

July 2002

**INITIAL ASSESSMENT OF 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 Limited

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I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
0.1	8/07/02	ELEXON		For Peer Review
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Version	Date	Reviewer	Signature	Responsibility

b Distribution

Name	Organisation
Each BSC Party	Various
Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
energywatch	energywatch
Core Industry Document Owners	Various

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II CONTENTS TABLE

I	Document Control	2
a	Authorities	2
b	Distribution	2
c	Intellectual Property Rights and Copyright	2
II	Contents Table	3
1	Executive Summary.....	4
2	Introduction	4
3	Details of the Modification Proposal.....	5
4	Impact on BSC Systems and Processes.....	5
5	Impact on Other Systems and Processes Used by Parties	5
6	Impact on Documentation.....	6
6.1	Impact on Balancing and Settlement Code.....	6
6.2	Impact on Code Subsidiary Documents	6
6.3	Impact on Core Industry Documents	6
7	Impact on Other Configurable Items	6
8	Impact on ELEXON.....	6
9	Impact on Financial Arrangements and Budget.....	6
10	Impact on BSC Agent Contractual Arrangements.....	6
11	Process and Timetable for Progressing the Proposal.....	7
12	Issues.....	7
	Annex 1 – Modification Proposal P94.....	8
	Attachment 1 - Legal Text to Give Affect to the Proposed Modification	

1 EXECUTIVE SUMMARY

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), included in Annex 1, was submitted on 8 July 2002 by the BSC Panel. P94 was raised following a discussion of paper 44/011 which outlined the requirement for a process to amend the legal drafting that is contained within a Modification Report that is with the Authority for determination where the basis for the legal drafting has been changed.

P94 seeks to amend Section F of the Code to enable 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.

An assessment of P94 has identified that it will only impact the Code, requiring a minor change to Section F of the Code to enable the Panel :

- to undertake a consultation in respect of the revised Implementation Date.
- to apply to the Authority to amend the proposed Implementation Date in a Modification Report; and

No other impacts have been identified.

The Panel is invited to:

- **NOTE the results of the Initial Written Assessment;**
- **DETERMINE that Modification Proposal P94 should be submitted to Report Phase in accordance with section F2.7 of the Code;**
- **AGREE the Report Phase timetable such that a draft Modification Report should be completed and submitted to the Panel for consideration at their meeting of 15 August 2002; and**
- **AGREE that the draft Modification Report contain a provisional recommendation that 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.**

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.

An electronic copy of this document can be found on the BSC website, at www.elexon.co.uk

3 DETAILS OF THE MODIFICATION PROPOSAL

Under the Modification Procedures set out in Section F of the Code, the Panel must approve the proposed text to give effect to any Modification Proposal or Alternative, which it is recommending. When legal text is prepared for any Modification Report, it is prepared on the basis of the current baseline of the Code, i.e. the legal drafting does not take into account the effect of the subsequent implementation of any other Modification Proposals on such legal drafting.

It is therefore possible that, whenever an Authority determination is made in respect of a Pending Modification Proposal for which the Authority has received a Modification Report, there will be an impact on the legal text that has been prepared for other Modification Proposals that are currently with the Authority for determination.

It is anticipated that the nature of such impacts will be limited to:

- Paragraph numbering, where more than one Modification Proposal has inserted paragraphs with the same paragraph number;
- Paragraph contents, where more than Modification Proposal has made a change to the same paragraph.

When the Code was first drafted it was envisaged that the Authority would be able to release determinations on Modification Proposals such that the impact of the legal drafting for any Modification Proposals would naturally flow through into any subsequent Modification Proposals. Unfortunately the volume and nature of Modification Proposals submitted and the time period between submission of Modification Reports to the Authority and a determination being made by the Authority has not allowed for this in a number of cases.

In the above circumstances, once the Authority has made a determination in favour of a Modification Proposal where the legal text conflicted with another Pending Modification Proposal, it would prove difficult for the Authority to make a determination in favour of any other Pending Modification Proposal where a conflict within the legal drafting existed.

In addition to the above, whilst every effort is made to prevent errors being introduced when legal drafting is prepared, it is also possible that an error may be identified within the legal drafting after the Modification Report has been submitted to the Authority for determination but prior to any determination in respect of that Modification Proposal.

The Code does not currently contain a formal process to allow the legal text to be amended in the circumstances described above. P94 therefore, proposes a process to allow the Panel to be notified of such an issue, and prepare a supplement to the Modification Report to allow the legal drafting to be replaced by that contained within the supplement.

P94 would enable the Panel, after consultation with interested parties, to seek to amend the proposed legal drafting of any Pending Modification, or an Alternative Modification, contained in a Modification Report by the preparation of a supplement to the Modification Report.

4 IMPACT ON BSC SYSTEMS AND PROCESSES

None identified.

5 IMPACT ON OTHER SYSTEMS AND PROCESSES USED BY PARTIES

None identified.

