

**P95 ATTACHMENT 1: CONSULTATION RESPONSES FROM P95 DEFINITION CONSULTATION**

This attachment contains a summary of the responses by question in section 1 and a copy of the individual responses received in section 2.

The consultation was issued on 14 August 2002 and responses were due on 27 August 2002. The following consultation responses have been received.

Twenty-one responses representing 60 BSC Parties and 4 non BSC Parties.

No	Company	File Number	No. of BSC Parties represented	No. of non-BSC Parties represented
1.	SEEBOARD	P95_DEF_001	1	
2.	Entergy-Koch Trading Ltd	P95_DEF_002	1	
3.	TXU	P95_DEF_003	21	
4.	Slough Energy	P95_DEF_004	1	
5.	LE Group	P95_DEF_005	7	
6.	Scottish Power	P95_DEF_006	4	
7.	Innogy	P95_DEF_007	7	
8.	SmartestEnergy	P95_DEF_008	1	
9.	Nedalo	P95_DEF_009		1
10.	RWE Trading Direct Ltd	P95_DEF_010	1	
11.	National Grid	P95_DEF_011	1	
12.	British Gas Trading	P95_DEF_012	1	
13.	Immingham CHP	P95_DEF_013	1	
14.	Powergen	P95_DEF_014	4	
15.	Combined Heat & Power Association	P95_DEF_015		1
16.	BP Gas Marketing	P95_DEF_016	1	
17.	British Sugar	P95_DEF_017		1
18.	Fibrowatt Limited	P95_DEF_018		1
19.	Aquila Networks (late response)	P95_DEF_019	1	
20.	British Energy (late response)	P95_DEF_020	3	
21.	Scottish and Southern (late response)	P95_DEF_021	4	

## 1. SUMMARY OF CONSULTATION RESPONSES

Below is a table summarising the responses to questions 1 to 10. Also given below are the responses received sorted by question. This was used by the P95MG to discuss the consultation responses.

Question	YES			NO			? / N/A		
	Responses	BSC Parties	Non BSC Parties	Responses	BSC Parties	Non BSC Parties	Responses	BSC Parties	Non BSC Parties
1	<b>8</b>	4	4	<b>12</b>	52	0	<b>1</b>	1	0
2	<b>7</b>	3	4	<b>8</b>	17	0	<b>2</b>	11	0
3	<b>10</b>	16	4	<b>7</b>	15	0			
4 a)	<b>11</b>	19	4	<b>4</b>	7	0	<b>2</b>	5	0
4 b)	<b>7</b>	16	1	<b>8</b>	10	3	<b>2</b>	5	0
4 c)	<b>5</b>	2	3	<b>10</b>	24	1	<b>2</b>	5	0
4 d)	<b>2</b>	8	0	<b>14</b>	18	4	<b>2</b>	5	0
5	<b>12</b>	17	4	<b>4</b>	7	0	<b>1</b>	7	0
6	<b>10</b>	6	4	<b>4</b>	22	0	<b>3</b>	3	0
7	<b>7</b>	3	4	<b>9</b>	27	0	<b>1</b>	1	1
8	<b>9</b>	27	0	<b>8</b>	4	4			
9	<b>10</b>	28	0	<b>7</b>	3	4			
10 a)	<b>11</b>	13	4	<b>5</b>	14	0	<b>1</b>	4	0
10 b)	<b>11</b>	13	4	<b>5</b>	14	0	<b>1</b>	4	0
10 c)	<b>10</b>	12	4	<b>5</b>	14	0	<b>2</b>	5	0
10 d)	<b>10</b>	12	4	<b>5</b>	14	0	<b>2</b>	5	0

Note:

Question 1 contains the responses from TXU / Aquila Networks / British Energy / Scottish and Southern Energy. These have not been included in other questions.

Question 5: The responses indicated that a sunset clause should not be included.

**Q1 Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?**

Resp	BSC Party?	Response	Rationale
001	yes	No	We have sympathy with any group or individual that feels that they are disadvantaged by the trading arrangements. We also know that over time BSC will change and evolve as it has done since the beginning of NETA. However, it is our view that those changes wherever possible should be generic rather than specific to address competitive advantages/disadvantages of individuals or groups of participants. To do otherwise is inherently discriminatory. If cash-out prices are not cost reflective then it would be inequitable to compensate one group of market participants and not others. Cost reflectivity is an issue that needs to be addressed in terms of imbalance price calculation applicable to all participants. There may or may not be barriers as suggested but we are of the opinion that in the long term this modification could do more harm than good, further inhibiting market developments in terms of consolidation and granularity.
005	yes	No	Any imbalance price modification should encompass all market participants. In producing a system that will give more agreeable imbalance price to one set of participants and the current more disagreeable price to the rest of the market the modification will undermine facilitation of competition in generation.
006	yes	No	ScottishPower recognises that small generators with unpredictable output have experienced some difficulties since the advent of NETA. While wholesale prices have dropped in general, it is arguable that the impact on small players has been disproportionate because of their relative size. However, recent changes to the trading rules, specifically BSC modification P12 (Reduction of Gate Closure to 1 hour), may be helpful in this regard and should be given some time to have an impact. In addition, it must be recognised that if a class of market participants seeks to create a separation within the trading rules applicable only to itself, this gives rise to discrimination. The BSC Panel has an objective to ensure that the BSC is "given effect without undue discrimination between Parties or classes of Party" (Section B1.2.1 (c)) and the principle behind P95 seems to subvert that objective. In this respect at least, P95 cannot be considered to promote effective competition in generation and supply.
007	Yes	No	Although Innogy supports a single cashout price, Modification P95 would lead to undue discrimination in favour of a certain class of market participant and distort the market. Furthermore, licenced exempt generators are not BSC parties and the proposed modification will result in a cross subsidy from BSC parties to certain non BSC parties in relation to implementation costs. A further cross subsidy would be created through adjustments to residual cashflow payments to reflect the payments of a neutral price to certain parties. Modification P95 does not, therefore, better facilitate the applicable BSC Objectives.
008	Yes	No	These issues primarily relate to the competitive position of LEGs within the market. The BSC was not designed to cater for positive discrimination against any individual party or group.
011	yes	No	We have concerns that allowing LEGs access to more benign imbalance prices amounts to undue discrimination. We also note that all of the proposed implementation solutions have highlighted the indirect impact the BSC has on LEGs. The BSC by definition must apply to BSC Parties and any implementation of P95 assumes any benefit will be passed through to LEGs. We are not convinced that P95 would ensure that this happens.
012	yes	No	

014	yes	No	Expanded further in following boxes, but in summary: It is discriminatory. It creates a cross subsidy between participants. It increases suppliers' administrative burden with respect to LEGs. We do not agree with the perceived defect. It does not address the perceived defect.
016	yes	No	The debate of single price cash-out is being examined by the PIMG in P74/78. We believe that it would be inappropriate to allow single pricing to exist in a sub-division of the industry before Modifications P74/78 are decided upon.
002	yes	Yes	It will be difficult to determine what a neutral price is, what a LEG is (will there be opportunities to game these definitions?). The real problem lies with pricing mechanism itself. If energy imbalance prices were more market reflective this problem would not be an issue
009	No	Yes	The modification will facilitate the promotion of effective competition in the generation and supply of electricity, and sale and purchase of electricity. Removal of barriers to the operation of existing Licence Exempt Generators (LEGs). CHP exports to the market fell by 37% between 2000 and 2001 and the fall in load factor between 2000 and 2001 is equivalent to losing over 800 MW <sub>e</sub> of installed CHP capacity.
010	yes	Yes	As a very general principle, there may be circumstances in which certain classes of small generator could be treated separately in respect of imbalance prices in order to better facilitate the BSC objective of "promoting effective competition in the generation and supply of electricity".
013	yes	Yes	The proposed modification will better facilitate the application of the BSC objective to promote effective competition in the generation and supply of electricity because it removes a barrier in the market that discriminates against intermittent technologies.

015	no	Yes	<p>The proposed modification will better facilitate the application of the BSC objective to promote effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in sale and purchase of electricity.</p> <p>This will be achieved through removal of certain of the barriers to the operation of existing Licence Exempt Generators (LEGs), and the development of new LEGs, that NETA has introduced. The maintenance of these barriers under NETA is having a damaging and discriminatory effect upon LEGs, as compared to other generators, thereby inhibiting competition. In removing these discriminatory barriers LEGs are better able to compete, resulting in better facilitation of the BSC objective.</p> <p>Data collated by the Office for National Statistics and published by DTI in <i>the Digest of UK Energy Statistics 2002</i> demonstrates that for the c. 940 CHP generators included in the survey:</p> <p>Investment has collapsed by 95%, from a high for the post-privatisation era of 844 MW<sub>e</sub> in 2000, to a low of 38 MW<sub>e</sub> in 2001.</p> <p>Electrical output has collapsed, from a high of 26.8 TWh in 2000 – even with the prevailing high price of gas over the year - to a level of 22.2 TWh in 2001.</p> <p>CHP exports to the market (i.e. excluding sales within a Qualifying Group) fell by 37% between 2000 and 2001.</p> <p>The load factor of existing plant has fallen to its lowest level since 1996. The fall in load factor between 2000 and 2001 is equivalent to losing over 800 MW<sub>e</sub> of installed CHP capacity.</p> <p>LEGs are effectively discriminated against and disadvantaged by the NETA framework insofar as:</p> <p>They are in a relatively weak commercial position with respect to suppliers, limiting their capacity to secure full value for their output taking account of such factors as the embedded benefits that they offer;</p> <p>They are subject to the same imbalance risk as other generators – by virtue of the scope for suppliers to pass-through imbalance costs – however they are not able, in practice to:</p> <p>manage these costs through trading ahead of gate closure on a similar cost basis as other generators;</p> <p>influence the direction of the market</p> <p>offset these costs with revenues earned through active participation in the Balancing Mechanism or Balancing Services contracts.</p>
017	no	Yes	<p>The proposed modification will better facilitate the BSC objective to promote effective competition in the generation and supply of electricity.</p> <p>NETA currently has created barriers to the participation of LEGS in the marketplace. Clearly this inhibits competition, and if left to run for several years will result in the elimination of this sector from the traded electricity market.</p> <p>The current system of imbalance charging is a key component of the barriers to LEGs within NETA. By addressing it, the mod will allow LEGs to access the markets on a non discriminatory basis and thus it does further the BSC objective.</p>
018	no	Yes	
004	yes	Yes	<p>Modification Proposal P95, which allows imbalances resulting from LEGs to be settled at a neutral price, better facilitates three of the applicable BSC objectives, as explained below:</p> <p>(a) the efficient discharge by the licensee of the obligations imposed upon it by the transmission licence: This modification supports the compliance by NGC of its obligation under Condition C3, paragraph 1(b) to have in force a BSC designed so that the balancing and settlement arrangements facilitate achievement of the objectives set out in paragraph 3 of that Condition. In particular, this will support the objective set out at paragraph 3(c) of that Condition to promote effective competition in the generation and supply of electricity, as explained in more detail at (c) below.</p> <p>(c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such</p>

			<p>competition in the sale and purchase of electricity:  This modification promotes competition in the generation and supply of electricity, in that:</p> <ul style="list-style-type: none"> <li>(i) the effect of the barriers referred in Paper A and its Appendices of the submission (“the P95 Submission”) sent to the members of Modification Group P95 on 5<sup>th</sup> August 2002, has been to cause NETA to have a damaging and discriminatory effect upon LEGs. This has resulted in severe financial consequences for the LEG sector which threaten its continued participation in the generation market. Evidence of these financial effects is contained in Appendix A6 to Paper A. It is in the interests of competition that the LEG sector, comprising up to an estimated 8% of the generation market in England and Wales, should not be excluded from the market and its economic and environmental benefits thereby denied to consumers. It is explained in the answer to question 9 below how the implementation of P95 would assist in enabling LEGs to maintain their competitive presence in the market;</li> <li>(ii) although this modification proposes a system of settlement which would identify LEGs separately from other generators, it does not discriminate (unduly or at all) against other generators. Applying different rules to different classes of generator, as proposed by P95, is <u>not</u> discriminatory. “Discrimination” is a term with an established meaning in the context of competition law. To be discriminatory, a market must either apply different rules to parties sharing the same characteristics or apply the same rules to parties with different characteristics. The current position imposes the same rules on parties with different characteristics and as a result constitutes discrimination. In summary, the current BSC rules and market structure unduly favour larger generators by applying the same rules both to them and to LEGs, whilst at the same time LEGs are denied the opportunity to manage their imbalance risk, which is available to larger generators. The position is explained in more detail in the answer to question 9 below. The effect of P95 would simply be to alleviate the uncompetitive effects of the current settlement system so that the barriers referred to above no longer place LEGs at an unfair disadvantage to other generators; and</li> <li>(iii) the modification has the effect of introducing a change to the BSC which assists in causing it to be consistent with: <ul style="list-style-type: none"> <li>(A) the duty of Member States under Articles 3(g), 10 and 81 of the EC Treaty not to take any measures which could jeopardise the effectiveness of the rules of competition;</li> <li>(B) the requirements of Directive 96/92 (the Electricity Directive) that Member States “ensure that electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity and shall not discriminate between these undertakings as regards either rights or obligations ...”; and</li> <li>(C) the duties of the Secretary of State and Ofgem pursuant to Section 3A of the Electricity Act 1989.</li> </ul> </li> </ul> <p>The modification is also consistent with the compliance by NGC of its duties as to competition under the terms of its licence and under the laws of England and Wales and those of the European Union.  Furthermore, the modification does not involve any aid favouring particular undertakings, nor aid from the state. Rather, the modification seeks to address an existing distortion of the market.</p> <ul style="list-style-type: none"> <li>(d) promoting efficiency in the implementation and administration of the balancing settlement arrangements:  This modification promotes efficiency in administration. It introduces a necessary change to the settlement system as it relates to LEGs by means of a modification. Although the proposed modification can operate permanently on the basis that it supports BSC objectives, it may be superseded by other, permanent changes to the settlement system and allows time and opportunity for such permanent changes to be considered with due care.</li> </ul>
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**Q2 The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?**

Resp	BSC party		Response
001	yes	No	We do not agree with the principle of a neutral price.
002	yes	No	An arithmetic average would produce high price at times when system actions cause SBP to be high. This would not seem to be cost reflective. It would be more appropriate to use a weighted average of SBP / SSP or devise a market related index. Again this demonstrates the problem with the mod.
006	yes	No	See comments above. There is no clear justification for instituting a separate imbalance price regime to cover a particular class of BSC Party.
007	Yes	No	Whilst we advocate a single imbalance price, we feel that the proposed price setting methodology for a neutral price is inappropriate since it is not cost reflective. As noted in our response to P74, in any one settlement period, the system can only be either long or short for the purpose of electricity balancing under the BSC. Consequently, a single price better reflects the costs of actions taken by NGC to ensure that the system remains in electricity balance (i.e. it is the cost of buying or selling energy), but there is no obvious logic to basing it on the average of SSP & SBP.
008	Yes	No	This is a rather simplistic attempt to arrive at a neutral cash out price.
010	yes	No	We would not support the current definition of the neutral price without investigating alternatives. The current definition of the neutral price would give LEGs (some of whom are relatively large) a guaranteed price for their output at a significant premium to market price (according to historic data) reducing their incentive to contract or balance.
012	yes	No	We do not support this proposal.
016	yes	No	See above
009	No	Yes	An average price is a simple definition, as it will tend to represent the imbalance price in an efficiently balanced market.
011	yes	Yes	We agree that this is the most appropriate definition in the context of this modification.
013	yes	Yes	<u>An average price is simple and easily derivable. However, given the inherent volatility in SBPs under the current pricing rules, it is likely that average prices will be systematically higher than SSPs under dual cashout and be subject to peakiness arising from actions to correct the system being short. Arguably those benefits should only be available to notified long actions. Consequently consideration should be given to averaging the first bid and offer in the ordered stacks for the purposes of producing the single average price.</u>
015	no	Yes	An average price is a simple and intuitive definition, since it will tend to represent the imbalance price in an efficiently balanced market. It is therefore appropriate to adopt this definition. It should be preferred to a market price that may be determined through a wider interaction of factors, or under imperfect market conditions.
017	no	Yes	The System Average Price is indeed the most appropriate definition. It is simple and avoids the complexity of using a market price which could introduce another set of problems if it is not representative of actual energy trades (e.g. because of high levels of vertical integration and low liquidity). Unfortunately the SSP and SBP prices are still flawed in that they can be set at levels without and real trades being carried out at that price and are set by a limited number of players which are a subset of the market. This is a core feature of NETA and thus it is difficult to address within the context of this mod.

