties, of inaccurate data for validation. All this is verifiable by reference to ELEXON circulars.

One such process problem on London's part, and its unfortunate combination with other problems arising from the operation of the systems employed by the central Parties, resulted in an undetected error in London's submission of its contract position relating to the day of 3 April, only a week after the commencement of the new market. The consequence of this error was that ELEXON's calculation of London's net financial liability for that day was increased by some £7.5 million above the level corresponding to its true contract position.

In brief, although London's error had no adverse effect whatsoever on the physical balancing or costs of operation of the electricity system, it had a very large adverse effect on the calculation of London's liability for imbalance charges for the day of 3 April. The total cost to London was then redistributed to other BSC Parties, resulting in windfall gains for them.

The justification for our proposed modification of the BSC is that, under present arrangements, the objects described in Condition 7A.2 of NGC's licence are not achieved, with the result that the affected Party – as in London's case in relation to the events described above – may suffer substantially higher imbalance charges than would apply if the correct contract volumes had been used to calculate the Party's settlement liabilities.

Given that for all Parties there has been a greater risk of notification errors during the early period of operation of the BSC, our proposal is designed to provide for the rectification of all past notification errors, including those in respect of trading periods for which initial settlement has been completed prior to the adoption of the proposed modification. We believe that the case for such retrospection is a strong one, from

which all BSC Parties stand to benefit, both immediately and on a continuing basis, particularly as regards new market entrants.

Our case is set out in more detail in the separate formal proposal, which we have formulated in the light of, amongst other things, the Authority's decision dated 8 June in relation to Modification Proposal P9. For the avoidance of doubt, (1) we ask that our proposal be treated as an urgent modification, and (2) we confirm that London will wish to make a retrospective claim for the rectification of its notification error in respect of its contract position for the day of 3 April, if the proposed modification is adopted.

If you or other Panel Members have any questions in relation to the above, we would be happy to deal with them. We look forward to hearing from you.

Yours sincerely

Roger Barnard

Regulatory Lawyer
London Electricity Group

ANNEX 2 EXTRACT FROM CONSULTATION REPORT DESCRIBING MODIFICATIONS GROUP CONSIDERATION OF P19

ANNEX 2.1 Approach

A Modifications Group was convened and met on Monday 18th June 2001 to consider the proposed modification.

The Modifications Group noted that the BSC Panel had obtained the agreement of the Authority that this Modification should be treated as urgent and that the associated timescales and processes allowed for two meetings of the Group. The first of these was to consider how the proposal should be progressed.

Two approaches were considered:

i) Consider and develop alternative Modifications to address the perceived defect and consult on which might be preferred.

ii) Present arguments pertaining largely to the proposal (P19) as it stands, seeking views on certain variations to particular elements of that proposal.

Given the urgent status of the Modification, the second of these approaches was taken. This approach was supported by the proposer. P19 is appended as annex 1.

In order to present the arguments for consultation, the key aspects of the Modification that were considered were as follows:

- Key features
- Impact
- Enduring process
- Initial process

Subsequently, ELEXON have obtained legal advice on the proposal and, in particular, on the suggested drafting. These views have also been included in this consultation document.

The Modifications Group accepted the presumption that the proposal was to apply equally to both Energy Contract Volume Notifications and Meter Volume Reallocation Notifications.

So as to assist the consultation, a number of specific questions have been drafted to reflect matters discussed by the Modifications Group. Responses are invited to these specific questions.

Views on any matter related to Modification Proposal P19 are also invited. Respondents are asked to give their views and rationale as to whether the Proposed Modification would better facilitate achievement of the Applicable BSC Objectives.

ANNEX 2.2 Key Features

Four key features were identified as being of significance in the context of the Modification:

- Intent to facilitate balancing
- Ability to adjust notified position ex-post
- Ex-ante notification
- Retrospection

Annex 2.2.1 Intent to Facilitate balancing

The view of the Modifications Group was that the Modification had no impact on the ability, or otherwise, of Parties to balance their position, and with suitable controls would not dilute incentives on Parties to balance.

Annex 2.2.2 Ability to adjust notified positions ex-post and ex-ante notification

The proposal itself, in presenting a case for enabling adjustments to notified positions to be made after Gate Closure, acknowledges that certain limiting factors should be considered in order to maintain the integrity of the ex-ante notification arrangements under the BSC:

- Ex-post adjustments should be made sufficiently soon to avoid undue uncertainty for settlement, on an ongoing basis.
- Incentives to make accurate notifications should be maintained.
- The ability to make ex-post adjustments should be used for its proper purpose, namely to reflect a true (ex-ante) trading position.

The Modifications Group recognised that the proposal sought to combine existing ex-ante notifications, with an exceptional ex-post element which would exist only as a means of correction of genuine errors.

Condition 7A.2(b) (ii) of NGC's Transmission Licence states that "NGC should provide arrangements for the settlement of obligations arising by reference to the physical quantities of electricity allocated to BSC Parties, including the imbalances ... between such quantities and the quantities of electricity contracted for sale and purchase between BSC Parties". It was suggested in the proposal that, in order to give effect to this objective (rather than allowing settlement to take place on the basis of some notifications being erroneous and, therefore, not related to contracted sales and purchases of electricity), either some ex-post adjustment should be enabled, or a disproportionate amount of investment would be required to ensure avoidance of errors.

The proposal further asserted that, by enabling true trading positions to be reflected, the proposal also leads to the better achievement of NGC's licence condition 7A.3(a); the efficient discharge by NGC of its licence obligations.

Subsequent legal advice, obtained by ELEXON, has suggested that NGC's licence condition 7A.2 defines the scope, or boundary, of the BSC and does not establish the objectives of the BSC (which are set out in 7A.3).

A view was also expressed at the Modifications Group that this risk of error was potentially stifling trades close to Gate Closure. Notwithstanding the above statements relating to NGC's licence condition 7A.2, such ex-post adjustments could also, therefore, be argued to enable better achievement of NGC Licence condition 7A.3 by allowing greater efficiency

and increased liquidity (close to Gate Closure) and thus promoting competition in the sale and purchase of electricity.

Finally, it was argued in the proposal that all of the foregoing would also lead to the better achievement of the NGC licence conditions 7A.3 (d) (promoting efficiency in the implementation and administration of the balancing and settlement arrangements) and also lead to better achievement of the NGC licence condition 7A.3 (a) (the efficient discharge by NGC of its licence obligations).

Underlying all of this was the presumption that the contracted volumes in question remain truly ex-ante and that the current basis of settlement was not undermined. In deliberating on this question, the Modifications Group considered whether certain justifications should be a pre-requisite of any notification error claims, recognising that certain limitations had been proposed in P19. The following limitations were considered:

- Time limits for submission of notification error claim
- Payment of fees to cover any notification error claim
- Provision of evidence to support a notification error claim
- Exclusion of certain circumstances from being treated as a notification error

It was noted that all but the last of these are utilised in P19; these matters, along with some variations are considered below.

On the basis of the foregoing discussion, a number of key questions may be helpful, in addition to any general views that may arise:

Q1. Do you support Modification Proposal P19?

Q2 Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?

Annex 2.2.3 Retrospection

In so far as retrospection is concerned, a number of arguments were considered, in the context of the above mentioned BSC Objectives. In P19 itself, it is argued that retrospective application of the proposal should be enabled because of the unusual difficulty of validating data in a timely manner in the initial period following the initiation of the BSC arrangements. The proposal also presented counter-views which, typically, underpin the presumption against retrospection:

- Parties may have acted differently, if they had known that new rules would apply
- A perceived risk may arise if retrospection is thought to be established as a precedent, rendering the trading rules inherently uncertain. Such a risk could lead to higher prices
- Settled transactions may be re-opened

The proposal provided some views on these points and the Modifications Group gave some further consideration to the first two of the points. The proposal suggests that no Party would have conducted itself differently in the balancing mechanism, since balancing action is related to physical position, not contracted position. Modifications Group discussions suggested that other actions, such as investment in notification and settlement systems and contracting strategies, might also have been influenced by the BSC as it stands.

On the second point, the proposal suggested that this risk is outweighed by the risk of unfair treatment which itself would factor into the achievement of the relevant BSC Objectives. The Modifications Group judged this balance of risks as being the key issue in respect of whether or not to apply the proposal retrospectively.

On the final point, the proposal noted that settlement has not been finalised for any period in question (by virtue of the 14 month reconciliation cycle) and that, in any event, legal precedents exist for re-opening transactions, in appropriate circumstances.

The proposal contends that discussions before Go-Live foresaw consideration of changes to the BSC in the light of operational experience.

The proposal also maintains that the circumstances experienced since Go-Live warrant consideration.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively; covering the period from Go-live?

Annex 2.3 Impact

The Modifications Group considered two distinct instances where the proposal could impact; firstly, the Party and counterparty associated with a given notification (and its subsequent adjustment) and secondly, other Parties.

On the Party and counterparty, the direct impacts may be summarised as follows:

- Correction of imbalance liabilities
- Liability for the payment of a notification error claim fee

The Modifications Group recognised that certain variations were possible in respect of the fee. Firstly, there is the question of whether, or not, a fee should be levied. There is then the question as to the level of the fee. In the proposal, it was noted, some reference is made to the fee (suggested to be £5K) covering the costs associated with the processing of the claim. This would be a similar arrangement to that employed for Manifest Error provisions in the BSC. Secondly, there is the question as to whether the fee should be a fixed amount, or whether it should be weighted in some way, for example, as a percentage of the sum involved in the notification error claim.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis (please specify)?

The direct impact on other Parties was considered to be:

- Correction of revenue surplus allocations

This may have both cost and timescale implications for Parties generally.

In addition, the Modifications Group believed that there may be changes required to other contractual arrangements that are outside of the BSC, such as GTMA's, were the proposal to be adopted. This might have further cost and timescale implications for Parties.

Q5. The adoption of this proposal might have implications for other contractual arrangements that are outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Annex 2.4 Enduring Process

The implication of the drafting given in P19 is that of a process largely the same as that employed for the Manifest Error provisions in the BSC. Hence, within a certain time limit a notification error claim may be lodged, along with a fee. Thereafter, the BSC Panel would consider the merits of the case, based on evidence (which is not prescribed) presented by the Party concerned. Depending on the decision of the BSC Panel following its deliberations, the notification error claim would either be accepted, for subsequent calculation of liabilities in settlement, or the claim would be rejected.

The Modifications Group considered a number of aspects of this process. Firstly, it was recognised that certain options existed for limiting the time for the submission of notification error claims. In the proposal itself, the point from which this time limit should be measured was taken to be the end of the last settlement period to which the notification related. Subsequent legal advice has suggested that this may be problematical, for example, in the case of 'evergreen' notifications. This raises the question as to what other points of reference might be used. The following provide some of these options:

- The time at which the erroneous notification was made
- The first Gate Closure relating to the erroneous notification
- The end of the last settlement period relating to the erroneous notification (as per P19)
- Some other reference time

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

a. The time at which the erroneous notification was made?
b. The first gate closure relating to the erroneous notification?
c. The end of the last settlement period relating to the erroneous notification (as per P19)?
d. Some other reference time (please specify)?

In so far as potential time limits were concerned, the Modifications Group discussions suggested the following options:

- A very short timescale, over which self-checking might be feasible, for example, 3.5 hours
- A timescale commensurate with the provision of initial information from central settlement systems, for example 24 hours

- A timescale consistent with the desire not to allow the error to propagate through settlement, for instance 72 hours, which is the proposal in P19.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a. 3.5 hours?
b. 24 hours?
c. 72 hours?
d. Some other period (please specify)?

The Modifications Group then considered whether the provision of evidence should be entirely non-prescriptive. One proposition was that, one element of prescription should be that both Parties associated with the notification (or one Party, if the trade is a transfer between accounts within one BSC signatory organisation) should support the error claim. This would avoid the process becoming embroiled in any dispute between Parties that may arise and mirrors current Manifest Error requirements.

Q8. Do you agree that the evidence required to support an application should:

a. Be entirely at the discretion of the Panel?
b. Always include supporting declarations from Party and Counterparty?
c. Include other prescribed components?

A further option considered by the Group was whether certain potential notification errors should be excluded from being considered. One option suggested was that of not allowing an error to be claimed when no notification at all was originally made.

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in questions 3 & 7)?

The Modifications Group also considered whether the BSC drafting should allow for the BSC Panel to avail itself of any assurance as to the evidence provided by the Party in support of a claim. The suggestion was that such assurance might assist in confirming that a notification error reflected a true ex-ante intent. The view was that this should be left to the discretion of the Panel.

Q10 What assurance, if any, should be specified in the code to support the evidence for a notification error claim?

Finally, the Modifications Group recognised that the impact on credit cover arrangements would need to be clarified. There was a view that whatever ex-post adjustments to notifications might arise, there should be no change to the treatment of the “erroneous” notifications pending a ruling by the Panel. ELEXON are currently considering this matter further.

Annex 2.5…Initial Process

If the proposal is to be implemented retrospectively, as per P19, then a period of 5 days from implementation is proposed for retrospective claims relating to periods back to 27th March 2001 to be made. A further question raised by the Modifications Group was whether some similar extension to the normal time limit should be provided for future new entrants. The basis of this approach was that new entrants will suffer similar difficulties to those experienced by participants that were Parties when the BSC was first given effect. Further consideration would need to be given as to how a new entrant might be defined and what extension might be appropriate.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

Annex 2.6 BSC Drafting

A number of points have been suggested by ELEXON's legal advisors, some of which have already been covered. However there are a number of further points which may be summarised as follows:

- It may not be clear, in seeking to define a notification error, what a "trade in Active Energy" is, nor indeed what an "agreement" might entail. Hence, it may be preferable to avoid any such description in the BSC and, instead, adopt an approach that is similar to that used in the BSC Manifest Error provisions.

- It may be desirable to include the relevant ECVNA in the process, as the Panel is likely to want to seek the views of the relevant ECVNA.

- There is no need for the Panel to exercise discretion as to the amounts of the rectification in making adjustments, since the outcome of the Panel deliberations would be restricted to either rejecting or accepting the claim. A view from the Modifications Group was that some discretion might be necessary where the Panel has to deal with multiple overlaid erroneous notifications.

ELEXON will prepare final legal drafting of the supporting Code changes, in the light of responses to this consultation.

ANNEX 3 CONSULTATION RESPONSES

ANNEX 3.1 Analysis of Consultation Responses

Responses were received from 18 respondents representing 45 companies. In addition to responding to the specific questions asked in the Consultation Report circulated on 20 June 2001 some respondents made additional points and where possible the key issues raised have been incorporated into this summary. Most of those respondents who did not support P19 nevertheless chose to comment on the questions asked, some on a without prejudice basis. This summary is intended to reflect the range of views in relation to each issue and references to respondents are references to the number of written responses rather than the number of companies on whose behalf those responses were submitted. The proposer of Modification P19 also chose to comment on particular issues raised in the Report. This commentary is not reproduced here but can be found, together with the individual responses from each company, in Annex 3.1 of this Report.

Q1: Do you support Modification Proposal P19?

All but one respondent commented on this question. Seven said they supported Modification Proposal P19. One respondent supports P19 because it better facilitates achievement of the Applicable BSC Objectives. Another respondent supports the modification proposal including the proposition to enable it retrospectively. This respondent set out its rationale in detail. It said that imbalance prices penalised participants for erroneous contract volume and meter volume notifications and that the unexpectedly large imbalance price spread means that the financial consequences of an erroneous notification are very large – far in excess of any cost than an erroneous notification would place on the system. The large penalty incentivises participants to minimise the risk of notification errors at almost any cost, which undermines the efficiency of the market. As an example of this it cited the situation where participants stopped trading many hours ahead of real time to allow themselves sufficient time to notify their contracts and verify their notifications before Gate Closure.

Five other respondents said they supported P19 with one saying that in supporting P19 it agrees with the Modification Group that it will have no effect on the ability of BSC Parties to balance their position and will not dilute incentives to balance properly if fully implemented.

Three respondents said they supported elements of P19 but not retrospective application of the rules. One respondent, in principle, supports the manifest error provision of enabling errors in Energy Contract Volume Notifications (ECVNs) and Metered Volume Reallocation Notifications (MVRNs) to be resolved on an ex-post basis in order to improve the efficiency of the market through reference to Parties' true contract positions rather than erroneously notified positions during settlement but said that it did not support the retrospective application of the rules. Another respondent agreed saying that, it supported a change that will, on an ongoing basis, improve the operation of the market and reduce risk, whilst enhancing the objectives of the BSC in its support of NGC's licence obligations. However, both said they had reservations about the retrospective application of the change from market opening to a potential implementation date. This view was

broadly shared by a third respondent who supported parts of P19 but not others (including retrospective application).

Eight respondents did not support the implementation of P19 with one saying that the effect of P19 was almost identical to the effect of P9, which was ultimately rejected, on sound grounds. It said that its primary objections to the proposal included; encouraging Parties to take active responsibility for their contracting activity underpins much of the NETA reform. Accurate notification of contract position is an integral part of this responsibility. It, like many other participants, had made substantial investments in risk management systems on the basis of the BSC. It recognises that it is highly unlikely that any participant system could be so robust that software faults can be entirely avoided or so comprehensively tested such that the effects of every combination of circumstances can be examined. However, it said that participants have made commercial decisions on the degree of investment in their trading systems and the consequences of any system failure resulting from this investment should be borne by the participant. Allowing the correction of errors will not incentivise participants to develop and test robust systems for contract notification. Instead it will allow participants to use inadequate systems safe in the knowledge that failures in notification can be corrected after the event. Another respondent supported this view adding that it was against retrospective changes to market rules as a matter of principle, as they unfairly prejudice those that have taken decisions against the existing rules, and are damaging for market confidence and liquidity.

This respondent said that the proposal contains no means of limiting the scope of any correcting mechanism. Far from having a tight definition of error, proposal P19 implies a very wide definition, as any set of circumstances leading to a difference between 'true' contract positions and notified position would qualify.

One respondent said it did not support the proposal since there were sufficient provisions within the BSC to enable Parties to manage the risks associated with making ECVNs and that implementing the proposal would dilute the incentives to make timely and accurate ECVNs. It is also concerned that the impact on the credit checking procedures had not yet been fully quantified. It believed that many of the risks associated with making erroneous ECVNs would be mitigated by the introduction of a dual notification process.

One company which did not support this proposal on either a prospective or retrospective basis said that in its view effectively extending the scope of BSC manifest error provision beyond the central systems could seriously undermine the integrity of the new trading arrangements, creating uncertainty in the settlement processes and a stream of claims, the management of which will place a substantial cost burden on the industry. It said that the importance of accurate notifications and the potential financial risk of making errors were well understood by BSC signatories prior to go live. It said that as a result many companies have invested hundreds of thousands in additional manpower, systems and procedures just to minimise these risks. If a more relaxed NETA regime had been planned prior to go live (as is effectively advocated by this proposal) significantly less investment would have been made. The redistribution of moneys as the result of recent errors may appear to be sizeable, but can perhaps be considered a fair reward for the investment made. It did not believe that the Panel or Ofgem should be overly concerned with the magnitude of recent financial redistribution between BSC Parties. As Parties learn from their mistakes (and expensive mistakes provide the most salutary lessons) we

believe significant future money redistribution is less likely. The progressive fall in residual cash flow values since go live provides some evidence that such incentives are working.

Another respondent said it did not support the implementation of P19 and it believed that the modification raised a number of serious issues that require detailed consideration. It pointed out that its specific comments on Modification P19 should in no way be viewed as support for the proposal and its comments were without prejudice to its fundamental opposition to the implementation of the modification. It said that the modification raised fundamental questions about the design of the market. It requires a definition of "true" contractual position in the BSC to allow the adjustment of contractual positions after gate closure but there was no corresponding obligation placed upon trading Parties to issue accurate notifications. It shared the views expressed above on the incentives and penalties associated with accurate and inaccurate notifications. It said that if there is no obligation to notify the 'true' contractual position then a party who has incorrectly notified may, in the light of price information, opt to do nothing if this is to its financial advantage. It believed that the starting point for any review of the modification must be the general principle of contract notification before gate closure as set out in the NETA design. It submitted that the Modification Group has not recognised or addressed this point.

One party said that although there were practical problems in implementing this modification it would like to see the issue given further consideration. It said it has some sympathy with the proposal at least as a 'soft landing' time-limited proposal, recognising that prior to NETA there was limited time for Parties to test their internal systems or become familiar with the processes and procedures. It said that the issues that this modification seeks to address have been exacerbated by the imbalance price spikes experienced since NETA was introduced. Once these were addressed, together with the introduction of improved reporting, the need for this modification could drop away.

Q2: Do you support the key feature of Modification Proposal P19 that the BSC should allow for the correction of notification after gate closure?

One respondent said it supported the correction of notifications after gate closure but only for genuine errors, as determined by the Panel. A further respondent supported this feature to the extent provided for in P19. Another respondent also supported this feature and said that the ability to correct erroneous ECVNs ex-post does not alter the ability of or the incentive on Parties to balance their positions pre-gate closure. It said that once a party has balanced his position pre-gate closure every facility should be available to him to ensure that the true ex-ante position is reflected in settlement in accordance with NGC's licence and the BSC objectives. It said it did not challenge the principle of pre-gate closure notifications of ECVNs, and believes that as a principle it should be upheld. However it did believe that there ought to be adequate safeguards which it described in response to the questions below. A further respondent believes that it is appropriate to allow for notifications to be corrected after gate closure only where there has been a failure in the ECVAA system that has prevented the notification being made/corrected by the normal deadline.

Four other respondents said they supported this feature. A further respondent said it supported correction going forward and another said it recommended inclusion of post

gate closure correction of notifications and that failure to recognise technical errors or events that may sometimes result in the inability of a part to strictly follow BSC processes despite having contracted ex-ante to avoid imbalance exposure results in Parties being cashed out in a manner that leads to inappropriate residual cashflow smears across the industry. It said that this seems perverse since the objective of the imbalance settlement process is to identify those participants whose energy accounts were imbalanced and in theory levy imbalance prices upon those Parties whose imbalance volumes caused physical imbalances upon the system. It recognised that some Parties would be concerned with preserving the principle of ex-ante notifications but thinks that implementing appropriate safeguards should allay these concerns. Two other respondents broadly agreed with this respondent's views with one adding that the penalties and windfalls distort the fair competition required by EU and UK legislation by allowing some Parties to price below cost at the expense of other Parties. This latter respondent said that the risk of imbalance settlement taking place against an erroneous contract position has further effects which will be relieved by the implementation of this modification. The risk of making an erroneous notification and incurring huge imbalance charges can cause Parties to over-invest in systems to ensure that the risk of errors is vanishingly small. This deters new entry and hence does not promote effective competition. It is also economically inefficient.