6 IMPACT ON DOCUMENTATION

6.1 Impact on Balancing and Settlement Code

The following table lists the impact on the Code identified by the initial assessment of P94.

BSC Section	Potential Impact of Proposed Modification
F: Modification Procedures	<p>Inclusion of additional; clauses after Section F2.7 and renumbering of existing clause F2.7.8.</p> <p>For the avoidance of doubt:</p> <ol style="list-style-type: none">1. The term 'manifest error' contained within paragraph F2.7.9 of the attached legal drafting has been used to identify an error within the legal text of any Modification Report, is consistent with the use of the term within paragraph F2.1.1 and should not be confused with the defined term 'Manifest Error' defined within paragraph Q7.1.1(a).2. References to the Panel's 'next following meeting' do not preclude a meeting of the Panel being convened at a time other than any currently scheduled meeting but is intended to provide the flexibility to call a meeting if the Panel so desires.

A copy of the legal text changes required to be made to implement P94 is contained within Attachment 1 to this report.

6.2 Impact on Code Subsidiary Documents

None identified.

6.3 Impact on Core Industry Documents

None identified.

7 IMPACT ON OTHER CONFIGURABLE ITEMS

None identified.

8 IMPACT ON ELEXON

None identified.

9 IMPACT ON FINANCIAL ARRANGEMENTS AND BUDGET

None identified.

10 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

None identified.

11 PROCESS AND TIMETABLE FOR PROGRESSING THE PROPOSAL

This initial assessment indicates that no further work is required to define or assess the amendments required to the Code. ELEXON therefore recommends P94 be submitted directly to the Report Phase with a Panel recommendation to the Authority that P94 should be made. The draft Modification Report, including consultation responses, should be presented to the Panel at their Meeting 15 August 2002.

It is proposed that the draft Modification Report contains a recommendation that P94 be implemented on:

- **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.**

12 ISSUES

None identified.

ANNEX 1 – MODIFICATION PROPOSAL P94

Modification Proposal	MP No: P94 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> 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.	
Submission Date <i>(mandatory by proposer):</i> 08 July 2002	
Description of Proposed Modification <i>(mandatory by proposer):</i> When it is envisaged that a Modification Proposal will have interactions with an earlier Modification Proposal on which the Authority is still to decide, the legal drafting for the latter proposal must use working assumptions concerning the former. These assumptions are: (i) whether decisions regarding Modification Proposals will be made in the chronological order in which they were submitted to the Authority; and (ii) whether or not any earlier proposal (or its alternative) submitted first to the Authority will be approved such that the legal drafting of the second will have to take account of the first proposal (or its alternative). This paper recommends that the BSC Panel raise a Modification Proposal to enable: (i) the Modification Report to make these working assumptions clear; and (ii) if the working assumptions are proved incorrect to further allow the Panel to correct the legal drafting, consult where appropriate and resubmit the Modification Report with amended legal drafting.	
Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i> In many cases the Mod Proposal ("the latter Proposal") will have interactions with a Mod Proposal which has already been submitted to the Authority for decision ("the earlier Proposal"). The Authority's decision on the earlier Mod Proposal will therefore impact the draft wording used to give effect to the latter. When the Code was first drafted it was envisaged that the Authority would release determinations on Mod Proposals such that the impact of the earlier Proposal(s) would naturally flow through into the latter. Unfortunately the time period between submission of Modification Reports to the Authority and the decision release dates has not allowed for this in a number of cases. As a result, there can be an element of uncertainty in preparing the legal drafting for latter Mod Proposals. Where there are interactions with earlier Proposals, assumptions are made when drafting proposed text to give effect to the latter Proposal. Legal text is currently drafted on the basis of the current version of the BSC, as amended by any Modification Proposals that have already been determined by the Authority (with an implementation date before that proposed by the 'latter' Modification Proposal). The timing of certain determinations have led to situations where legal text has been amended to reflect changes such as paragraph numbering.	
Impact on Code <i>(optional by proposer):</i> Introduce a new process into Section F	
Impact on Core Industry Documents <i>(optional by proposer):</i> Nil	

Modification Proposal	MP No: P94 <i>(mandatory by BSCCo)</i>
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i> Nil	
Impact on other Configurable Items <i>(optional by proposer):</i> Nil	
Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by proposer):</i> It is believed that the modification will better facilitate achievement of Applicable BSC Objective C3 3(d): (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements. The proposal would allow flexibility to amend legal text in light of Authoriury directions on earlier Modification Proposal and therefore reduce the administrative burden/costs.	
Details of Proposer: Name: BSC Panel Organisation: N/A Telephone Number: N/A Email Address: N/A	
Details of Proposer's Representative: Name: Modification Secretary Organisation: ELEXON Telephone Number: 0207 380 4337 Email Address: chris.rowell@elexon.co.uk	
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	
Attachments: NO If Yes, Title and No. of Pages of Each Attachment:	