004	yes	Yes	<p>The average of SSP and SBP at any time is the most appropriate definition of the neutral cash-out price. It is fair that the price should be neutral; that is to say that the generating output of LEGs should not be subject to penal prices in respect either of spill or shortfall in contracted output. This is because LEGs are generally unable to influence the balancing process or manage their imbalance exposure through the power exchanges or the over-the-counter markets; nor can they compensate for the impact of imbalance charges by means of profits earned through participation in the Balancing Mechanism. LEGs should therefore receive or pay a single neutral price in respect of imbalances.</p> <p>The average between SSP and SBP is a fair and cost reflective way of establishing that neutral price. Parties who are signatories to the BSC and able to manage their own imbalance risk should, in the absence of any special consideration, be seeking to balance. To do that, a party will assess its most likely level of consumer demand (if a supplier) or generating output (if a generator) and will trade as necessary in the market place to reflect that position. The result of achieving its best balanced position is that the party is equally exposed to being short or long, or to SBP and SSP. For the reasons already stated, it is fair and reasonable to base the LEGs' neutral price on the principle that all participating BSC signatories behave in this way. The effect would be a neutral price which is an average of the two prices and would be more cost reflective of the imbalance risk which LEGs ought to bear.</p> <p>An alternative to a neutral price based on the average of SSP and SBP would be a market price. However, such market prices as are available are distorted by the way in which the market operates and would therefore not be suitable. Current market price (for example as proposed in Modification 78) is inevitably influenced by the behaviour of participating BSC signatories who have the option of selling or buying at the market price, or at SSP and SBP (as the case may be) within the settlement system. This means that such parties can arbitrage between the market price and the cash out price within the settlement system, the effect of which (in a market where suppliers have taken an intentionally long position) is to depress market price. This would be unfair on non-participant LEGs.</p> <p>Similarly, in a "long" market, bid acceptances represent a revenue stream to generators who have already sold the electricity to which the bid relates, to a supplier. The generator can then save fuel costs by having the bid accepted, thus increasing its margin on the sale to the supplier. This depresses the price at which generators are willing to sell to suppliers in the spot market and would therefore lead LEGs to being offered an unfairly depressed price.</p>
018	no	Yes	
005	yes	Yes/No	
014	yes	Yes/No	No comment, given our fundamental disagreement with the principle of P95.



**Q3 Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.**

Resp	BSC party		Response
001	yes	No	A definition of an Exemptable Generating Plant already exists in BSC. We believe that it is unnecessary and inequitable to arbitrarily create a definition specific to this or any other modification.
002	yes	No	Why are Licence Exempt Suppliers not included?
006	yes	No	See comments in answer to question 1
007	Yes	No	For the purpose of this modification the term "Exemptable Generating Plant" as currently defined under the BSC (Section K1.2.2(c)) should be used to define a Licence Exempt Generator.
010	yes	No	We would like to see some sort of size limit applied. Certain LEGs are relatively large and have controllable outputs – as a result they may be more competitive under the existing imbalance rules than small, unpredictable generators who cannot mitigate imbalance risk.
013	yes	No	<u>We believe ring fencing the proposed arrangements to LEGs is too narrow, not least because of the arbitrary nature of the 50MW cut off under the licence exemption arrangements. All those with inherently unstable loads who choose to participate in the BSC should be eligible. We also believe that the proposal should be varied so that it is optional, not automatic. It is conceivable that certain types of participant with exemptible facilities may elect to stay with dual weighted pricing.</u>
005 008 011	yes	Yes	
009 015 018	No	Yes	
012	yes	Yes	It is acceptable for the purposes of Assessment of this proposal although we would like clarification on whether this will include generation on domestic premises.
014	yes	Yes	It is clear from the proposal that this is intended to be restricted to Licence Exempt Generation, rather than small, unpredictable generation for instance.
016	yes	Yes	This modification appears to be addressing the situation for those areas of the electricity industry least represented under NETA. To this extent, it should be concerned with those parties that do not have an agreed licence.
017	no	Yes	The Class Exemption regulations define which plants should qualify. These rules give the best available proxy for the plants which are most adversely impacted by the discriminatory features of NETA.
004	yes	No	The proposed definition of an LEG equates to a generator who is exempted from the requirement to hold a generation licence by virtue of section 5(1) of the Electricity Act. Those regarded as LEGs for the purposes of this modification should however be confined to those exempt by virtue of a class exemption, rather than an individual exemption granted to any generator under section 5. The reason is that the generation plant covered by the current class exemption order (The Electricity (Class Exemption from the Requirement for a Licence) Order 2001) shares the characteristics to which the proposed modification is directed (see below); but plant subject to an individual exemption will have been granted exemption for reasons specific to it or the relevant generator and may not share those characteristics. A cogent point has been raised as to whether the proposed modification should apply to plant owned/operated by a generator who is licence

		<p>exempt or to plant with the characteristics falling within the class exemption, regardless of whether the party owning/operating the plant holds a licence or is able to rely upon the exemption. An example would be CHP plant owned/operated by a generator who also operates large generating plant not having the characteristics covered by the class exemption order. In such circumstances, the CHP plant may be "licence exempt" but the party owning/operating it would not.</p> <p>A convenient definition to adopt would be that of "Exemptable" Generating Plant under Section K, paragraph 1.2.2(c) of the Code, that is: "Generating Plant where the person generating electricity at that Generating Plant is, or would (if it generated electricity at no other Generation Plant and/or did not hold a Generation Licence) be, exempt from the requirement to hold a Generation Licence." As explained above, however, plant individually exempted should not be regarded as within the definition of LEGs for this purpose.</p> <p>However, if "licence exempt" plant is owned by a power utility conglomerate with large generation interests, the administrative costs of BSC participation may not be a barrier to it; nor may market liquidity problems, or at least not to the same extent. It is strongly arguable, however, that the fact of who owns "licence exempt" plant should not affect the applicability of the proposed modification particularly since important barriers regarding cost reflectivity and the sale of embedded benefits associated with LEGs' generating output remain, regardless of ownership. There is, however, the case of "licence exempt" plant owned by a power utility conglomerate which also owns a supply business or which controls a subsidiary which does so. It could be argued in such cases that the weak negotiating position of the LEG as against the supplier which is introduced by undue imbalance penalties being imposed on LEGs and lack of scope for selling their embedded benefits, may not exist in this case, since the output of the "licence exempt" generator may be sold to a supplier owned by the same entity as the generation plant. This should, in theory, be an advantage to the generator only if the deal done for the purchase of the output of the "licence exempt" plant is not at arms length; that is to say the supplier owned by the generator does not react to the offer of power from that generator on the same basis as it would if the power had been offered by any other party from a similar source. In the proposer's view, discriminatory conduct by a generator's "captive" supplier would give rise to issues of anti-competitive conduct which Ofgem would wish to investigate, if the effect was to give some "licence exempt" plant a competitive advantage over other LEGs' plant; and on that basis the proposer does not see the issue as part of an evaluation of this proposed modification.</p>
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**Q4 Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed.**

Resp	BSC party		Response
013	yes		Exemptible plant are likely to be subject to similar obstacles and commercial constraints under NETA as those outlined for LEGs. It is therefore appropriate that the application of the Modification to these parties should be considered under the Assessment procedure.
001	yes	N/A	See response to question 3.
008	Yes	No	Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
010	yes	No	Not without reference to the size of the generator.
012	yes	No	
014	yes	No	This would make it less discriminatory. However, even with this extension of the definition we disagree with the modification.
002	yes	Yes	Definition of exemptible plant already within the Code and more easily identifiable
004	yes	Yes	The proposer considers that the proposed modification should apply to 'Exemptible' plant, for the reasons explained in the answer to question 3 above.
005	yes	Yes	See below.
007	Yes	Yes	The Modification should be applied to "Exemptible Generating Plant" as currently defined under the BSC (Section K1.2.2(c)).
009	No	Yes	Exempt plant is likely to be subject to similar obstacles under NETA as those outlined for LEGs, therefore these parties should be considered under the Assessment procedure.
011	yes	Yes	We note that BSC K 1.2.2 (c) defines Exemptible as relating to Generating Plant and believe this option should be assessed further against the modification group definition as it has the benefit of an existing definition.
015	no	Yes	Exemptible plant are likely to be subject to similar obstacles and commercial constraints under NETA as those outlined for LEGs. It is therefore appropriate that the application of the Modification to these parties should be considered under the Assessment procedure.
016	yes	Yes	See above (Comments Q3)
017	no	Yes	Whilst exemptible plant is not affected by the NETA barriers to the same extent as plant owned by non portfolio companies, it should be covered by the scope of P95. Indeed, it can be seen that P95 is a rational mod because these plants will simply benefit less than stand alone plants; demonstrating that P95 is a move to put these plants on a more equal footing in the marketplace.
018	no	Yes	
006	yes	Yes/No	See comments in response to question 1. The intention to apply the neutral price to the imbalance exposure of only a select group of BSC Parties indicates that this modification would have a discriminatory impact.

**Q4 b) Licence Exempt Suppliers in addition to Licence Exempt Generators**

Resp	BSC party		Response
001	yes	N/A	See response to question 3.
004	yes	No	Save in respect of any supplier who is granted an individual exemption for reasons specific to that supplier, a "Licence Exempt Supplier" is one falling within The Electricity (Class Exemption from the Requirement for a Licence) Order 2001. Apart from small suppliers (who supply electricity they generate themselves in quantities not exceeding 5 MW), exempt status under the class exemption for suppliers is either in respect of supply which is resale or on-site supply, or offshore supply. The proposer does not see that any of the barriers to which the proposed modification is directed applies to such suppliers. This leaves the question of suppliers who are licence exempt as "small suppliers", for which see below.
007	Yes	No	The Modification refers to Licence exempt Generators only and therefore cannot address Licence Exempt Suppliers
008	Yes	No	Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
010	yes	No	The barriers detailed by the proposer are stated in relation to LEGs, not suppliers, and it is not appropriate to discuss supplier issues under this modification.
011	yes	No	We believe that suppliers are explicitly excluded within the intent of this modification.
012	yes	No	
014	yes	No	Same comment as for a) above.
017	no	No Not relevant	The Supply market under NETA is different to the Generation market in many important respects. The definition of licence exempt supplier is not analogous to that of a LEG, as one would expect given these differences. It should be accepted that this is a mod to address the Generation side issues. Including suppliers would only be done for cosmetic reasons i.e. in order to appear reasonable and symmetrical and will have little importance in practice.
002	yes	Yes	Suppliers should be included if this mod progresses
005	yes	Yes	
009	No	Yes	Licence Exempt Suppliers are likely to face similar disadvantages under NETA to those faced by LEGs. It is therefore appropriate to consider such parties under the Procedure.
013	yes	Yes	Licence Exempt Suppliers are, by virtue of their scale, likely to face similar disadvantages under NETA to those faced by LEGs and exemptable plant. It is therefore appropriate to consider such parties under the Procedure.
015	no	Yes	Licence Exempt Suppliers are, by virtue of their scale, likely to face similar disadvantages under NETA to those faced by LEGs. It is therefore appropriate to consider such parties under the Procedure.
016	yes	Yes	See above
018	no	Yes	
006	yes	Yes/No	See comments on 4a) above.

**Q4 c) Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?**

Resp	BSC party		Response
001	yes	N/A	See response to question 3.
002	yes	No	Difficult to identify and establish a cut-off
004	yes	No	<p>Some of the market barriers listed in the "issue or defect" section of the P95 proposal (namely cost reflectivity, liquidity/granularity &amp; administrative burdens) might appear to be relevant to small suppliers who are not licence exempt or to suppliers who are licence exempt but are 'small suppliers' within the terms of the class exemption. The proposer's view is that they should not be covered by the proposed modification, because they are not in the same market as LEGs &amp; different considerations apply to them. In particular:</p> <p>(i) smaller suppliers can choose whether to purchase power from LEGs or elsewhere. This can be contrasted with the position of LEGs, as explained in Paper A of the P95 Submission &amp; in the P95 proposal itself; namely that the great majority of LEGs are unable to sell their output other than to a supplier with the necessary consumer demand under the relevant grid supply point group, or to sell embedded benefit entitlements other than to such suppliers. This puts LEGs in a weak negotiating position as against suppliers with the result that suppliers are more likely to derive a benefit than a disbenefit from the current arrangements;</p> <p>(ii) where a supplier chooses to contract with an LEG, it can manage the imbalance risk involved in that transaction by passing that risk down to the LEG or achieving the same result by imposing substantial discounts on the price offered. Paper A &amp; Appendix A2 of the P 95 Submission (as well as paragraph 5 of the "issue or defect" section of the P95 proposal) show that this has indeed been the experience of LEGs when contracting with suppliers under NETA. The supplier can therefore manage its imbalance risk at the expense of LEGs. As explained in P95 &amp; in Paper A, LEGs are unable to manage their imbalance risk, as the great majority of them are unable to influence the balancing mechanism, profit from it or trade their power, in the same way as larger generators can (see Paper A &amp; the P95 proposal);</p> <p>(iii) Appendix A6 of the P95 Submission contains a considerable body of evidence of the adverse financial effects of NETA on LEGs. This reflects the concerns which have been repeatedly expressed by LEGs, relevant trade associations &amp; independent individuals &amp; organisations throughout the NETA process. It is significant that although it is generally accepted that LEGs have suffered under NETA, there is no equivalent evidence of suppliers (small or otherwise) suffering any equivalent ill effects. This reflects the differing positions in the market of LEGs &amp; suppliers, as explained above.</p> <p>In summary, the position of suppliers (small or otherwise) under NETA cannot be compared to that of LEGs &amp; therefore it would not be appropriate for P95 to be extended to small suppliers.</p>
005 012	yes	No	
007	Yes	No	The Modification The Modification refers to Licence exempt Generators only and therefore cannot address small suppliers. Even if it did, we do not believe this would meet the relevant objectives for the reasons cited in response to Q1.
008	Yes	No	Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
010	yes	No	The barriers detailed by the proposer are stated in relation to LEGs, not suppliers, & it is not appropriate to discuss supplier issues under this modification.

011 014	yes	No	see above answer
017	no	No	None of the discussion in the mod group so far appears to have been driven by the problems facing small suppliers. Therefore whilst it is clear that some of the central NETA issues concerning penal non cost reflective imbalance prices & their mitigation by portfolio effects will impact on them, it is not really appropriate to target this mod at them. As noted above the markets are different and there is little to recommend transposing rules from generation to supply for its own sake. Several supplier based mods have been considered already e.g. P7. This mod is targeted at solving problems which NETA has thrown up for the hundreds of small generators, not the handful of smaller suppliers, who are already signatories to the code & have therefore been able to raise their own mods.
009 018	No	Yes	
013	yes	Yes	We do not have a view on the level though the principle embodied by 4(a) suggests that consolidation opportunities would increase the lower the level.
015	no	Yes	The Association does not hold a view in respect of small suppliers.
016	yes	Yes	Unknown. This needs to be statistically established by the P95MG
006	yes	Yes/No	See comments on 4a) above.

**Q4 d) Other**

Resp	BSC party		Response
001	yes	N/A	See response to question 3.
002 012 013 016	yes	No	
009 015 018	No	No	
004	yes	No	As explained in 4(b) and 4(c) above, there is only a justification for P95 being extended to other parties where it can be shown that the issue or defect complained of applies to that party and that the implementation of P95 would address the impact of that issue or defect on that party. In our view, there is no justification for applying P95 to any other party or class of party than LEGs.
007	Yes	No	The Modification refers to Licence exempt Generators only and therefore cannot address any other market participants.
008	Yes	No	Demand Users, if not included, would be discriminated against and it would appear that have not been considered.
011	yes	No	Any alternate definition of a LEG will have to be defined within the BSC and will suffer additional complications that do not affect option (a).
014	yes	No	Same comment as for a) above.
017	no	No	It is up to other groups to put their evidence to the mod group as is being done in this case.

005	yes	Yes	As the issues highlighted in the consultation report are significant to small generators we believe that the consideration on a size limit would be reasonable for this modification.
010	yes	Yes	We would like to see some sort of size limit applied (eg 10MW). Certain LEGs are relatively large and have controllable outputs – as a result they may be more competitive under the existing imbalance rules than small, unpredictable generators who cannot mitigate imbalance risk.
006	yes	Yes/No	See comments on 4a) above.

**Q5 Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?**

Resp	BSC party		Response
005	yes		We are unable to assess this as it has not been made clear what the enduring solution would be if this modification is an interim solution. Based on our anticipation of the large cost for implementation it would seem inefficient to have only a short period of time.
001	yes	No	We do not believe that this is an appropriate solution for any period. However, we would argue that a "sunset" provision where no alternative is foreseen adds unnecessary and potentially damaging uncertainty to participants.
006	yes	No	See comments in response to question 1. It would be inappropriate for a different imbalance price regime to apply to a select group of BSC Parties for any length of time, let alone on an enduring basis, as this would tend to perpetuate any discrimination.
008	Yes	No	An enduring solution would be a market derived one, and the work involved in implementing P95 for the short term is disproportionate
010	yes	No	A certain time limit should be set (perhaps a year?) and an assessment made at the end of that period as to whether the competitive environment for those generators affected by any changes to the BSC had improved. A decision could then be taken as to whether the transitional amelioration should continue, or be deemed to be unnecessary.
002	yes	Yes	If this mod is found to better facilitate the applicable objectives of the BSC it should not considered an interim solution.
007	Yes	Yes	The defects as identified in the Modification are not addressed by the proposed solution since the Modification simply provides relief in relation to costs that arise as a result of perceived defects elsewhere in the structure of the market (e.g. the assertion that there is a lack of competition in suppliers in relation to LEG demand). In the absence of any defined criteria or proposals to address the actual defects, Modification P95 must be regarded as an enduring "cross subsidy" from BSC parties to a certain class of market participant.
009	No	Yes	As set out in Section1, Nedalo believes that P95 will better address a number of the effects of NETA upon LEGs. A sunset clause is not appropriate. Any cessation, in whole or part, of the arrangements proposed under P95 should only be implemented when it is evident that the prevailing conditions under the Code no longer present an adverse or discriminatory effect for LEGs.
011	yes	Yes	We are unclear as to the trigger event that would make the enduring implementation of P95 inappropriate. The Proposer's stated belief that P95 is not "the best means of removing the barriers" is liable to undermine the arguments for implementation.
012	yes	Yes	Should this proposal be progressed further then it should be considered as an enduring solution. We fail to see how any proposal can be considered to better facilitate the applicable BSC objectives if it is transient. We do not agree that this will provide the appropriate incentive on the industry to provide a 'better' solution. Indeed there is no forum where such work can be carried out and the impact of the BSC is to be fully assessed. We do not support the use of a sunset clause. If any part of the Code requires changing this should be done through a Modification Proposal which allows proper assessment against the applicable objectives.
013	yes	Yes	P95 will better facilitate applicable BSC objectives by addressing a number of adverse effects of the current pricing rules upon LEGs. It should be considered as an enduring solution. A sunset clause is not appropriate, as the impacts it addresses are not time specific. It would be open to any participant to bring forward modifications if and when the conditions changed.