One respondent said it did not support the correction of notification after gate closure since there was a very real risk that the proposal will threaten the integrity of the new trading arrangements, one of the founding principles of which was notification prior to gate closure. To change this would undermine the robustness of notification and settlement data and could potentially open the floodgates for all sorts of spurious claims. This respondent disagrees with London's assertion that the objects described in NGC's Licence Condition 7A.2 are not achieved. It said that Condition 7A.2 needs to be seen in the broader context of the objectives set out in Condition 7A.3. In particular it drew attention to sub paragraph e (d) which requires "efficiency in the implementation and administration of the balancing and settlement arrangements." This view was endorsed by another respondent who said it assumed that London's reference to the 'true' contract position refers, not to its notified position, but the position it would have been in had it accurately notified its valid bilateral contracts to the ECVAA. Once Parties have notified their contracts they acknowledge that they cannot challenge or dispute any errors arising from contract notification. It argues that the true contract position thus, by definition, must be the contracts as notified to the central service provider. There are presently no central systems to validate notifications and no procedures to investigate notifications. The modification would require the Panel to look behind the notification and consider the actions and intent of the bilateral Parties prior to the notification being made and a substantial central infrastructure would be required to administer the claims process under P19.

Two further respondents said that they did not support the correction of notification after gate closure. One of the two said that allowing the correction of any errors will not incentivise participants to develop and test robust systems for contract notification. Instead, it will allow participants to use inadequate systems safe in the knowledge that failures in notification can be corrected after the event. A further respondent agreed but said that perhaps after more experience has been gained with NETA, say in a year or so,

a thorough review might be appropriate where a number of the questions raised could be examined.

Q3: Do you agree that such a Modification to the BSC should apply retrospectively to Go-Live?

One respondent said it supported retrospective application and that the sheer scale of settlement imbalance charges which Parties have incurred through making Notification Errors points clearly to the risk of unfair treatment outweighing any opposing risk of introducing uncertainty into the trading rules. Another respondent said that retrospective application of P19 was consistent with the applicable BSC objective of promoting the efficient implementation and administration of the balancing and settlement arrangements (see also its comments on achievement of the applicable objectives below). It said that retrospective application provides the precedent that participants will be protected from the consequences of unanticipated flaws in the BSC thereby reducing the regulatory risk of participating in the BSC and reducing participants' costs. It said that at Go Live participants could not have anticipated that there would be problems arising with ELEXON leading to inaccurate notification data being fed back to participants for validation. As a result, and through no fault of their own, participants found it very difficult to know whether their notifications were in error. Nor could participants have anticipated the large spread between imbalance prices The spread means that the penalty for erroneous notifications is significantly higher than anticipated at Go Live.

The same respondent argued that there is little risk that retrospective application would render the BSC inherently uncertain; P19 was designed to address specific flaws not make arbitrary and widespread changes and it had minimal impact on third Parties. Participants other than the participant applying to the Panel to correct an erroneous notification would only be impacted by the correction of a notification in as much as the correction affects the size of the beer fund. P19 would not have incentivised participants to act differently had they known the proposed rules would apply from go live because participants retain a sufficiently high level of financial risk from an erroneous notification. P19 does this through the application fee and Panel determination process. It said that finally, the Panel can further reduce the risk that retrospective application of P19 makes the BSC inherently uncertain by carefully considering and documenting its reasons for making P19 retrospective. It concluded by saying that retrospectivity can legitimately be applied in those cases where the advantages clearly outweigh the disadvantages of such action. Three respondents broadly agreed with this view with one saying that it urged the Panel to test for specious arguments from participants benefiting from windfall sums of money. This respondent said that the test for retrospection should be the effect on future investment and contracting strategies. In its view acceptance of the modification will not materially change future investment or contracting decisions, participants will remain obliged to submit accurate notifications and will require investment in systems capable of such submissions. One of the three said that not to implement the modification retrospectively would perpetuate the unjust burdens caused by past errors. For the market to be seen to be unwilling to remedy such injustices would not encourage new entry.

One respondent in supporting retrospective application to go live said that the worrisome issue should not be the precedent of retrospectively adopting new rules but the precedent of failing to correct clearly imperfect processes. It said the Panel must balance the

principle against retrospection in public law, which is not absolute, with the principle that the law will not insist on performing a clear mutual mistake, present here in the form of attaching balancing penalties to transactions never made. This respondent said that markets become illiquid if correct transactions are unwound and conversely correcting mutually incorrect transactions increases market reliability and credibility. It said it was futile to ask whether retrospection would harm Parties that invested in notification and settlement systems and contracting strategies based on the BSC as it stands; the question suggests NETA required perfect investment foresight before go live. Fundamental economics assumes investments depreciate over time and require improvement or be retired. The presence of modifications processes itself suggests Parties invested in an evolutionary, correctable process post go live.

One respondent whilst supporting P19, thought that on balance the modification should not apply retrospectively to go live. It said that new rules applied retrospectively are unfair to Parties who might have acted differently had they know of the new rule. A party does not judge or measure its risk on the basis of any one type of transaction, rather it balances its risk across the whole of its operations. It said consumption and production accounts carry their own different types of risk, and the overall risk to a company will reflect its relative exposure in these accounts. It said that at market opening especially, Parties took the rough with the smooth across the whole of their operations; one man's swing is another man's roundabout, and once one element of this complex overall risk balance is made renegotiable or made uncertain, it could cascade into other areas. Parties may then pursue modifications in other areas such as PNs, claiming errors were made in their demand forecasts. It said that it must be true that retrospective amendment of rules increase uncertainty and the need to signal to Parties that the BSC is responsive to all reasonable modifications could be met by introduction of this modification on a prospective basis. It also argued that the 14 month reconciliation period referred to in London's submission is principally in respect of Supplier Volume allocation, and as such has a particular risk/change profile associated with it. To claim that it could absorb other types of correction without increasing risk is not correct.

Another respondent did not, in principle, support London's arguments for retrospection and agreed with many of the points made by the above respondent. In particular it did not accept that as a result of ELEXON circulars "it was often unusually difficult for Parties to distinguish errors arising from central systems errors in Parties' own notifications." Parties, acting in accordance with the BSC should have developed systems and processes to identify and correct errors prior to gate closure; those errors that are identified after gate closure are the sole responsibility of the party concerned. It said that although it may be argued that in the early days of NETA there was a greater risk associated with system operation it submitted that the risks were the same for all Parties and that the unified pre-production testing processes were designed to identify problems with participants' systems. Problems with its systems were identified at this time and investment in systems and processes was required to overcome the problem. It believes that retrospection benefits those Parties that did not invest in the required systems. It said that if P19 is introduced then it is appropriate that there is a provision for recovery of stranded costs by those market participants that have incurred such costs and it believes that, without prejudice to its opposition to the modification, drafting should be included in the Code to cover this situation. It added that it concurred with Ofgem's previously published view on retrospection (see Ofgem decision letter on P3).

One respondent said that it believes there are additional issues for any one modification to be applied retrospectively. In this case, if applied retrospectively, a lower recovery rate should be adopted (between 50-70%).

Seven additional respondents did not believe that the Modification should apply retrospectively to go live. One of those opposing retrospection said that Parties may have undergone significant expenditure in developing robust systems and process or in contracting with third Parties to mitigate the risk and might not have done so had manifest error provisions been in place from day one.

One of those who opposed retrospection said that amending the rules prospectively may be fair enough, but changing the rules after the event will create huge uncertainty amongst BSC participants. Allowing the modification to apply retrospectively would be likely to result in a huge number of relatively trivial claims.

Q4: Do you agree that the appropriate fee for raising each notification error claim should be:

a) No charge?
b) A fixed fee of £5,000?
c) Some other fixed fee?
d) A fee determined on some other basis (please specify)?

One respondent said that no charge should be levied but an appropriate de-minimus level for a claim should be set and claims should be made via the Trading Disputes Committee and the costs of investigation and finding recovered in the normal manner.

The proposer said that in its Proposed Modification, it suggested a fee of £5,000 on the basis that such a figure was appropriate and is the same as the fee for claims of Manifest Error. However, it has no objection to the substitution of some other reasonable figure, provided that it is calculated substantially by reference to the costs associated with the processing of the Notification Error claim. It can see no justification for weighting the fee by reference to a percentage of the sum involved in the Notification Error claim.

Two respondents supported a fixed fee of £5,000 with one saying that the fee should be sufficiently large so as to deter participants from applying for correction of notification errors with de-minimis financial consequences. A further respondent supported the proposed fee structure saying that the flat fee should represent the nominal cost of processing a claim and making the correction, both of which are not proportional to the materiality of the claim. Claims should be treated on a per ECVN basis, eg if the same "error" resulted in several erroneous ECVNs, a fee would be payable in respect of each, and supporting evidence required for each. Another respondent supports a fixed fee for raising an error, not to exceed £5,000 per claim. It said it fails to comprehend the logic behind the proposal to weight fees relative to the sum involved as it appears no more costly to correct a large error (unless one is the payor).

A further respondent agreed that the proposed £5,000 fee did not provide any significant incentive to avoid error saying that this sum was small in relation to the potential cost of errors. Another respondent said it supported the idea of a barrier that seeks to prevent

routine use of the process. Given the size of some of the cashout prices it said it is difficult to arrive at a price that would always discourage the correction of notifications when a participant believes he will be significantly exposed. It said that it was not clear exactly what fee was proposed, for example was it £5,000 per half hour, £5,000 per notification file (ie up to 48 half hours) or even £5,000 for a series of notification files all subject to the same error? It said that this clearly this creates barriers of very different size. Another respondent asked a similar question and said that since it did not support the modification it had not considered the question fully but would suggest the maximum of £5,000 and [10%] of the sum involved.

A further respondent said that if the modification was accepted the fixed fee of £5,000 might be appropriate although any fixed fee risks being a disproportionate burden on smaller players. Another respondent shared the concern about the impact on smaller players and said that a fixed charge of £5,000 favours larger Parties; the charge would be more fairly levied as a percentage of the saving to be made by the party making the claim eg 10%. This charge should be levied whether the claim is successful or not to ensure only bona fide claims are made.

One respondent believes that the size of the fee should be related to the size of the party and suggests that it be related to the magnitude of the party's daily energy cost exposure at the credit assessment price, i.e.,

Fee = {(DC*CALF) + (GC*CALF)} * 24 * CAP * X

where X is either 0.1% if the fee is a non-refundable charge, or 0.2% if the fee is a deterrent which is refundable to successful claimants.

Another respondent supported the introduction of a fee and said that it should reflect the costs associated with the administration of the claims by ELEXON and the Panel; this could include legal costs associated with testing and challenging claims or claims disputes and potentially the costs associated with detailed third party audits to validate and verify claims. The figure should be subject to review by the Panel and reflective of costs involved.

One respondent believes the fixed fee should be high enough to discourage numerous small claims being made and that there ought to be some escalation factor for multiple claims.

Another respondent, whilst supportive of the concept of correction of erroneous ECVNs and MVRNs thought that a fee of £5,000 is insufficient to create the correct incentives on participants making claims. It proposes a fee from £10,000 to £15,000 for each claim to be implemented, arguing that a larger fee will provide a financial incentive to Parties to avoid making errors at the outset. Another respondent supports a fee in the region of £15,000 with the maximum recovery rate set at around 80-90%.

One respondent suggested that if the modification was approved then a fee of £5,000 or say [10%] of the 'uncorrected' cost of the error, whichever is the greater, smeared back through the residual cash flow would be appropriate. To discourage too many claims it may be appropriate to limit the number of claims to say [2] per BSC Party in any continuous 12 month period. In addition, to prevent a proliferation of retrospective claims back to go live, the fee for such claims should be set at £50,000.

Q5: The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

One respondent said that a period between adopting the proposal and resolving impact is not necessary. Another respondent said that the impact on third party contracts is likely to be small and therefore it proposed a short time for assessing the impact on third party contracts eg one month. A further said that the largest impact would be on the standard GTMA agreement.

Three respondents suggested that the adoption of P19 will have little or no direct effect on other Parties in relation to contractual changes such as those to the GTMA which includes provisions to conform the transactions and agreement to applicable law and regulation though one said it would not oppose a period not exceeding 30 days between retrospective adoption and implementation whilst another said there should be no need for a significant delay between adopting this proposal and implementation.

One respondent agreed with the views expressed above and said it did not believe significant changes to the GTMA are required and in its view satisfactory remedies for erroneous notifications already exist in such agreements; these should continue to be the primary remedy for Parties to such agreements. It suggested that one month be allowed to resolve any impacts. Another respondent agreed that bilateral contract changes and provisions should take no more than 4 weeks to conclude. Another respondent suggested that 6 – 8 should be allowed whilst a further respondent took a different view saying that it believed a period of 3 to 6 months would be necessary to resolve such impacts.

One respondent said that any changes to the treatment of notification errors would required changes to Power Exchange rulebooks as well as the Grid Trade Master Agreements; it estimated that it would take a minimum of several weeks to resolve these problems. Another believed that there would be a considerable impact on other agreements and that renegotiation of the terms can be a lengthy (upto 3 months or more) and expensive process. Another respondent held broadly similar views.

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

a) The time at which the erroneous notification was made?
b) The first gate closure relating to the erroneous notification?
c) The end of the last settlement period relating to the erroneous notification (as per P19)?
d) Some other reference time (please specify)?

One party said that an error claim should be allowed to be made for the whole notification from the end of the last settlement period related to the erroneous notification. To make the reference time the point at which the erroneous notification was made would only serve to discourage participants from making notifications well in advance of gate closure. To make gate closure the reference point would result in participants with an erroneous contract of long duration having to correct part of their notification in advance of gate closure or make repeated applications to correct the same notification after gate closure.

One respondent said that the reference point for 'starting the clock' towards the time limit for a claim should ideally be the point at which a competent operator should be expected to spot any notification error and would therefore presumably relate either to receipt of

the '7 day' report for any notification or the first gate closure relating to the erroneous notification.

One respondent said that the appropriate reference point should be the time from which the settlement report is received.

One respondent said it does not oppose any of the measurement reference points but thinks that b) above may be the least problematical given that it is clearly determinable. Two further respondents supported option b).

Three respondents thought that option c) above is appropriate.

One respondent suggested that the appropriate reference point should be 6 hours after a notification has been made.

A further respondent said that an appropriate reference point should be the end of the first settlement period relating to the erroneous volume.

Another respondent said that the reference point should be the point at which as a Reasonable and Prudent Operator the party concerned should have first detected the error.

One respondent said that a reference time was not required if a contract notification error was defined as a 'self evident' manifest error. It suggested that the definition could be that a notified value that was at least an order of magnitude (positive or negative) different from the value that would be notified in the ordinary course of events (subject to determination by the Panel).

Q7: Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a) 3-5 hours?
b) 24 hours?
c) 72 hours?
d) Some other period (please specify)?

Five respondents said that they thought the appropriate time limit was of the order of 72 hours. This was supported by two other respondents although they qualified this by saying that if the 72 hours included weekends then another 48 hours should be added. This view was endorsed by two further respondents who said that the period within which claims for correction should be made would be better represented in terms of business days, and suggested that midnight at the end of the second working day following the incident be the limit such that if an error was made during Day 1, provided Days 2 and 3 are business days the deadline would be midnight at the end of Day 3.

Another respondent argued that 72 hours for a claim is too long and proposed a shorter time of 48 hours and suggested that a revision of the claim time be undertaken when enhanced reporting is implemented.

One respondent said that it suspects that P19 proposed a 72 hours period to accommodate Parties who do not operate 24 x 7 trading floors and that imposing a time limit of less than that would be unfair to those Parties. It suggested that the Panel reserve the right to revisit this issue after experience.

Another respondent said that any time limit should be set at the minimum possible, reducing uncertainty for the market as a whole, accepting that 72 hours might be appropriate given that many players do not have 24 hour operations.

Another respondent said that the timescale was entirely dependent on the level of reporting in place. Given the present situation it would suggest that the appropriate time limit would be by midday on the next working day, this would cover non 24/7 operations and extended bank holiday periods.

One respondent said that the time limit should be 3.5 hours which effectively means that errors would have to be reported by the end of the period to which any claim relates. Another respondent agreed.

One respondent said that prior to the introduction of NETA there were a number of consultations dealing with Manifest Error provisions and notifications of energy to the Energy Contract Volume Aggregation Agent (ECVAA). These consultations resulted in the BSC having no provision for post gate closure amendment of notified contract position.

Q8: Do you agree that the evidence required to support an application should:
a) Be entirely at the discretion of the Panel?
b) Always include support declarations from Party and Counterparty?
c) Include other prescribed components?

One respondent said that the allowable and required evidence should be at the discretion of the Panel to the extent that the Panel follows guidelines established to set out the intent and general principles to follow in assessing a claim. It would be difficult to prescribe in advance all evidence that the Panel would want to see. Two further respondents agreed with this approach

One respondent suggests that a claim be accepted on its merits if unconditionally supported by all relevant Parties to the claim. If all Parties do not support the claim then the Panel should have the discretion to require such evidence as it deems necessary.

Another respondent said that the documents to be submitted with a claim should be prescribed in advance and should be from both the party and counterparty. It said there may be times when other evidence (entirely at the discretion of the Panel) may be required to satisfy the Panel of the true contractual position at gate closure and that no abuse of this condition is occurring. Four other respondents agreed with this approach.

Another respondent said that the claim should be brought by the ECVNA and that the claim should be supported by the two Parties in the case of ECVNAs for bilateral contracts. In the case of a trade between accounts of a single party the claim must be supported by that party. It thought that claims should be heard by the Trading Dispute Panel which should be given absolute powers and discretion to resolve claims. An appeals route should form part of the procedure. It agreed with others that the onus should be on the claimant to support his claim and that to the extent that the error gave rise to an artificial credit position being recorded the claimant should comply with any additional credit cover requirements before the claim is settled (if required to do so).

One respondent said that supporting evidence should always be provided and that if there is a disagreement between Parties it is difficult to see how such an application could be heard. It argued that remedies through the GTMA should be explored in the first instance and said it was very sceptical that evidence provided by a single trading party with respect

to internal intra company notifications could be verified even by an external party. It said that it would seem that there is greater potential scope to make spurious claims in the case of intra company errors where a single party is involved compared to inter company claims where two Parties can provide supporting evidence. Also, although it may be clear an error has been made, it may be difficult to ascertain the 'correct' notification value. Conveniently, the value claimed might match a party's forecasting error, which he is now in a position to determine. Parties directly affected should have to demonstrate to the reasonable satisfaction of the BSC Panel that they had taken all reasonable steps to prevent the notification error happening in the first place. In arriving at a judgement the Panel should have the discretion to ask for any additional evidence they believe necessary to support the applicant's case. Another respondent agreed that supporting declarations from party and counterparty should be provided and that sufficient information should be made public or circulated to certain Parties.

One respondent said that there is a lack of definition in the factors that the Panel should consider in determining whether such an error has occurred. This potentially led to subjectivity which again leads to uncertainty and lack of confidence in market arrangements.

Another respondent said that this question is misconceived. Ultimately, the onus is on the Party making a claim of Notification Error to prove to the satisfaction of the Panel that a trade of Active Energy took place in advance of Gate Closure for the relevant Settlement Period(s) and that the trade was not accurately notified under the BSC. Typically, the Party will be able to do this through the presentation of appropriate records and by the making of a declaration as to the accuracy of those records. In certain circumstances, something more might be required before the Panel is satisfied. In either case, it would be wrong to prescribe the evidence that would be needed to satisfy the Panel as to the validity of the claim. Either the evidence provided by the Party concerned will satisfy the Panel, or it will not. The Panel will be entitled to call for additional evidence, if it is clear that the evidence provided by the Party making the claim is insufficient to make out its case.

A further respondent said that it did not want to see this modification allow routine adjustments to contract positions after gate closure and all the options listed could contribute to achieving this.

Q9: Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in Q3 and Q7)?

One respondent thought that it should be up to the Panel to decide what circumstances they would disallow to the extent that the Panel follows guidelines established to set out the intent and general principles to follow in assessing a claim. It would be difficult to prescribe in advance all specific circumstances that should preclude a notification error claim.

One respondent said that there should be a requirement that there exists a genuine, ex-ante trade between Parties.

Eight respondents said that at this point specific circumstances should not be excluded but one suggests that the Panel reserve the right to revisit this issue after experience and another added that there is no reason in principle to exclude particular types of Notification Error claim. In particular, there is no justification for disallowing claims in

relation to a failure to make a notification. A failure in a Party's notification and settlement systems and procedures is just as likely to result in a failure to notify a trade at all as it is to result in an inaccurate notification. Indeed, because of the complex way in which such systems and procedures operate, it will often be difficult to distinguish between a Notification Error resulting from a failure to notify and a Notification Error resulting from an inaccurate notification (for example, where a previously notified trade is overwritten by a notification that omits reference to that trade). It would be irrational to distinguish between these two (or indeed any other) types of Notification Error. One of the eight said that in permitting ex-post correction of notifications there is no suggestion that there should be anything less than a robust approach taken by the Panel to market competency. Factors such as culpability, systems readiness and procedural compliance will remain relevant to the Panel's assessment. However, to prescribe circumstances as precluding correction would be to unduly fetter the Panel's discretion to consider each set of circumstances on its merits.

If any type of Notification Error claim is to be excluded, it should only be on the basis that the failure to notify a particular trade resulted from a positive decision not to notify on the part of the Party or Parties concerned (perhaps as part of some complex trading or hedging strategy). If it were felt appropriate to exclude this type of Notification 'Error', it would be necessary for the Party making a Notification Error claim to provide a declaration to the effect that its notification of a different amount (or its omission to notify any amount) was not a deliberate commercial decision to notify some amount other than the true contractual amount. In practice, however, there are likely to be very few instances in which a Notification 'Error' would result from a positive decision not to notify the true contract amount.

One respondent said that specific circumstances should probably not preclude a claim however, some claims may be more difficult to demonstrate than others, eg the failure to notify altogether requires Parties to also demonstrate an intent to notify.

Another respondent believes that claims for the application of the correction process should not be prejudged by the nature of the error or its origin. The onus of proof that an error has been made and that a correction should be allowed rests with the claimant. It said that this should not preclude a claim for a missing ECVN to be considered although the burden of proof may be more onerous in such a case.

