



August 2002

**MODIFICATION REPORT
MODIFICATION PROPOSAL**

**P94 - Introduction Of A Process To Allow The
Panel To Recall Modification Reports From The
Authority To Allow The Legal Drafting To Be
Corrected If Working Assumptions Prove To Be
Incorrect**

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

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1	BSC Panel Paper 47/011	ELEXON	7 June 2002	FINAL
2	P94 Initial Assessment	ELEXON	18 July 2002	1.0

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Report Phase, and the resultant findings of this report, the BSC Panel recommends that:

Modification Proposal P94 should be made with an Implementation Date of:

- **30 September 2002 if an Authority determination is made on or prior to 9 September 2002; or**
- **15 Working Days after such Authority determination if that determination is made after the 9 September 2002.**

1.2 Background

Modification Proposal P94 - Introduction Of A Process To Allow The Panel To Recall Modification Reports From The Authority To Allow The Legal Drafting To Be Corrected If Working Assumptions Prove To Be Incorrect' (P94) was raised on behalf of the BSC Panel on 8 July 2002.

P94 seeks to amend Section F of the Balancing and Settlement Code to allow the Panel to apply to the Authority to amend the proposed legal text contained within a Modification Report that has already been submitted to the Authority for determination, but where the Authority has not yet made a determination.

1.3 Rationale for Recommendations

The unanimous view of the Panel was that P94 would promote efficiency in the implementation and administration of the balancing and settlement arrangements (Applicable BSC Objective (d)).

The achievement of this Objective would be better facilitated by allowing the legal text contained within a Modification Report, on which the Authority has not yet made a determination, to be amended where either:

- The baseline against which the legal text for any Pending Modification Proposal, or its Alternative Modification awaiting Authority Decision, has changed because of the introduction of legal text to implement another Modification Proposal and there is a direct impact on the legal drafting; or
- An error has subsequently been identified in the legal text included in the Modification Report.

Twelve responses (42 Parties) responded to the consultation on P94. All either supported the Modification Proposal or made no comment. The rationale for the support was that incorporation of P94 would increase efficiency in the Implementation and Administration of the Balancing and Settlement Code Arrangements.

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 ('the Code'). The

Code 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 Code.

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 DESCRIPTION OF PROPOSED MODIFICATION

P94 proposes to amend Section F of the Code to enable the Panel to apply to the Authority to amend the proposed legal text included in a Modification Report that has already been submitted to the Authority for determination, but where the Authority has not yet made a determination.

The circumstances where this process would be used are:

- Where there has been a change to the Code legal text, as a result of another Modification Proposal being approved by the Authority, that affects the basis on which the legal drafting was produced for a Modification Proposal currently with the Authority for determination. This may include requirements to change the paragraph numbers, cross references to other paragraphs within the Code or changes to the legal text where there is a clear interaction between the proposed legal text and the new baseline of the Code; or
- Where an error has subsequently been identified in the legal text of a Modification Report currently with the Authority for determination.

P94 allows for the Panel to be informed when one of the above circumstances arises and for a supplement to the Modification Report to be prepared containing revised legal text. Following approval by the Panel, the supplement will be submitted to the Authority. The legal text for this Modification allows the Panel to consider whether a consultation on the supplement is appropriate. It is envisaged that a consultation will normally be undertaken by the Panel where there is a change to the meaning contained within the legal text.

4 HISTORY OF PROPOSED MODIFICATION

P94 was raised on 8 July 2002 on behalf of the BSC Panel following a discussion by the Panel of paper 47/011 (reference 1) at their meeting on 13 June 2002. The Initial Written Assessment (IWA), (reference 2), was presented to the Panel meeting of 18 July 2002. The Panel agreed to the recommendation in the IWA to submit P94 to the Report Phase with a provisional recommendation that the Modification Proposal should be made with an Implementation Date of:

- 30 September 2002 if an Authority determination is made on or prior to 9 September 2002; or
- 15 Working Days after such Authority determination if that determination is made after the 9 September 2002.

A draft Modification Report for P94 was issued for consultation on 26 July 2002. 12 responses (42 Parties), were received. All responses either supported the Proposed Modification or provided no comment. On the basis of the support for P94 the Panel recommends to the Authority that the Proposed Modification as set out in this report be made.

5 RATIONALE FOR PANEL RECOMMENDATIONS

The Panel agreed with the recommendation of ELEXON as set out within the IWA in that approval of P94 would better facilitate the achievement of applicable BSC Objective (d). This view was supported by all consultation respondents who provided a comment. The rationale for this is that it will allow the correction of text in an efficient manner without the need to raise a subsequent Modification Proposal to correct the legal text of a Proposed Modification following approval of such Proposed Modification.