014	yes	Yes	P95 should be considered and assessed on whether or not it better meets the BSC objectives. If it is deemed to do so, then there should be no reason why it should be regarded as a transitory measure.
015	no	Yes	As set out in section 1, the Association believes that P95 will better facilitate applicable BSC objectives by addressing a number of the deleterious effects of NETA upon LEGs. It is therefore appropriate that it should be considered as an enduring solution. A sunset clause is not appropriate. Any cessation, in whole or part, of the arrangements proposed under P95 should only be implemented when it is evident that the prevailing conditions under the Code no longer present an adverse or discriminatory effect for LEGs.
016	yes	Yes	Any modification to the BSC needs to be treated as enduring, until it is superseded by a later modification.
017 018	no	Yes	
004	yes	Yes	As was made clear in the P95 proposal, it is envisaged that this modification would be superseded by longer term solutions which would remove the current barriers faced by LEGs rather than merely ameliorating their effects. The urgency of LEGs' plight (which is illustrated by Appendix A6 to the P95 Submissions) necessitates a modification being made as a transitional measure as rapidly as possible. P95 does not in itself remove the barriers complained of. In relation to the four barriers referred to in the P95 proposal, the modification is merely protecting LEGs from the discriminatory effects of the barriers until such time as they may be removed by other measures, which may include further BSC modifications as well as other solutions outside the BSC. The proposer notes that the question has been raised in meetings of the P95 Modification Group as to whether P95 is attempting to remove the "cost reflectivity" barrier rather than merely ameliorate it. The true position is as set out in the P95 proposal; namely, that this modification would ameliorate rather than remove this barrier. The SSP and SBP (and the spread between them), which are the basis upon which non cost reflective imbalance charges are currently imposed on LEGs, would remain the same. The neutral cash out price for LEGs would have the effect of removing LEGs from the discriminatory effects of the imbalance pricing structure, whilst leaving the structure itself intact. Notwithstanding the above, the proposer agrees with Elexon that P95 should be defined and assessed as an enduring solution. P95 has no "sunset clause", but simply envisages that it may be superseded by other, permanent modifications. It would be consistent with BSC objectives if it were to remain permanently, since it facilitates competition, by removing discrimination and avoiding the unfair effects of the current settlement system on LEGs. Once P95 were in place, it would still be open to all interested parties (including the proposer) to introduce additional modifications in order to better facilitate the applicable BSC objectives. P95 is no different to any other modification in that respect. A "sunset clause" which gives an end date for the applicability of P95 would not be appropriate. The criterion against which the continued need for P95 should be addressed is whether or not the market barriers referred to in the modification proposal remain in place. Until other modifications directed at removing the relevant barriers have been defined and fully assessed, the circumstances under which P95 ceases to be applicable could not be defined. To provide for an arbitrary end date irrespective of whether or not the need for P95 remains has no logical or economic basis.

**Q6 Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.**

Resp	BSC party		Response
001	yes	Don't know	There may or may not be barriers as suggested but this modification could further inhibit market developments in terms of consolidators and granularity.
005	yes	No	Although we appreciate that in the early stages of NETA the imbalance costs were excessively high and volatile, they have stabilised and decreased now.
006	yes	No	See comments in question 1. The commercial impact of NETA, in terms of a reduction in wholesale prices in general, has impacted all market participants. At the same time, BSC modifications aimed at facilitating the participation of small players in the Balancing Mechanism and reduction of their exposure to imbalance price risk through consolidation services have been approved (P7, P55 & P67). It is, therefore, unnecessary for small generators to seek to create a separate imbalance price regime applicable only to them, as appears the case with P95.
007	Yes	No	No evidence has been presented to demonstrate that the Modification P95 itself addresses a clear defect in the BSC. While there may be issues in relation to the structure of the market that result in specific issues for LEGs in relation to trading opportunities, all market participants are currently exposed to the vagaries of electricity forward market prices. If electricity forward prices were to rise, or single cashout introduced, then many of the current issues for LEGs would be less significant.
014	yes	No	<p>We have yet to see hard evidence to suggest that generators are disadvantaged purely by being exempt from the requirement to hold a generation licence. Licence exemptions allow smaller generators to avoid certain obligations (such as signing up to the BSC) that licensed generators must meet and to that extent they actually have less to do to enter the market than a licensed generators. In addressing the claimed barriers in turn:</p> <p>Cost reflectivity. There was much discussion, and disagreement, about the cost reflectivity of current cash out prices in the assessment of P74 and P78. This mainly focussed on the correct split between energy and system balancing actions, which comes down to a subjective opinion as it is impossible to fully distinguish the two in some cases. Even if you take the view that present prices are not cost reflective, it is not apparent that this would disadvantage LEGs more than other generators. Clearly we would not disagree that LEGs are finding the market difficult at the moment and there have been many representations made to this effect. However, this is true for licensed generators as well as exempt generators and is due to the low levels of wholesale electricity price relative to fuel costs. We do not accept that exempt generators have been particularly hit and have not seen a specific argument to prove this.</p> <p>Embedded benefits. The argument here is that LEGs are not acquiring a sufficient share of embedded benefits from suppliers as the suppliers are in the stronger bargaining position. A myth surrounding the sharing of embedded benefits is the view that the generator should always receive a share of the benefit from the supplier regardless of the balance of supply and demand. This is not so. In an equilibrium situation no benefits would be shared. Embedded benefits arise from suppliers and generators embedded in a distribution network trading with each other below the GSP and, therefore, both avoiding charges associated with use of the transmission system. The generator's embedded benefit is the ability to avoid the charges, as is the supplier's. Presently embedded generators are a rare commodity so suppliers pay them a consideration or share the embedded benefits to acquire their business. This can be as high as a sharing of 80% of the benefit. Therefore, generators presently are in the stronger position. If suppliers were in a stronger bargaining position, it would be fair to assume that generators would have to share their</p>

			<p>benefits with them to acquire their business.</p> <p>There probably is too low liquidity in the market for small volumes of energy. However, if LEGs were to sell through the exchanges, surely these would have to be notifiable under the BSC for it to be of use to the supplier? The generator would then become subject to imbalance charges at SBP and SSP. Therefore, if there were sufficient liquidity in small volumes in the market, how would this protect LEGs from exposure to the dual prices?</p> <p>Administrative burdens. We accept that the administrative costs of participating under the BSC may be prohibitive to small parties. Therefore, they do not have to sign up to the BSC unless they require a licence. This is the attraction of being licence exempt. As in 3 above, if they did participate they would be exposed to cash out prices of SBP and SSP anyway. We are therefore not sure how this would help.</p>
002	yes	Yes	But these are factors of other rigidities within the Code, such as registration, EIPs, notifications, which all parties are exposed to. LEGs should not be considered a special case when it comes treatment under the Code
009	No	Yes	The evidence that has emerged in DUKES 2002, as set out in response to Question 1, provides a clear indication that NETA has introduced a barrier to market participation by LEGs. The discussions of the DTI's Consolidation Working Group suggested evidence of barriers including an asymmetry of market power between LEGs and suppliers and through a net reduction in embedded benefits. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee's recent report <i>A Sustainable Energy Strategy? Renewables and the PIU Review..</i> and the earlier 2002 report of the Trade and Industry Select Committee <i>Security of Energy Supply</i> .
010	yes	Yes	There is no doubt that LEGs have suffered from the decline in wholesale prices, but this is not a matter for the BSC, and affects all generators regardless of size. It is our view that contracts are available with suppliers for LEGs, and that these do offer a competitive price (particularly for LEGs with predictable outputs) together with a sharing of embedded benefits, the split of which generally favours the LEG. We do accept, however, that the registration of the majority of LEGs in SMRS does restrict their contracting options and that recent changes to the BSC (P7, P67 and P55) do not appear to have had an appreciable impact.
011	yes	Yes	Whilst there is evidence that market participants believe NETA has introduced the defects listed; the proposed solution is removal of exposure to non-cost reflective imbalance prices. The Proposer argues that all other "barriers" will be alleviated by this single action. We argue that if the main problem is a market that is non-cost reflective then this affects all participants and the solution is to modify the imbalance price calculation as a whole. (ref: P74/78/90)
013	yes	Yes	NETA has, empirically, introduced a barrier to market participation by intermittent technologies. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee's recent report <i>A Sustainable Energy Strategy? Renewables and the PIU Review</i> .
015	no	Yes	The evidence that has emerged in DUKES 2002, as set out in response to Question 1, provides a clear indication that NETA has introduced a barrier to market participation by LEGs. The discussions of the DTI's Consolidation Working Group suggested evidence of barriers including an asymmetry of market power between LEGs and suppliers and through a net reduction in embedded benefits. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee Fifth Report <i>A Sustainable Energy Strategy? Renewables and the PIU Review</i> (paras. 68-82) and the Second Report of the Trade and Industry Select Committee <i>Security of Energy Supply</i> (paras. 63-69).
016	yes	Yes	Administrative burdens and risk exposures of BSC participation. Lack of development of many LEG schemes (e.g. CHPs) due to unfavourable market conditions.
017	no	Yes	The mod proposer has demonstrated compelling evidence that there are barriers to LEG market participation under NETA. There is widespread and well documented evidence that these barriers are caused by discrimination on grounds of size and are not just a natural reverse economy of

			scale.
018	no	Yes	
008	Yes	Yes/No	Some of the problems identified are difficulties for all participants, not just LEGs. We would encourage additional solutions be sought that allow the maximum benefit of being embedded to be passed through to the LEG. Market agents should be allowed to provide solutions to this and any other problems and could be encouraged by the reduction of administrative burdens"
012	yes	Yes/No	The barriers to LEGs market participation that have been cited in the proposal and consultation are no different to those faced by all players. We agree that the imbalance prices seen thus far under NETA have been extreme. We have previously stated our support for market reform through Modification Proposal 78A. This will address many of the issues related to cost reflectivity and extreme imbalance prices for all market participants. We agree that LEGs are unlikely to have the same resources to cope with the administrative burden associated with NETA but we do not believe that this proposal will directly address this issue. Lack of liquidity in the market is also an issue faced by participants and not specific to LEGs.
004	yes	Yes	The Modification Group is referred to the evidence of the four barriers to LEGs' market participation which is contained in (respectively) Appendices A1, A2, A3 and A4 of the P95 Submission, as well as in Paper A. As is pointed out in Paper A, this evidence has been collected from LEGs themselves, trade associations, independent consultants (such as Ilex and David Milborrow) and other independent sources, including the PIU Energy Review, the Trade and Industry Select Committee and the Environmental Audit Committee.

**Q7 Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?**

Resp	BSC party		Response
001	yes	No	Other modifications for example reduction of gate closure fundamentally addressed the issue.
002	yes	No	The Code should be modified so that it works efficiently, not so that it targets certain participants.
005	yes	No	The modification does not address the perceived issues cited as reasons for the changes.
006	yes	No	See comments in questions 1 & 6. In terms of the imbalance pricing regime currently in place, it would be appropriate to consider perceived defects through the Pricing Issues Standing Group (PISG) which should shortly be in place. The PISG should be expected to assess if there are defects and, in time, produce a holistic solution, which can form the basis of a BSC modification.
007	Yes	No	This question is really outside the scope of Modification P95. However, as noted above, changes to market structure may be appropriate and this could include Modifications to the BSC,
008	Yes	No	This is not a function of the BSC, this is something the market should provide.
010	yes	No	Legislative measures have already been taken (CCL, RO) to place obligations on suppliers to purchase from renewable and CCL exempt generators. Ultimately these may be the sort of measures required, and as such are out of the scope of the BSC. However, whilst a modification to the BSC may not be the most <i>appropriate</i> means to address the perceived defects, this route should still be assessed so that all alternatives are explored.
011	yes	No	As stated above, we believe it can only address market non-cost reflectivity and we believe P78 better achieves this objective.
014	yes	No	If there is an issue with cost reflectivity of prices then the BSC is the appropriate place to address it. However, as stated above no clear argument has been made that suggests the price is less cost reflective to LEGs so this issue appears irrelevant. A change to the cash out regime will have no effect on the levels of embedded benefits which will be shared. Low liquidity will not be affected by a change in the cash out regime. Administrative costs of joining the BSC will not be affected by a change in the cash out regime.
009	No	Yes	The barriers to LEGs described are a fundamental, intrinsic consequence of the existing provisions of the Code. It is therefore logical and appropriate that these barriers should be addressed directly through the Code, in preference to an external approach that permits the existing distortions or defects to persist. In presenting an approach that better facilitates the objectives of the Code, a more efficient, enduring solution is likely to result.
013	yes	Yes	The barriers to intermittent technologies should be tackled. This form of remedy through the BSC should not restrict Government and Ofgem in their consideration of the problems facing embedded generators, which need to be addressed further.
015	no	Yes	The barriers to LEGs described are a fundamental, intrinsic consequence of the existing provisions of the Code. It is therefore logical and appropriate that these barriers should be addressed directly through the Code, in preference to an external approach that permits the existing distortions or defects to persist. In presenting an approach that better facilitates the objectives of the Code, a more efficient, enduring solution is likely to result.
016	yes	Yes	Access to the market needs to be given to allow the LEGs to participate. Modifications are not the only process as LEGs are also affected by legislation from HM C&E and the Treasury.

017	no	Yes	It is the Code that defines NETA and encompasses the key rules regarding the treatment of imbalance. The "sizeist" nature of NETA is therefore built into the code and it is appropriate to address it by code mods. There are other code mods which can help address parts of the problems facing LEGS such as P74, but it is entirely appropriate that the problem is addressed directly by P95. Indeed outside agencies expect that the internal NETA mechanisms should be used to the full to sort any distortions before complex, difficult (and slow!) external actions are required to ensure that we maintain a base of hundreds of generators.
018	no	Yes	
012	yes	Yes/No	It may be appropriate to address some of these defects through the Code but we do not believe P95 is the appropriate tool through which to achieve these aims.
004	yes	Yes	Section F of the BSC and NGC's transmission licence set out the grounds upon which a proposal for a BSC modification may be implemented, namely that it must better facilitate the achievement of the applicable BSC objective(s) set out in paragraph 3 of Condition C3 of NGC's transmission licence. It is not necessary to repeat those four objectives here, although the reasons why the proposer believes that P95 better facilitates three of the four applicable objectives are set out in detail in the answer to question 1. It must follow from this that any modification proposal which better facilitates the applicable BSC objective(s), is an appropriate means of addressing the perceived defect in the market structure. The effect of arguing the opposite viewpoint would be to impose a further hurdle on any modification proposal which has no basis in the relevant parts of the BSC or NGC's transmission licence. Therefore, it seems to the proposer that any argument to the effect that a proposed modification to the BSC is appropriate only when the defect complained of originates wholly from the BSC, goes against the function of both the BSC and the transmission licence. The test of whether any particular modification proposal is the appropriate means to address the defect referred to in that proposal must be whether or not the implementation of that modification is likely to address the defect complained of. This issue in relation to P95 is dealt with at (ii) below.