Another respondent said that it does not support this modification and believes that there are already sufficient means for Parties to remove or at least mitigate the risks associated with the ECVNA role though it does acknowledge that ECVNs for bilateral trades will have an effect on the position of another party if they are inaccurately notified. It believes that intra-company/group ECVNs should be excluded from the scope of this proposal if implemented. It says that the effects of these ECVNs are wholly internalised and Parties should be incentivised to manage their own internal risks and not seek changes to the BSC to manage it for them.

Another respondent said that the definition of manifest error outlined elsewhere in the BSC should be adopted in relation to the definition of notification error. This would preclude errors to be claimed when no notification at all was originally made since these are not self evident manifest errors (a party can determine at his sole discretion whether or not to submit a notification or whether to procure energy from the residual system balancing mechanism).

Q10: What assurance, if any, should be provided to support the evidence for a notification error claim?

One respondent said it should be up to the Panel to decide what circumstances they would disallow. Three others agreed with this approach.

One respondent believes that the Panel should be empowered to require whatever assurances it deems reasonable and necessary under the circumstances from Parties claiming notification error.

Another respondent said that no interim change to credit cover arrangements should be made pending a dispute decision. If a judgement is made in favour of the applicant credit cover arrangements should subsequently take this into account. Thus Parties making notification errors may find themselves with higher than necessary credit cover – this is appropriate as an incentive to avoid errors in the first place.

Another respondent said that no assurance is specifically required in the treatment of BM Manifest Errors and the position on ECVN should not differ. It will be for the Panel to assess the quality of evidence presented and the need to verify that evidence.

One respondent said that the proposal is ill-defined with regard to the evidence that would be required to demonstrate an error in energy contract volume notification; this potentially leads to subjectivity which again leads to uncertainty and lack of confidence in market arrangements.

Another respondent said that there should be a requirement that there exists a genuine, ex-ante trade between Parties. This view was shared by another respondent who said that P19 would undermine the NETA objectives and design principles.

One respondent suggested that there may be a practical difficulty in getting an independent view on the evidence of the grounds of liability for opinion. If the claimant can provide independent audit to support his evidence then this should be welcomed but it should not be a pre-requisite or a pre-condition to a successful claim. Another respondent said that a Director's Statement that this is a bona fide claim made in good faith should be provided.

Another respondent said that any claim should clearly describe the nature of the error and include signed declarations from a senior officer of the company involved. If the claim involves human error a similar declaration from the individuals involved could be expected.

Q11: Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

Six respondents agreed that the notice period for retrospective claims should be five days after the Modification becomes effective with one qualifying this by saying that these should be business days. Another respondent, whilst not supporting retrospection, agrees that 5 days was appropriate. Another respondent believes that whilst the 5 day window does represent a practical way of limiting back claims there may be a deluge of claims brought in anticipation of the modification being introduced. It said that the key safeguard in ensuring that only genuine errors are corrected is the short qualifying period for claims to be made. One respondent suggested that 30 days is far more reasonable than 5 days.

Another respondent, whilst supporting manifest error provisions in principle did not support retrospective application of the new rules.

One respondent said that introducing retrospective change of any sort introduces uncertainty into the market and will weaken confidence in market mechanisms. In this case players have taken market commercial decisions on the degree of investment in trading systems on the basis of the BSC as set out prior to go live; retrospective amendment (and indeed the provisions of P19 whether retrospective or prospective) invalidate those decisions.

Three other respondents said that no retrospective claims should be allowed. Another said that the issue needed further consideration.

Q12: Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

One respondent said that new entrants will be able to benefit to some degree (for example, by hiring experienced staff from other Parties) from the experience of those who have already operated in the new trading environment. But, in practice, it will take some time for such entrants' own notification and settlement systems to 'bed down'. In the interests of encouraging new entrants and promoting competition, it would be appropriate to allow new entrants to raise Notification Error claims at any time in, say, their first three months of trading. Clearly, it would be necessary to introduce safeguards to prevent the abuse of this concession by existing participants. Two other respondents agreed that a period of grace not longer than three months from the point at which their first notified contract volume was physically delivered or received seemed reasonable.

One respondent did not believe that the time limit for future new entrants should be extended saying that P19 as proposed gave all new entrants the opportunity to correct their notifications after Gate Closure from the time they begin to make notifications under the BSC. It said that the reason for retrospectively applying P19 is that since Go Live incumbents have not had the opportunity to correct notifications after Gate Closure.

One respondent said that the commissioning and testing of notification systems would be more appropriately served by the provision of a test environment by Central Systems. Given such an environment, the time limit for raising notification error claims should be consistent among all participants.

Six further respondents did not believe special arrangements should be made for new entrants, one respondent suggests that future new entrants will reap the benefit of learning from those Parties experiencing go live from inception and should not be treated differently in this respect. Another said that it appears that so far the most significant errors are the result of 'internal' transactions by larger organisations who one might expect to have the resources to manage more complex notification arrangements. The smaller players, (and perhaps by definition potential new entrants) having less resources and simpler notification arrangements do not face the same inherent risks. Another said that the rules were clearly set out in the BSC.

Additional points made in responses:

Achievement of Applicable BSC Objectives

One respondent who supported modification P19 including the proposition to enable it retrospectively said that if the costs incurred by participants in mitigating the risk of notification errors are disproportionate to the costs that errors impose on the system, real and unnecessary costs are being imposed on the industry; these costs would eventually be passed through to consumers in the form of higher prices. P19 addressed this issue by reducing the financial risk of erroneous notifications and this was consistent with the applicable BSC objective of promoting efficiency in the implementation and administration of the balancing and settlement arrangements because it reduces the incentive for participants to incur unnecessary costs in mitigating the risks of notification errors. It said that P19 was also consistent with the applicable BSC objective of promoting competition in generation and supply. By reducing the financial risk of notification error P19 encourages contract trading closer to Gate Closure. It said that short-term contract trading is an important mechanism for small generators, suppliers and renewables to manage their imbalance risk. Portfolio generators did not rely solely on contract trading to manage their imbalance risk. They also have the option of adjusting their physical output. By facilitating contract trading closer to real time, P19 removes some of the competitive advantage that simply being big provides to portfolio generators, thereby better promoting competition.

Another respondent said that by providing a means to correct erroneous notifications and ensuring true contract positions are used for settlement the efficiency of the market was improved.

One respondent said it believes that the implementation of this modification proposal will better achieve the objectives of the BSC, comply with EU and UK legislation, and is essential for the correct operation of the imbalance settlement arrangements and the avoidance of distortions in competition. Retrospective application within clearly defined limits will ensure that the windfall gains which have already occurred are recovered and any consequent distortion of competition is minimised.

A further respondent, who opposed the modification said that in its view, achievement of the applicable BSC Objectives is founded on participants' submissions of timely and accurate information. Participants have invested heavily to ensure delivery of such information. Any weakening of the Gate Closure deadline undermines the incentives on participants to provide such information. It also said that it felt that market procedures with known, fixed deadlines bring benefits, both tangible and intangible, through added certainty. A similar view was expressed by another respondent who said that it could not be assumed that the relevant requirements of NGC's licence require that NETA processes should reflect the 'true' contractual position in the sense that the proposer interprets this. NETA incentivises contract notification with Parties able to determine whether to contract forward or purchase electricity through the residual balancing decision; a commercial decision framed by the fact that imbalance prices may be penal. P19 itself would not secure that Parties submit their true contracts; there could still be a discrepancy between the true position or the intent of the Parties and the notified contracts. In fact, it said, P19 merely allows a longer period of time for the Parties to notify their contracts. It said that London's argument from principle that P19 better encapsulates the requirements of NGC's licence is invalid. It did not (and indeed would not be improved if it did) seek to substitute 'truth' for 'notification'. By extending the period beyond gate closure it adds an unworkable test for notification error which is inconsistent with NETA principles and processes, and which would have to be applied by the Panel in determining a correction request.

One respondent said that in general it does not consider that the proposal would result in the efficient implementation of the balancing and settlement arrangements. The expense of dealing with numerous claims could prove prohibitive for the industry and the proposal will significantly weaken the disciplines in the regime to avoid errors in the first place. It said it is also important to note that the efficiency of the market or indeed prices paid by electricity consumers does not seem to have been affected by recent notification errors and it does not believe that this proposal better meets the Applicable BSC Objectives. Another respondent broadly agreed with this view and said that rather than 'incentivising Parties to avoid making errors at the outset' P19 created opportunities for Parties in a privileged position (ie in possession of erroneous modifications) to determine whether to pursue a claim in relation to the size of any loss incurred as a result of imbalance settlement. This modification

would therefore fail to meet the BSC objectives to operate the transmission system efficiently and to promote effective competition. It also noted that whilst fees may not reflect the costs of work involved in the settlement of any claim by ELEXON, considerable work may also be required by the Parties in relation to claims and there was currently no cost recovery mechanism for such work. There was a risk that the process could introduce market distortions or barriers to entry, particularly for smaller players.

System issues

One respondent said that it was not aware of significant problems on 3 April with either the operation of the central systems or provision of data through the EO221 ECVAA 7 day report that could have lead to inaccuracies in notified data or the ability of Parties to validate notifications submitted. It said that London refers to 14 ELEXON circulars (largely dealing with SSP/SBP data) which may have added to some confusion, but none of these circulars describe conditions that could affect a BSC Party's ability to submit and validate ex ante notification data. It said that although it thought short term reporting could be improved, adequate information should have been available at the time to mitigate the risk associated with within-day notifications.

Role of Panel

One company said that if the BSC Panel became the appeals body for notification error claims (whether such responsibilities were delegated or otherwise) they would be faced with making judgements which could easily be open to legal challenge especially if different rulings on ostensibly similar cases were made. The scope for such challenge is potentially huge compared to the limited scope of the current BSC manifest error provisions. It thought this would place the Panel in a very difficult position.

Manifest Errors

One respondent said that the current manifest error arrangements refer to such errors being 'self evident'. However, today's 'self evident' errors may well be normal trading practice in the future. For example selling energy from a consumption account and buying energy into a production account (even very large quantities) is feasible under the current trading arrangements and may become increasingly common place as the market becomes more sophisticated. It therefore believed that implementation of this proposal would set dangerous precedents, especially if such precedents were to be used to judge future claims.

The same company said it believes it is important to ensure, as far as is reasonably practical, consistency of treatment of manifest errors across the gas and electricity markets. It said that a recent decision on manifest errors made by Ofgem under the gas Network Code is of relevance. In this case a modification proposer requested that a data entry error be referred to a Network Code committee for consideration as a manifest error (Modification Proposal 0402). This was conceptually similar to P19 and Ofgem rejected 0402 on 21 June 2000.

Operational issues

One company said that it had difficulty in seeing how the proposal would work in practice. It said that although it may be easier to demonstrate an erroneous notification between different companies, it was by no means necessarily the case that both Parties would wish to have a trade corrected. One party might be 'in the money' because of the error or the non-notifying party could have sought to balance against the wrong notified data – either way they might not be keen to 'correct' the transaction. In its view the Grid Trade Master Agreement provides the most appropriate remedies for such errors and it does not understand why the proposer considers additional remedies are required under the BSC.

Another respondent said that significant work is also required to implement P19 with regard to the development of central systems and market participant systems and urged the Panel to investigate the costs and benefits of such changes prior to considering implementation of the modification:

- ECVNA systems and process may require modification to allow for retrospective adjustment of contract positions, whether in relation to the long-stop timetable as part of the enduring solution or in relation to some one-off retrospective adjustment;
- ECVAA systems and processes may require modification to allow for retrospective adjustment of contract positions, whether in relation to the long-stop timetable as part of the enduring solution or in relation to some one-off retrospective adjustment;
- ECVAA systems and processes may require modification to enable the Panel to test and challenge claims with respect to contract notifications;
- New systems and processes may be required within ECVNA, ECVAA and market participants' systems to allow independent verification of claims;
- Market participant systems may required significant changes to enable "erroneous" contract notifications to be identified in an independently verifiable manner; and
- New systems and processes may be required to monitor and administer the processing of claims.

Intra-company transactions

One company said that London Electricity's interpretation of NGC's Condition 7A Licence obligations does not seem applicable to internal intra company notifications. Paragraph 2(b)(ii) provides for the settlement of obligations between BSC Parties arising by reference to the quantities referred to in sub paragraph 2(b)(i), including "the quantities of electricity contracted for sale and purchase between BSC Parties". However, London's proposal (suggested drafting P2.3.6A(b)) includes quantities that are not contracted between BSC Parties but are transfers between the energy accounts of just one party.

This company went on to say that the proposer suggests that the risks associated with notification errors may discourage new entry. However, it appears that so far, the most significant errors are the result of 'internal' transactions by larger organisations which one might expect to have the resources to manage more complex notification arrangements. The smaller players, (and perhaps by definition potential new entrants) having less resources and simpler notification arrangements do not face the same inherent risks. It also disagreed with the proposer that trading close to gate closure is less likely if remedies do not exist for ex post correction of errors. Save for the large internal transactions described above, later notifications are generally small quantities designed to fine tune a balance position thus any potential imbalance quantities are less likely to be significant.

ANNEX 3.2 Consultation Responses

Responses from P19 Urgent Modification Report Consultation

Representations were received from the following Parties:

No	Company	File Number
1.	Axia Energy Europe Ltd	P19_UMR_001
2.	Magnox Ltd	P19_UMR_002
3.	Seeboard	P19_UMR_003
4.	Scottish & Southern	P19_UMR_004
5.	Innogy	P19_UMR_005
6.	Powergen	P19_UMR_006
7.	Enron	P19_UMR_007
8.	Dynegy	P19_UMR_008
9.	Edison Mission Energy	P19_UMR_009

10.	TXU Europe Energy Trading	P19_UMR_010
11.	London Electricity	P19_UMR_011
12.	Humber Power Ltd	P19_UMR_012
13.	Northern Electric & Gas	P19_UMR_013
14.	Scottish Power	P19_UMR_014
15.	British Gas Trading	P19_UMR_015
16.	British Energy	P19_UMR_016
17.	Bridge of Cally	P19_UMR_017
18.	Total Fina Elf	P19_UMR_018

P19_UMR_001 – Axia Energy Europe Limited

22 June 2001

MODIFICATION PROPOSAL P19
To provide for the remedy of errors in notifications

Axia Energy Europe Limited, the European marketing and trading arm of Entergy-Koch, LP (AEEL), offers the following comments respecting Modification Proposal P19 ('P19").

AEEL agrees with the Modifications Group that P19 will have no effect on the ability of BSC Parties to balance their position, and will not dilute incentives to balance properly if fully implemented. AEEL supports P19 and its key feature, to wit, that the BSC should allow correction of notifications after gate closure under specific conditions. Comments on other questions follow below.

AEEL believes P19 should apply retrospectively from Go-live. The worrisome issue should not be the precedent of retrospectively adopting new rules, but the precedent of failing to correct clearly imperfect processes. The Panel must balance the principle against retrospection in public law, which is not absolute, with the principle that the law will not insist on performing a clear mutual mistake, present here in the form of attaching balancing penalties to transactions never made.

Some argue that retrospection would lead to uncertainty in the market, and add its correlative companion that improved liquidity from risk reduction does not follow from retrospection. This argument proves too much. Markets become illiquid if correct transactions are unwound. Conversely, correcting mutually incorrect transactions increases market reliability and credibility. Markets become liquid if Parties can consummate correct transactions with little risk to the market's systems and process. Conversely, markets become illiquid if clearly incorrect transactions and processes go uncorrected because the risk (and thus cost) of participating in the market's system and process remains high.

It is futile to ask whether retrospection would harm Parties that invested in notification and settlement systems and contracting strategies based on the BSC as it stands. The question suggests NETA required perfect investment foresight before Go-live. Investments in imperfect systems or strategies are incomplete, imperfect (and typical) investments. Fundamental economics assumes investments depreciate over time and require improvement or be retired. The presence of the Modifications Process itself suggests Parties invested in an evolutionary, correctable process post Go-live. Surely no party could contend reasonably its initial investments in NETA systems and strategies were perfect investments immune from improvement costs as NETA evolved after Go-live.

AEEL supports a fixed fee for raising a notification error not to exceed £5,000 per claim similar to that in the BSC for manifest error. AEEL fails to comprehend the logic behind the proposal to weight fees relative to the sum involved as it appears no more costly to correct an error of, say, £232,536 than an error of, say, £3,255 (unless of course one is the payor).

AEEL suggests that P19 will have little or no direct effect on other Parties respecting changes to contractual arrangements such as GTMAs. The general form of GTMA includes provisions to conform the transactions and agreement to applicable law and regulation. Parties are on notice of P19, its urgent status and the retrospection issue. It thus would appear GTMAs would conform upon disposition of P19. Having so stated, AEEL would not oppose a period not exceeding thirty days between retrospective adoption and implementation.

AEEL does not oppose any of the measurement reference points suggested but believes a period measured from the first gate closure relating to the erroneous notification may be the least problematical of the alternatives given it is clearly determinable. As to time limits from the reference point for submitting notification error claims, AEEL suspects P19 proposed 72 hours to accommodate Parties who do not operate 24 x 7 trading floors. We believe imposing a time limit of less than 72 hours would be unfair to those Parties. AEEL suggests the BSC Panel reserve the right to revisit this issue after experience.

Several other procedural questions deserve brief comment.
* AEEL suggests that a claim of notification error be accepted on its merits if unconditionally supported by all relevant Parties to the claim. If all Parties do not support the error claim, then the BSC Panel should have the discretion to require such evidence as it deems necessary to adjudicate the error claim timely.
* AEEL does not support at this time excluding specific circumstances from a claim of error, but again suggests the BSC Panel (or an ongoing committee thereof) reserve the right to revisit this issue after experience.
* AEEL believes the Panel should be empowered to require whatever assurances it deems reasonable and necessary under the circumstances from Parties claiming notification error.
* AEEL would not oppose a reasonable limitation period after implementation for filing claims retrospective to Go-live, but suggests thirty days is far more reasonable than five days
* AEEL suggests future new entrants will reap the benefit of learning from those Parties experiencing Go-live from inception and should not be treated differently respecting notification procedures.

Thank you for the opportunity to submit our views.

William C. Pitcher
Director, Legal & Regulatory Affairs

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E-mail: bpitc90@entergy.com

P19_UMR_002 - Magnox

From: juliet.jones@magnox.co.uk[SMTP:juliet.jones@magnox.co.uk]
Sent: 25 June 2001 15:21
To: modifications@ELEXON.co.uk
Cc: john.speirs@magnox.co.uk; nigel.burrows@magnox.co.uk; kathryn.wall@magnox.co.uk; jagtor.basi@magnox.co.uk
Subject: P19 Modification Report Comments

Magnox Electric plc would like to comment on the above modification proposal as follows :

Q1. YES
Q2. YES
Q3. NO
Q4. b - we believe that the fixed fee should be high enough to discourage numerous small claims being made and that there ought to be some escalation factor for multiple claims (eg. the fixed fee is increased if you wish to make more than one claim per year).
Q5. No view
Q6. d - the time from when the settlement report is received
Q7. c - 72hrs from receipt of the settlement report
Q8. b & c - the documents to be submitted with a claim should be prescribed in advance and should be from both the party and counterparty. There may be times when other evidence (entirely at the discretion of the panel) may be required to satisfy the panel of the true contractual position at Gate Closure and that no abuse of this condition is occuring.
Q9. NO
Q10. No view
Q11. No retrospective claims should be allowed
Q12. NO

If you have any queries concerning the above please contact me: tel. 01453 814042, email. juliet.jones@magnox.co.uk

Best Regards

Juliet Jones

P19_UMR_003 –Seeboard

From: Fraser, Sue[SMTP:SFraser@seeboard.com]
Sent: 25 June 2001 16:12
To: 'modifications@ELEXON.co.uk'
Subject: P19 Report Comments - SEEBOARD Response

We list below Seeboard's comments to the questions raised in the consultation report.

Q1. Do you support modification p19

Seeboard supports parts of P19 - see answers below.

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?

Seeboard supported this aspect of P9 and supports it again in P19

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

Seeboard did not support this aspect of P9 and does not support it in P19.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis (please specify)?

Seeboard supports the idea of a barrier that seeks to prevent routine use of the process. Given the size of some cashout prices it is difficult to arrive at a price that would always discourage the correction of notifications when a participant believes he will be significantly exposed. A figure of £5000 per half hour creates a barrier which could be supplemented by a rule that limited the number of half hours that could become a part of an error claim. e.g. 3 times 48 per year. Also it is not clear to us what exactly what fee is proposed. The possibilities would appear to be £5000 per half hour, £5000 per notification file (i.e. up to 48 half hours) or even £5000 for a series of notification files all subject to the same error. Clearly this creates barriers of very different size.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

3 to 6 months

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

a The time at which the erroneous notification was made?

b The first gate closure relating to the erroneous notification?

c The end of the last settlement period relating to the erroneous notification (as per P19)?

d Some other reference time (please specify)?

(c)

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a. 3.5 hours?

b. 24 hours?

c. 72 hours?

d. Some other period (please specify)?

(c) (but only if the rule does not count Weekends - otherwise add 48 hours)

Q8. Do you agree that the evidence required to support an application should

a. Be entirely at the discretion of the Panel?

b. Always include supporting declarations from Party and Counterparty?

c. Include other prescribed components?

Seeboard does not want to see this modification allow routine adjustments to contract positions after gate closure. (a), (b) and (c) could all contribute to achieving this.

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 & 7)?

Beyond what we have said above - no.

Q10 What assurance, if any, should be provided to support the evidence for a notification error claim?

Any claim should clearly describe the nature of the error and include signed declarations from a senior officer of the company involved. If the claim involves human error a similar declaration from the individuals involved could be expected.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

Seeboard does not support retrospective claims but if they were to be allowed then a 5 day notice period, after which no further claims can be made, seems sensible.

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

It would seem reasonable to allow new entrants a period of grace of not longer than 3 months from the point at which their first notified contract volume was physically delivered or received.

Sue Fraser
for DAVE MORTON
0190 328 3465

P19_UMR_004 – Scottish & Southern

From: John Sykes[SMTP:John.Sykes@scottish-southern.co.uk]
Sent: 25 June 2001 16:45
To: Modifications@ELEXON.co.uk
Cc: Beverley Grubb; Robert Hackland
Subject: P19 - Consultation Response by Scottish and Southern Energy

Summary
Scottish and Southern Energy supports a change such as that put forward in Modification P19 that will, on an ongoing basis, improve the operation of the market and reduce risk, whilst enhancing the objectives of the BSC in its support of NGC's license obligations. However, it has reservations about the retrospective application of the change from market opening to a potential implementation date.