6 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

P94 requires minor changes to section F of the Code. The changes to the legal text of the Code in the following sections are based on version 4.0 of Section F which was issued on 10 July 2002. If the baseline of the Code changes prior to implementation of P94, or if other Proposed Modifications are to be implemented at the same time as P94, the legal text may need to be amended to realign to the new baseline.

The detailed red lined changes to the Legal text are included in Annex 2. In summary:

Section F Inserts new paragraphs after paragraph F2.7.7 to allow the Panel to

- Prepare revised legal text for a Proposed Modification awaiting Authority determination;
- Consult with Parties about the changes to be made to the legal text to be included within a supplement to the Modification Report; and
- Send such Supplement to the Authority and for the Supplement.

7 SUMMARY OF REPRESENTATIONS

Twelve responses (42 Parties) responded to the consultation on P94. All either supported the Proposed Modification or made no comment. The arguments in favour of the Modification were that the Implementation of P94 would:

- Improve Efficiency;
- Cut down on bureaucracy;
- Reduce the requirement to raise further modifications to correct legal text; and
- Provide a more effective process.

There were no arguments expressed that were against the approval of this Modification, however one respondent, whilst supporting the aims of the Proposed Modification did suggest that where a manifest error were to be identified within the legal text, that a consultation should always be undertaken in respect of the revised legal text. The same respondent also questioned the need for the Modification Proposal observing that ELEXON had already notified market participants about errors within the legal text of several Proposed Modification during July 2002. In response to this query, ELEXON contacted the respondent to provide further details on the justification for the Modification Proposal having been raised. This was to introduce a formal process, should the need arise to change legal text prior to an Authority decision, that is transparent and defined within the Code. The respondent was happy with this explanation.

There were no costs associated with the implementation of P93, identified by respondents to consultation.

Copies of all responses can be found in Annex 1.

ANNEX 1 – REPRESENTATIONS

Responses from P94 Draft Report Consultation

The draft Modification Report was sent out for consultation on 26 July 2002 with responses due back on 1 August 2002. The table below gives a summary of the responses and the actual responses received are attached below.

	Responses	Parties
For	11	41
Against	0	0
No Comment	1	1

Representations were received from the following parties:

No	Company	File Number	No. Parties Represented
1.	TXU Europe	P94_MR_001	21
2.	Dynegy	P94_MR_002	1
3.	YEDL/NEDL	P94_MR_003	2
4.	SEEBOARD	P94_MR_004	1
5.	British Gas	P94_MR_005	1
6.	LE Group	P94_MR_006	1
7.	British Energy	P94_MR_007	3
8.	Scottish Power	P94_MR_008	5
9.	Scottish and Southern	P94_MR_009	4
10.	Aquila Networks	P94_MR_010	1
11.	Entergy-Koch Trading Limited	P94_MR_011	1
12.	National Grid	P94_MR_012	1

P94_MR_001 – TXU Europe

Thank you for the opportunity to comment on P94 (Introduction of a Process to Allow Modification Reports to be Recalled from the Authority for Legal Drafting to be Corrected if Working Assumptions Prove Incorrect). This response is sent on behalf of all TXU Europe companies.

TXU fully supports this proposal. It is a sensible approach which avoids the situation whereby a modification has to be rejected and re-submitted because there has been an error in the legal drafting which could be rectified prior to the Authority reaching a decision, this will improve efficiency in the governance of the Balancing and Settlement Code.

Yours faithfully

Nicola Roberts
Market Development Analyst
TXU Europe Energy Trading Ltd

P94_MR_002 – Dynegy

Dynegy supports both of these modifications as we believe that they both better fulfil the relevant objectives, particularly by improving the efficiency of the implementation and administration of the BSC. The more we can do to streamline change and to cut the bureaucracy of the modification process the easier it will be for the market to respond to changes and to maintain an efficient system that operates to the benefit of UK customers by promoting competition.

Dynegy hopes that the Panel will recommend to the Authority that both proposals are accepted.

Lisa Waters
Director Government Affairs

P94_MR_003 – YEDL/NEDL

Our comments are that we agree with P94 for both YEDL and NEDL

Sue Calvert
Distribution Change
System Investment

P94_MR_004 – SEEBOARD

With respect to above mentioned proposal and its draft modification report, dated 26th July. We agree with recommendations within section 1.1 of this report and options for implementation dates detailed therein.

Dave Morton
SEEBOARD Energy Limited

P94_MR_005 – British Gas

Modification Proposal P94: Introduction of Process to Allow Modification Reports to be Recalled from the Authority for Legal Drafting to be Corrected if Working Assumptions Prove Incorrect

Thank you for the opportunity of responding to this Draft Modification Report. British Gas recognise that there is an issue associated with legal text for some modification proposals awaiting the Authority's decision being superseded by the approval of other proposals. As such we support the aims of the Draft Modification Report but would like to draw to the Panel's attention some areas for consideration.