**Q8 Do you believe that P95 actually addresses the perceived defects listed in the Modification?**

Resp	BSC party		Response
001	yes	No	
002	yes	No	The perceived defects effect many other parties other than LEGs. Any Mods which are raised should deal with the apparent flaws in the BSC but they should not target one particular type of party.
005	yes	No	It seems that the modification is aimed towards subsidising LEGs for the perceived defects, but does not address the root cause behind them.
006	yes	No	See comments in questions 1 & 7. P95 appears to have a discriminatory impact. It would be more efficient in both cost and implementation terms, and for the benefit of all BSC Parties, if perceived defects are assessed by the PISG and a holistic solution produced.
007	Yes	No	P95 does not address the specific defects identified in the Modification Proposal and an enduring "cross subsidy" is not an appropriate approach to address them.
011	yes	No	As stated above, alleviating non-cost reflective imbalance prices for one category of Generator does not make the market as a whole cost reflective.
012	yes	No	The underlying 'defect' described by P95 appears to be that suppliers are passing through all of imbalance risk and none of the benefits of that the LEGs provide. This is a matter of contract between the LEGs and the suppliers, not with the Balancing and Settlement Arrangements, and cannot be addressed through a modification to the BSC.
014	yes	No	P95 simply means that an amount of money will be refunded to suppliers who contract with LEGs and this will be reflected in the price that the LEGs can command. As mentioned in the answer to Q7 above, it does not address the perceived defects and only represents a shifting of wealth between some participants to others for no cost reflective purpose. Therefore, it provides a cross subsidy and creates a distortion in the market.
008	Yes	Yes	It is however inefficient and discriminatory
009 015	No	Yes	<p>Cost reflectivity. The present dual cash-out price is not cost-reflective, since at any period in time the market can only be short and long and hence only a single clearing price can pertain. Furthermore, the dual cash-out arrangement makes no allowance for the natural balancing effect between parties of a heterogeneous, interconnected network, and hence tends to recover costs in excess of the actual costs of intervention necessary to balance the system. A single, average price will ensure that the clearing price for LEGs is closer to the optimal clearing price for a balanced market over a greater proportion of periods, thereby improving cost-reflectivity.</p> <p>Illiquidity. The OTC markets and power exchanges do not present a practical option for managing the risks of LEGs, owing to the granularity of the market, the lack of liquidity and the transaction costs. In presenting a viable alternative, P95 will mitigate the barriers presented by these factors.</p> <p>Embedded benefits. Through ameliorating the risk and consequent costs of managing this risk under the present dual cash-out arrangements, P95 will improve the commercial position of LEGs with respect to suppliers, thereby allowing them to recover a greater proportion of embedded benefit that they bring to the system.</p> <p>Administrative costs. P95 will mitigate the risks presented by the dual cash-out arrangements. In doing so, it will reduce the administrative costs associated with managing these risks either directly through participation trading or indirectly through risk management services procured via a third party. Such costs are regressive and discriminate most against the smallest parties.</p>
010	yes	Yes	It addresses indirectly the cost reflectivity defect in respect of imbalance prices, insofar as exposure to imbalance prices weakens the contracting abilities of LEGs. We do not believe that the modification addresses the issues of administrative burdens, lack of liquidity or granularity in the market or embedded benefit realisation. Fundamentally, registration in SMRS restricts LEGs' commercial options as the treatment of LEG outputs as

			negative demand in a Suppliers consumption account at GSP level means that embedded benefits may be realised only with suppliers with sufficient GSP group demand.
013	yes	Yes	<p>Cost reflectivity.</p> <p>A single, average price will ensure that the clearing price for <u>qualifying participants</u> is closer to the optimal clearing price for a balanced market over a greater proportion of periods, thereby improving cost-reflectivity.</p> <p>Illiquidity.</p> <p>The OTC markets and power exchanges do not present a practical option for managing the risks of smaller participants, owing to the lack of liquidity in the market place and the transaction costs. In presenting a viable alternative to trade, P95 will mitigate the deleterious effects presented by these factors.</p> <p>Embedded benefits.</p> <p>Through ameliorating the risk and consequent costs of managing this risk under the present dual cash-out arrangements, P95 will improve the commercial position of intermittent technologies and smaller participants with respect to suppliers, thereby allowing them to recover a greater proportion of embedded benefits.</p> <p>Administrative costs.</p> <p>P95 will mitigate many of the risks presented by the dual cash-out arrangements and provide a route to market. In doing so, it will reduce the administrative costs associated with managing these risks either directly through participation trading or indirectly through risk management services procured via a third party. Such costs discriminate disproportionately against the smallest parties.</p>
016	yes	Yes	P95 offers possible approaches to tackle the perceived defects as listed.
017	no	Yes	<p>P95 tackles head on the imbalance issue whereby Suppliers can use their market power over LEGs to charge the non cost reflective imbalance prices to the LEG. It therefore addresses the cost reflectivity issue.</p> <p>This improvement in bargaining position really only extends to the imbalance charging unless it gives a useful tool to the supplier as many of the options do (with Option D doing it transparently).</p> <p>P95 does address the Illiquidity/granularity issue by allowing a LEG to trade, without being part of a portfolio, with a power exchange or other trader without facing penal imbalance exposure. This should increase liquidity across the market, which furthers NETA aims.</p> <p>P95, if applied in a way that the suppliers like, should reduce the need for LEGs to have to sign the code &amp; trade directly. If P95 is implemented such that small generators have to submit half hourly notifications to central settlements then the mod would actually have the opposite effect &amp; increase admin.</p>
018	no	Yes	
004	yes	Yes	<p>Modification proposal P95 address the relevant defects. Its effect would be to ameliorate the discriminatory effects of the four barriers to LEGs' ability to function under NETA which are explained in P95, as follows:</p> <p>(i) <u>Cost Reflectivity</u>: the lack of cost reflectivity in the settlement system for LEGs is a particular disadvantage, since they cannot manage their own imbalance risk or earn revenue from trading in the balancing mechanism, but are dependent upon suppliers taking and managing that risk on the financial terms which suppliers offer to do so (see also Paper B of the P95 Submission). The lack of cost reflectivity therefore puts LEGs at a competitive disadvantage to larger generators, who are not subject to these restrictions. P95 acknowledges that LEGs cannot benefit from participating in the balancing mechanism or otherwise directly manage their balancing risk through direct access to the trading system within which the balancing risk is costed and settled. The modification proposal introduces a pricing system for LEGs which is more</p>



			<p>cost reflective (see the answer to question 2 above) and recognises their inability to manage the balancing risk as fully participating BSC signatories can do.</p> <p>(ii) <u>Embedded Benefits: Weak Bargaining Position</u>: As to this barrier, the effect of P95 would be to mitigate the unduly weak bargaining position for LEGs (of which the current lack of cost reflectivity for their imbalances is a principal cause) since LEGs will no longer be in the position of negotiating with suppliers who will take into account the disproportionate imbalance risk taken by LEGs, in the course of their negotiations to purchase LEGs' generation output and embedded benefits. This has placed LEGs in a weak bargaining position with suppliers.</p> <p>(iii) <u>Illiquidity/Granularity</u>: the current lack of adequate liquidity/granularity in the market place makes it very difficult for LEGs seeking to minimise their imbalance exposure, as it is simply impractical for them to sell on the over the counter markets and on power exchanges; and these markets are in practice unavailable to generators registered in SVA and dealing through suppliers. This denies LEGs an alternative to trading with suppliers by managing their imbalance risk as full participants in these markets. Although P95 will not address the absence of liquidity/granularity directly, the reduction in LEGs' imbalance risk would enable LEGs to negotiate with suppliers from a more equitable market position as explained above and therefore cause the discriminatory effects of LEGs not being able to trade in the over the counter markets and on power exchanges, to be less damaging to them.</p> <p>(iv) <u>Administrative Burdens</u>: By ensuring that the settlement system is more cost reflective for LEGs, the proposed modification would cause the discriminatory effects on LEGs of the administrative burdens referred to in Paper A and Appendix A4 of the P95 Submission to be less damaging to LEGs. LEGs would be able to negotiate with suppliers under their grid supply point group from a more equitable negotiating position and therefore their inability to participate in the balancing and trading mechanisms in order to be able to find a wider market for their generation output would be less damaging to them.</p>
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**Q9 Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?**

Resp	BSC party		Response
009 015	No	No	P95 corrects for aspects of the present arrangements that - in the absence of any inherent correction mechanism within the market - discriminates against the LEGs. The existing discrimination occurs as a consequence of the common application of a set of market rules; a process that fails to recognise fundamental variation in the capability of different parties to response to these rules. The proposals represent a correction of an exiting discrimination, not the introduction of a new one.
013	yes	No	P95 corrects for aspects of the present arrangements that – in the absence of any inherent correction mechanism within the market – discriminates against intermittent technologies. The proposals represent a correction of an exiting discrimination. In so far as the change would result in specific treatment for specific types of player, the discrimination is proportionate (i.e. it is not undue discrimination).
016	yes	No	Care needs to be taken here. While P95 is proposed to address a perceived discrimination currently within the BSC, the answer is NOT to counter it with another discrimination (i.e. positive discrimination). To abide by the rules of BSC, it is important to ensure that any solution is beneficial to ALL parties to the BSC, or at least does not discriminate against them, while still aiming to aid the application of the BSC Objectives.
017	no	No	This is an attempt to mitigate against existing discrimination inherent in the overly complex & penal systems which constitute some parts of NETA.
018	no	No	
004	yes	No	<p>The issue of whether P95 discriminates for/against a particular sector of the market is relevant to the issue of whether it facilitates the applicable BSC objective of promoting effective competition in the generation &amp; supply of electricity, &amp; (so far as consistent therewith) promoting such competition in the sale &amp; purchase of electricity. This wider question is dealt with in the answer to question 1 above, but it is worth referring to here as the context in which question 9 needs to be addressed.</p> <p>P95 does not constitute discrimination (undue or otherwise). “Discrimination” is a word with an established meaning in the context of competition law. To be discriminatory, a market structure must either apply different rules to parties sharing the same characteristics or apply the same rules to parties with different characteristics. The current position imposes the same rules on parties with different characteristics &amp; as a result constitutes discrimination.</p> <p>In particular, the current BSC rules &amp; market structure unduly favour large generators in the following respects, by applying the same rules both to them &amp; to LEGs:</p> <ul style="list-style-type: none"> <li>(i) since LEGs will not usually be BSC signatories &amp; must sell their generation output to a supplier with sufficient consumer demand under the relevant grid supply point group, they cannot trade firm contracts with suppliers. This is because, unlike larger generators, they are unable to manage their imbalance risk by trading in the over-the-counter markets &amp; power exchanges (&amp; thereby address any discrepancy between their physical &amp; contractual position); nor can they earn revenue from bids &amp; offers (see paragraph 2.2 of the P95 proposal).</li> <li>(ii) the position of LEGs is, therefore, that through their contracts with suppliers, they suffer the full impact of the imbalance charge system. In this, they are no different to large generators; the difference is that unlike larger generators, LEGs are not in a position to manage their imbalance risk as explained above. Since LEGs generally cannot influence the balancing process or benefit from it, it is discriminatory for them to suffer imbalance charges on the same basis as larger generators &amp;, as pointed out in paragraph 5 of the P95 proposal, it would be fair &amp; therefore not discriminatory for them to pay imbalance charges as if the market were in balance. This would be the effect of the neutral cash</li> </ul>

			<p>out price being an average of SSP &amp; SBP (see also the answer to question 2 above). Also, the balancing &amp; settlement system is not currently cost reflective for LEGs; costs are treated as being incurred on the same basis in respect of larger generators &amp; LEGs, regardless of the fact that their different characteristics mean that the effect of this is to discriminate against LEGs. For example, it was reported by a number of the respondents to the DTI's consultation of November 2001 that NGC had indicated that plant below 100 MWE would not have a major impact on balancing the system. The proposer understands that this remains NGC's view; yet LEGs are still subject to imbalance prices on the same basis as their larger counterparts.</p> <p>The proposed modification recognises the difference between large generators &amp; LEGs by applying different rules to different classes of generator. The effect of this would be to end the existing undue discrimination currently suffered by LEGs &amp; thereby to promote effective competition in the generation &amp; supply of electricity.</p>
001	yes	Yes	<p>An underlying principle of NETA is that costs should fall on those that cause them. This modification is specifically designed to compensate small generators for perceived failings of NETA. Therefore, if the impact of imbalance on a small generator becomes less it must become more for another participant.</p> <p>As well as discrimination this further raises the issue of cross subsidy.</p>
002	yes	Yes	It unduly discriminates in favour of LEGs. See previous answers.
005	yes	Yes	It discriminates against licensed generators & demand customers by treating them differently for their imbalance positions.
006	yes	Yes	See comments in questions 1 & 8.
007	Yes	Yes	P95 singles out at set of market participants & provides a cross subsidy. A single cash out would be a more appropriate way of ameliorating imbalance costs for LEGs without discrimination.
008	Yes	Yes	A modification of any form is not the appropriate mechanism. NETA is still relatively new & the market still needs time to develop fully before any such changes are considered.
010	yes	Yes	As it currently stands, yes, as a large LEG may have as predictable an output as a centrally connected generator, but would be subject to a less penal cash-out regime. Again, the size & predictability of the generator is relevant.
011	yes	Yes	<p>As the proposed solution argues that it will alleviate the lack of cost reflectivity for LEGs, even though the issue affects all participants, we believe that it does unduly discriminate &amp; therefore does not better meet a BSC Panel Objective (BSC B 1.2.1 (c)).</p> <p>As stated above, we believe that cost-reflectivity is better addressed by changing the pricing methodology, rather than giving exemptions to certain groups.</p>
012	yes	Yes	<p>This proposal discriminates in favour of LEGs. A mechanism to help LEGs should be found outside the BSC.</p> <p>The BM prices should reflect the true value of this nature of power to the system (&amp; if the BM is not cost reflective this is another issue that should be addressed separately). If this sort of generation needs to be supported (because of its renewable nature or a desire to promote CHP) then the support should be direct, not achieved indirectly by changing the rules of the system to falsely inflate the value of the power produced.</p> <p>Changing the system rules will benefit all LEG's - some of which are non-renewable &amp; non CHP. Direct support can be targeted more effectively.</p>
014	yes	Yes	As P95 refers purely to LEG it discriminates against all other parties, be they Licensed Generators, Licensed Suppliers or Licence Exempt Suppliers.

10 a) The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure:

**Option A: Leg Rebate Agent**

Resp	BSC party		Response
001 012	yes	No	
007	Yes	No	This is a complex solution to the problem of cashing out LEG imbalances at a neutral price. In particular, it will be difficult to define and audit the appropriate capacity for the purposes of cash out and require some form of "expected output notification" so that a cash out volume can be identified. Given the administrative complexity, it is likely that only larger LEGs would benefit from this approach.
008	Yes	No	We do not believe it to be an appropriate modification for the reasons stated previously
014	yes	No	This would significantly increase the administrative burden for Parties dealing with LEGs. Additionally, it appears to be a considerable amount of work under the BSC to create the new agent and a significant change to central systems. As one of the methods suggested by the proposer this should be considered further if the proposal goes to assessment. However, we do not feel that this modification proposal should be taken further in the process and should go straight to report stage with a recommendation that it be rejected.
002	yes	Yes	Minimal impact on BSC systems
004	yes	Yes	<p>SHP is pleased to note that the Modification Group has been able to propose four valuable implementation options. Although we do not believe that at this definitions stage any of the options need to be eliminated, SHP believes that the Modification Group should be able to identify the criteria by which the best implementation option can be selected. These criteria can be summarised as follows –</p> <ul style="list-style-type: none"> <li>- the extent to which the implementation arrangement accurately reflects the purpose of the proposed modification;</li> <li>- the simplicity with which the implementation method chosen can be applied to LEGs registered in SVA and LEGs who register themselves in CVA;</li> <li>- the extent to which the method of implementation causes undue administrative burdens being placed on LEGs or other parties;</li> <li>- the speed of implementation.</li> </ul> <p>There may be a conflict between these criteria, particularly in relation to speed of implementation. The evidence presented to the Modification Group has included evidence of the need to act urgently to alleviate the effect on LEGs of the barriers described in the proposed modification. However, the implementation method chosen should provide the right balance of incentives on LEGs and licensed suppliers in particular and be as free as possible of anomalies connected with its operation. The latter consideration may imply a longer period to implement the proposed modification than is consistent with the level of urgency involved and a balanced judgement will need to be applied to this issue.</p>
005	yes	Yes	As a general comment, we believe that all the options should be further considered before a firm judgement is made on their suitability.
009 015	No	Yes	All the proposed options have merit and would appear, as they are set out in the consultation, to present a solution to the barriers described in the Proposal and to better facilitate the BSC objectives. All should be considered under the Assessment process. Prime considerations under the Assessment process should be the need for prompt introduction of the mechanism simplicity and low administrative costs.
010	yes	Yes	Could very easily be manipulated by suppliers and LEGs submitting inflated LEG contract notifications to the rebate agent to take advantage of the less penal imbalance charges.

011	yes	Yes	All the options are valid Alternatives to the Original modification and may be carried forward to the assessment procedure, however, the Panel and the Modification group will ultimately have to come to a view on whether P95 better facilitates the BSC Objectives.
013	yes	Yes	All the proposed implementation options have merit and would appear, as they are set out in the consultation, to present a solution to the barriers described in the Proposal and to better facilitate the BSC objectives. All should be considered under the Assessment process against a common set of criteria.
016	yes	Yes	It is important for the issue of cost reflectivity that any extra costs are apportioned to the parties responsible for those costs. Further it should be judged that the development costs for this modification/systems do not significantly outweigh the benefits to the parties concerned.
017	no	Yes	All these mechanisms should be considered in assessment. From our perspective the over-riding criteria for any solution should be simplicity (which aids transparency) given that we are aiming here at small players whose main business is not always power generation, but whose output is valuable in terms of diversity, security, competition and the environment.
018	no	Yes	
006	yes	Yes/No	As we do not support the intent behind P95, we will not pass comment on any of the implementation options at this stage. However, should P95 progress to the assessment stage, the options should be explored to establish which one is the minimum cost solution, as well as having minimum impact on both central systems and participants' systems.

**10 b) Option B: LEG Trading Party**

Resp	BSC party		Response
001 012	yes	No	
007	Yes	No	This option creates further problems when compared with option A. In particular, it will require each existing trading party with a contract with a LEG to set up and maintain a new BSC party. This will be expensive since it will be required to post credit and set up new "LEG contract notifications" systems. Furthermore, it will also require some form of capacity register for LEGs and a notification process for expected output. The administrative complexity would mean it is likely that only larger LEGs would benefit from this approach.
008	Yes	No	We do not believe it to be an appropriate modification for the reasons stated previously
014	yes	No	Represents a large change within the BSC to create the special Trading Party or agent. Appears to be a significant increase in Party administrative burden too to deal separately with the LEG Trading Party and to make the necessary declarations of generation capacity. Again, as one of the methods suggested by the proposer this should be considered further if the proposal goes to assessment.
002	yes	Yes	Minimal impact on BSC systems
004 005	yes	Yes	
009	No	Yes	See 10 a)
010	yes	Yes	Administratively complex and also loses the consolidation benefit between embedded generation and supply portfolios, making LEG contracts less attractive to suppliers. There could be credit issues in relation to the LEG Trading Party.
011 013 016	yes	Yes	See 10 a) above.
015 017	no	Yes	See 10 a)
018	no	Yes	
006	yes	Yes/No	See comments on 10a) above.