SSE's Response to the questions posed As requested, SSE has structured its response in line with the questions posed in the Consultation Document. All references to ECVNs should be deemed to apply to MVRNs except where explicitly differentiated.

Q1. Do you support Modification Proposal P19?
Yes, SSE supports the Modification, but has reservations about retrospection, see below.
SSE believes that the objectives of the BSC and NGC's license obligations are better met through operation of the processes proposed by the Modification, as it enables the Settlement calculations to more accurately reflect the physical and contractual conditions that related to the period(s) in question.

Q2 Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?
Yes. The ability to correct erroneous ECVNs ex-post does not alter the ability of or the incentive on Parties to balance their positions pre-gate closure. Once a party has balanced his position pre-gate closure every facility should be available to ensure that the true ex-ante position is reflected in settlement in accordance
with NGC's license and the BSC objectives. SSE does not challenge the principle of pre-gate closure notifications of ECVNs, and believes that as a principle it should be upheld, and that this Modification does not detract from it. Indeed, SSE believes that this Modification proposes an allowable justification within the framework of the principle that facilitates better operation of the market through the potential to achieve more accurate settlement between BSC Parties. However, this justification is only allowable in conjunction with adequate safeguards such as those proposed in the Modification, and discussed below.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

On balance, No. In their proposal, London cite three arguments commonly made against retrospection, and their counter argument. On balance SSE supports the arguments against retrospection. New rules applied retrospectively are unfair to Parties who might have acted differently had they known of the New Rule. London claim that no party would have acted differently even if it knew that errors could be corrected. Whilst they may not have made different balancing decisions, a party does not judge or measure its risk on the basis of any one type of transaction, but balances its risk across the whole of its operations. Consumption and production accounts carry their own different types of risk, and the overall risk to a company will reflect its relative exposure in these accounts. At market opening especially, Parties took the rough with the smooth across the whole of their operations. One man's swing is another man's roundabout, and once one element of this complex overall risk balance is made renegotiable or made uncertain, it could cascade into other areas. Parties may then pursue modifications in other areas, such as PNs, claiming that errors were made in their demand forecasts.

Whilst London refer to "all retrospective amendments of rules increase risk" as a misconception, it must be true that that they increase uncertainty. The need to signal to Parties that the BSC is responsive to all reasonable modifications could be met by introduction of this modification on a prospective basis. Retrospection does not come into it. The 14 month reconciliation period is principally in respect of Supplier Volume allocation, and as such has a particular risk/change profile associated with it. To claim that it could absorb other types of correction without increasing risk is not correct.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis (please specify)?

The fee structure as proposed is supported. The flat fee should represent the nominal cost of processing a claim, and making the correction, both of which are not proportional to the materiality of the claim. Claims should be treated on a per ECVN basis, e.g. if the same "error" resulted in several erroneous ECVNs, a fee would be payable in respect of each, and supporting evidence required for each.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC.
What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Some bilateral contractual changes and provisions will need to be addressed, and it is anticipated that these should take no more than 4 weeks to conclude.

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:
a The time at which the erroneous notification was made?
b The first gate closure relating to the erroneous notification?
c The end of the last settlement period relating to the erroneous notification(as per P19)?
d Some other reference time (please specify)? see Q7.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:
a. 3.5 hours?
b. 24 hours?
c. 72 hours?
d. Some other period (please specify)?

The period within which claims for correction should be made (proposed as 72 hours) would be better represented in terms of business days, and midnight at the end of the 2nd working day following the "incident" is suggested. i.e. if an "error" was made during Day 1, provided Days 2 and 3 are business days, the deadline would be midnight at the end of Day 3.

Q8. Do you agree that the evidence required to support an application should
a. Be entirely at the discretion of the Panel?
b. Always include supporting declarations from Party and Counterparty?
c. Include other prescribed components?

The claim should be brought by the ECVN Agent. In the case of ECVNs for bilateral contracts, the claim should be supported by the two Parties. In the case of a trade between accounts of a single party, the claim must be supported by that party. Claims should be heard by the Trading Disputes Panel, who should be given absolute powers and discretion to resolve claims. An appeals route should form part of the procedure. The onus should be on the claimant to provide evidence to support his claim. The erroneous error may give rise to an artificial credit position being recorded. The onus must be on the claimant to comply with any additional credit cover requirements from ELEXON before the claim is settled, if required to do so.

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 & 7)?

SEE believes that claims for the application of the correction process should not be prejudged by the nature of the error, or its origin. The onus of proof that an error has been made and that a correction should be allowed rests with the claimant. For the avoidance of doubt, this should not preclude a claim for a missing ECVN to be considered, although it is fully expected that the burden of proof may be more onerous in such a case.

Q10 What assurance, if any, should be provided to support the evidence for a notification error claim? Whilst desirable, there may be a practical difficulty in getting an

independent view on the evidence on the grounds of liability for opinion. If the claimant can provide independent audit to support his evidence, then this should be welcomed but it should not be a pre-requisite or a pre-condition to a successful claim.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

SSE believes that whilst the proposals in the modification for a 5 day claim "window" do represent a practical way of limiting back claims, there may be a deluge of claims brought in anticipation of the Modification being introduced. The key safeguard in ensuring that only genuine errors are corrected is the short qualifying period for claims to be made.

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

SEE does not believe that a probation period for new entrants is appropriate.

New entrants should use their own judgment of risk as to when they are ready to enter the market. They have the option to "go when ready" that was not open to existing Parties when the market opened. If this modification is adopted, they would, in any case, have the same opportunity to correct data as other Parties.

[ends]

P19_UMR_005 - Innogy

Q1. Do you support Modification Proposal P19?

No

Q2 Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?

No

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

No

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:
a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis (please specify)?

If the modification should be accepted, the fixed fee of £5,000 might be appropriate, although any fixed fee risks being a disproportionate burden on smaller players.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Any changes to the treatment of notification errors would require changes to Grid Trade Master Agreements and Power Exchange rulebooks. We would estimate a minimum of several weeks to resolve these problems.

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:
a The time at which the erroneous notification was made?
b The first gate closure relating to the erroneous notification?
c The end of the last settlement period relating to the erroneous notification (as per P19)?
d Some other reference time (please specify)?

The reference point for 'starting the clock' towards the time limit for a claim should ideally be the point at which a competent operator should be expected to spot any notification error, and would therefore presumably relate either to receipt of the '7 Day' report for any notification, or the first gate closure relating to the erroneous notification.

Q7. Do you agree that the appropriate time limit for application to correct an
erroneous notification should be:
a. 3.5 hours?
b. 24 hours?
c. 72 hours?
d. Some other period (please specify)?

Any time limit should be set at the minimum possible, reducing uncertainty for the market as a whole, accepting that 72 hours might be appropriate given that many players do not have 24hour operations.

Q8. Do you agree that the evidence required to support an application should
a. Be entirely at the discretion of the Panel?
b. Always include supporting declarations from Party and Counterparty?
c. Include other prescribed components?

Be entirely at the discretion of the Panel

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 & 7)?

There should be a requirement that there exists a genuine, ex-ante trade between Parties.

Q10 What assurance, if any, should be provided to support the evidence for a notification error claim?

There should be a requirement that there exists a genuine, ex-ante trade between Parties.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

We do not support retrospective application.

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

We do not see a persuasive justification for discriminatory application of time limits.

Summary

In Innogy's view, achievement of the applicable BSC Objectives is founded on participants' submissions of timely and accurate information.

Participants have invested heavily to ensure delivery of such information. Any weakening of the Gate Closure deadline undermines the incentives on participants to provide such information.

We also feel that market procedures with known, fixed deadlines bring benefits, both tangible and intangible through added certainty.

P19_UMR_006 - Powergen

25 June 2001

Chris Rowell
P19 Modification Group Chairman

Dear Chris

Modification Proposal P19 – To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

Thank you for giving us the opportunity to comment on this proposal.

Powergen does not support this proposal on either a prospective or retrospective basis. In our view effectively extending the scope of BSC manifest error provision beyond the central systems could seriously undermine the integrity of the new trading arrangements, creating uncertainty in the settlement processes and a stream of claims the management of which will place a substantial cost burden on the industry.

In considering its recommendations we would like to bring the BSC Panel's attention to the following points (responses to specific consultation questions are addressed in Appendix A):

- The importance of accurate notifications and the potential financial risk of making errors were well understood by BSC signatories prior to Go-live. As a result many companies have invested hundreds of thousands of pounds in additional manpower, systems and procedures just to minimise these risks. If a more relaxed NETA regime had been planned prior to Go-live (as is effectively advocated by this proposal) significantly less investment would have been made.

- The redistribution of moneys as the result of recent errors may appear to be sizeable, but can perhaps be considered a fair reward for the investment made. We do not believe the BSC Panel or Ofgem should be overly concerned with the magnitude of recent financial redistribution between BSC participants - as Parties learn from their mistakes (and expensive mistakes provide the most salutary lessons) we believe significant future monetary redistribution is less likely. The progressive fall in residual cash flow values since Go-live provides some evidence that such incentives are working.

- We were not aware of significant problems on the 3 April with either the operation of the central systems or provision of data through the E0221 ECVAA 7 day report that could have lead to inaccuracies in notified data or the ability of Parties to validate notifications submitted. London refer to 14 ELEXON circulars (largely dealing with SSP/SBP data) which may have added to some confusion, but none of these circulars describe conditions that could affect a BSC Party's ability to submit and validate ex ante notification data. Although in our view short-term reporting could be improved, adequate information should have been

available at the time to mitigate the risk associated with within-day notifications.

- If the BSC Panel became the appeals body for notification error claims (whether such responsibilities were delegated or otherwise) they would be faced with making judgements, which could easily be open to legal challenge especially if different rulings on ostensibly similar cases were made. The scope for such challenge is potentially huge compared to the limited scope of the current BSC manifest error provisions. This places members of the BSC Panel in a very difficult position.

- The current manifest error arrangements refer to such errors being 'self evident'. However, today's 'self evident' errors may well be normal trading practice in the future. For example selling energy from a consumption account and buying energy into a production account, (even very large quantities) is feasible under the current trading arrangements and may become increasingly common place as the market becomes more sophisticated. We therefore believe implementation of this proposal would set dangerous precedents, especially if such precedents were to be used to judge future claims.

- We have some difficulty in seeing how the P19 proposal would work in practice. Although, it may be easier to demonstrate an erroneous notification between different companies, it is by no means necessarily the case that both Parties would wish to have a trade corrected. One party might be 'in the money' because of the error or the non-notifying party could have sought to balance against the wrongly notified data – either way they may not be keen to 'correct' the transaction. In our view the Grid Trade Master Agreement (GTMA) provides the most appropriate remedies for such errors. We therefore do not understand why the proposer considers additional remedies are required under the BSC (see suggested drafting P 2.3.6A (2) (a)).

- London Electricity's interpretation of NGC's Condition 7A Licence obligations does not seem applicable to internal intra company notifications. Paragaph 2(b)(ii) provides for the settlement of obligations between BSC Parties arising by reference to the quantities referred to in sub paragraph 2(b)(i), including "the quantities of electricity contracted for sale and purchase between BSC Parties". However, London's proposal (suggested drafting P 2.3.6A (2) (b)) includes quantities that are not <u>contracted</u> between BSC Parties but are transfers between the energy accounts of just one party.

- The proposer suggests that the risks associated with notification errors may discourage new entry. However, it is appears that so far the most significant errors are the result of 'internal' transactions by larger organisations who one might expect to have the resources to manage more complex notification arrangements. The smaller players, (and perhaps by definition potential new entrants) having less resources and simpler notification arrangements do not face the same inherent risks. We also disagree with the proposer that trading close to gate closure is less likely if remedies do not exist for ex post correction of errors. Save for the large internal transactions described above, later notifications

are generally small quantities designed to fine tune a balance position, thus any potential imbalance costs are less likely to be significant.

- We also believe it is important to ensure, as far as is reasonably practical, consistency of treatment of manifest errors across the gas and electricity markets. A recent decision on manifest errors made by Ofgem under the gas Network Code is of relevance. In this case a modification proposer requested that a data entry error be referred to a Network Code committee for consideration as a manifest error (Modification Proposal 0402 – Referral of entry capacity disputes to the Energy Balancing Credit Committee). Conceptually similar to P19 (which effectively seeks to refer notification errors to the BSC Panel for resolution) Ofgem decided to reject this proposal on 21 June 2000.

In general we consider that London Electricity's proposal would not result in the efficient implementation of the balancing and settlement arrangements. The expense of dealing with numerous claims could prove prohibitive for the industry and the proposal will significantly weaken the disciplines in the regime to avoid errors in the first place. It also important to note that the efficiency of the market or indeed prices paid by electricity consumers does not seem to have been affected by recent notification errors. We therefore do not believe this proposal better meets the Applicable BSC Objectives.

In the light of the above comments we would urge the Panel to recommend this proposal be rejected.

Yours sincerely

Peter Bolitho
Head of Modifications
Powergen UK plc

Appendix A - Specific Consultation Questions

Please note answering these questions does not imply support by Powergen for the proposal. Nevertheless, should the BSC Panel and the Authority conclude there is merit in this proposal, we believe appropriate mechanisms should be put in place to limit claims to those that are both material and genuine.

Q1 Do you support Modification Proposal P19?

No – see detailed comments above.

Q2 Do you support the key feature of Modification proposal P19, that the BSC should allow for the correction of notifications after gate closure?

No. There is a very risk that the proposal will threaten the integrity of the new

trading arrangements. One of the founding principles of the regime was notification prior to gate closure. To change this would undermine the robustness of notification and settlement data. In our view the proposal could potentially open the floodgates for all sorts of spurious claims.

London assert that the objects described in NGC's Licence Condition 7A.2 are not achieved; a view with which we disagree. However Condition 7A.2 needs to be seen in the broader context of the objectives set out in Condition 7A.3. In particular, sub paragraph 3(d) requires "efficiency in the implementation and administration of the balancing and settlement arrangements".

Q3 Do you agree that such a modification to the BSC should apply retrospectively; covering the period from Go-live.

No. Amending the rules prospectively may be fair enough, but changing the rules after the event will create huge uncertainty amongst BSC participants. Allowing the modification to apply retrospectively back to Go-live is, in our view, likely to result in a huge number of relatively trivial claims. To limit such claims we suggest that a higher fee be applied for each retrospective claim (see answer to Q4 below).

Q4 Do you agree that the appropriate fee for raising each notification error claim should be

c. A fee determined on some other basis.
A fee of £5,000 or say [10%] of the 'uncorrected' cost of the error, whichever is the greater smeared back through residual cash flow. To discourage too many claims it may be appropriate to limit the number of claims to say [2] per BSC Party in any continuous 12 month period.

In addition to prevent a proliferation of retrospective claims back to Go-live the fee for such claims should be set at £50,000.

Q5 The adoption of this proposal might have implications for other contractual arrangements outside the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Say one month. We do not believe significant changes to the GTMA are required. In our view satisfactory remedies for erroneous notifications already exist in such agreements, and these should continue to be the primary remedy for Parties to such agreements.

Q6 Do you agree that the appropriate reference point for measuring time within which a notification error claim must be made should be:

d. Some other reference time (please specify)?
Say [6] hours after a notification has been made.

Q7 Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

c. 3.5 hours or whatever future gate closure time may apply in future. This effectively means that errors would have to be reported by the end of the period to which any such claim relates.

Q8 Do you agree that the evidence required to support an application should…

In our view supporting evidence from the Parties involved should be provided. If there is disagreement between Parties it is difficult to see how such an application could by heard. In any event remedies through the GTMA should be explored in the first instance. We are very sceptical that evidence provided by a single trading party with respect to internal intra company notifications, could be verified even by an external party.

It would seem that there is greater potential scope to make spurious claims in the case of intra company errors where a single party is involved compared to inter company claims where two Parties can provide supporting evidence. Also it may be clear an error has been made, it may be difficult to ascertain the 'correct' notification value. Conveniently, the value claimed might match a party's forecasting error, which he is now in a position to determine.

Parties directly affected should have to demonstrate to the reasonable satisfaction of the BSC Panel that they had taken all reasonable steps to prevent the notification error happening in the first place. In arriving at a judgement the Panel should have the discretion to ask for any additional evidence they believe necessary to support the applicants case.

Q9 Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 and 7)?

Probably not. However, some claims may be more difficult to demonstrate than others, e.g. the failure to notify altogether requires Parties to also demonstrate an intent to notify.

Q10 What assurance, if any, should be provided to support the evidence for a notification error claim?

No interim change to credit cover arrangements should be made pending a dispute decision. If a judgement is made in favour of the applicant credit cover arrangements should subsequently take this into account. Thus Parties making notification errors may find themselves with higher than necessary credit cover – this is appropriate as an incentive to avoid errors in the first place.

Q11Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

Yes.

P19_UMR_007 - ENRON

Modification Proposal P19: To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

Response by Enron Europe
25 June 2001

Enron's Recommended Solution

Enron Europe Limited (EEL) supports modification proposal P19, including the proposition to enable it retrospectively.

Rational for Enron's Recommendation

Imbalance prices penalise participants for erroneous contract volume and meter volume notifications. The unexpectedly large imbalance price spread means the financial consequences of an erroneous notification are very large – far in excess of any cost that an erroneous notification would place on the system. The large penalty incentivises participants to minimise the risk of notification errors at almost any cost, which undermines the efficiency of the market. For example, participants stop trading many hours ahead of real time to allow themselves sufficient time to notify their contracts and verify their notifications before Gate Closure.

If the costs incurred by participants in mitigating the risk of notification errors are disproportionate to the costs that errors impose on the system, real and uneccessary costs are being imposed on the industry. These costs will eventually be passed through to consumers in the form of higher prices. P19 addresses this issue by reducing the financial risk of erroneous notifications. This is consistent with the applicable BSC objective of promoting efficiency in the implementation and administration of the balancing and settlement arrangements because it reduces the incentive for participants to incur unnecessary costs in mitigating the risks of notification errors.

P19 is also consistent with the applicable BSC objective of promoting competition in generation and supply. By reducing the financial risk of notification error P19 encourages contract trading closer to Gate Closure. Short-term contract trading is an important mechanism for small generators, suppliers and renewables to manage their imbalance risk. Portfolio generators don't rely solely on contract trading to manage their imbalance risk. They also have the option of adjusting their physical output. By facilitating contract trading closer to real time, P19 removes some of the competitive advantage that simply being big provides to portfolio generators, thereby better promoting competition.

It would be inefficient if P19 reduced the risk of notification errors to the extent that participants had little or no incentives to make accurate notifications. P19 addresses this issue by using two mechanisms to give participants incentives to provide accurate notifications:

1. The £5000 non-refundable fee when an application is made to the Panel to correct a notification error gives participants a financial incentive to make accurate notifications; and
2. The possibility that the Panel may choose not to correct an erroneous notification places a risk on participants that erroneous notifications may be expose them to imbalance prices.

The application fee deters participants from burdening the Panel with applications to correct errors with de-minimis financial consequences. This, combined with the Panel process for determining whether to uphold an application, maintains significant financial risk on participants of submitting inaccurate notifications.

The level of the application fee and the design of the determination process should ideally balance the risk to participants of erroneous notifications against the costs to the system of (i) inaccurate notifications in the first place and (ii) the cost of administering the process for determining whether an application should be upheld. This is difficult to do and there is no single right answer. However, P19

strikes a better balance between these objectives than the BSC does currently, thereby better achieving the applicable BSC objective of promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel should not have complete discretion in assessing each claim since this would be opaque and increase uncertainty. Therefore, before P19 is enabled guidelines should be established by the Panel and approved by the Authority that set out the intent and general principles that the Panel will adopt in assessing each claim. Our response to questions 8 and 9 of the questionnaire is predicated on guidelines being established.

Questionnaire

This section contains EEL's response to the specific questionnaire contained within the P19 consultation document, including why P19 should be applied retrospectively.

Q1. Do you support Modification Proposal P19?

A1. Yes, for the reasons given in section 2.

Q2. Do you support the key feature of Modification Proposal P19 that the BSC should allow for the correction of notifications after gate closure?

A2. Yes, but only for genuine errors as determined by the Panel.

Q3. *Do you agree that such a Modification to the BSC should apply retrospectively to Go-Live?*

A3. Yes. Retrospectively applying P19 is consistent with the applicable BSC objective of promoting the efficient implementation and administration of the balancing and settlement arrangements.

Retrospective application provides the precedent that participants will be protected from the consequences of unanticipated flaws in the BSC thereby reducing the regulatory risk of participating in the BSC and reducing participants' costs. At Go-Live, participants could not have anticipated that there would be problems arising with ELEXON leading to inaccurate notification data being fed back to participants for validation. As a result, and through no fault of their own, participants found it very difficult to know whether their notifications were in error. Nor could participants have anticipated the large spread between imbalance prices. This large spread means that the penalty for erroneous notifications is significantly higher than anticipated at Go-Live. Retrospective application of P19 addresses both these unanticipated flaws in the operations of the BSC.

There is little risk that retrospective application of P19 will render the BSC inherently uncertain. Firstly, P19 is designed to address specific flaws in the BSC, not make arbitrary and widespread changes. Secondly, P19 has minimal impact on third Parties. Participants, other than the participant applying to the Panel to correct an erroneous notification, would only be impacted by the correction of a notification in as much as the correction affects the size of the beer fund. Thirdly, P19 would not have incentivised participants to act differently had they known the proposed rules would apply from Go-Live because participants retain a sufficiently high level of financial risk from an erroneous notification. P19 does this through the application fee and Panel determination process. Finally, the Panel can further reduce the risk that retrospective application of P19 makes the BSC inherently uncertain by carefully considering and documenting its reasons for making P19 retrospective. Retrospectivity can legitimately be applied in those cases where the advantages clearly outweigh the disadvantages of such action.

Q4. *Do you agree that the appropriate fee for raising each notification error claim should be:-*

a) No charge?
b) A fixed fee of £5,000?
c) Some other fixed fee?
d) A fee determined on some other basis (please specify)?

A4. A fixed fee of £5000. As explained in section 2, the fee should be sufficiently large so as to deter participants from applying for correction of notification errors with de-minimis financial consequences.