We believe that there needs to be a degree of flexibility within the Code allowing minor textual changes, such as miss-aligned cross-references, to be amended whilst the proposal is with the Authority. It is undoubtedly more efficient for these to be dealt with directly by the Panel. However the legal drafting also provides for instances when the Panel becomes aware of a manifest error or minor inconsistency in the proposed legal text. Instances such as these are not defined and it is unclear from the legal drafting what would constitute a manifest error. The current modification process allows for detailed examination of the legal text and consequently it is hard to envisage any circumstance, except for cross-references, where the legal drafting should change without requiring further industry consultation. Furthermore, if a manifest error is identified it would seem appropriate to

make re-consultation with the industry mandatory rather than at the discretion of the Panel or Authority.

We also note that on 25th July 2002 Elexon carried out a brief consultation on changes to legal text for a variety of modifications. When this consultation was circulated it was stated that *'These changes are of a minor nature and do not alter the intent or effect of any of the Modifications in question'*. This approach was pragmatic, efficiently undertaken and carried out under the BSC as currently drafted we therefore question the need for this modification proposal.

One reason this modification was raised is because occasionally there is a substantial delay between the Authority receiving proposals and making a decision. We would encourage the reasons for this to be explored. If the information in the reports to the Authority is inadequate or incomplete then the reports should be changed and not the BSC.

We hope these comments are helpful to you. Should you wish to discuss this issue further please do not hesitate to contact me on the above number.

Yours faithfully

Andrew Latham
Account Manager

P94_MR_006 – LE Group

P94

LE Group support the recommendation to implement this modification. The introduction of a process to allow the BSC Panel to call back a modification from the Authority if working assumptions are unclear or require revision better facilitates BSC applicable objective (d). We would also like to add that it is important that the industry is consulted when any changes that result from this process lead to a potential impact on market participants' systems or commercial operations; it is also important that the industry is informed whenever this process is invoked.

P94_MR_007 – British Energy

This modification allows for correction of legal drafting included with BSC modification reports where a separate change has been made which interacts with the modification or an error has been detected. This seems sensible to avoid the possibility of modifications being rejected or implemented with errors simply because the process is restrictive. Since it would reduce the need for possible further corrected modifications, it would enhance the efficiency of the BSC process and thus better facilitate the BSC efficiency objective. The Panel will need to give careful consideration to the need for further consultation on changes to the original modification report legal text, to ensure that participants have opportunity to express views on significant material changes.

Regards

Rachel Ace

on behalf of

British Energy Power and Energy Trading
British Energy Generation Ltd
Eggborough Power Ltd

P94_MR_008 – Scottish Power

P94 Draft Modification Report Comments

With reference to the above, we offer our support to P94 Modification Proposal.

We believe that P94 would minimise the raising of minor housekeeping mods, thus adding efficiency to the BSC process.

We have considered the legal drafting provided and agree that it is appropriate.

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

Yours Sincerely,

Man Kwong Liu
Calanais Ltd.

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

P94_MR_009 – Scottish and Southern

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

Further to your note of 26th July 2002, and the associated Modification Report for P94, we agree with the proposed BSC Panel recommendation to the Authority that this Modification Proposal P94 should be made.

If the Modification Proposal P94 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in Section 1.1 of the Modification Report.

Regards

Garth Graham
Scottish & Southern Energy plc

P94_MR_010 – Aquila Networks

Please find that Aquila Networks Plc response to P94 Consultation on draft Modification Report is 'No Comment'.

regards
Rachael Gardener

Deregulation Control Group &
Distribution Support Office
AQUILA NETWORKS

P94_MR_011 - Entergy-Koch Trading Limited

Entergy-Koch Trading Limited (“EKTL”) supports the changes outlined in modification proposal P94.

The proposal introduces a useful degree of flexibility for changing the legal text of proposals in certain circumstances. This will allow more efficient and effective administrative processes. EKTL considers that this proposal improves the relevant objectives of the BSC and therefore supports the recommendation of the panel.

Yours sincerely,

Adam Cooper
Regulatory Affairs
Entergy-Koch Trading Limited

P94_MR_012 – National Grid

We agree with the proposed changes set out in Modification Report P94 - Introduction of Process to Allow Modification Reports to be Recalled from the Authority for Legal Drafting to be Corrected if Working Assumptions Prove Incorrect.

Clare Talbot
National Grid

ANNEX 2 – LEGAL TEXT

See attached document.

ANNEX 3 – P94 MODIFICATION PROPOSAL

See attached document.