**10 c) Option C: LEG Account**

Resp	BSC party		Response
001 012	yes	No	
007	Yes	No	This option may be more feasible than either option A and B but still requires the development of new systems and process. As a result it would be administratively complex and it is likely that only larger LEGs would benefit.
008	Yes	No	We do not believe it to be an appropriate modification for the reasons stated previously
014	yes	No	Represents a large change to central systems and to the BSC. Additional burden for Parties will be created to manage an extra account and to make the declarations of maximum capacity.
002	yes	Yes	Simple approach
004	yes	Yes	
010	yes	Yes	Potentially involves major changes to Central Systems and removes consolidation benefit between embedded generation and supply portfolios.
011 013	yes	Yes	See above.
005	yes	Yes	
015 017 009	no	Yes	See 10 a)
018	no	Yes	
006 016	yes	Yes/No	See 10 a)

**10 d) Option D: LEG Neutral Capacity Band**

Resp	BSC party		Response
001	yes	No	
007	Yes	No	This approach was rejected in the context of P26 & while administratively simple is open to potential gaming of LEG capacity in order to benefit from neutral cash out.
008	Yes	No	We do not believe it to be an appropriate modification for the reasons stated previously
012	yes	No	A similar modification proposal (P26) has already been discussed and rejected by the industry and Ofgem.
014	yes	No	It is difficult to see how this would work in practice as not much definition has been provided, but would appear to be similar to modification proposal P26 which was rejected by the Authority because it created a cross subsidy between parties.
002	yes	Yes	Simple approach
010	yes	Yes	If there is an acceptance in this option that parties are simply cashed-out at the neutral price on a deadband volume of LEG generation, issues surrounding verification of LEG volumes would be removed. However, it begins to look like a subsidy from RCRC to non-BSC parties (in fact, all the options could have this effect).
004 005	yes	Yes	
013 011	Yes	Yes	See 10 a)
009 015 017 018	no	Yes	See 10 a)
006 016	yes	Yes/No	See comments on 10a) above.



**Q11 Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?**

Resp	BSC party		Response
001 002 010 014 016	Yes	No	see details in 10 a)
018	No	Yes	
007	Yes	Yes	The issue of cost recovery requires further thought & definition, particularly in the light of the Ofgem decision on P66. We would suggest that the market participants that benefit from the proposed modification should pay in full for the costs of implementation. This would require cost recovery from non BSC parties through a cost reflective fee from users of the service.
008	Yes	Yes	How will LEGs be treated in the Balancing Mechanism under such a regime? In providing a solution of sorts for CHP & other such unpredictable generation does this Modification discriminate against more flexible LEGs effectively reducing their value as balancing plants?
009 015	No	Yes	As set out in 10, the need for the prompt introduction of a solution is vital to offset the serious & persistent damage that NETA has inflicted upon LEGs in general, & CHP in particular.
011	yes	Yes	If YES please give details With the Proposer so closely defining the modification to apply solely to LEGs; is it possible for any P95 alternative to apply to the market as a whole, whilst benefiting LEGs as well?
013	yes	Yes	<u>Under the Renewables Obligation, only suppliers are subject to the costs. It is for consideration whether costs arising from incentivising exemptible supplies should be similarly treated, &amp; the cost of administering the arrangements through the beer fund targeted on suppliers only.</u>
017	no	Yes	If P95 is not the answer, what is the route that LEGs should take to get NETA reformed before further long lasting harm is done to UK generation?
004	yes	Yes	The proposer wishes to ensure that P95 is dealt with as urgently as possible at each stage of the modification process. It should be clear from the evidence set out in Appendix A6 of the P95 Submission (for example the £60 million write down undertaken by the proposer) that the financial effects felt by LEGs in operating under NETA have been, & continue to be, severe. It follows that the longer the current system is allowed to continue without appropriate remedial action, the more severe these effects will be on LEGs. The anti-competitive impact of NETA's effect on LEGs is dealt with in detail in Paper B of the P95 Submission, as well as in the appropriate section of the proposal. In the interests of the better facilitation of the applicable BSC objective to promote effective competition in the generation & supply of electricity, the current position should be addressed by the implementation of this modification. The Modification Group is also aware that the need for urgency caused P95 to be introduced as a measure which might be superseded by others addressing how the barriers referred to in P95 may be removed or lowered, rather than avoided.
005 012 006	Yes	Yes/No	

**12: Further comments:**

Resp	BSC Party?	Response
005	yes	It is our belief that many of the problems and expense that LEGs cite as barriers and issues could be alleviated by auctions –similar to the NFPA- for their capacity with standard contracts. We are also concerned about the potential for BSC Parties with LEG subsidiaries to use them to maximise their imbalance benefits by taking long or short positions with their portfolio, which will have a direct impact on RCRC payments across the market.
007	Yes	In addition to being flawed on economic and competition grounds, the P95 Modification Group has failed to identify a workable business process to support the proposed modification, and we would suggest that either further definition in this area is required or the Modification should be rejected on this basis alone. The Modification is therefore contrary to objectives (c) and (d) of the BSC in relation to “promoting efficiency in the implementation and administration of the balancing and settlement arrangements” & “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”.
008	Yes	Positive discrimination is a political issue and the subject of levies/subsidies/legislation not a matter for the BSC introducing elements of market distortion.
009 015	No	As set out in response to Question 1, data published by DTI for the year 2001 has demonstrated the extent of the negative impact that NETA has brought upon existing CHP plant and upon new investment in the sector. The breadth of responses upon which this survey has drawn suggests that it represents a more accurate reflection of the true situation facing CHP than that contained in <i>The review of the first year of NETA</i> , published by OFGEM IN July.
010	yes	LEGs are an important part of the mix of generation in the market and must increase in importance if government targets for CHP and renewables are to be met. It may be possible that changes to the BSC could ameliorate the position of certain LEGs in a manner that would not be unduly discriminatory to other market participants, but this may only be achievable through some sort of size limit above which LEGs would be treated in the same manner as centrally connected generators. In this sense, we do feel that the modification with all its alternatives should be taken to the assessment phase to ensure that the BSC route is fully explored. The effect of all the alternatives on the RCRC should also be carefully monitored to avoid any possibility of a cross subsidy from other market participants to LEGs. However, it may be that action outside the BSC in the form of subsidies or obligations is required fully to address the concerns raised by the proposer, such action obviously being outside the scope of the P95MG.
017	no	It is a bit late to be recognising these issues which should have been addressed during design. Since implementation the lack of progress on this issue is doing damage to the wider perception of NETA which may soon be seen to be seriously flawed.
012	yes	We do not support this proposal & do not believe it should be progressed to the Assessment Procedure. The defects identified by the Proposer will not be addressed through this proposal. Furthermore, P74, P78 & P90 have considered in some detail the problems faced by all market participants due to high imbalance prices.
004	yes	The P95MGs attention is drawn to the contents of Appendix A5 to the P95 Submission, which identifies a number of areas where the proposer believes the conclusions of Ofgem’s One Year Review to be seriously misleading. This is a material issue given that, in considering the merits of the points raised in the various submissions in support of P95, the Modification Group will inevitably be influenced by how it perceives the effect of NETA on such important matters as output, investment, pricing and liquidity for the LEG sector. The proposer is concerned to ensure that the Modification Group is aware that there is a serious discrepancy between Ofgem’s conclusions on these important matters and those of the proposer. The proposer would therefore ask that full weight is given to the content of Appendix A5; for example, the proposer believes that Appendix A5 demonstrates that in regard to the prices received by LEGs under NETA, Ofgem’s conclusions are at variance even with its own figures.

## 2. RESPONSES RECEIVED

### P95\_DEF\_001 – SEEBOARD

<b>Respondent name</b>	Dave Morton
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	SEEBOARD Energy Limited
<b>Role of Respondent</b>	Supplier

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	<p>We have sympathy with any group or individual that feels that they are disadvantaged by the trading arrangements. We also know that over time BSC will change and evolve as it has done since the beginning of NETA. However, it is our view that those changes wherever possible should be generic rather than specific to address competitive advantages/disadvantages of individuals or groups of participants. To do otherwise is inherently discriminatory.</p> <p>If cash-out prices are not cost reflective then it would be inequitable to compensate one group of market participants and not others. Cost reflectivity is an issue that needs to be addressed in terms of imbalance price calculation applicable to all participants.</p> <p>There may or may not be barriers as suggested but we are of the opinion that in the long term this modification could do more harm than good, further inhibiting market developments in terms of consolidation and granularity.</p>

2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	We do not agree with the principle of a neutral price.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	No	A definition of an Exemptable Generating Plant already exists in BSC. We believe that it is unnecessary and inequitable to arbitrarily create a definition specific to this or any other modification.
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	N/A	a) See response to question 3.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	N/A	b) See response to question 3.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	N/A	c) See response to question 3.
4 d)	Other	N/A	d) See response to question 3.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	No	We do not believe that this is an appropriate solution for any period. However, we would argue that a "sunset" provision where no alternative is foreseen adds unnecessary and potentially damaging uncertainty to participants.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Don't know	There may or may not be barriers as suggested but this modification could further inhibit market developments in terms of consolidators and granularity.

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	Other modifications for example reduction of gate closure fundamentally addressed the issue.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	An underlying principle of NETA is that costs should fall on those that cause them. This modification is specifically designed to compensate small generators for perceived failings of NETA. Therefore, if the impact of imbalance on a small generator becomes less it must become more for another participant.  As well as discrimination this further raises the issue of cross subsidy.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	No	Please give views on each option:
10 b)	Option B: LEG Trading Party	No	
10 c)	Option C: LEG Account	No	
10 d)	Option D: LEG Neutral Capacity Band	No	
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	No	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	No	

## P95\_DEF\_002 – Entergy-Koch Trading Ltd

<b>Respondent name</b>	Entergy-Koch Trading Ltd
<b>BSC Party</b>	<b>YES</b> <sup>1</sup>
<b>Responding on Behalf of</b>	Please list all Parties responding on behalf of (including the respondent company if relevant). Entergy-Koch Trading Ltd
<b>Role of Respondent</b>	(Licensed Generator/Licence Exempt Generator/Supplier/Distribution Business/Other) <sup>1</sup> Trader Non-Physical

Q	Question	Response <sup>1</sup>	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	It will be difficult to determine what a neutral price is, what a LEG is (will there be opportunities to game these definitions?). The real problem lies with pricing mechanism itself. If energy imbalance prices were more market reflective this problem would not be an issue
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	An arithmetic average would produce high price at times when system actions cause SBP to be high. This would not seem to be cost reflective. It would be more appropriate to use a weighted average of SBP / SSP or devise a market related index. Again this demonstrates the problem with the mod.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	No	Why are Licence Exempt Suppliers not included?

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<sup>1</sup> Delete as appropriate

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes	Please give rationale for each a) Definition of exemptable plant already within the Code and more easily identifiable
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes	b) Suppliers should be included if this mod progresses
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c) Difficult to identify and establish a cut-off
4 d)	Other	No	d)
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	If this mod is found to better facilitate the applicable objectives of the BSC it should not considered an interim solution.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	But these are factors of other rigidities within the Code, such as registration, EIPs, notifications, which all parties are exposed to. LEGs should not be considered a special case when it comes treatment under the Code
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	The Code should be modified so that it works efficiently, not so that it targets certain participants.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	The perceived defects effect many other parties other than LEGs. Any Mods which are raised should deal with the apparent flaws in the BSC but they should not target one particular type of party.

9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	It unduly discriminates in favour of LEGs. See previous answers.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	Minimal impact on BSC systems
10 b)	Option B: LEG Trading Party	Yes	Minimal impact on BSC systems
10 c)	Option C: LEG Account	Yes	Simple approach
10 d)	Option D: LEG Neutral Capacity Band	Yes	Simple approach
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	No	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	No	



**P95\_DEF\_003 – TXU**

Thank you for the opportunity to comment on the above Modification Proposal. The following comments are made on behalf of all TXU Europe's BSC Parties.

TXU does not believe that this Modification Proposal should proceed to the Assessment Phase. We do not believe that the defects identified by the proposer relate to the Balancing and Settlement Code and further, we do not believe that the proposed solution adequately addresses the identified defects anyway.

The proposer claims that imbalance charges faced by LEGs are not cost reflective. As we have consistently said during the debates on P74 and P78 the main aim of imbalance charges is to incentivise parties to balance their positions and to reduce the number and volume of balancing actions required to be taken by the System Operator. Imbalances between contracted volumes and metered volumes are not unique to LEGs and so we do not believe that they should be treated any different from other market participants in this respect.

The next 'defect' identified by the proposer is that there is no means for LEGs to realise embedded benefits other than by trading with licensed suppliers within their GSP Group via the formation of Trading Units and the related commercial agreement that the Supplier will pay the LEG for the reduced costs which it will incur as a result of the creation of the Trading Unit. Perhaps Option B is intended to reproduce this scenario without requiring Suppliers to be involved – if this was its intention we do not believe it achieves it.

The proposer then points to the lack of liquidity in small parcels of power. We are not convinced that there has ever been a great deal of liquidity in small volumes which would imply that this is not a defect of the Balancing and Settlement Code itself, rather a result of trading practices.

We recognise that there is an administrative burden on LEGs in participating in short term markets. However, the proposals do not remove the administrative burden, they merely transfer it from the LEG to their Supplier, and it is likely that any such increase in administrative costs would be passed back to the LEGs in the form a lower bilateral contract price. As drafted the proposal just shifts the administrative burden, so the defect is not solved by the proposal.

TXU believes that the proposals as drafted would require major software developments which would be funded by all BSC Parties and would be unlikely to achieve the proposer's desired result. Consequently we believe that the proposal as drafted should not proceed to the Assessment Phase, rather it should go straight to the Report Phase with the recommendation that it be rejected.

We remain of the view that if there is to be a mechanism for helping small generators through these times of low wholesale prices then the simplest way of doing it would be a Trade Association to become a signatory to the Code and become the Registrant for all of the export Meters and then MVRN the output to NGC's Energy Account and for NGC to pay the Trade Association party (who would then be responsible for distributing the payments) the arithmetic average of SBP and SSP and then for this to be recovered from all BSC Parties via BSUoS. This could work without any central software development.

We hope you have found our comments useful and should you have any questions please do not hesitate to contact me on the above number.

Yours sincerely

Nicola Roberts

Market Development Analyst

## P95\_ASS\_004 – Slough Energy

<b>Respondent name</b>	Steve Garrett
<b>BSC Party</b>	Yes
<b>Responding on Behalf of</b>	Slough Energy Supplies Limited
<b>Role of Respondent</b>	Supplier

Q	Question	Response	Rationale
1.	<b>Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?</b>	Yes	<p>Modification Proposal P95, which allows imbalances resulting from LEGs to be settled at a neutral price, better facilitates three of the applicable BSC objectives, as explained below:</p> <p><b>(a) the efficient discharge by the licensee of the obligations imposed upon it by the transmission licence:</b></p> <p>This modification supports the compliance by NGC of its obligation under Condition C3, paragraph 1(b) to have in force a BSC designed so that the balancing and settlement arrangements facilitate achievement of the</p>

Q	Question	Response	Rationale
			<p>objectives set out in paragraph 3 of that Condition. In particular, this will support the objective set out at paragraph 3(c) of that Condition to promote effective competition in the generation and supply of electricity, as explained in more detail at (c) below.</p> <p><b>(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:</b></p> <p>This modification promotes competition in the generation and supply of electricity, in that:</p> <p>(i) the effect of the barriers referred in Paper A and its Appendices of the submission (“the P95 Submission”) sent to the members of Modification Group P95 on 5<sup>th</sup> August 2002, has been to cause NETA to have a damaging and discriminatory effect upon LEGs. This has resulted in severe financial consequences for the LEG sector which threaten its continued participation in the generation market. Evidence of these financial effects is contained in Appendix A6 to Paper A. It is in the interests of competition that the LEG sector, comprising up to an estimated 8% of the generation market in England and Wales, should not be excluded from the market and its economic and environmental benefits thereby denied to consumers. It is explained in the answer to</p>

Q	Question	Response	Rationale
			<p>question 9 below how the implementation of P95 would assist in enabling LEGs to maintain their competitive presence in the market;</p> <p>(ii) although this modification proposes a system of settlement which would identify LEGs separately from other generators, it does not discriminate (unduly or at all) against other generators. Applying different rules to different classes of generator, as proposed by P95, is <u>not</u> discriminatory. “Discrimination” is a term with an established meaning in the context of competition law. To be discriminatory, a market must either apply different rules to parties sharing the same characteristics or apply the same rules to parties with different characteristics. The current position imposes the same rules on parties with different characteristics and as a result constitutes discrimination. In summary, the current BSC rules and market structure unduly favour larger generators by applying the same rules both to them and to LEGs, whilst at the same time LEGs are denied the opportunity to manage their imbalance risk, which is available to larger generators. The position is explained in more detail in the answer to question 9 below. The effect of P95 would simply be to alleviate the uncompetitive effects of the current settlement system so that the barriers referred to above no longer place LEGs at an unfair disadvantage to other generators; and</p>

Q	Question	Response	Rationale
			<p>(iii) the modification has the effect of introducing a change to the BSC which assists in causing it to be consistent with:</p> <p>(A) the duty of Member States under Articles 3(g), 10 and 81 of the EC Treaty not to take any measures which could jeopardise the effectiveness of the rules of competition;</p> <p>(B) the requirements of Directive 96/92 (the Electricity Directive) that Member States “ensure that electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity and shall not discriminate between these undertakings as regards either rights or obligations ...”; and</p> <p>(C) the duties of the Secretary of State and Ofgem pursuant to Section 3A of the Electricity Act 1989.</p> <p>The modification is also consistent with the compliance by NGC of its duties as to competition under the terms of its licence and under the laws of England and Wales and those of the European Union.</p> <p>Furthermore, the modification does not involve any aid favouring particular undertakings, nor aid from the state. Rather, the modification seeks to address an existing</p>