Q5. *The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?*

A5. The impact on third party contracts is likely to be small. Therefore, we propose a short time for assessing the impact on third party contracts, eg, 1 month.

Q6. *Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:-*

a) The time at which the erroneous notification was made?
b) The first gate closure relating to the erroneous notification?
c) The end of the last settlement period relating to the erroneous notification (as per P19)?
d) *Some other reference time (please specify)?*

A6. An error claim should be allowed to made for the whole notification from the end of the last settlement period related to the erroneous notification.

To make the reference point the time at which the erroneous notification was made would only serve to discourage participants from making notifications well in advance of Gate Closure. To make Gate Closure the reference point would result in participants with an erroneous contract of long duration having to correct part of their notification in advance of Gate Closure, or make repeated applications to correct the same notification after Gate Closure.

Q7. *Do you agree that the appropriate time limit for application to correct an erroneous notification should be:-*

a) 3.5 hours?
b) 24 hours?
c) 72 hours?
d) *Some other period (please specify)?*

A7. An appropriate time limit is in the order of 72 hours.

Q8. *Do you agree that the evidence required to support an application should:-*

a) Be entirely at the discretion of the Panel?
b) Always include support declarations from Party & Counterparty?
c) *Include other prescribed components?*

A8. The allowable and required evidence should be at the discretion of the Panel to the extent that the Panel follows guidelines established to set out the intent and general principles to follow in assessing a claim. It would be difficult to prescribe in advance all evidence that the Panel would want to see.

Q9. *Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in Q 3 & 7)?*

A9. No, it should be up to the Panel to decide what circumstances they would disallow to the extent that the Panel follows guidelines established to set out the intent and general principles to follow in assessing a claim. It would be difficult to prescribe in advance all specific circumstances that should preclude a notification error claim.

Q10. *What assurance, if any, should be provided to support the evidence for a notification error claim?*

A10. None, it should be up to the Panel to decide what circumstances they would disallow.

Q11. *Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?*

A11. Yes.

Q12. *Do you agree that for future new entrants the time limit for raising notification error claims should be extended?*

A12. No. P19 as proposed gives all new entrants the opportunity to correct their notifications after Gate Closure from the time they begin to make notifications under the BSC. The reason for retrospectively applying P19 is that since Go-Live incumbents have not had the opportunity to correct notifications after Gate Closure.

P19_UMR_008 - Dynegy

Mr G Forrester
ELEXON

25 June 2001

Dear Gareth,

Modification Proposal P19: To provide for the remedy of errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications.

Dynegy, in principle, support the manifest error provision of enabling errors in Energy Contract Volume Notifications (ECVNs) and Metered Volume Reallocation Notifications (MVRNs) to be resolved on an ex-post basis. Dynegy believe there should be a provision of allowing Parties to correct erroneous notifications in order to improve the efficiency of the market through reference to Parties' true contract positions rather than erroneously notified positions during settlement.
Although Dynegy is supportive of the concept as a means to correct erroneous ECVNs and MVRNs, we do not agree with aspects of the proposed modification. Dynegy consider that the fee of £5,000 for each claim is insufficient to create the correct incentives on participants making claims. Dynegy proposes a fee from £10,000 to £15,000 for each claim to be implemented. The larger fee will provide a financial incentive to Parties to avoid making errors at the outset.
Secondly, the modification proposal suggests that a claim would need to be submitted within a time limit of 72 hours from the relevant trading period. Dynegy believe a time scale of 72 hours for a claim is a long duration and therefore propose a shorter time limit of 48 hours. Dynegy would also like to propose that a revision of the claim time limit be undertaken when enhanced reporting is implemented. A shorter time to raise an error claim should be considered as reporting improves, participants would be aware of their notifications closer to real time.
Finally, the proposal states that the modification would be applied retrospectively, to take account of the period immediately following the introduction of NETA. Dynegy do not support the retrospective application of the new rules.

Dynegy believe that the proposed modification better fulfils the relevant BSC objective by improving the efficiency of the market through providing a means to correct erroneous notifications, ensuring true contract positions are used for the settlement process. NGC will also be capable of efficiently discharging their licence obligations by dealing with Parties true contract positions.

Yours sincerely

Rekha Patel.
Power Regulatory Analyst.

P19_UMR_009 – Edison Mission Energy

Gareth Forrester
ELEXON Ltd

25th June 2001

Dear Gareth
P19 MODIFICATION REPORT COMMENTS

Thank you for the opportunity to comment on Modification Proposal P19. This response is submitted on behalf of the three signatories to the BSC that are wholly owned subsidiaries of Edison Mission Energy - First Hydro Company, Edison First Power Limited, and Lakeland Power Limited.

Edison Mission Energy does not support the implementation of Modification Proposal P19. The effect of P19 is almost identical to the effect of P9, which was ultimately rejected by the Panel. We believe that the grounds for rejecting P9 were sound and that they apply equally to P19.

Our primary objections to the proposal are set out below:

Encouraging Parties to take active responsibility for their contracting activity underpins much of the NETA reform. Accurate notification of contract position is an integral part of this responsibility.

Like many other participants, Edison Mission Energy has made substantial investments in risk management systems on the basis of the BSC. We recognise that it highly unlikely that any participant system could be so robust that software faults can be entirely avoided or so comprehensively tested such the effects of every combination of circumstances can be examined. However, participants have made commercial decisions on the degree of investment in their trading systems and the consequences of any system failure resulting from this investment should be borne by the participant. Allowing the correction of any errors will not incentivise participants to develop and test robust systems for contract notification. Instead, it will allow participants to use inadequate systems safe in the knowledge that failures in notification can be corrected after the event.

The proposal contains no means of limiting the scope of any correction mechanism. Far from having a tight definition of error, proposal P19 implies a very wide definition, as any set of circumstances leading to a difference between 'true' contract position and notified position would qualify. Nor does the proposed £5,000 fee provide any significant incentive to avoid error. This sum is small in relation the potential cost of errors.

Introducing retrospective change of any sort introduces uncertainty into the market and will weaken confidence in market mechanisms. In this case,

players have taken commercial decisions on the degree of investment in trading systems on the basis of the BSC as set out prior to go-live; retrospective amendment (and indeed the provisions of P19 whether retrospective or prospective) invalidate those decisions.

P19 is ill-defined with regard to the evidence that would be required to demonstrate an error in energy contract volume notification. There is a similar lack of definition in the factors that the Panel should consider in determining whether such an error has occurred. Both of these areas potentially lead to subjectivity which again leads to uncertainty and lack of confidence in market arrangements.

Finally, as noted by the Authority in their negative determination on P9, prior to introduction of NETA there were a number of consultations dealing with Manifest Error provisions and notifications of energy to the Energy Contract Volume Aggregation Agent (ECVAA). These consultations resulted in the BSC having no provision for post-gate close amendment of notified contract position.

Yours sincerely

Phil Edgington

P19_UMR_010 – TXU Europe Energy Trading

Dear Gareth

Urgent Modification Proposal P19: To Provide for the Remedy of Errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

Thank you for the opportunity to comment on the above modification proposal. TXU Europe Energy Trading Ltd would like to make the following comments on behalf of all TXU Europe companies.

TXU do not support this modification proposal. We believe that there are sufficient provisions within the Balancing and Settlement Code to enable Parties to manage the risks associated with making Energy Contract Volume Notifications, namely appointing a third party Energy Contract Volume Notification Agent. Furthermore we belive that should this modification proposal be implemented, it may to some extent, dilute the incentive on participants to make timely and accurate ECVNs. We are also concerned that the impact on credit checking procedures has not yet been fully quantified. In addition, we believe that many of the risks associated with making erroneous ECVNs would be mitigated by the introduction of a dual notification process as proposed in P4.

Below are TXU Europe's answers to the specific questions given in the modification report.

Q1. Do you support Modification Proposal P19?

A1. No

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?

A2. TXU believe that it is appropriate to allow for notifications to be made/corrected after gate closure only where there has been a failure in the ECVAA system that has prevented the notification being made/corrected by the normal deadline.

Q3. Do you agree that such a modification to the BSC should apply retrospectively; covering the period from Go-live?

A3. No. Parties may have undergone significant expenditure in developing robust systems and process, or in contracting with a third party ECVNA to mitigate the risk of submitting erroneous ECVNs and they may not have done so had manifest error provisions been in place from day one.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis?

A4. As we do not believe that the proposal should be implemented, we have not fully considered this question, but would suggest the maximum of £5000 and [10]% of the sum involved. Would this fee be chargeable per notification, per affected day or per affected settlement period?

Q5. The adoption of this proposal might have implications for other contractual arrangements that are outside of the BSC. What period between the decision to adopt this

proposal and implementation do you believe is necessary to enable such impacts to be resolved?

A5. Should this proposal be implemented, it would have considerable impact on the Grid Trade Master Agreement and also on any structured contracts that Parties may have in place. Renegotiation of the terms of these contracts and the GTMA can be a lengthy and expensive process. We would estimate that to renegotiate all of our GTMAs and structured contracts could take up to 3 months, perhaps more.

Q6. Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

a. *The time at which the erroneous notification was made?*
b. *The first gate closure relating to the erroneous volume?*
c. *The end of the last settlement period relating to the erroneous notification (as per P19)?*
d. *Some other reference time?*

A6. TXU believe that if implemented, the appropriate reference point should be the end of the first settlement period relating to the erroneous volume.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a. *3.5 hours?*
b. *24 hours?*
c. *72 hours?*
d. *Some other period?*

A7. This is entirely dependant on the level of reporting in place. Given the current reporting situation we would suggest that the appropriate time limit would be by mid-day on the next working day, this would cover non 24/7 operations and extended bank holiday periods such as the Easter break.

Q8. Do you agree that the evidence required to support an application should

a. *Be entirely at the discretion of the Panel?*
b. *Always include supporting declarations from Party and Counterparty?*
c. *Include other prescribed components?*

A8. We believe that there should be supporting declarations from both the Party and the Counterparty and that additional or alternative evidence could be requested at the discretion of the Panel.

Q9. Do you believe that any specific circumstances should preclude a notification error claim?

A9. Although we do not support this modification and believe that there exist sufficient means for Parties to remove or at least mitigate the risks associated with the ECVNA role, TXU believe that intra-company/group ECVNs should be excluded from the scope of this proposal if implemented. The effects of these ECVNs are wholly internalised and Parties should be incentivised to manage their own internal risks, not seek changes to the BSC to manage it for them. Whereas ECVNs for bi-lateral trades will have an effect on the position of another party if they are inaccurately notified.

Q10. What assurance, if any, should be specified in the code to suport the evidence for a notification error claim?

A10. TXU agree that this should be left to the discretion of the Panel.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modfiication becomes effective?

A.11 No comment.

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

A12. No comment.

TXU do not support this modification proposal. We hope you have found our comments helpful and should you wish to discuss any aspect of this response further, please do not hesitate to contact me at the above number.

Yours sincerely

Nicola Lea
Market Development Analyst

P19_UMR_011 – London Electricity

Dear Secretary

BSC Modification Proposal P19: London's Response to the ELEXON Consultation Report of 20 June 2001 on Behalf of the BSC Panel

London Electricity plc ('London') welcomes the opportunity to comment on the Urgent Modification Consultation report (the 'Report') about Modification Proposal P19. London provides this response on behalf of itself and the following BSC Parties: Jade Power Generation, London Energy Company, South Western Electricity, and Sutton Bridge Power.

London reaffirms its views as set out in the Modification Proposal which it submitted on 11 June. It sees no advantage in restating them in full here. For the sake of completeness, however, London has set out in an annex to this letter its answers to each of the specific questions raised in the Report. In addition, London has the following comments in relation to particular issues raised in the Report (the headings used below are in each case those used in the Report under which the issues are raised):

1. Ability to adjust notified positions ex-post and ex-ante notification

The Modification Proposal argued that ex-post adjustment should be allowed in order to give effect to condition 7A.2(b)(ii) of NGC's transmission licence (which, when combined with condition 7A.1, requires NGC to provide arrangements for each Party's imbalance position to be settled by reference to its true contract position, rather than by reference to a notified position which turns out to have been erroneous).

In this context, the Report notes that legal advice obtained by ELEXON has suggested that NGC's licence condition 7A.2 defines the scope, or boundary, of the BSC and does not establish the objectives of the BSC (which are set out in 7A.3). The implication is that the Proposed Modification does not better facilitate achievement of the BSC objectives and that, accordingly, the modification cannot be justified on that ground.

London agrees that condition 7A.2(b)(ii) of NGC's licence does not itself represent a BSC objective. But that does not change the fact that the BSC in its present form does not expressly require settlement to be based on Parties' true contract positions, which is what NGC's licence requires. NGC's first obligation is to have in place a BSC which provides for settlement to be effected by reference to Parties' true contract positions. The BSC objectives regulate how that is to be achieved (that is, what particular provisions are to be preferred, among all the possible versions of the BSC which might fulfil that requirement). A fortiori, a

particular set of contract terms cannot meet the BSC objectives if it does not provide effectively for the BSC to achieve the requirements of condition 7A.2(b)(ii). By providing expressly for settlement to be based on true contract positions, the Modification Proposal ensures, beyond any possibility of doubt, that the BSC will fulfil the requirements of condition 7A.2(b)(ii), and thereby lead to the better achievement of the BSC objective set out in condition 7A.3(a) of NGC's licence**:** ie, the efficient discharge by NGC of the obligations imposed on NGC by its licence.

2. Retrospection

In considering the case for retrospective application of the Proposed Modification, the Report suggests that the key question is whether the unfairness to Parties arising from a failure to adopt the Proposed Modification outweighs any detriments which may be expected to arise from the adoption of the Proposed Modification.

In this regard, it is pertinent to note that if (as London contends) the Proposed Modification is calculated to ensure that the BSC achieves the requirements of condition 7A.2(b)(ii), which have been known to all Parties from the outset, then that must weigh heavily in favour of adopting the Proposed Modification**:** ie, Parties could reasonably have expected that the BSC would operate by reference to true contract positions.

Moreover, to the extent that Parties (including London) risk suffering losses because they made erroneous notifications, the losses would be grossly disproportionate to the gravity of their errors. The question is therefore whether the detriments of retrospective application of the Proposed Modification are so great as to mean that retrospective application would be unfair. London has already set out its case on this.

In considering this point, the Report suggests that the actions of Parties, such as in their contracting strategies or investment in notification and settlement systems, might have been influenced by the BSC as it stands. The important point here is that any investment that a Party has made in notification and settlement systems will remain worthwhile. The Proposed Modification does not eliminate the importance of making accurate notifications under the BSC. The £5,000 fee payable in respect of each Notification Error, together with the management time that would be expended in pursuing such errors, will ensure that Parties remain incentivised to provide accurate notifications at the outset. Parties that have invested in notification and settlement systems will continue to benefit from the resulting additional confidence that they have acquired in their systems, for example by being enabled to trade closer to Gate Closure.

As regards the effect of retrospection on contracting strategies, as a matter of practice it is most unlikely that any particular Party would have adopted a different strategy (for example, in relation to trading close to Gate Closure) had they known about the proposed rule change. To the extent that the Proposed Modification might enable Parties to trade up to a later time, closer to Gate Closure, that benefit can be expected to accrue to Parties generally. In this respect, a retrospective application of the Proposed Modification will not, and cannot be seen to, distort competition.

Separately under this heading, the Report states that the Modification Proposal 'contends that discussions before Go-live foresaw consideration of changes to the BSC in the light of operational experience'. London wishes to make it clear that the particular relevant proposal referred to the consideration of changes specifically in relation to erroneous notifications,

rather than in relation to the BSC generally. In this regard, see page 48 of the Ofgem/DTI 'conclusions document' on NETA dated October 1999, and also pages 2 and 3 of the joint NETA Programme/ELEXON working group paper dated October 2000 about Manifest Errors in Balancing Mechanism Transactions.

3. BSC drafting

ELEXON's legal advisers have suggested that it may be preferable to avoid use of the concept of a 'trade of Active Energy' and, instead, adopt an approach that is similar to that used in the BSC Manifest Error provisions. London acknowledges that it is for ELEXON to provide the specific legal drafting necessary to give effect to the Proposed Modification. The drafting suggested in the Proposed Modification (which was modelled almost entirely on existing provisions in the BSC) was intended to be helpful in explaining the workings and effect of the Proposed Modification, rather than providing definitive contractual wording.

London submits, however, that it would be wrong to adopt an approach for Notification Errors that is modelled on the approach used for Manifest Errors. This is because of the fundamental distinction between a Manifest Error and a Notification Error. In relation to claims of Manifest Error, a Party must seek to persuade the Panel that a submission and/or acceptance of a Bid/Offer should be unwound on the basis that the Bid/Offer was 'self-evidently' made in error. The role of the Panel is to come to a view, in the light of the then prevailing circumstances, as to whether the submission and/or acceptance was an error which could and should have been apparent to both Parties to the transaction, and not simply a bad bargain. This involves the exercise of a substantial degree of judgement, and a determination as to what bargain the Parties could reasonably have been expected to have made instead.

The position in relation to Notification Errors is quite different. By making a claim of Notification Error, a Party is seeking merely to prove an objective fact, generally by reference to pre-existing evidence**:** namely that, at the point immediately prior to Gate Closure for the relevant Settlement Period(s),

there had in fact been a trade of Active Energy – either with another Party or as between that Party's own two Energy Accounts. The Party will need to provide evidence of that trade (and the time that it took place) before its claim of Notification Error can succeed. The Panel's role is limited to determining a straightforward question of fact. If the Panel is satisfied, in the light of the evidence, that the notification at Gate Closure failed to reflect the underlying contract position, then its role is limited to directing that the true contract numbers be substituted for the erroneously notified numbers. There is no element of judgment or discretion to be exercised by the Panel in determining what it would be reasonable to do.

For the avoidance of any doubt, we should make clear that London does not envisage that the Panel would be called upon to determine disputes between Parties as to whether they had concluded a contractual trade, or its terms. Where a Party to a bilateral trade wished to claim a Notification Error, it would be expected to claim jointly with the contractual counterparty, and to put in uncontested evidence as to the conclusion and terms of its contract (so far as material to the correctness of the notification).

In the context of Notification Errors, it is therefore far more appropriate to make use of the concept of a trade of Active Energy (which reflects something that can be objectively established) than to have recourse to the concept of Manifest Error. Indeed, it is difficult to see how the Manifest Error approach would operate in relation to a Notification Error, since a Notification Error is not 'self-evidently' an error in any normal sense**:** it might well not be

evident to anyone (otherwise than by checking the underlying contractual records) that the Party had made an erroneous notification at all.

London is concerned that any attempt to 'fit' the treatment of Notification Errors into the existing concept of Manifest Error would represent a material, and inappropriate, change in the effect of the Proposed Modification.

ELEXON's legal advisers have also suggested that it would be desirable to include the relevant ECVNA in the Notification Error process, as the Panel is likely to want to seek the views of the relevant ECVNA. London would be happy if the relevant ECVNA were to be consulted. However, it is difficult to see what useful information that agent would be able to provide that could not be provided with greater evidential weight by the Energy Contract Volume Aggregation Agent (which, under the Proposed Modification, is to be requested to provide comments in relation to any claim of Notification Error by virtue of the second bullet point of proposed new paragraph 2.3.6A(6)(b)(i)).

Finally, the legal advisers have commented that there is no need for the Panel to exercise discretion about the amounts of the rectification in making adjustments, since the outcome of the Panel's deliberations would be restricted to either rejecting or accepting the claim. London confirms that this is what is intended by its proposal.

We hope that these comments will assist the Panel.

Yours faithfully

R B

Roger Barnard
Regulatory Lawyer,London
Electricity Group

ANNEX

Modification Proposal P19: London's Response to Questions Raised in ELEXON's Consultation Report

Q1. Do you support Modification Proposal P19?

Yes, because it better facilitates achievement of the Applicable BSC Objectives.

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after Gate Closure?

Yes, to the extent provided for in Modification Proposal P19.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

Yes. The sheer scale of settlement imbalance charges which Parties have incurred through making Notification Errors points clearly to the risk of unfair treatment outweighing any opposing risk of introducing uncertainty into the trading rules.

Q4. Do you agree that the appropriate fee for raising each Notification Error claim should be:

a. No charge?

b. A fixed fee of £5,000?

c. Some other fixed fee?

d. A fee determined on some other basis (please specify)?

In the Proposed Modification, London suggested a fee of £5,000 on the basis that such a figure was appropriate and is the same as the fee for claims of Manifest Error. However, London has no objection to the substitution of some other reasonable figure, provided that it is calculated substantially by reference to the costs associated with the processing of the Notification Error claim. London can see no justification for weighting the fee by reference to a percentage of the sum involved in the Notification Error claim.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

London does not envisage that this proposal will result in any material changes being required to other contractual arrangements. There should be no need for a significant delay between adopting this proposal and implementation.

Q6. Do you agree that the appropriate reference point for measuring the time within which a Notification Error claim must be made should be:

a. The time at which the erroneous notification was made?

b. The first Gate Closure relating to the erroneous notification?

c. The end of the last Settlement Period relating to the erroneous notification (as per P19)

d. Some other reference time (please specify)?

London is grateful to the Modifications Group for bringing the problem of 'evergreen' notifications to its attention. In the light of the issues raised by notifications of that type, London recognises that setting the time limit to run from the end of the last Settlement Period to which the erroneous notification relates (as per P19) might be too open-ended. It therefore proposes that the time period within which a claim of Notification Error must be made should begin to run from Gate Closure for the first Settlement Period to which the

notification relates. This appears to be consistent with option (b) above, which we therefore support.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a. 3.5 hours?

b. 24 hours?

c. 72 hours?

d. Some other period?

Nothing in the Report has dissuaded London from the view that 72 hours (option (c)) is an appropriate time limit for a claim of Notification Error to be made, consistent with the desire not to allow the errror to propagate through settlement.

Q8. Do you agree that the evidence required to support an application should:

a. Be entirely at the discretion of the Panel?

b. Always include supporting declarations from Party and Counterparty?

c. Include other prescribed components?

This question is misconceived. Ultimately, the onus is on the Party making a claim of Notification Error to prove to the satisfaction of the Panel that a trade of Active Energy took place in advance of Gate Closure for the relevant Settlement Period(s) and that the trade was not accurately notified under the BSC. Typically, the Party will be able to do this through the presentation of appropriate records and by the making of a declaration as to the accuracy of those records. In certain circumstances, something more might be required before the Panel is satisfied. In either case, it would be wrong to prescribe the evidence that would be needed to satisfy the Panel as to the validity of the claim. Either the evidence provided by the Party concerned will satisfy the Panel, or it will not. The Panel will be entitled to call for additional evidence, if it is clear that the evidence provided by the Party making the claim is insufficient to make out its case.

Q9. Do you believe that any specific circumstances should preclude a Notification Error claim (other than the time limits explored in questions 3 and 7)?

There is no reason in principle to exclude particular types of Notification Error claim. In particular, there is no justification for disallowing claims in relation to a failure to make a notification. A failure in a Party's notification and settlement systems and procedures is just as likely to result in a failure to notify a trade at all as it is to result in an inaccurate notification. Indeed, because of the complex way in which such systems and procedures operate, it will often be difficult to distinguish between a Notification Error resulting from a failure to notify and a Notification Error resulting from an inaccurate notification (for example, where a previously notified trade is overwritten by a notification that omits reference to that trade). It would be irrational to distinguish between these two (or indeed any other) types of Notification Error.

If any type of Notification Error claim is to be excluded, it should only be on the basis that the failure to notify a particular trade resulted from a positive decision not to notify on the part of the Party or Parties concerned (perhaps as part of some complex trading or hedging strategy). If it were felt appropriate to exclude this type of Notification 'Error', it would be necessary for the Party making a Notification Error claim to provide a declaration to the effect that its notification of a different amount (or its omission to notify any amount) was not a deliberate commercial decision to notify some amount other than the true contractual amount. In practice, however, there are likely to be very few instances in which a Notification 'Error' would result from a positive decision not to notify the true contract amount.

Q10. What assurance, if any, should be provided to support the evidence for a Notification Error claim?

See our response to questions 8 and 9.

Q11. Do you believe that the notice period for retrospective claims should be five days after the Modification becomes effective?

London continues to believe that a period of five days is appropriate.

Q12. Do you agree that for future new entrants the time limit for raising Notification Error claims should be extended?

Although London made no provision for this in its proposal, on reflection it considers that extending the time limit for raising Notification Error claims for new entrants is a sound proposition. Of course, new entrants will be able to benefit to some degree (for example, by hiring experienced staff from other Parties) from the experience of those who have already operated in the new trading environment. But, in practice, it will take some time for such entrants' own notification and settlement systems to 'bed down'. In the interests of encouraging new entrants and promoting competition, it would be appropriate to allow new entrants to raise Notification Error claims at any time in, say, their first three months of trading. Clearly, it would be necessary to introduce safeguards to prevent the abuse of this concession by existing participants. .

London Electricity, 25 June 2001: for itself, London Energy Company, South Western Electricity, Jade Power Generation, and Sutton Bridge Power

P19_UMR_012 – Humber Power Limited

The Modifications Secretary

ELEXON Limited
Third Floor
1 Triton Square
London NW1 3BX

26th June 2001

Dear Secretary

BSC Modification Proposal P19: Response to the Consultation Document Issued on 20th June 2001 from Humber Power Limited

Humber Power Limited (HPL) welcomes the opportunity to respond to the Urgent Modification Consultation report ('Report') relating to Modification Proposal P19. This response from HPL has been made with regard to the timescales required in the Report and does not include full cross references to designated documents. HPL requests that the Modifications Panel recognise the expediency required.

HPL offers the following comments and responses to the questions posed in the Report.

Q1. Do you support Modification Proposal P19?

HPL supports Modification Proposal P19.

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after Gate Closure?

HPL supports the key feature of Modification Proposal P19, that the BSC should allow the correction of notification errors after Gate Closure.

NETA required the establishment of a market in electricity for the benefit of consumers. Two fundamental principles following from this premiss are a) that there is competition between market participants and, b) that physical energy positions match (i.e. that generation = demand or that input = output). Where physical energy positions do not match, the 'polluter pays' principle applies and an out of balance party pays for the cost of additional electricity to cover a short position, or pays for the disposal of surplus electricity to cover a long position.

Where participants are competing for generation and supply of electricity and where physical energy positions match, the fundamental requirements of NETA are met. An information technology issue however, i.e. a notification

error, which penalises participants is in the view of HPL, a reflection of the market environment not functioning effectively. In the event of a notification error, the competitive market remains, physical energy positions remain in balance and the 'Balancing Mechanism' reflects a true physical energy position. Yet, participants are penalised by a literal application of settlement rules.

The application of a penalty in the event of a notification error unnecessarily reduces competition by increasing risk and, by not reflecting a physical energy position, will lead to an unnecessary increase in the cost of electricity.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

HPL agrees that such a Modification to the BSC should apply retrospectively, covering the period from Go-live.

The retrospective application of such a modification to the BSC will not adversely affect competition nor adversely affect the efficient balancing of energy, nor will it lead to an inherent uncertainty in the trading rules. Penalising participants in the event of a notification failure gives an over recovery of money within the Balancing Mechanism, this is redistributed amongst participants in the form of the Residual Cashflow Reallocation Charge. It is inconceivable that participants not affected by notification error are organising their businesses to take advantage of such uncertain windfall sums of money. Retrospective application of the Modification will serve to reinforce true competition by correcting the distribution of windfall sums of money, the physical energy balance position will not change and certainty of the trading rules will be enhanced by a consistent application of the fundamental principles referred to above.

Some responses to the Report may discuss the case against retrospective application of the Modification. The Panel are respectfully urged to test for specious arguments from participants benefiting from windfall sums of money.

The Report reflects a hypothesis that the BSC as it stands may have had an effect on investment in notification and settlement systems and on contracting strategies. The test for retrospective application of the Modification should be the effect on future investment and contracting decisions. It is HPLs view that acceptance of the modification will not materially change future investment or contracting decisions, participants will remain obliged to submit accurate notifications and will require investment in systems capable of such submissions.

Q4. Do you agree that the appropriate fee for raising each Notification Error claim should be:

e. No charge?

f. A fixed fee of £5,000?

g. Some other fixed fee?

h. A fee determined on some other basis (please specify)?

HPL is of the opinion that no charge should be levied for the raising of a Notification Error Claim.

The effect of imposing a charge will be to set a de-minimus level below which the raising of a claim would not be worthwhile. To avoid the additional administrative burden of charging, an appropriate de-minimus level for a claim should be set.

A Notification Error Claim should be made via the Trading Disputes Committee and the costs of investigation and finding recovered in the normal manner.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the

decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

It is the view of HPL that a period between adopting the proposal and resolving impact is not necessary.

The Modification will not affect the contractual position of participants with respect to energy. The contractual burden in respect of notification failure will reduce and this is likely to be beneficial to all participants.

Q6. Do you agree that the appropriate reference point for measuring the time within which a Notification Error claim must be made should be:

e. The time at which the erroneous notification was made?

f. The first Gate Closure relating to the erroneous notification?

g. The end of the last settlement period relating to the erroneous notification (as per P19)

h. Some other reference time (please specify)?

It is the view of HPL that the appropriate reference point for measuring the time within which a Notification Error claim must be made should be the end of the settlement period to which the claim relates.

The impact on the settlement process should be considered when determining the reference point. The settlement process is referenced to settlement periods and Notification Error claims should be referenced in the same manner.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

e. 3.5 hours?

f. 24 hours?

g. 72 hours?

h. Some other period?

HPL agree that the appropriate time limit for application to correct an erroneous notification should be 72 hours.

Q8. Do you agree that the evidence required to support an application should:

d. Be entirely at the discretion of the Panel?

e. Always include supporting declarations from Party and Counterparty?

f. Include other prescribed components?

The onus is on the party submitting a claim of Notification Error to provide supporting evidence to the satisfaction of the Panel. The Panel should not however, be precluded from seeking at its discretion, further evidence by a Request For Information or route similar to that used by the Trading Disputes Committee.

Q9. Do you believe that any specific circumstances should preclude a Notification Error claim (other than the time limits explored in questions 3 and 7)?

No specific circumstances should preclude a Notification Error claim.

Q10. What assurance, if any, should be provided to support the evidence for a Notification Error claim?

HPL agree that assurance, if any, provided to support the evidence for a Notification Error claim should be left to the discretion of the Panel.

Q11. Do you believe that the notice period for retrospective claims should be five days after the Modification becomes effective?

HPL believes that five business days after the Modification becomes effective is an appropriate notice period for retrospective claims.

Q12. Do you agree that for future new entrants the time limit for raising Notification Error claims should be extended?

The commissioning and testing of notification systems would be more appropriately served by the provision of a test environment by Central Systems. Given such an environment, the time limit for raising Notification Error claims should be consistent amongst all participants.

Michael Holmes
Commercial & Regulatory Affairs Manager
Humber Power Limited

P19_UMR_013 – Northern Electric & Gas

26th June 2001

Gareth Forester
Modifications Manager

Dear Gareth,

Modification Proposal P19: "To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications"

> **Northern Electric and Gas welcomes the opportunity to comment on modification P19 relating to provision for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications[1] submitted by London Electricity ("London").**

***Q1 Do you support Modification Proposal P19*?**
We do not support implementation of Modification P19. We believe that the modification raises a number of serious issues that require detailed consideration and our detailed views on these are set out in this response. Our specific comments on Modification P19 should in no way be viewed as support for the proposal and our comments are without prejudice to our fundamental opposition to the implementation of the modification.

We believe that Modification P19 raises fundamental questions about the design of NETA and the principles that underpin the operation of the market. The proposal requires a definition of "true" contractual position in the BSC to allow the adjustment of contractual positions after gate closure but there is no corresponding obligation placed upon trading Parties to issue accurate notifications. Under present NETA arrangements such an obligation is unnecessary as the Parties are incentivised to issue accurate notifications as they are rewarded for accuracy and penalised for inaccuracy, such notification having to be made prior to receiving information relating to matters such as system sell price and system buy price. This modification will effectively remove the incentive to notify as the Parties, once in possession of information relating to price, are able to amend their contractual positions. If there is no obligation to notify the 'true' contractual position then a party who has incorrectly notified may, in the light of price information, opt to do nothing if this is to its financial advantage. We believe that the starting point for any review of the modification must be the general principle of contract notification prior to gate

[1] Modification Proposal MP Number: P19, "To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications", ELEXON, June 2001, referred to as "Modification P19" in this response.

closure, as set out in the NETA design. We submit that the Modification Group has not recognised or addressed this general point.

> **Furthermore, we do not accept that Modification P19 better reflects the objective of NGC's licence, nor the BSC objectives, nor that it can be assumed that the relevant requirements of NGC's licence require that NETA processes should reflect the "true" contractual position of the Parties in the sense that London interpret this. NETA incentivises contract notification with Parties able to determine whether to contract forward or purchase electricity through the residual balancing decision (a commercial decision framed by the fact that imbalance prices may be penal). Indeed, Modification P19 itself would not secure that Parties submit their "true" contracts. The 72 hour time limit, and the affected party's option to raise a correction request both mean that there could still be a discrepancy between the "true" position or "intent" of the Parties and the notified contracts. In fact, Modification P19 merely allows a longer period of time for the Parties to notify their contracts.**

When read together with other industry documents it is perhaps more accurate to assert the 'true' contractual position is always that that is notified. All of the NETA processes and systems are predicated on the principle that NETA will not look beyond what is notified by the Parties. Thus there is no audit beyond receipt of notification, are no standard form contracts, nor bodies set up to consider the validity or otherwise of the contractual arrangements entered into bilaterally between the Parties nor systems designed to validate those arrangements.

London's argument from principle that Modification P19 better encapsulates the requirements of NGC's licence is invalid. It does not (and indeed would not be improved if it did) seek to substitute "truth" for "notification". By extending the period during which notifications can be adjusted beyond Gate Closure it adds an unworkable test for "notification error", which is inconsistent with NETA principles and processes, and which would have to be applied by the Panel in determining a correction request.

Without fundamental re-design NETA cannot work by seeking to look at the "true" position of the Parties and trying to establish either obligations they may have entered into with one another or the "intent" of the Parties with regard to contractual arrangements. NETA can only work by incentivising Parties to contract to meet their needs and by taking notifications as the only necessary evidence of such contracts.

Q2 Do you support the key feature of Modification Proposal P19 that the BSC should allow for the correction of notifications after Gate Closure?

We do not believe that the BSC should be modified to allow for the correction of notifications after gate closure.

London suggest that Modification P19 will fulfil the objectives of NGC's transmission licence "*by providing that each Party's imbalance is settled by reference to its true contract position rather than by reference to a notified position which turns out to*

have been erroneous"[2]. We assume that London's reference to the "true" contract position refers, not to its notified position, but the position it would have been in had it accurately notified its valid bilateral contracts to the Energy Contract Volume Aggregation Agent ("ECVAA").

We would note that NETA is designed so that Parties must notify their contractual arrangements in accordance with the procedures set out in the BSC prior to gate closure. Furthermore, once Parties have notified their contracts, Parties acknowledge that they cannot challenge or dispute any errors or omissions arising from contract notification[3]. Parties are therefore, incentivised under the current arrangements to disclose their contract position to the central service providers since failure to do so would result in imbalance settlement. As a result, the true contract position must, by definition, be the contracts as notified to the central service providers.

If implemented, Modification P19 would raise important issues about NETA processes, procedures and systems. At present there are no central systems to validate notifications and no procedures to investigate notifications. The modification would require the Panel to look behind the notification and consider the actions and intent of the bilateral Parties prior to the notification being made. The Panel may have to consider whether a valid bilateral contract between the Parties existed that was capable of being notified. Therefore, we would submit that a substantial central infrastructure is required to administer the claims process under Modification P19.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively; covering the period from Go Live?

We do not believe that Modification P19 should apply retrospectively covering the period from Go Live.

We note London's arguments in favour of retrospection, but we do not, in principle, support these. In particular, we do not accept that as a result of ELEXON circulars "it was often unusually difficult for Parties to distinguish errors arising from central systems from errors in Parties' own notifications"[4]. Acting in accordance with the Balancing and Settlement Code (Section P), Parties should have developed systems and processes to identify and correct errors prior to Gate Closure. Those errors that are identified after Gate Closure are the sole responsibility of the Party concerned.

Although it may be argued that in the early days of NETA there was greater risk associated with system operation, we would submit that those risks were the same for all Parties and that the unified pre production testing processes were designed to identify problems with participants systems. In our experience, problems with our contract notifications were identified at this time, and investment in systems and processes was required in order to rectify the problem.

We also believe that retrospection will benefit those Parties that did not invest in the required systems prior to Go Live. Parties may have acted differently if Modification

[2] Quote from covering letter submitted by London as part of Modification P19.

[3] BSC, Section P, 1.2.2

[4] Modification P19, page 7

P19 had been in place at the commencement of NETA. If a relatively lax arrangement had been introduced for contract notifications at NETA Go Live, then Parties would not need to have developed rigorous contract notification systems and procedures. Modification P19 will, therefore, result in stranded costs for market participants. As a result, we believe that if the modification is implemented, it is appropriate that there is a provision for recovery of stranded costs by those market participants that have incurred such costs. Without prejudice to our opposition to the modification, we believe appropriate drafting should be included in the Balancing and Settlement Code to cover this situation.

We believe that Modification P19 would create further uncertainty and risk for market participants, ultimately feeding into higher prices. Further we would contend that retrospection designed to relate to the difficulties of individual Parties since NETA Go Live raises the issue of creating precedents for further party-specific modifications. Allowing retrospection of Modification P19 would, therefore, open the modification process to abuse since Parties may wish to raise further modifications to rectify the particular circumstances relating to errors or omissions.

In addition, we support the explicit provisions set out in Section P1.2.2 of the BSC which make clear the obligations of the Parties and do not believe that these obligations should be relaxed to allow Modification P19. If these provisions are removed, there is little or no incentive for Parties to consistently submit accurate notifications.

In terms of reopening settlement financial transactions[5] we note London's arguments in favour but we would suggest that, notwithstanding these, the principles that underlie NETA would suggest that retrospection should not normally be a basis for operating competitive markets. Indeed, we concur with Ofgem's previously published view on retrospection that:

5.14 "Ofgem believe that there are generally accepted and well understood legal reasons why retrospective modifications are to be avoided. It is a general principle of law that rules ought to deal with future acts and ought not to change the character of past transactions completed on the basis of the then existing rules.

5.15 Participants have been trading on the basis of …… an understanding of the rules in place at that time. ……..[retrospection] will reduce confidence in the stability of the trading arrangements and the predictability of the form of the trading arrangements."[6]

[5] Modification P19, page 8, (c) at top of page
[6] Ofgem Letter on Modification P3: "Correction of price spikes in the Balancing Mechanism – Decision Document" April 2001

We believe that that principles established by Ofgem in this decision are equally applicable to the question of retrospection in relation to this modification, and that retrospection will reduce confidence in the stability of the trading arrangements.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

a. No charge

b. A fixed fee of £5,000

c. Some other fixed fee

d. A fee determined on some other basis (please specify)?

We support the introduction of an appropriate fee for raising each notification error claim. Further we believe that the level of the fee should reflect the costs associated with the administration of the claims by ELEXON and the Panel. We would note that these costs could include legal costs associated with testing and challenging claims or claim disputes and, potentially the costs associated with detailed third party audits to validate and verify claims. As such a fee of £5,000 may be reasonable, but should subject to review and revision from time to time by the Panel and reflective of the actual costs involved.

The issue of the fee raises further questions about the principle of Modification P19. London asserts that the Modification would "incentivise Parties to avoid making errors at the outset"[7]. We do not believe that this is the case. Modification P19 may create opportunities for Parties in a privileged position (ie in possession of an erroneous notifications) to determine whether to pursue a claim in relation to the size of any loss incurred as a result of imbalance settlement. This modification would therefore fail to meet the BSC objective to operate the transmission system efficiently (NGC licence Condition 7A(b) and to "promote effective competition" (NGC licence Condition 7A(b)).

[7] Modification P19, page 6

Furthermore, we would note that while the fee may not reflect the costs of work involved in the settlement of any claim by ELEXON, considerable work may also be required by the Parties in relation to claims. There is currently no cost recovery mechanism for such work with the risk that the process could introduce market distortions or barriers to entry, particularly for smaller players.

Q5. The adoption of this proposal might have implications for other contractual arrangements that are outside the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Modification P19 raises important issues about the balance of risk associated with contract notifications. However, depending on legal drafting of the Modification, we believe that the modification as it stands may require significant reworking of contractual arrangements such as the GTMA, particularly with reference to repayments of cash-out for imbalances made when an erroneous notification is resolved successfully.

Q6. Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

- ***a. The time at which the erroneous notification was made?***
- ***b. The first gate closure relating to the erroneous notification?***
- ***c. The end of the last settlement period relating to the erroneous notification (as per P19)?***
- ***d. Some other reference time (please specify)?***

We would support use of a definition of a contract notification error as a "self-evident" manifest error as set out elsewhere in the BSC[8]. Such "self-evident" manifest errors do not, therefore, require a "reference time". For example, a party that would normally submit a contract value of say 10MW for each half-hour for its contract, but in error submits a value of say 1,000,000MW for one half hour, with the following half-hour reverting to the original value (10MW). We would submit that in this case

the notification of 1,000,000MW constitutes a "self-evident" manifest error. Therefore, a self-evident manifest error could be defined as a notified value that was at least an order of magnitude (positive or negative) different from the value that would be notified in the ordinary course of events (subject to determination by the Panel). Such self-evident manifest errors do not, therefore require a reference time and answers (a) to (d) do not apply.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a. 3.5 hours

b 24 hours

c. 72 hours

d. Some other time period (please specify)

Based on the definition of an error as "self-evident" we believe that there should be an incentive on Parties to identify such errors as soon as practicable. Given the incentives set out in Section P of the BSC to ensure accurate contract notifications (and invest in appropriate systems and procedures), we believe that the time limit for the application to correct an error should be as short as possible. Therefore, we would support a time limit of less than 3.5 hours.

Q8. Do you agree that the evidence required to support an application should:

a. Be entirely at the discretion of the Panel?

b. Always include supporting declarations from Party and Counterparty?

c. Include other prescribed components?

We would suggest that:

i. Parties should be incentivsied to provide standard forms of information to the Panel to enable verification; and
ii Parties and counterParties should be required to verify a claim; and
iii The Panel should have the discretion to request further information from the Parties and the Parties should have the obligation to provide this information.

[8] BSC Section Q, 7.1.1 (b)): "...an error will be considered manifest only where it is self-evidently an error"

We believe that Modification P19 raises wider concerns about the notification claims process adopted. The Modification would imply that the "true" contract positions between the Parties are those arrangements actually entered into by the Parties, but not necessarily notified to the central systems. Therefore, processes and systems would be required to verify this "true" contract position including the ability to audit.

Significant work is also required to implement Modification P19 with regard to the development of central systems and market participant systems:

- ECVNA systems and processes may require modification to allow for retrospective adjustment of contract positions, whether in relation to the long-stop timetable as part of the enduring solution or in relation to some one-off retrospective adjustment;
- ECVAA systems and processes may require modification to allow for retrospective adjustment of contract positions, whether in relation to the long-stop timetable as part of the enduring solution or in relation to some one-off retrospective adjustment;
- ECVAA systems and processes may require modification to enable the Panel to test and challenge claims with respect to contract notifications;
- New systems and processes may be required within ECVNA, ECVAA and market participant's systems to allow independent verification of claims;
- Market participant systems may require significant changes to enable "erroneous" contract notifications to be identified in an independently verifiable manner; and
- New systems and processes may be required to monitor and administer the processing of claims.

We would urge the Panel to investigate the costs and benefits of such changes prior to considering implementation of the modification.

We would submit that in order to manage and administer the process required under Modification P19, some form of central registry that would enable independent verification of contractual positions would be necessary. In addition, in order to facilitate such a verification process and allow those administering it to expeditiously ascertain that a valid agreement existed, it may be appropriate to adopt industry standard contract forms to enable contracts to be compared and assessed so that true contract positions can be defined. Further, the BSC would require substantial modification to enable the Panel to have jurisdiction over the contracts entered into, or the "intent" of any arrangement, between Parties in the event that there were disputes or claims. The foregoing also assumes that appropriate modifications to central systems software (and if applicable hardware) are undertaken.

Q9. Do you believe that any specific circumstances should preclude a notification error (other than the time limits explored in questions 3 & 7)?