Q	Question	Response	Rationale
			<p>distortion of the market.</p> <p><b>(d) promoting efficiency in the implementation and administration of the balancing settlement arrangements:</b></p> <p>This modification promotes efficiency in administration. It introduces a necessary change to the settlement system as it relates to LEGs by means of a modification. Although the proposed modification can operate permanently on the basis that it supports BSC objectives, it may be superseded by other, permanent changes to the settlement system and allows time and opportunity for such permanent changes to be considered with due care.</p>
2.	<p><b>The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?</b></p>	Yes	<p>The average of SSP and SBP at any time is the most appropriate definition of the neutral cash-out price.</p> <p>It is fair that the price should be neutral; that is to say that the generating output of LEGs should not be subject to penal prices in respect either of spill or shortfall in contracted output. This is because LEGs are generally unable to influence the balancing process or manage their imbalance exposure through the power exchanges or the over-the-counter markets; nor can they compensate for the impact of imbalance charges by means of profits earned through participation in the Balancing Mechanism. LEGs should therefore receive or pay a single neutral price in respect of imbalances.</p>

Q	Question	Response	Rationale
			<p>The average between SSP and SBP is a fair and cost reflective way of establishing that neutral price. Parties who are signatories to the BSC and able to manage their own imbalance risk should, in the absence of any special consideration, be seeking to balance. To do that, a party will assess its most likely level of consumer demand (if a supplier) or generating output (if a generator) and will trade as necessary in the market place to reflect that position. The result of achieving its best balanced position is that the party is equally exposed to being short or long, or to SBP and SSP. For the reasons already stated, it is fair and reasonable to base the LEGs' neutral price on the principle that all participating BSC signatories behave in this way. The effect would be a neutral price which is an average of the two prices and would be more cost reflective of the imbalance risk which LEGs ought to bear.</p> <p>An alternative to a neutral price based on the average of SSP and SBP would be a market price. However, such market prices as are available are distorted by the way in which the market operates and would therefore not be suitable. Current market price (for example as proposed in Modification 78) is inevitably influenced by the behaviour of participating BSC signatories who have the option of selling or buying at the market price, or at SSP and SBP (as the case may be) within the settlement system. This means that such parties can arbitrage between the market price and the cash out price within the settlement system, the effect of which (in a market where suppliers have taken an intentionally long position) is to depress market price. This</p>

Q	Question	Response	Rationale
			<p>would be unfair on non-participant LEGs.</p> <p>Similarly, in a “long” market, bid acceptances represent a revenue stream to generators who have already sold the electricity to which the bid relates, to a supplier. The generator can then save fuel costs by having the bid accepted, thus increasing its margin on the sale to the supplier. This depresses the price at which generators are willing to sell to suppliers in the spot market and would therefore lead LEGs to being offered an unfairly depressed price.</p>
3.	<p><b>Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95?</b></p>	No	<p>The proposed definition of an LEG equates to a generator who is exempted from the requirement to hold a generation licence by virtue of section 5(1) of the Electricity Act. Those regarded as LEGs for the purposes of this modification should however be confined to those exempt by virtue of a class exemption, rather than an individual exemption granted to any generator under section 5. The reason is that the generation plant covered by the current class exemption order (The Electricity (Class Exemption from the Requirement for a Licence) Order 2001) shares the characteristics to which the proposed modification is directed (see below); but plant subject to an individual exemption will have been granted exemption for reasons specific to it or the relevant generator and may not share those characteristics.</p> <p>A cogent point has been raised as to whether the proposed</p>



Q	Question	Response	Rationale
			<p>modification should apply to plant owned/operated by a generator who is licence exempt or to plant with the characteristics falling within the class exemption, regardless of whether the party owning/operating the plant holds a licence or is able to rely upon the exemption. An example would be CHP plant owned/operated by a generator who also operates large generating plant not having the characteristics covered by the class exemption order. In such circumstances, the CHP plant may be "licence exempt" but the party owning/operating it would not.</p> <p>A convenient definition to adopt would be that of "Exemptable" Generating Plant under Section K, paragraph 1.2.2(c) of the Code, that is: "Generating Plant where the person generating electricity at that Generating Plant is, or would (if it generated electricity at no other Generation Plant and/or did not hold a Generation Licence) be, exempt from the requirement to hold a Generation Licence." As explained above, however, plant individually exempted should not be regarded as within the definition of LEGs for this purpose.</p> <p>However, if "licence exempt" plant is owned by a power utility conglomerate with large generation interests, the administrative costs of BSC participation may not be a barrier to it; nor may market liquidity problems, or at least not to the same extent. It is strongly arguable, however, that the fact of who owns "licence exempt" plant should not affect the applicability of the proposed modification particularly since important barriers regarding cost reflectivity and the sale of embedded benefits</p>

Q	Question	Response	Rationale
			<p>associated with LEGs' generating output remain, regardless of ownership.</p> <p>There is, however, the case of "licence exempt" plant owned by a power utility conglomerate which also owns a supply business or which controls a subsidiary which does so. It could be argued in such cases that the weak negotiating position of the LEG as against the supplier which is introduced by undue imbalance penalties being imposed on LEGs and lack of scope for selling their embedded benefits, may not exist in this case, since the output of the "licence exempt" generator may be sold to a supplier owned by the same entity as the generation plant. This should, in theory, be an advantage to the generator only if the deal done for the purchase of the output of the "licence exempt" plant is not at arms length; that is to say the supplier owned by the generator does not react to the offer of power from that generator on the same basis as it would if the power had been offered by any other party from a similar source. In the proposer's view, discriminatory conduct by a generator's "captive" supplier would give rise to issues of anti-competitive conduct which Ofgem would wish to investigate, if the effect was to give some "licence exempt" plant a competitive advantage over other LEGs' plant; and on that basis the proposer does not see the issue as part of an evaluation of this proposed modification.</p>
4.	<p><b>Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):</b></p> <p>(a) <b>EXEMPTABLE plant as defined in Section K, paragraph</b></p>		<p>The proposer considers that the proposed modification should</p>

Q	Question	Response	Rationale
	<p><b>1.2.2(c) of the BSC;</b></p> <p><b>(b) Licence Exempt Suppliers in addition to Licence Exempt Generators;</b></p> <p><b>(c) Small suppliers in addition to Licence Exempt Generators, if so, what level should the cut off point be and why?</b></p>	<p>Yes</p> <p>No</p> <p>No</p>	<p>apply to ‘Exemptable’ plant, for the reasons explained in the answer to question 3 above.</p> <p>Save in respect of any supplier who is granted an individual exemption for reasons specific to that supplier, a “Licence Exempt Supplier” is one falling within The Electricity (Class Exemption from the Requirement for a Licence) Order 2001. Apart from small suppliers (who supply electricity they generate themselves in quantities not exceeding 5 MW), exempt status under the class exemption for suppliers is either in respect of supply which is resale or on-site supply, or offshore supply. The proposer does not see that any of the barriers to which the proposed modification is directed applies to such suppliers. This leaves the question of suppliers who are licence exempt as “small suppliers”, for which see below.</p> <p>Some of the market barriers listed in the “issue or defect” section of the P95 proposal (namely cost reflectivity, liquidity/granularity and administrative burdens) might appear to be relevant to small suppliers who are not licence exempt or to suppliers who are licence exempt but are ‘small suppliers’ within the terms of the class exemption. The proposer’s view is that they should not be covered by the proposed modification, because they are not in the same market as LEGs and different considerations apply to them. In particular:</p> <p>(i) smaller suppliers can choose whether to purchase power from LEGs or elsewhere. This can be contrasted with the</p>

Q	Question	Response	Rationale
			<p>position of LEGs, as explained in Paper A of the P95 Submission and in the P95 proposal itself; namely that the great majority of LEGs are unable to sell their output other than to a supplier with the necessary consumer demand under the relevant grid supply point group, or to sell embedded benefit entitlements other than to such suppliers. This puts LEGs in a weak negotiating position as against suppliers with the result that suppliers are more likely to derive a benefit than a disbenefit from the current arrangements;</p> <p>(ii) where a supplier chooses to contract with an LEG, it can manage the imbalance risk involved in that transaction by passing that risk down to the LEG or achieving the same result by imposing substantial discounts on the price offered. Paper A and Appendix A2 of the P 95 Submission (as well as paragraph 5 of the “issue or defect” section of the P95 proposal) show that this has indeed been the experience of LEGs when contracting with suppliers under NETA. The supplier can therefore manage its imbalance risk at the expense of LEGs. As explained in P95 and in Paper A, LEGs are unable to manage their imbalance risk, as the great majority of them are unable to influence the balancing mechanism, profit from it or trade their power, in the same way as larger generators can (see Paper A and the P95 proposal);</p> <p>(iii) Appendix A6 of the P95 Submission contains a considerable body of evidence of the adverse financial effects of NETA on LEGs. This reflects the concerns which have been repeatedly expressed by LEGs, relevant</p>

Q	Question	Response	Rationale
	<p>(d) Other;</p>	<p>No</p>	<p>trade associations and independent individuals and organisations throughout the NETA process. It is significant that although it is generally accepted that LEGs have suffered under NETA, there is no equivalent evidence of suppliers (small or otherwise) suffering any equivalent ill effects. This reflects the differing positions in the market of LEGs and suppliers, as explained above.</p> <p>In summary, the position of suppliers (small or otherwise) under NETA cannot be compared to that of LEGs and therefore it would not be appropriate for P95 to be extended to small suppliers.</p> <p>As explained in 4(b) and 4(c) above, there is only a justification for P95 being extended to other parties where it can be shown that the issue or defect complained of applies to that party and that the implementation of P95 would address the impact of that issue or defect on that party. In our view, there is no justification for applying P95 to any other party or class of party than LEGs.</p>

Q	Question	Response	Rationale
5.	<p><b>Do you believe that P95 should be considered as an enduring solution?</b></p> <p><b>If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?</b></p>	Yes	<p>As was made clear in the P95 proposal, it is envisaged that this modification would be superseded by longer term solutions which would remove the current barriers faced by LEGs rather than merely ameliorating their effects. The urgency of LEGs' plight (which is illustrated by Appendix A6 to the P95 Submissions) necessitates a modification being made as a transitional measure as rapidly as possible. P95 does not in itself remove the barriers complained of. In relation to the four barriers referred to in the P95 proposal, the modification is merely protecting LEGs from the discriminatory effects of the barriers until such time as they may be removed by other measures, which may include further BSC modifications as well as other solutions outside the BSC. The proposer notes that the question has been raised in meetings of the P95 Modification Group as to whether P95 is attempting to remove the "cost reflectivity" barrier rather than merely ameliorate it. The true position is as set out in the P95 proposal; namely, that this modification would ameliorate rather than remove this barrier. The SSP and SBP (and the spread between them), which are the basis upon which non cost reflective imbalance charges are currently imposed on LEGs, would remain the same. The neutral cash out price for LEGs would have the effect of removing LEGs from the discriminatory effects of the imbalance pricing structure, whilst leaving the structure itself intact.</p> <p>Notwithstanding the above, the proposer agrees with Elexon that P95 should be defined and assessed as an enduring solution. P95 has no "sunset clause", but simply envisages that it may be superseded by other, permanent modifications. It would be</p>

Q	Question	Response	Rationale
			<p>consistent with BSC objectives if it were to remain permanently, since it facilitates competition, by removing discrimination and avoiding the unfair effects of the current settlement system on LEGs.</p> <p>Once P95 were in place, it would still be open to all interested parties (including the proposer) to introduce additional modifications in order to better facilitate the applicable BSC objectives. P95 is no different to any other modification in that respect.</p> <p>A "sunset clause" which gives an end date for the applicability of P95 would not be appropriate. The criterion against which the continued need for P95 should be addressed is whether or not the market barriers referred to in the modification proposal remain in place. Until other modifications directed at removing the relevant barriers have been defined and fully assessed, the circumstances under which P95 ceases to be applicable could not be defined. To provide for an arbitrary end date irrespective of whether or not the need for P95 remains has no logical or economic basis.</p>
6.	<p><b>Do you believe there is evidence of barriers, for or against, LEGs' market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other?</b></p>	Yes	<p>The Modification Group is referred to the evidence of the four barriers to LEGs' market participation which is contained in (respectively) Appendices A1, A2, A3 and A4 of the P95 Submission, as well as in Paper A. As is pointed out in Paper A, this evidence has been collected from LEGs themselves, trade associations, independent consultants (such as Ilex and David Milborrow) and other independent sources, including the PIU Energy Review, the Trade and Industry Select Committee</p>

Q	Question	Response	Rationale
			and the Environmental Audit Committee.
7.	<b>Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?</b>	Yes	Section F of the BSC and NGC's transmission licence set out the grounds upon which a proposal for a BSC modification may be implemented, namely that it must better facilitate the achievement of the applicable BSC objective(s) set out in paragraph 3 of Condition C3 of NGC's transmission licence. It is not necessary to repeat those four objectives here, although the reasons why the proposer believes that P95 better facilitates three of the four applicable objectives are set out in detail in the answer to question 1. It must follow from this that any modification proposal which better facilitates the applicable BSC objective(s), is an appropriate means of addressing the perceived defect in the market structure. The effect of arguing the opposite viewpoint would be to impose a further hurdle on any modification proposal which has no basis in the relevant parts of the BSC or NGC's transmission licence. Therefore, it seems to the proposer that any argument to the effect that a proposed modification to the BSC is appropriate only when the defect complained of originates wholly from the BSC, goes against the function of both the BSC and the transmission licence. The test of whether any particular modification proposal is the appropriate means to address the defect referred to in that proposal must be whether or not the implementation of that modification is likely to address the defect complained of. This issue in relation to P95 is dealt with at (ii) below.
8.	<b>Do you believe that P95 actually addresses the perceived defects listed in the Modification?</b>	Yes	Modification proposal P95 address the relevant defects. Its effect would be to ameliorate the discriminatory effects of the four barriers to LEGs' ability to function under NETA which are explained in P95, as follows:



Q	Question	Response	Rationale
			<p>(i) <u>Cost Reflectivity</u>: the lack of cost reflectivity in the settlement system for LEGs is a particular disadvantage, since they cannot manage their own imbalance risk or earn revenue from trading in the balancing mechanism, but are dependent upon suppliers taking and managing that risk on the financial terms which suppliers offer to do so (see also Paper B of the P95 Submission). The lack of cost reflectivity therefore puts LEGs at a competitive disadvantage to larger generators, who are not subject to these restrictions. P95 acknowledges that LEGs cannot benefit from participating in the balancing mechanism or otherwise directly manage their balancing risk through direct access to the trading system within which the balancing risk is costed and settled. The modification proposal introduces a pricing system for LEGs which is more cost reflective (see the answer to question 2 above) and recognises their inability to manage the balancing risk as fully participating BSC signatories can do.</p> <p>(ii) <u>Embedded Benefits: Weak Bargaining Position</u>: As to this barrier, the effect of P95 would be to mitigate the unduly weak bargaining position for LEGs (of which the current lack of cost reflectivity for their imbalances is a principal cause) since LEGs will no longer be in the position of negotiating with suppliers who will take into account the disproportionate imbalance risk taken by LEGs, in the course of their negotiations to purchase LEGs' generation output and embedded benefits. This has placed LEGs in a weak bargaining position with suppliers.</p> <p>(iii) <u>Illiquidity/Granularity</u>: the current lack of adequate</p>

Q	Question	Response	Rationale
			<p>liquidity/granularity in the market place makes it very difficult for LEGs seeking to minimise their imbalance exposure, as it is simply impractical for them to sell on the over the counter markets and on power exchanges; and these markets are in practice unavailable to generators registered in SVA and dealing through suppliers. This denies LEGs an alternative to trading with suppliers by managing their imbalance risk as full participants in these markets. Although P95 will not address the absence of liquidity/granularity directly, the reduction in LEGs' imbalance risk would enable LEGs to negotiate with suppliers from a more equitable market position as explained above and therefore cause the discriminatory effects of LEGs not being able to trade in the over the counter markets and on power exchanges, to be less damaging to them.</p> <p>(iv) <u>Administrative Burdens</u>: By ensuring that the settlement system is more cost reflective for LEGs, the proposed modification would cause the discriminatory effects on LEGs of the administrative burdens referred to in Paper A and Appendix A4 of the P95 Submission to be less damaging to LEGs. LEGs would be able to negotiate with suppliers under their grid supply point group from a more equitable negotiating position and therefore their inability to participate in the balancing and trading mechanisms in order to be able to find a wider market for their generation output would be less damaging to them.</p>
9.	<b>Do you believe that P95 unduly discriminates for/against a particular section of the market?</b>	No	The issue of whether P95 discriminates for/against a particular sector of the market is relevant to the issue of whether it

Q	Question	Response	Rationale
	<p><b>If YES, is this Modification the best way of or is there any alternative Modification that could be considered?</b></p>		<p>facilitates the applicable BSC objective of 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. This wider question is dealt with in the answer to question 1 above, but it is worth referring to here as the context in which question 9 needs to be addressed.</p> <p>P95 does not constitute discrimination (undue or otherwise). “Discrimination” is a word with an established meaning in the context of competition law. To be discriminatory, a market structure must either apply different rules to parties sharing the same characteristics or apply the same rules to parties with different characteristics. The current position imposes the same rules on parties with different characteristics and as a result constitutes discrimination.</p> <p>In particular, the current BSC rules and market structure unduly favour large generators in the following respects, by applying the same rules both to them and to LEGs:</p> <p>(i) since LEGs will not usually be BSC signatories and must sell their generation output to a supplier with sufficient consumer demand under the relevant grid supply point group, they cannot trade firm contracts with suppliers. This is because, unlike larger generators, they are unable to manage their imbalance risk by trading in the over-the-counter markets and power exchanges (and thereby address any discrepancy between their physical and contractual position); nor can they earn revenue from bids and offers (see paragraph 2.2 of the P95 proposal).</p>

Q	Question	Response	Rationale
			<p>(ii) the position of LEGs is, therefore, that through their contracts with suppliers, they suffer the full impact of the imbalance charge system. In this, they are no different to large generators; the difference is that unlike larger generators, LEGs are not in a position to manage their imbalance risk as explained above. Since LEGs generally cannot influence the balancing process or benefit from it, it is discriminatory for them to suffer imbalance charges on the same basis as larger generators and, as pointed out in paragraph 5 of the P95 proposal, it would be fair and therefore not discriminatory for them to pay imbalance charges as if the market were in balance. This would be the effect of the neutral cash out price being an average of SSP and SBP (see also the answer to question 2 above). Also, the balancing and settlement system is not currently cost reflective for LEGs; costs are treated as being incurred on the same basis in respect of larger generators and LEGs, regardless of the fact that their different characteristics mean that the effect of this is to discriminate against LEGs. For example, it was reported by a number of the respondents to the DTI's consultation of November 2001 that NGC had indicated that plant below 100 MWE would not have a major impact on balancing the system. The proposer understands that this remains NGC's view; yet LEGs are still subject to imbalance prices on the same basis as their larger counterparts.</p> <p>The proposed modification recognises the difference between large generators and LEGs by applying different rules to</p>

Q	Question	Response	Rationale
			different classes of generator. The effect of this would be to end the existing undue discrimination currently suffered by LEGs and thereby to promote effective competition in the generation and supply of electricity.

Q	Question	Response	Rationale
10.	<p>The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the Assessment procedure:</p> <p>(a) Option A: LEG Rebate Agent  (b) Option B: LEG Trading Party  (c) Option C: LEG Account  (d) Option D: LEG Neutral Capacity Band</p>	<p>Yes  Yes  Yes  Yes</p>	<p>SHP is pleased to note that the Modification Group has been able to propose four valuable implementation options. Although we do not believe that at this definitions stage any of the options need to be eliminated, SHP believes that the Modification Group should be able to identify the criteria by which the best implementation option can be selected. These criteria can be summarised as follows –</p> <ul style="list-style-type: none"> <li>- the extent to which the implementation arrangement accurately reflects the purpose of the proposed modification;</li> <li>- the simplicity with which the implementation method chosen can be applied to LEGs registered in SVA and LEGs who register themselves in CVA;</li> <li>- the extent to which the method of implementation causes undue administrative burdens being placed on LEGs or other parties;</li> <li>- the speed of implementation.</li> </ul> <p>There may be a conflict between these criteria, particularly in relation to speed of implementation. The evidence presented to the Modification Group has included evidence of the need to act urgently to alleviate the effect on LEGs of the barriers described in the proposed modification. However, the implementation method chosen should provide the right balance of incentives on LEGs and licensed suppliers in particular and be as free as possible of anomalies connected with its operation. The latter consideration may imply a longer period to implement the proposed modification than is consistent with the level of urgency involved and a balanced judgement will need to be</p>

Q	Question	Response	Rationale
			applied to this issue.
11.	<b>Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?</b>	Yes	The proposer wishes to ensure that P95 is dealt with as urgently as possible at each stage of the modification process. It should be clear from the evidence set out in Appendix A6 of the P95 Submission (for example the £60 million write down undertaken by the proposer) that the financial effects felt by LEGs in operating under NETA have been, and continue to be, severe. It follows that the longer the current system is allowed to continue without appropriate remedial action, the more severe these effects will be on LEGs. The anti-competitive impact of NETA's effect on LEGs is dealt with in detail in Paper B of the P95 Submission, as well as in the appropriate section of the proposal. In the interests of the better facilitation of the applicable BSC objective to promote effective competition in the generation and supply of electricity, the current position should be addressed by the implementation of this modification. The Modification Group is also aware that the need for urgency caused P95 to be introduced as a measure which might be superseded by others addressing how the barriers referred to in P95 may be removed or lowered, rather than avoided.
12.	<b>Are there any further comments on Modification Proposal P95 that you wish to make?</b>	Yes	The Modification Group's attention is drawn to the contents of Appendix A5 to the P95 Submission, which identifies a number of areas where the proposer believes the conclusions of Ofgem's One Year Review to be seriously misleading. This is a material issue given that, in considering the merits of the points raised in the various submissions in support of P95, the Modification Group will inevitably be influenced by how it perceives the effect of NETA on such important matters as output, investment,

Q	Question	Response	Rationale
			<p>pricing and liquidity for the LEG sector. The proposer is concerned to ensure that the Modification Group is aware that there is a serious discrepancy between Ofgem's conclusions on these important matters and those of the proposer. The proposer would therefore ask that full weight is given to the content of Appendix A5; for example, the proposer believes that Appendix A5 demonstrates that in regard to the prices received by LEGs under NETA, Ofgem's conclusions are at variance even with its own figures.</p>



## P95\_DEF\_005 – LE Group

BSC Parties and other interested parties are invited to respond to this consultation expressing their views with respect to the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

<b>Respondent name</b>	LE Group
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	Please list all Parties responding on behalf of (including the respondent company if relevant). London Electricity Group Plc, London Electricity Plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Network Plc and Eastern Power Network Distribution Ltd.
<b>Role of Respondent</b>	Licensed Generator/Supplier/Distribution Business

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	Any imbalance price modification should encompass all market participants. In producing a system that will give more agreeable imbalance price to one set of participants and the current more disagreeable price to the rest of the market the modification will undermine facilitation of competition in generation.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes/No	Please give details
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes	Please give rationale for each  See below. a)
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes	b)
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c)
4 d)	Other	Yes	d) As the issues highlighted in the consultation report are significant to small generators we believe that the consideration on a size limit would be reasonable for this modification.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?		We are unable to assess this as it has not been made clear what the enduring solution would be if this modification is an interim solution. Based on our anticipation of the large cost for implementation it would seem inefficient to have only a short period of time.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	No	Although we appreciate that in the early stages of NETA the imbalance costs were excessively high and volatile, they have stabilised and decreased now.
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	The modification does not address the perceived issues cited as reasons for the changes.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	It seems that the modification is aimed towards subsidising LEGs for the perceived defects, but does not address the root cause behind them.

9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	It discriminates against licensed generators and demand customers by treating them differently for their imbalance positions.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	Please give views on each option:  As a general comment, we believe that all the options should be further considered before a firm judgement is made on their suitability.
10 b)	Option B: LEG Trading Party	Yes	
10 c)	Option C: LEG Account	Yes	
10 d)	Option D: LEG Neutral Capacity Band	Yes	
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes/No	If YES please give details
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	It is our belief that many of the problems and expense that LEGs cite as barriers and issues could be alleviated by auctions –similar to the NFPA- for their capacity with standard contracts. We are also concerned about the potential for BSC Parties with LEG subsidiaries to use them to maximise their imbalance benefits by taking long or short positions with their portfolio, which will have a direct impact on RCRC payments across the market.

## P95\_DEF\_006 – Scottish Power

BSC Parties and other interested parties are invited to respond to this consultation expressing their views with respect to the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

<b>Respondent name</b>	Man Kwong Liu
<b>BSC Party</b>	<b>Yes</b>
<b>Responding on Behalf of</b>	Please list all Parties responding on behalf of (including the respondent company if relevant). <i>ScottishPower UK Plc.; ScottishPower Energy Trading Ltd.; ScottishPower Generation Ltd.; Scottish Power Energy Retail Ltd.; SP Transmission Ltd.</i>
<b>Role of Respondent</b>	(Licensed Generator/Licence Exempt Generator/Supplier/Distribution Business/Other) <sup>2</sup> All

Q	Question	Response <sup>1</sup>	Rationale
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<sup>2</sup> Delete as appropriate

1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	ScottishPower recognises that small generators with unpredictable output have experienced some difficulties since the advent of NETA. While wholesale prices have dropped in general, it is arguable that the impact on small players has been disproportionate because of their relative size. However, recent changes to the trading rules, specifically BSC modification P12 (Reduction of Gate Closure to 1 hour), may be helpful in this regard and should be given some time to have an impact. In addition, it must be recognised that if a class of market participants seeks to create a separation within the trading rules applicable only to itself, this gives rise to discrimination. The BSC Panel has an objective to ensure that the BSC is “given effect without undue discrimination between Parties or classes of Party” (Section B1.2.1 (c)) and the principle behind P95 seems to subvert that objective. In this respect at least, P95 cannot be considered to promote effective competition in generation and supply.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	See comments above. There is no clear justification for instituting a separate imbalance price regime to cover a particular class of BSC Party.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	No	See comments in answer to question 1

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes/No	Please give rationale for each a) See comments in response to question 1. The intention to apply the neutral price to the imbalance exposure of only a select group of BSC Parties indicates that this modification would have a discriminatory impact.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes/No	b) See comments on 4a) above.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes/No	c) See comments on 4a) above.
4 d)	Other	Yes/No	d) See comments on 4a) above.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	No	See comments in response to question 1. It would be inappropriate for a different imbalance price regime to apply to a select group of BSC Parties for any length of time, let alone on an enduring basis, as this would tend to perpetuate any discrimination.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	No	See comments in question 1. The commercial impact of NETA, in terms of a reduction in wholesale prices in general, has impacted all market participants. At the same time, BSC modifications aimed at facilitating the participation of small players in the Balancing Mechanism and reduction of their exposure to imbalance price risk through consolidation services have been approved (P7, P55 & P67). It is, therefore, unnecessary for small generators to seek to create a separate imbalance price regime applicable only to them, as appears the case with P95.

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	See comments in questions 1 & 6. In terms of the imbalance pricing regime currently in place, it would be appropriate to consider perceived defects through the Pricing Issues Standing Group (PISG) which should shortly be in place. The PISG should be expected to assess if there are defects and, in time, produce a holistic solution, which can form the basis of a BSC modification.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	See comments in questions 1 & 7. P95 appears to have a discriminatory impact. It would be more efficient in both cost and implementation terms, and for the benefit of all BSC Parties, if perceived defects are assessed by the PISG and a holistic solution produced.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	See comments in questions 1 & 8.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes/No	Please give views on each option: As we do not support the intent behind P95, we will not pass comment on any of the implementation options at this stage. However, should P95 progresses to the assessment stage, the options should be explored to establish which one is the minimum cost solution, as well as having minimum impact on both central systems and participants' systems.
10 b)	Option B: LEG Trading Party	Yes/No	See comments on 10a) above.
10 c)	Option C: LEG Account	Yes/No	See comments on 10a) above.
10 d)	Option D: LEG Neutral Capacity Band	Yes/No	See comments on 10a) above.

11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes/No	If YES please give details See <u>all</u> our comments above.
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes/No	Please give your comments



## P95\_DEF\_007 – Innogy

BSC Parties and other interested parties are invited to respond to this consultation expressing their views with respect to the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

<b>Respondent name</b>	Bill Reed
<b>BSC Party</b>	<b>YES / <del>NO</del></b> <sup>1</sup>
<b>Responding on Behalf of</b>	Please list all Parties responding on behalf of (including the respondent company if relevant). Innogy plc, npower Limited, Innogy Cogen Trading Limited, Innogy Cogen Limited, npower Direct Limited, npower Northern Limited, npower Yorkshire Limited
<b>Role of Respondent</b>	(Licensed Generator/Licence Exempt Generator/Supplier/Distribution Business/Other) <sup>3</sup> Licensed Generator & Supplier

Q	Question	Response <sup>1</sup>	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	<del>Yes</del> /No	<p>Please give rationale:</p> <p>Although Innogy supports a single cashout price, Modification P95 would lead to undue discrimination in favour of a certain class of market participant and distort the market. Furthermore, licenced exempt generators are not BSC parties and the proposed modification will result in a cross subsidy from BSC parties to certain non BSC parties in relation to implementation costs. A further cross subsidy would be created through adjustments to residual cashflow payments to reflect the payments of a neutral price to certain parties. Modification P95 does not, therefore, better facilitate the applicable BSC Objectives.</p>

<sup>3</sup> Delete as appropriate

2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	<del>Yes</del> /No	Please give details:  Whilst we advocate a single imbalance price, we feel that the proposed price setting methodology for a neutral price is inappropriate since it is not cost reflective. As noted in our response to P74, in any one settlement period, the system can only be either long or short for the purpose of electricity balancing under the BSC. Consequently, a single price better reflects the costs of actions taken by NGC to ensure that the system remains in electricity balance (i.e. it is the cost of buying or selling energy), but there is no obvious logic to basing it on the average of SSP and SBP.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	<del>Yes</del> /No	Please give rationale:  For the purpose of this modification the term "Exemptable Generating Plant" as currently defined under the BSC (Section K1.2.2(c)) should be used to define a Licence Exempt Generator.
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes/ <del>No</del>	Please give rationale for each  The Modification should be applied to "Exemptable Generating Plant" as currently defined under the BSC (Section K1.2.2(c)).
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	<del>Yes</del> /No	The Modification refers to Licence exempt Generators only and therefore cannot address Licence Exempt Suppliers

4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	<del>Yes</del> /No	The Modification The Modification refers to Licence exempt Generators only and therefore cannot address small suppliers. Even if it did, we do not believe this would meet the relevant objectives for the reasons cited in response to Q1.
4 d)	Other	<del>Yes</del> /No	d) The Modification refers to Licence exempt Generators only and therefore cannot address any other market participants.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes/ <del>No</del>	Please give criteria:  The defects as identified in the Modification are not addressed by the proposed solution since the Modification simply provides relief in relation to costs that arise as a result of perceived defects elsewhere in the structure of the market (e.g. the assertion that there is a lack of competition in suppliers in relation to LEG demand).  In the absence of any defined criteria or proposals to address the actual defects, Modification P95 must be regarded as an enduring "cross subsidy" from BSC parties to a certain class of market participant.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	<del>Yes</del> /No	Please give evidence:  No evidence has been presented to demonstrate that the Modification P95 itself addresses a clear defect in the BSC. While there may be issues in relation to the structure of the market that result in specific issues for LEGs in relation to trading opportunities, all market participants are currently exposed to the vagaries of electricity forward market prices. If electricity forward prices were to rise, or single cashout introduced, then many of the current issues for LEGs would be less significant.

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	<del>Yes</del> /No	Please give rationale:  This question is really outside the scope of Modification P95. However, as noted above, changes to market structure may be appropriate and this could include Modifications to the BSC,
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	<del>Yes</del> /No	Please give rationale:  P95 does not address the specific defects identified in the Modification Proposal and an enduring "cross subsidy" is not an appropriate approach to address them.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes/ <del>No</del>	Please give rationale:  P95 singles out at set of market participants and provides a cross subsidy. A single cash out would be a more appropriate way of ameliorating imbalance costs for LEGs without discrimination.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	<del>Yes</del> /No	Please give views on each option:  This is a complex solution to the problem of cashing out LEG imbalances at a neutral price. In particular, it will be difficult to define and audit the appropriate capacity for the purposes of cash out and require some for of "expected output notification" so that a cash out volume can be identified. Given the administrative complexity, it is likely that only larger LEGs would benefit from this approach.

10 b)	Option B: LEG Trading Party	<del>Yes</del> /No	This option creates further problems when compared with option A. In particular, it will require each existing trading party with a contract with a LEG to set up and maintain a new BSC party. This will be expensive since it will be required to post credit and set up new "LEG contract notifications" systems. Furthermore, it will also require some form of capacity register for LEGs and a notification process for expected output. The administrative complexity would mean it is likely that only larger LEGs would benefit from this approach.
10 c)	Option C: LEG Account	<del>Yes</del> /No	This option may be more feasible than either option A and B but still requires the development of new systems and process. As a result it would be administratively complex and it is likely that only larger LEGs would benefit.
10 d)	Option D: LEG Neutral Capacity Band	<del>Yes</del> /No	This approach was rejected in the context of P26 and while administratively simple is open to potential gaming of LEG capacity in order to benefit from neutral cash out.
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes/ <del>No</del>	<p>If YES please give details:</p> <p>The issue of cost recovery requires further thought and definition, particularly in the light of the Ofgem decision on P66. We would suggest that the market participants that benefit from the proposed modification should pay in full for the costs of implementation. This would require cost recovery from non BSC parties through a cost reflective fee from users of the service.</p>

12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes/ <del>No</del>	<p>Please give your comments:</p> <p>In addition to being flawed on economic and competition grounds, the P95 Modification Group has failed to identify a workable business process to support the proposed modification, and we would suggest that either further definition in this area is required or the Modification should be rejected on this basis alone. The Modification is therefore contrary to objectives (c) and (d) of the BSC in relation to “promoting efficiency in the implementation and administration of the balancing and settlement arrangements” and “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”.</p>
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**P95\_DEF\_008 – SmartestEnergy**

BSC Parties and other interested parties are invited to respond to this consultation expressing their views with respect to the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

<b>Respondent name</b>	Robert Owens
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	SmartestEnergy
<b>Role of Respondent</b>	(Other) <sup>4</sup>

Q	Question	Response <sup>1</sup>	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price better facilitates the applicable BSC Objectives?	No	These issues primarily relate to the competitive position of LEGs within the market. The BSC was not designed to cater for positive discrimination against any individual party or group.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	This is a rather simplistic attempt to arrive at a neutral cash out price.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	

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<sup>4</sup> Delete as appropriate

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	No	a) Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	No	b) Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c) Positive discrimination is not a function of the BSC. The market should be allowed to develop its own mechanisms for dealing with any problems faced by such parties.
4 d)	Other	No	d) Demand Users, if not included, would be discriminated against and it would appear that have not been considered.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	No	An enduring solution would be a market derived one, and the work involved in implementing P95 for the short term is disproportionate
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes/No	Some of the problems identified are difficulties for all participants, not just LEGs. We would encourage additional solutions be sought that allow the maximum benefit of being embedded to be passed through to the LEG. Market agents should be allowed to provide solutions to this and any other problems and could be encouraged by the reduction of administrative burdens"



7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	This is not a function of the BSC, this is something the market should provide.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	It is however inefficient and discriminatory
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	A modification of any form is not the appropriate mechanism. NETA is still relatively new and the market still needs time to develop fully before any such changes are considered.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	No	Please give views on each option:  We do not believe it to be an appropriate modification for the reasons stated previously
10 b)	Option B: LEG Trading Party	No	We do not believe it to be an appropriate modification for the reasons stated previously
10 c)	Option C: LEG Account	No	We do not believe it to be an appropriate modification for the reasons stated previously
10 d)	Option D: LEG Neutral Capacity Band	No	We do not believe it to be an appropriate modification for the reasons stated previously
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	How will LEGs be treated in the Balancing Mechanism under such a regime? In providing a solution of sorts for CHP and other such unpredictable generation does this Modification discriminate against more flexible LEGs effectively reducing their value as balancing plants?
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	Positive discrimination is a political issue and the subject of levies/subsidies/legislation not a matter for the BSC introducing elements of market distortion.