As noted above, we believe that the definition of manifest error outlined elsewhere in the BSC should be adopted in relation to the definition of notification error. This would preclude errors to be claimed when no notification at all was originally made

since these are not self evident manifest errors (a party can determine as his sole discretion whether or not to submit a notification or whether to procure energy from the residual system balancing mechanism).

Q10. What assurance, if any, should be specified in the code to support evidence for a notification error?

While it may be prudent to require assurance from Parties regarding the "true ex ante intent", this raises considerable concerns about the principle of the proposed modification. The NETA design objectives and the principles set out in the code are that the "true" contract position is that notified to the central systems prior to gate closure. Section P1.2.2 of the BSC states that Parties:

"P1.2.2(b) shall for the purposes of the Code be bound by, and may not challenge or dispute under or for the purposes of the Code:

(i) any Energy Contract Volume Notification or Metered Volume Reallocation Notification submitted by any Energy Contract Volume Notification Agent or Metered Volume Reallocation Notification Agent; and

(ii) any omission or failure to submit any Energy Contract Volume Notification or Metered Volume Reallocation Notification by any Energy Contract Volume Notification Agent or Metered Volume Reallocation Notification Agent"[9]

As a result, the notification submitted to the central systems must be regarded as an absolute rule as the "true" contract position. Modification P19 will undermine this rule by introducing a relaxation which will reward those Parties that have not invested in the relevant risk management systems and open the notification to potential abuse (*ex post* notification of contractual positions). As such, Modification P19 fails to meet the BSC objective to operate the transmission system efficiently (NGC licence Condition 7A(b) and to "promote effective competition" (NGC licence Condition 7A(b)).

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the modification becomes effective?

We do not support retrospection in relation to Modification P19.

Q12. Do you agree that for future new entrants the time limit for raising notification claims should be extended?

We do not support Modification P19. The rules as set out in the BSC are clearly defined for all market participants including new entrants.

GENERAL COMMENTS ON MODIFICATION P19

[9] Balancing and Settlement Code, Section P, 1.2.2 (b) (i) and (ii)

Modification P19 appears to have been raised in response to the specific concerns of a particular BSC party in relation to the actual operation of its energy contract notification processes.

We do understand that there was limited time available for testing systems and processes during the Unified Pre-Production testing phase and that all market participants were working to a very tight timetable. This carried with it the risk that some players would fail to achieve the required standards of performance. However, we would suggest that all market participants had the same amount of time to have their systems and/or processes tested and in place and, therefore, the same amount of time to discover and rectify errors. As a result the failure of an individual party's systems should be regarded as part of the normal commercial risk of operating under NETA.

While we have some sympathy for the party concerned, we do not believe that a modification to the BSC is an appropriate means of addressing the issues raised. Making changes to the BSC to address the problems of individual Parties is not consistent with the wider objectives of the BSC.

We recognise that in determining this matter Ofgem may have to have regard to considerations which run wider than the objectives of the BSC itself. Nevertheless, in determining this modification request we would expect Ofgem to uphold the integrity of the BSC by:

a) ensuring that any modification made to the BSC will make the BSC a better basis for transactions in future; and

b) refraining from introducing any changes, which have a retrospective effect unless an element of retrospection is absolutely necessary to enable the licensee to continue to finance its business.

We hope that these comments are helpful,

Yours faithfully

Bill Reed
Industry Communications Manager
Northern Electric and Gas

P19_UMR_014 – Scottish Power

Mr Gareth Forrester
Modifications Manager

Urgent Modification Proposal P19 – Response to Consultation

Dear Mr Forrester,

This response is submitted on behalf of Scottish Power UK plc, Manweb plc, Manweb Services Ltd and Emerald Power Generation Ltd.

ScottishPower fully supports Modification Proposal P19 *To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications* and believes that its acceptance will allow better achievement of the objectives of the BSC set out in the NGC Transmission Licence without reducing the efficiency of the implementation and administration of the balancing and settlement arrangements. Our views on the matters arising from the proposed modification and our answers to the specific questions posed in the consultation paper are set out below.

Q1 – YES Q2 – YES

The principle of imbalance settlement is that the Party's allocated energy should be compared with its contracted position when determining the volume of imbalance energy which is to be cashed out. For example, The Ofgem/DTI Balancing and Settlement Code Conclusions Document (August 2000) refers to "...a Settlement Process for charging participants whose contracted positions do not match their metered volumes of electricity...". Accepting that this requires the SAA to be notified of the Party's true contract position and that there should be an incentive for the Party to notify correctly, we nevertheless believe that the imposition of imbalance charges on imbalances which are merely the result of erroneous notifications and which do not relate to any corresponding physical imbalance on the system is wholly inappropriate. The levying of such excessive imbalance charges and the distribution of these funds to other Parties through the residual cashflow reallocation cashflow exposes participants to arbitrary penalties and windfall gains. These penalties and windfalls distort the fair competition required by EU and UK legislation by allowing some Parties to price below cost at the expense of other Parties. Implementation of the modification proposal would ensure that settlement could take place against the correct contract position and would therefore better achieve the BSC objectives, in particular that of promoting effective competition in the generation and supply of electricity.

The risk of imbalance settlement taking place against an erroneous contract position has further effects which will be relieved by the implementation of this modification. The risk of making an erroneous notification and incurring huge imbalance charges can cause Parties to over-invest in systems to ensure that the risk of errors is vanishingly small. This deters new entry and hence does not promote effective competition. It is also economically inefficient. Allowing the correction of errors in notifications of ex-ante trades will achieve better overall economic efficiency by adjusting the balance between the investment requirements of Parties and party agents and the efficiency of the settlement process, while maintaining the principle of ex-ante trading and notification. An alternative defensive strategy is to refrain from trading for a period before gate closure such that there is always time available to submit corrective notifications before gate closure if errors are discovered. This reduces both the liquidity and the efficiency of the market. Implementation of this modification can therefore be seen also to better facilitate the achievement of the efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System, as require by the BSC.

Q3 – YES

ScottishPower recognises the normal presumption against retrospective amendments to market rules. However, this presumption is based on the need not to make burdensome that which was not burdensome at the time. Indeed Ofgem recognise in their decision letter on Modification Proposal P9

that "...there may be very limited situations in which the rules of the market permit corrective action." This modification proposal seeks to relieve an unjust burden and does so without imposing any burden as a consequence.

We believe that the distortive and anti-competitive effects of notification errors noted above are sufficiently serious to require that all such errors which have been made during the period since trading began under the BSC be corrected and the windfall gains recovered and returned to the erring Parties. Such rectification would not result in any extra charges being incurred by other Parties. Reconciliation of charges can be achieved through the normal Settlement Run adjustments.

The BSC was implemented with a tight timescale against a fixed Go-Live date. Participants generally supported the Go-Live decision in order to deliver the benefits of the new arrangements for customers. As noted in the modification proposal there have been problems, not unexpectedly in a new market environment, with central systems which have caused Parties to be unable to check their notified contract positions adequately. The modification proposal seeks to allow the ex-post correction of notifications, not the submission of ex-post notifications. Not to implement the modification retrospectively would perpetuate the unjust burdens caused by past errors. For the market to be seen to be unwilling to remedy such injustices would not encourage new entry.

Q4 – (d) A fee determined on some other basis

ScottishPower believes that the size of the fee should be related to the size of the party and suggests that it be related to the magnitude of the party's daily energy cost exposure at the credit assessment price, i.e.,

Fee = {(DC*CALF) + (GC*CALF)} * 24 * CAP * X

where X is either 0.1% if the fee is a non-refundable charge, or 0.2% if the fee is a deterrent which is refundable to successful claimants.

Q5 – 6-8 Weeks

Given the requirement in the GTMA to respond to changes in the BSC it should be possible to achieve the necessary changes to the terms of the GTMA within 6-8 weeks.

Q6 – (b) The first gate closure relating to the erroneous notification

Q7 – (d) Some other period

ScottishPower believes that the time limit for application to correct an error should relate to business days rather than hours. Accordingly, we would propose that the period be three business days after the settlement day in which the first gate closure of the erroneous notification falls.

Q8 – (a) Entirely at the discretion of the Panel

ScottishPower believes that it is important that the Panel should be able to determine what is appropriate to deal with any circumstances which arise.

Q9 – No

In permitting ex-post correction of notifications there is no suggestion that there should be anything less than a robust approach taken by the Panel to market competency. Factors such as culpability, systems readiness and procedural compliance will remain relevant to the Panel's assessment. However, to prescribe circumstances as precluding correction would be to unduly fetter the Panel's discretion to consider each set of circumstances on its merits.

Q10 – None

No assurance is specifically required in the treatment of BM Manifest Errors and the position on ECVN should not differ. It will be for the Panel to assess the quality of evidence presented and the need to verify that evidence.

Q11 – Yes

ScottishPower believes that a period of five business days after implementation of the modification is sufficient time for retrospective error claims to be submitted.

Q12 – Yes

As noted above, we believe that the risk of imbalance charges being imposed as a result of erroneous notifications will act as a deterrent to new entrants and can lead to over-investment in systems. Recognising that errors are more likely to occur in the initial period of trading (see Ofgem's decision letter on Modification Proposal P9), ScottishPower believes that new entrants should have the facility of checking settlement output while the period for submitting error claims is still open. We would therefore propose that, for a period of three months from the first day of trading of a new entrant, the period for notification of error claims should be from the first gate closure relating to the erroneous notification until the earlier of three business days after the receipt of the output from the initial settlement run and three months from the first day of trading.

In conclusion, ScottishPower believes that the implementation of this modification proposal will better achieve the objectives of the BSC, comply with EU and UK legislation, and is essential for the correct operation of the imbalance settlement arrangements and the avoidance of distortions in competition. Retrospective application within clearly defined limits will ensure that the windfall gains which have already occurred are recovered and any consequent distortion of competition is minimised.

Yours Sincerely,

Mike Harrison
Scottish Power UK plc

P19_UMR_015 – British Gas Trading

Tel. (01753) 758052
Fax (01753) 758170
Tuesday 26 June 2001

Dear Sir,

Urgent Modification 19: To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

Thank you for the opportunity to comment on the above Urgent Modification Proposal.

In our view, the issues this modification seeks to address have been exacerbated by the imbalance price "spikes" experienced since NETA was introduced. The causes of these prices are themselves the subject of several Modification Proposals, although these Modification Proposals do not directly deal with the underlining cause of these price "spikes", they should all play a contributory part in removing them. Therefore, in future, imbalance prices should be much diminished reducing the need for this modification.

Additionally, work is required on improving the systems support for system notifications, as the present arrangements seem to be facilitating errors.

We believe the pursuit of initiatives to improve both the systems for notifications and a reduction of the imbalance price spikes should in due course eliminate the need for the Modification Proposal 19. Therefore, after completion of work to remove imbalance price "spikes" and improve the notification system this modification could drop away.

We also recognise that prior to NETA Go-Live there was limited time available for BSC Parties to test their internal systems or develop familiarity with the processes and procedures. We, therefore have some sympathy with the sentiments behind the Modification Proposal at least as a "soft landing" time-limited proposal. We believe there are additional issues for any one modification to be applied retrospectively.

Although we believe there are practical problems with the implementation of this modification, we would like to see the issue given further consideration.

Yours faithfully

Sarah Grimes
Q1. Do you support Modification Proposal P19? Yes, as an interim measure going forward - Please see the accompanying letter and answer to Q3 below.

Q2 Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure? Yes, going forward.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live? We believe there are additional issues for any one modification to be applied retrospectively. If this modification is applied retrospectively, we believe a lower recovery rate should be adopted (between 50-70%)

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:
a. No charge?
b. A fixed fee of £5000?
c. Some other fixed fee?
d. A fee determined on some other basis (please specify)? This fee should be in the region of £15,000. Additionally, a maximum recovery rate should be set (around 80-90%)

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved? We believe the largest impact would be on the standard GTMA agreement.

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:
a The time at which the erroneous notification was made?
b The first gate closure relating to the erroneous notification?
c The end of the last settlement period relating to the erroneous notification (as per P19)?
d Some other reference time (please specify)? When as a RPO (Reasonable and Prudent Operator) you should have first detected the error.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:
a. 3.5 hours?
b. 24 hours?
c. 72 hours?
d. Some other period (please specify)? 3 working days.

Q8. Do you agree that the evidence required to support an application should:
a. Be entirely at the discretion of the Panel?
b. Always include supporting declarations from Party and Counterparty?
c. Include other prescribed components? Answer b - Sufficient information should be made public or circulated to certain Parties.

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 & 7)? No

Q10 What assurance, if any, should be provided to support the evidence for a notification error claim? A Director's Statement that this is a bona fide claim made in good faith.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective? Needs further consideration.

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended? No, The rules should be consistent for all players at all times.
A company

British Gas Trading Limited Registered in England No.3078711 Registered Office Charter Court 50 Windsor Road Slough Berkshire SL1 2HA

P19_UMR_016 – British Energy

From: Ace Rachel[SMTP:rachel.ace@british-energy.com]
Sent: 26 June 2001 09:36
To: 'modifications@ELEXON.co.uk'
Cc: Ace Rachel
Subject: P19 Comments

To: Modification Secretary, ELEXON

From: Rachel Ace, British Energy, 26 June 2001

British Energy does not support any of the proposals contained in Modification Proposal P19. All Parties were aware of BSC Energy Contract Volume Notification (ECVN) and Metered Volume Reallocation Notifications (MVRN) and will have invested in and developed their systems against transparent criteria. To allow changes to the BSC which enables errors in ECVN & MVRN on an ex-post basis discriminates against those Parties who have made the investments in systems and processes.

Such a change would also be very difficult to police and open to abuse if not carefully monitored making the market more uncertain. We are also against retrospective changes to market rules as a matter of principle, as they unfairly prejudice those that have taken decisions against the existing rules, and are damaging for market confidence and liquidity.

Specific questions posed:

Question 1 - Do you support Modification Proposal P19? No

Question 2 - Do you support the key feature of Modification Proposal P19, that the BSC should allow for correction of notifications after gate closure? No not at this time. Perhaps after more experience has been gained with NETA say in a year or so a thorough review might be appropriate where a number of the questions raised could be examined.

Question 3 - Do you agree that such a Modification to the BSC should apply retrospectively to Go-live? No

Question 4 - Do you agree that the appropriate fee for raising each notification error claim should be?

a) No charge
b) A fixed fee of £5000
c) Some other fixed fee
d) A fee determined on some other other basis? No View

Question 5 - The adoption of this proposal might have implications for other
contractual arrangements outside of the BSC. What period between the

decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved? See answer to question 2

Question 6 - Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be :

a) the time at which the erroneous notification was made
b) the first gate closure relating to the erroneous notification
c) the end of the last settlement period relating to the erroneous notification
d) Some other period See answer to question 2

Question 7 - Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

a) 3.5 hours
b) 24 hours
c) 72 hours
d) Some other period? See answer to question 2

Question 8 - Do you agree that the evidence required to support an application should

a) Be entirely at the discretion of the panel
b) Always include supporting declarations from Party and Counterparty
c) Include other prescribed comments? See answer to question 2

Question 9 - Do you believe that any specific circumstances should preclude a notification error claim (other that the time limits explored in question 3 & 7)? See answer to question 2

Question 10 - What assurance, if any, should be provided to support the evidence for a notification error claim? See answer to question 2

Question 11 - Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective? See answer to question 2

Regards

Rachel Ace

For
British Energy Power and Energy Trading
British Energy Generation Ltd
Eggborough Power Ltd

P19_UMR_017 – Bridge of Cally

Thank you for the opportunity to respond on the above modification.

Given the short timescale, and the wide ranging issues raised, Bridge of Cally is neither able to support or reject the modification.

However, I would like to respond to your question 4, on the basis that the modification may be accepted.

The imposition of a fixed charge of #5000 is discriminatory towards Parties with small portfolios, and favours larger Parties. The charge would be more fairly levied as a percentage of the saving to be made by the party making the claim, e.g. 10%. This charge should be levied whether the claim is successful of not, to ensure only bona fide claims are made.

Consideration should be given to increasing the percentage charge for each subsequent claim per year to provide an incentive to improve systems.

Regards

Stephen Mooney

P19_UMR_018 – Total Fina Elf

The Modifications Secretary

ELEXON Limited
Third Floor
1 Triton Square
London NW1 3BX

Tuesday, June 26, 2001

Dear Modifications Secretary

TotalFinaElf Response to Modification Proposal P19: Remedy for Errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications

TotalFinaElf Gas and Power (TFE) welcome the opportunity to respond to this modification. Please note our responses below to the specific questions within the consultation. We would appreciate if these comments were to be included within the panel modification report for P19.

Q1. Do you support Modification Proposal P19?

TFE supports Modification Proposal P19.

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after Gate Closure?

The intent of the BSC is, inter alia, to provide for sufficient financial incentives for BSC Parties to contract such that energy accounts are balanced/optimised prior to gate-closure (ex-ante) with any imbalances settled post gate-closure. The post-gate closure settlement rules presently consider only those notifications that were accurately notified ex-ante. We recognise the present rules contain little flexibility for technical errors or events that may sometimes result in the inability of a party to strictly follow BSC processes despite these Parties having contracted ex-ante to avoid imbalance price exposure.

TFE consider that failure to recognise these particular circumstances, within the BSC, results in Parties being cashed out in an manner that does not recognise their true contract position and leads to inappropriate residual cashflow reallocation smears across the industry. This would seem perverse since the objective of the imbalance settlement process is to identify those participants whose energy accounts were imbalanced and therefore in theory levy imbalance prices upon those Parties whose imbalance volumes caused physical imbalances upon the system. Given that incorrect notifications do not result in any change to the physical balance upon the

system, applying imbalance price exposure to those Parties who failed to notify correctly for technical reasons does appear to be unduly onerous and penal.

If notifications are corrected after gate-closure we accept that some Parties will be concerned with preserving the principle of ex-ante notifications. Implementing appropriate safeguards could easily allay these concerns. For example they could include the relevant Parties being required to demonstrate, to the Panels reasonable satisfaction, that contracts were agreed prior to gate closure and reasonable attempts were made to accurately notify these contracts prior to gate-closure.

TFE therefore recommend inclusion within the BSC of post gate-closure correction of notifications. We consider this would be both pragmatic and better facilitates the objectives of the BSC. Failure to implement this modification may also lead to a greater perceived notification risk associated with trading close to delivery. We suspect this may have an adverse impact upon either liquidity within these secondary markets or prices from a customer perspective.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?

TFE agrees this modification should apply retrospectively to Go-Live.

The uncertainty and unfamiliarity associated with the NETA trading rules are likely to have contributed to errors in contract notification. Retrospective application of this modification far from creating uncertainties within the trading rules should correct for these initial market uncertainties and distortions. Furthermore it should not adversely impact upon efficient balancing since participants should be required to effectively demonstrate these contracts existed prior to gate closure. In addition since aggregate balancing decisions by NGC are based upon notified physical positions this should also not be affected.

We accept that retrospective application of this modification may re-open previously settled financial transactions particularly with respect to the residual cashflow reallocation charge, however, since these were on the basis of 'incorrect' imbalances they may be construed to have been an inappropriate windfall. Retrospective application of this modification is consistent with the fundamental objectives of the code and does not significantly erode the requirement for Parties to submit accurate notifications prior to gate-closure. Rather it corrects for the uncertainties initially experienced with the introduction of NETA and correctly re-distributes windfall sums of money leaving the physical energy balance position unchanged.

Q4. Do you agree that the appropriate fee for raising each Notification Error claim should be:

i. No charge?

j. A fixed fee of £5,000?

k. Some other fixed fee?

l. A fee determined on some other basis (please specify)?

This modification has certain similarities with Manifest Error provisions. A fixed fee of £5,000 would therefore be consistent and provides certain safeguards for ELEXON to administer the disputes process with regard to immaterial claims.

Q5. The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

Implementation of this modification should reduce the contractual risk associated with contract notification. It should not change the actual contracted position of any participant, therefore, TFE recommend this proposal be implemented at the earliest opportunity.

Q6. Do you agree that the appropriate reference point for measuring the time within which a Notification Error claim must be made should be:

i. The time at which the erroneous notification was made?

j. The first Gate Closure relating to the erroneous notification?

k. The end of the last settlement period relating to the erroneous notification (as per P19)

l. Some other reference time (please specify)?

TFE recommend for prospective notification error claims the end of the settlement period to which the claim applies is preferable.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

i. 3.5 hours?

j. 24 hours?

k. 72 hours?

l. Some other period?

TFE consider 72 hours an appropriate time limit for application to correct an erroneous notification.

Q8. Do you agree that the evidence required to support an application should:

g. Be entirely at the discretion of the Panel?

h. Always include supporting declarations from Party and Counterparty?

i. Include other prescribed components?

The onus is on the party submitting a claim of Notification Error to provide supporting evidence to the satisfaction of the Panel. The Panel should not be precluded for requesting further supporting information.

Q9. Do you believe that any specific circumstances should preclude a Notification Error claim (other than the time limits explored in questions 3 and 7)?

No.

Q10. What assurance, if any, should be provided to support the evidence for a Notification Error claim?

This should be left to the discretion of the Panel.

Q11. Do you believe that the notice period for retrospective claims should be five days after the Modification becomes effective?

Yes.

Q12. Do you agree that for future new entrants the time limit for raising Notification Error claims should be extended?

TFE have no firm view in respect of this question.

We hope our comments prove to be constructive. If you would like to discuss any aspect of this response please contact me on 020 7318 6880.

Yours sincerely,

Sharif Islam

Energy Regulation Manager
TotalFinaElf Gas and Power Ltd

ANNEX 4 APPLICABLE BSC OBJECTIVES

The Applicable BSC Objectives are set out in paragraph 3 of Condition 7A of the Licence, as follows:

(a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;

(b) The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;

(c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity; and

(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

ANNEX 5 MODIFICATION GROUP MEMBERSHIP

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Ben Jones	ELEXON	ben.jones@ELEXON.co.uk

ANNEX 6 PROPOSED LEGAL DRAFTING

ANNEX 6.1 Modification P19 – legal drafting – differences between original and alternative versions.

Aside from certain differences in drafting, the main differences between the original and the alternative modifications are as below. However the legal text for both versions should be read to ascertain all of the differences:

Issue	Original modification	Alternative modification
Definition of notification error	Based on concept of 'trade in active energy'.	Based on 'manifest error' in notifying volume notifications
Counter-party agreement of notification error (in two-party case)	Not required	Both Contract Trading Parties must confirm the error
Limits on making claims	Within 72 hours after (first) Settlement Period for which rectification sought	Within 72 hours after Gate Closure for Settlement Period for which rectification sought
	No equivalent	A claim may not be made if a previous claim made in relation to the same notification
	No equivalent	A claim may not be made in relation to Settlement Periods for which Gate Closure not yet occurred
	No equivalent	At Panel's discretion, rectification will not be allowed if a claim for the same Party(ies) made within [12] preceding months and the underlying cause was not remedied

ANNEX 6.2 Tidied Version.

The following text would be inserted in Section P.

2.3A Rectification of ECV Notification Errors

2.3A.1 For the purposes of this paragraph 2.3A:

(a) an ECV notification error ("**ECV Notification Error**") occurs where and only where:

(i) the information contained in an Energy Contract Volume Notification (taken together with any prior Energy Contract Volume Notification that remains in force pursuant to paragraph 2.3.5(b)) does not, at Gate Closure for any Settlement Period to which that notification relates, accurately reflect a trade of Active Energy; or

(ii) a trade of Active Energy is not, at Gate Closure for any Settlement Period to which that trade of Active Energy relates, reflected in an Energy Contract Volume Notification;

(b) in relation to a claim under paragraph 2.3A.2 for rectification of an ECV Notification Error, a trade of Active Energy is:

(i) an agreement between two Trading Parties for the sale and purchase of a quantity (or quantities) of Active Energy in relation to one or more Settlement Periods; or

(ii) a resolution on the part of a single Trading Party to transfer Energy Contract Volume(s) from one of its Energy Accounts to the other which has been implemented within the Trading Party's own books or other records of account.

2.3A.2 In relation to ECV Notification Errors:

(a) where a Party considers that there has been an ECV Notification Error in relation to any trade of Active Energy to which it is Party, it may, subject to paragraph 2.3A.2(b), as soon as reasonably practicable after becoming aware of the ECV Notification Error and, in any event, no later than 72 hours after the end of the Settlement Period or first Settlement Period in relation to which the Party seeks rectification of such error], make a claim for rectification of the ECV Notification Error by giving notice of such claim to BSCCo, together with details of the other Party (if any) to the relevant trade of Active Energy;

(b) where a Party makes a claim for rectification of an ECV Notification Error, it shall pay a fee to BSCCo, the amount of which (for each such claim) shall be £5,000, or such other amount as the Panel may from time to time, after consultation with Parties, determine upon not less than 30 days' notice to Parties, which fee shall not be reimbursed in any circumstances;

(c) where a Party gives notice of a claim for rectification of an ECV Notification Error to BSCCo, BSCCo shall within 24 hours of receiving such notice forward the notice to the ECVAA, and to all Contract Trading Parties and Volume Notification Agents.

2.3A.3 The Panel shall consider claims for rectification of ECV Notification Errors in accordance with the following provisions:

(a) for the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 2.3A, and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so;

(b) where a claim for rectification of an ECV Notification Error is made:

(i) the Panel Secretary shall arrange for the claim to be placed on the agenda of the Panel (consistently with paragraph 2.3A.3(b)(iii)), and shall request:

(1) the Party claiming rectification of the ECV Notification Error to provide such evidence and information supporting its claim as it may consider appropriate to resolve the claim; and

(2) the ECVAA to provide comments in relation to the claim;

(ii) the Panel shall determine in its opinion whether there was an ECV Notification Error and (if so) shall also determine what adjustments are to be made to the relevant Energy Contract Volume Notification or (in the case of an ECV Notification Error under paragraph 2.3A.1(a)(ii)) what Energy Contract Volume Notification should be treated as having been submitted in respect of the relevant Settlement Period(s);

(iii) the Panel shall wherever practicable consider and determine the claim in time for any such adjustments to be taken into account in the Initial Settlement Run;

(iv) the Panel Secretary shall notify the Panel's determinations to the ECVAA and to all Contract Trading Parties and Volume Notification Agents; and

(v) the fee under paragraph 2.3A.2(b) shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph 2.3A.3(b)(iv), and shall be paid accordingly;

(c) the determination of the Panel (or any Panel Committee established or appointed under paragraph 2.3A(a)) as to whether there was an ECV Notification Error, and (if so) what adjustments are to be made under paragraph 2.3A.3(b)(ii), shall be final and binding on all Parties.

2.3A.4 Where the Panel has determined pursuant to paragraph 2.3A.3(b)(ii) that adjustments are to be made to the relevant Energy Contract Volume Notification or that an Energy Contract Volume Notification should be submitted:

(a) a notification in such terms shall be treated as having been submitted by the relevant Energy Contract Volume Notification Agent in respect of the relevant Settlement Period(s) in accordance with paragraph 2.3A.4(b);

(b) subject to paragraph 2.3A.5, an Energy Contract Volume Notification submitted in accordance with paragraph 2.3A.4(a):

(i) shall be deemed (for the purposes of the Code) to have been received:

(1) in the case of an ECV Notification Error under paragraph 2.3A.1(a)(i), at the time at which the original such notification was received; or

(2) in the case of an ECV Notification Error under paragraph 2.3A.1(a)(ii), at the time immediately before Gate Closure for the first Settlement Period to which the relevant trade of Active Energy relates;

(ii) if valid in accordance with paragraph 2.3.4, shall, notwithstanding that it may be submitted after Gate Closure for any Settlement Period, be in force and (subject to paragraph 2.4) effective for Settlement Periods for which:

(1) in the case of an ECV Notification Error under paragraph 2.3A.1(a)(i), the original Energy Contract Volume Notification would (consistent with paragraph 1.2.4) have been in force; or

(2) in the case of an ECV Notification Error under paragraph 2.3A.1(a)(ii), the trade of Active Energy relates.

2.3A.5 Where an Energy Contract Volume Notification (the "**rectified ECV notification**") is treated as having been submitted in accordance with paragraph 2.3A.4(a), such notification shall be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to Settlement Periods for which Gate Closure occurs after, but not earlier than, the time of the rectification, and accordingly:

(a) where, in accordance with Section M, a relevant Contract Trading Party was treated before the time of the rectification as being in Credit Default and would not have been so treated had the rectified ECV notification been submitted:

(i) Section M3.5 shall not apply; and such Party shall not be entitled to any right or remedy in respect of being so treated; and

(ii) to the extent that, as a result of such Party being so treated, any other Volume Notification was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by

the rectification of the ECV Notification Error and Section M4 shall not apply in relation thereto;

(b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated before the time of the rectification as being in Level 2 Credit Default had the rectified ECV notification been submitted, and was not so treated, the rectification of the ECV Notification Error shall not affect or prejudice any other Volume Notification which was not treated as refused before, or rejected as to Settlement Periods for which Gate Closure was before, the time of the rectification;

and for the purposes of this paragraph 2.3A.5, the time of the rectification of an ECV Notification Error is the time with effect from which the ECVAA enters into its BSC Agent System the adjustments determined under paragraph 2.3A.3(b)(ii).

2.3A.6 The provisions of this paragraph 2.3A shall apply in respect of a trade in Active Energy relating to any Settlement Period (since the Go-live Date), whether before, on or after the date on which such provisions come into effect, provided that:

(a) no claim for rectification of an ECV Notification Error relating (in whole or in part) to any Settlement Period for which Gate Closure has occurred prior to the date on which the provisions of this paragraph 2.3A come into effect may be made after the expiration of five days from such date; and

(b) in relation to such a claim as is described in paragraph (a), the requirement under paragraph 2.3A.2(a) (that such claim be submitted within 72 hours after the end of the Settlement Period to which the trade of Active Energy relates) shall not apply.

ANNEX 6.3 Optimised Version.

Section P

The following text shall be inserted in Section P.

6. NOTIFICATION ERRORS

6.1 Meaning of Notification Error

6.1.1 For the purposes of this Section P:

(a) a "**Notification Error**" occurs in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was a manifest error in the submission of a Volume Notification on the part of the Volume Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period;

(b) references in this paragraph 6 to the submission of a Volume Notification:

(i) mean the submission of a particular Volume Notification; and

(ii) include a failure to submit a Volume Notification,

and the provisions of this paragraph 6 shall be construed accordingly;

(c) for the purposes of paragraph (a), a manifest error in the submission of a Volume Notification will be considered to have occurred only where:

(i) the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and

(ii) it is clear that a mistake occurred in giving effect to that commitment;

(d) in relation to a claim of Notification Error:

(i) the "**relevant**" Volume Notification is the Volume Notification in respect of which the Notification Error occurs;

(ii) the "**relevant**" Volume Notification Agent is the Volume Notification Agent which submitted the relevant Volume Notification;

(iii) the "**relevant**" Settlement Period is the Settlement Period in respect of which the Notification Error occurs;

(iv) a "**relevant**" Contract Trading Party is a Contract Trading Party in relation to which the Notification Error occurs;

(v) the "**rectified Volume Notification**" is the Volume Notification which would have been made had the Notification Error not occurred;

(e) in relation to a relevant Contract Trading Party, references to a Notification Error are to the Notification Error which has (or is alleged to have) occurred in respect of such Party;

(f) "**Volume Data**" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be.

6.2 Claiming Notification Errors

6.2.1 Where a relevant Contract Trading Party considers that there has been a Notification Error, such Party may, subject to paragraph 6.2.2 and (where applicable) paragraph 6.2.3, as soon as reasonably practicable after becoming aware of the Notification Error and in any event no later than 72 hours after Gate Closure for the relevant Settlement Period, make a claim to that effect by giving notice of such claim to BSCCo, identifying the Notification Error(s) and the relevant Settlement Period(s).

6.2.2 Where a relevant Contract Trading Party makes a claim of Notification Error, such Party shall pay a fee to BSCCo the amount of which (for each such claim, provided that for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4 a claim may relate to more than one Notification Error in respect of the same Volume Notification) shall be [£5,000], or such other amount as the Panel may from time to time, after consultation with Parties, determine upon not less than 30 days' notice to Parties; which fee shall not be reimbursed in any circumstances.

6.2.3 Where a relevant Contract Trading Party makes a claim of Notification Error (other than one to which paragraph 1.4.1 applies), the claim shall be accompanied by a statement in writing from the other relevant Contract Trading Party (addressed to BSCCo for the benefit of all Contract Trading Parties) confirming that it considers that the Notification Error has occurred.

6.2.4 A claim of Notification Error may not be made:

(a) in relation to a Volume Notification in respect of which a previous claim has been made (and accordingly, if a relevant Contract Trading Party wishes to claim Notification Errors in relation to more than one Settlement Period, a single claim must be made for all such errors, subject to paragraph (b) below and paragraph 6.2.1); or

(b) in relation to a Settlement Period for which Gate Closure occurs after the time at which the claim is made.

6.2.5 A claim of Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if submitted as described in paragraph 6.4.5) would not have been so treated, but without prejudice to paragraph 6.6.2.

6.3 Flagging Notification Errors

6.3.1 Where a Party gives notice of a claim of Notification Error under paragraph 6.2.1, BSCCo shall within 1 Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties and the relevant Volume Notification Agent.

6.4 Determination of Notification Errors

6.4.1 The Panel shall consider claims of Notification Error in accordance with this paragraph 6.4.

6.4.2 For the avoidance of doubt the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6; and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so.

6.4.3 Where a claim of Notification Error is made:

(a) the Panel Secretary shall arrange for the claim to be placed on the agenda of a meeting of the Panel (consistently with paragraph (c)), and shall request:

(i) the Party claiming the Notification Error to provide evidence and information supporting its claim;

(ii) the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and

(iii) the relevant Volume Notification Agent and the ECVAA to provide comments in relation to the claim;

(b) the Panel shall determine in its opinion whether there was a Notification Error and, if so, what it was;

(c) the Panel shall wherever practicable consider the claim in time for any such rectification to be taken into account in the Initial Settlement Run;

(d) the relevant Contract Trading Parties and the relevant Volume Notification Agent shall provide the Panel with such further information as it may reasonably request to assist it in making its determination;

(e) the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent;

(f) BSCCo shall give such instructions to the ECVAA, SAA and FAA as are necessary to give effect to any such rectification;

(g) the fee under paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph (e), and paid accordingly.

6.4.4 The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to whether there was a Notification Error and, if so, what it was shall be final and binding on all Parties.

6.4.5 Rectification of a Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:

(a) at the time at which the relevant Volume Notification was submitted; or

(b) where the Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.

6.4.6 If:

(a) a claim of Notification Error is made and the Panel determines that the Notification Error has occurred;

(b) within a period of [12] months after the first claim was made, a further claim of Notification Error is made in respect of the same Contract Trading Parties and Energy Contract Volume Notification Agent; and

(c) the Panel considers that the further Notification Error occurred because the Energy Contract Volume Notification Agent and/or one or both of the Contract Trading Parties failed to remedy any defect in its or their systems or processes which gave rise to the first claim,

the Panel may decline to rectify the Notification Error(s) identified in the further claim.

6.5 Rectification of Notification Errors

6.5.1 Where the Panel determines that there was a Notification Error:

(a) the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Notification Error as determined by the Panel; and

(b) such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period.

6.6 Credit arrangements

6.6.1 Where a Notification Error is rectified, the rectification shall be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to Settlement Periods for which Gate Closure occurs after, but not earlier than, the time of the rectification.

6.6.2 In accordance with paragraph 6.6.1:

(a) where, in accordance with Section M, a relevant Contract Trading Party was treated before the time of the rectification as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted,

(i) Section M3.5 shall not apply; and such Party shall not be entitled to any right or remedy in respect of being so treated;

(ii) to the extent that, as a result of such Party being so treated, any other Volume Notification was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Notification Error and Section M4 shall not apply in relation thereto;

(b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated before the time of the rectification as being in Level 2 Credit Default had the rectified Volume Notification been submitted, and was not so treated, the rectification of the Notification Error shall not affect or prejudice any other Volume Notification which was not treated as refused before, or rejected as to Settlement Periods for which Gate Closure was before, the time of the rectification.

6.6.3 For the purposes of this paragraph 6.6, the time of the rectification of a Notification Error is the time with effect from which the ECVAA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.

6.7 Prior application

6.7.1 This paragraph 6 shall apply in relation to the notification of Volume Date in relation to any Settlement Period (since the Go-live Date), whether Gate Closure for such Settlement Period occurred before, on or after the date on which this paragraph 6 comes into effect (the "**effective date**"), subject to paragraph 6.7.2.

6.7.2 In relation to a Notification Error in relation to a Settlement Period for which Gate Closure occurred before the effective date:

(a) no claim of such Notification Error may be made after the expiry of 5 days after the effective date;

(a) the requirement (pursuant to paragraph 6.2.1) that a claim of Notification Error be submitted within 72 hours after Gate Closure for the relevant Settlement Period shall not apply;

(c) paragraph 6.2.4(a) shall not apply;

(d) paragraph 6.4.6 shall not apply in relation to claims of further Notification Errors (as referred to in paragraph 6.4.6(b)) relating to Settlement Periods before the effective date.

ANNEX 7 OPERATION OF CENTRAL SYSTEMS

INTRODUCTION

Modification Proposal P19 says(Para (ii) in 'Justification for proposed Modification…') that:

"Parties have found it unusually difficult to validate notification data in a timely manner. In particular, problems arising from the operation of systems employed by central Parties have frequently led to inaccurate data being fed back to the Parties for validation. (This is clear from ELEXON circulars issued at or around that time, notably numbers 11 to 13, 15 to 17, 19 to 21, 24, 27, 28, 33, and 41, and the Logica bulletin dated 11 April relating to settlements for 3 April.) In consequence, it was often unusually difficult for Parties to distinguish errors arising from central systems from errors in Parties' own notifications. This meant that Parties were often unable to identify and correct errors before Gate Closure, with errors becoming apparent only on provision of data in respect of the initial settlement run."

ELEXON has assembled the information in this Annex as background to the points made in the proposal. The information provided relates to the early period of live operation, from 27th March –30th April 2001.

The information provided relates to Energy Contract Volume Notifications, the ECVAA Service, and communications services which ECVAA and Parties use. It does not therefore cover other matters (such as System Sell and System Buy Prices) which are not the subject of Modification Proposal P19.

The information presented is that which is readily available to ELEXON. For this summary presentation, ELEXON has not retrieved more detailed information from the Logica Consortium

This information was not presented to the Modifications Group during their consideration of the modification proposal and was not made available to Parties to inform their responses to the Urgent Modification Consultation.

SUMMARY OF OPERATIONAL ISSUES

Figure A7.1 summarises operational events within the scope defined above. It presents three categories of information:

a. ELEXON Circulars
b. Information provided by the Logica Consortium to ELEXON.
c. Problem Management Reports (which are ELEXON internal records).

ELEXON Circulars

Table A7.1 lists the twelve ELEXON Circulars issued during the defined period relating to ECVAA and ECVNs. This list does not include all those mentioned within P19. Of those cited in the proposal but omitted from Table A7.1, Circular Numbers 11, 13, 15, 16, 17, 20, 24, and 33 relate to SSP and SBP; Circular Number 19 relates to CDCA Settlement Data.

Circular Numbers 12, 21, 27, 28, 41 cited in the proposal also appear in Table A7.1

Information Provided by the Logica Consortium

This reflects specific incidents reported to ELEXON by the Logica Consortium.

Problem Management Reports

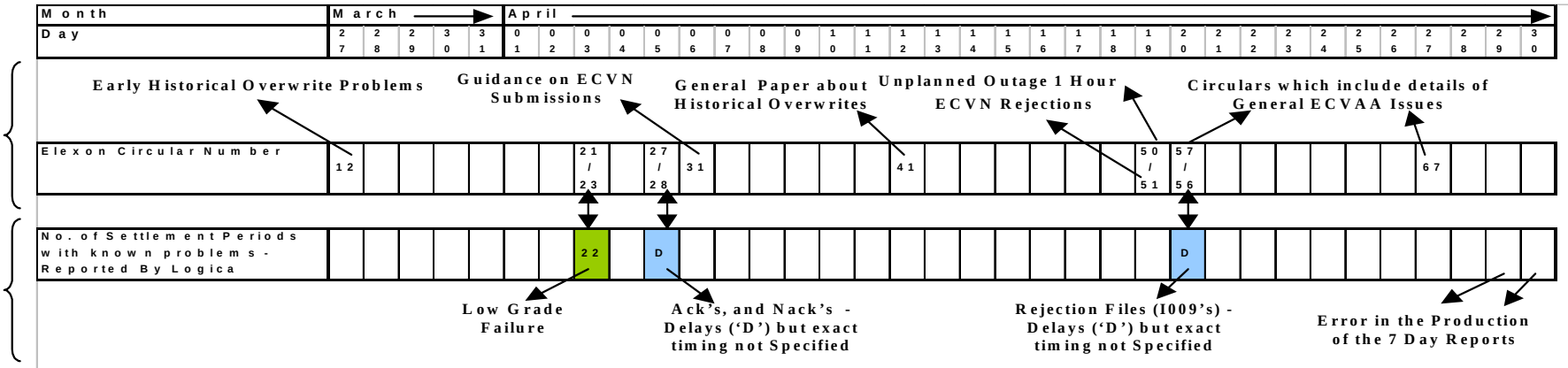
ELEXON maintains internal records of operational issues in the form of PMRs. A PMR is raised for each operational issue reported: for instance, help desk calls and other communications from Parties may cause a PMR to be raised. Note that a single problem may generate a number of PMRs.

Figure A7.1 shows the PMRs raised by topic, and totals by day.

TABLE A7.1

Circular Number	Circular Title	Subject
12	Energy Contract Notifications - Known Rejections	Historic Overwrites, primarily relating to trading Parties using UKPX's exchange
21	Low Grade Service	Informed BSC Parties of on-going investigation relating to the Low Grade Service failure
23	Low Grade Service Update	Reported on the resumption of the Low Grade Service (see circular 21 above)
27	Energy Contract Volume Notification Submissions to Energy Contract Volume Aggregation Agent (ECVAA)	Notified Parties of investigations taking place into delays experienced by some Parties in receiving ACK's and NACK's
28	Energy Contract Volume Aggregation Agent (ECVAA) System Issues 5th April 2001	Reported on the resumption of normal service following the investigation and subsequent correction of errors (see circular 27 above)
31	Start Dates for the Authorisation of an ECVN and MVRN	Guidance Circular aimed at clarifying the use of certain 'Effective Dates' aimed at reducing the number rejections
41	Correction Process for Historical Overwrite Issues	Guidance Circular issued by ELEXON providing further clarification of Historical Overwrite issues
50	ECVAA & BMRA unplanned outage	Identified an unplanned outage which lasted for 1 hour
51	Rejection of Energy Contract Volume Notifications submitted by UKPX on 18th and 19th April 2001	Historical Overwrite issues arising as a result of File Sequence Number problems. Primarily affected UKPX and included an apology for the inconvenience caused.
56	ECVAA Business Loader Delay	Business Loader problems experienced over a 2 day period. This affected the Energy Contract Volume Notification Feedback Reports (I009's) which inform Notification Agents and Trading Parties when contract notifications have been rejected.
57	Initial Settlement Run Data for 27 March 2001	General Circular leading up to the 1st SF Run. Acknowledged that there had been a number of issues with contract notifications in the first few weeks of the market (e.g. Historical Overwrite) and that rectification measures had been applied.
67	Trading Position Verification	General Circular leading up to the 1st Payment Day related to the 1st SF Run providing advice to Parties in helping them to reconcile their Trading Position. This included a number of contract related reports.

ECVAA Operations 27th Mar 2001 to 30th April 2001



Summary of ECVAA Problem Management Reports (PMR's)

	27	28	29	30	31	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	Total PMR's By Type
High Grade Failure																1							1													2
Low Grade Failure								5	3							3	1																			12
ACK's & NACK's		3	1						2	8	4						1				1			2					1							23
Historical Overwrites		3	1	3					1	1					1	1					1	2	1				2	1	1			1			2	22
Rejection Files		1	1				1										1						2				1									7
Seqence Numbering		1					2						1				1							1			1					1				8
7 Day Reports	2	2	3	3			2	1	1				1	1	2	2					1						1								1	23
Party Software				1						1						1														1						4
PC sec Problems								1		1							1										1									4
End of Day Reports				1				1		1	1		1	3	1	1					2		1	2			2		2	3					3	25
Daily Totals For All Types	2	10	6	8	0	0	5	8	7	11	6	0	0	3	5	9	8	0	0	0	0	5	2	5	5	0	0	8	1	4	4	2	0	0	6	
Weekly Totals For All Types						26							37							25							17							19			

Daily PMR Totals