## P95\_DEF\_009 – Nedalo

<b>Respondent name</b>	Andrew Gardner
<b>BSC Party</b>	<b>NO</b>
<b>Responding on Behalf of</b>	Nedalo (UK) Limited
<b>Role of Respondent</b>	LEG

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	The modification will facilitate the promotion of effective competition in the generation and supply of electricity, and sale and purchase of electricity. Removal of barriers to the operation of existing Licence Exempt Generators (LEGs).  CHP exports to the market fell by 37% between 2000 and 2001 and the fall in load factor between 2000 and 2001 is equivalent to losing over 800 MW <sub>e</sub> of installed CHP capacity.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes	An average price is a simple definition, as it will tend to represent the imbalance price in an efficiently balanced market.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes	Exempt plant is likely to be subject to similar obstacles under NETA as those outlined for LEGs, therefore these parties should be considered under the Assessment procedure.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt	Yes	Licence Exempt Suppliers are likely to face similar disadvantages

	Generators		under NETA to those faced by LEGs. It is therefore appropriate to consider such parties under the Procedure.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes	
4 d)	Other	No	
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	As set out in Section1, Nedalo believes that P95 will better address a number of the effects of NETA upon LEGs. A sunset clause is not appropriate. Any cessation, in whole or part, of the arrangements proposed under P95 should only be implemented when it is evident that the prevailing conditions under the Code no longer present an adverse or discriminatory effect for LEGs.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	The evidence that has emerged in DUKES 2002, as set out in response to Question 1, provides a clear indication that NETA has introduced a barrier to market participation by LEGs. The discussions of the DTI's Consolidation Working Group suggested evidence of barriers including an asymmetry of market power between LEGs and suppliers and through a net reduction in embedded benefits. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee's recent report <i>A Sustainable Energy Strategy? Renewables and the PIU Review.</i> and the earlier 2002 report of the Trade and Industry Select Committee <i>Security of Energy Supply</i> .
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	The barriers to LEGs described are a fundamental, intrinsic consequence of the existing provisions of the Code. It is therefore logical and appropriate that these barriers should be addressed directly through the Code, in preference to an external approach that permits the existing distortions or defects to persist. In presenting an approach that better facilitates the objectives of the Code, a more efficient, enduring solution is likely to result.

8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	<p><b>Cost reflectivity.</b> The present dual cash-out price is not cost-reflective, since at any period in time the market can only be short and long and hence only a single clearing price can pertain. Furthermore, the dual cash-out arrangement makes no allowance for the natural balancing effect between parties of a heterogeneous, interconnected network, and hence tends to recover costs in excess of the actual costs of intervention necessary to balance the system. A single, average price will ensure that the clearing price for LEGs is closer to the optimal clearing price for a balanced market over a greater proportion of periods, thereby improving cost-reflectivity.</p> <p><b>Illiquidity.</b> The OTC markets and power exchanges do not present a practical option for managing the risks of LEGs, owing to the granularity of the market, the lack of liquidity and the transaction costs. In presenting a viable alternative, P95 will mitigate the barriers presented by these factors.</p> <p><b>Embedded benefits.</b> Through ameliorating the risk and consequent costs of managing this risk under the present dual cash-out arrangements, P95 will improve the commercial position of LEGs with respect to suppliers, thereby allowing them to recover a greater proportion of embedded benefit that they bring to the system.</p> <p><b>Administrative costs.</b> P95 will mitigate the risks presented by the dual cash-out arrangements. In doing so, it will reduce the administrative costs associated with managing these risks either directly through participation trading or indirectly through risk management services procured via a third party. Such costs are regressive and discriminate most against the smallest parties.</p>
9	Do you believe that P95 unduly discriminates for / against a	No	P95 corrects for aspects of the present arrangements that - in the

	particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?		absence of any inherent correction mechanism within the market - discriminates against the LEGs. The existing discrimination occurs as a consequence of the common application of a set of market rules; a process that fails to recognise fundamental variation in the capability of different parties to respond to these rules. The proposals represent a correction of an existing discrimination, not the introduction of a new one.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	All the proposed options have merit and would appear, as they are set out in the consultation, to present a solution to the barriers described in the Proposal and to better facilitate the BSC objectives. All should be considered under the Assessment process. Prime considerations under the Assessment process should be the need for prompt introduction of the mechanism simplicity and low administrative costs.
10 b)	Option B: LEG Trading Party	Yes	See 10 a)
10 c)	Option C: LEG Account	Yes	See 10 a)
10 d)	Option D: LEG Neutral Capacity Band	Yes	See 10 a)
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	As set out in 10, the need for the prompt introduction of a solution is vital to offset the serious and persistent damage that NETA has inflicted upon LEGs in general, and CHP in particular.
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	As set out in response to Question 1, data published by DTI for the year 2001 has demonstrated the extent of the negative impact that NETA has brought upon existing CHP plant and upon new investment in the sector. The breadth of responses upon which this survey has drawn suggests that it represents a more accurate reflection of the true situation facing CHP than that contained in <i>The review of the first year of NETA</i> , published by OFGEM IN July.

## P95\_DEF\_010 – RWE Trading Direct Ltd

<b>Respondent name</b>	RWE Trading Direct Limited
<b>BSC Party</b>	<b>Yes</b>
<b>Responding on Behalf of</b>	RWE Trading Direct Limited
<b>Role of Respondent</b>	(Supplier)

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	As a very general principle, there may be circumstances in which certain classes of small generator could be treated separately in respect of imbalance prices in order to better facilitate the BSC objective of “promoting effective competition in the generation and supply of electricity”.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	We would not support the current definition of the neutral price without investigating alternatives. The current definition of the neutral price would give LEGs (some of whom are relatively large) a guaranteed price for their output at a significant premium to market price (according to historic data) reducing their incentive to contract or balance.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	No	We would like to see some sort of size limit applied. Certain LEGs are relatively large and have controllable outputs – as a result they may be more competitive under the existing imbalance rules than small, unpredictable generators who cannot mitigate imbalance risk.
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the	No	Please give rationale for each a) Not without reference to the size of the generator.

	Code)		
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	No	b) The barriers detailed by the proposer are stated in relation to LEGs, not suppliers, and it is not appropriate to discuss supplier issues under this modification.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c) The barriers detailed by the proposer are stated in relation to LEGs, not suppliers, and it is not appropriate to discuss supplier issues under this modification.
4 d)	Other	Yes	d) We would like to see some sort of size limit applied (eg 10MW). Certain LEGs are relatively large and have controllable outputs – as a result they may be more competitive under the existing imbalance rules than small, unpredictable generators who cannot mitigate imbalance risk.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	No	A certain time limit should be set (perhaps a year?) and an assessment made at the end of that period as to whether the competitive environment for those generators affected by any changes to the BSC had improved. A decision could then be taken as to whether the transitional amelioration should continue, or be deemed to be unnecessary.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	There is no doubt that LEGs have suffered from the decline in wholesale prices, but this is not a matter for the BSC, and affects all generators regardless of size. It is our view that contracts are available with suppliers for LEGs, and that these do offer a competitive price (particularly for LEGs with predictable outputs) together with a sharing of embedded benefits, the split of which generally favours the LEG.  We do accept, however, that the registration of the majority of LEGs in SMRS does restrict their contracting options and that recent changes to the BSC (P7, P67 and P55) do not appear to have had an appreciable impact.

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	Legislative measures have already been taken (CCL, RO) to place obligations on suppliers to purchase from renewable and CCL exempt generators. Ultimately these may be the sort of measures required, and as such are out of the scope of the BSC. However, whilst a modification to the BSC may not be the most <i>appropriate</i> means to address the perceived defects, this route should still be assessed so that all alternatives are explored.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	It addresses indirectly the cost reflectivity defect in respect of imbalance prices, insofar as exposure to imbalance prices weakens the contracting abilities of LEGs. We do not believe that the modification addresses the issues of administrative burdens, lack of liquidity or granularity in the market or embedded benefit realisation. Fundamentally, registration in SMRS restricts LEGs' commercial options as the treatment of LEG outputs as negative demand in a Suppliers consumption account at GSP level means that embedded benefits may be realised only with suppliers with sufficient GSP group demand.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	As it currently stands, yes, as a large LEG may have as predictable an output as a centrally connected generator, but would be subject to a less penal cash-out regime. Again, the size and predictability of the generator is relevant.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	Please give views on each option:  Could very easily be manipulated by suppliers and LEGs submitting inflated LEG contract notifications to the rebate agent to take advantage of the less penal imbalance charges.
10 b)	Option B: LEG Trading Party	Yes	Administratively complex and also loses the consolidation benefit between embedded generation and supply portfolios, making LEG contracts less attractive to suppliers. There could be credit issues in relation to the LEG Trading Party.
10 c)	Option C: LEG Account	Yes	Potentially involves major changes to Central Systems and



			removes consolidation benefit between embedded generation and supply portfolios.
10 d)	Option D: LEG Neutral Capacity Band	Yes	If there is an acceptance in this option that parties are simply cashed-out at the neutral price on a deadband volume of LEG generation, issues surrounding verification of LEG volumes would be removed. However, it begins to look like a subsidy from RCRC to non-BSC parties (in fact, all the options could have this effect).
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	No	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	LEGs are an important part of the mix of generation in the market and must increase in importance if government targets for CHP and renewables are to be met. It may be possible that changes to the BSC could ameliorate the position of certain LEGs in a manner that would not be unduly discriminatory to other market participants, but this may only be achievable through some sort of size limit above which LEGs would be treated in the same manner as centrally connected generators. In this sense, we do feel that the modification with all its alternatives should be taken to the assessment phase to ensure that the BSC route is fully explored. The effect of all the alternatives on the RCRC should also be carefully monitored to avoid any possibility of a cross subsidy from other market participants to LEGs. However, it may be that action outside the BSC in the form of subsidies or obligations is required fully to address the concerns raised by the proposer, such action obviously being outside the scope of the P95MG.

## P95\_DEF\_011 – NGC

<b>Respondent name</b>	Richard Lavender
<b>BSC Party</b>	<b>YES / <del>NO</del></b> <sup>1</sup>
<b>Responding on Behalf of</b>	Please list all Parties responding on behalf of (including the respondent company if relevant). National Grid
<b>Role of Respondent</b>	( <del>Licensed Generator/Licence Exempt Generator/Supplier/Distribution Business/Other</del> ) <sup>5</sup> Transmission Company

Q	Question	Response <sup>1</sup>	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	<del>Yes</del> /No	Please give rationale We have concerns that allowing LEGs access to more benign imbalance prices amounts to undue discrimination. We also note that all of the proposed implementation solutions have highlighted the indirect impact the BSC has on LEGs. The BSC by definition must apply to BSC Parties and any implementation of P95 assumes any benefit will be passed through to LEGs. We are not convinced that P95 would ensure that this happens.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes/ <del>No</del>	Please give details We agree that this is the most appropriate definition in the context of this modification.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes/ <del>No</del>	Please give rationale We agree that this definition is consistent with the intent of the modification proposal.

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<sup>5</sup> Delete as appropriate

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes/ <del>No</del>	Please give rationale for each a) We note that BSC K 1.2.2 (c) defines Exemptable as relating to Generating Plant and believe this option should be assessed further against the modification group definition as it has the benefit of an existing definition.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	<del>Yes</del> /No	b) We believe that suppliers are explicitly excluded within the intent of this modification.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	<del>Yes</del> /No	c) see above answer
4 d)	Other	<del>Yes</del> /No	d) Any alternate definition of a LEG will have to be defined within the BSC and will suffer additional complications that do not affect option (a).
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes/ <del>No</del>	Please give criteria We are unclear as to the trigger event that would make the enduring implementation of P95 inappropriate. The Proposer's stated belief that P95 is not "the best means of removing the barriers" is liable to undermine the arguments for implementation.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes/ <del>No</del>	Please give evidence Whilst there is evidence that market participants believe NETA has introduced the defects listed; the proposed solution is removal of exposure to non-cost reflective imbalance prices. The Proposer argues that all other "barriers" will be alleviated by this single action. We argue that if the main problem is a market that is non-cost reflective then this affects all participants and the solution is to modify the imbalance price calculation as a whole. (ref: P74/78/90)

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	<del>Yes</del> /No	Please give rationale As stated above, we believe it can only address market non-cost reflectivity and we believe P78 better achieves this objective.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	<del>Yes</del> /No	Please give rationale As stated above, alleviating non-cost reflective imbalance prices for one category of Generator does not make the market as a whole cost reflective.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way or is there an alternative Modification that could be considered?	Yes/ <del>No</del>	Please give rationale As the proposed solution argues that it will alleviate the lack of cost reflectivity for LEGs, even though the issue affects all participants, we believe that it does unduly discriminate and therefore does not better meet a BSC Panel Objective (BSC B 1.2.1 (c)). As stated above, we believe that cost-reflectivity is better addressed by changing the pricing methodology, rather than giving exemptions to certain groups.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes/ <del>No</del>	Please give views on each option: All the options are valid Alternatives to the Original modification and may be carried forward to the assessment procedure, however, the Panel and the Modification group will ultimately have to come to a view on whether P95 better facilitates the BSC Objectives.
10 b)	Option B: LEG Trading Party	Yes/ <del>No</del>	See above.
10 c)	Option C: LEG Account	Yes/ <del>No</del>	See above.
10 d)	Option D: LEG Neutral Capacity Band	Yes/ <del>No</del>	See above.

11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes/ <del>No</del>	If YES please give details With the Proposer so closely defining the modification to apply solely to LEGs; is it possible for any P95 alternative to apply to the market as a whole, whilst benefiting LEGs as well?
12	Are there any further comments on Modification Proposal P95 that you wish to make?	<del>Yes</del> /No	Please give your comments

## P95\_DEF\_012 – British Gas Trading

<b>Respondent name</b>	BGT
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	
<b>Role of Respondent</b>	Supplier

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	We do not support this proposal.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	It is acceptable for the purposes of Assessment of this proposal although we would like clarification on whether this will include generation on domestic premises.
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	No	Please give rationale for each a)
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	No	b)

4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c)
4 d)	Other	No	d)
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	<p>Should this proposal be progressed further then it should be considered as an enduring solution. We fail to see how any proposal can be considered to better facilitate the applicable BSC objectives if it is transient. We do not agree that this will provide the appropriate incentive on the industry to provide a 'better' solution. Indeed there is no forum where such work can be carried out and the impact of the BSC is to be fully assessed.</p> <p>We do not support the use of a sunset clause. If any part of the Code requires changing this should be done through a Modification Proposal which allows proper assessment against the applicable objectives.</p>
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes/No	<p>The barriers to LEGs market participation that have been cited in the proposal and consultation are no different to those faced by all players. We agree that the imbalance prices seen thus far under NETA have been extreme. We have previously stated our support for market reform through Modification Proposal 78A. This will address many of the issues related to cost reflectivity and extreme imbalance prices for all market participants.</p> <p>We agree that LEGs are unlikely to have the same resources to cope with the administrative burden associated with NETA but we do not believe that this proposal will directly address this issue.</p> <p>Lack of liquidity in the market is also an issue faced by participants and not specific to LEGs.</p>

7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes/No	It may be appropriate to address some of these defects through the Code but we do not believe P95 is the appropriate tool through which to achieve these aims.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	The underlying 'defect' described by P95 appears to be that suppliers are passing through all of imbalance risk and none of the benefits of that the LEGs provide. This is a matter of contract between the LEGs and the suppliers, not with the Balancing and Settlement Arrangements, and cannot be addressed through a modification to the BSC.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	<p>This proposal discriminates in favour of LEGs. A mechanism to help LEGs should be found outside the BSC.</p> <p>The Balancing Mechanism prices should reflect the true value of this nature of power to the system (and if the BM is not cost reflective this is another issue that should be addressed separately). If this sort of generation needs to be supported (because of its renewable nature or a desire to promote CHP) then the support should be direct, not achieved indirectly by changing the rules of the system to falsely inflate the value of the power produced.</p> <p>Changing the system rules will benefit all LEG's - some of which are non-renewable and non CHP. Direct support can be targeted more effectively.</p>
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	No	Please give views on each option:



10 b)	Option B: LEG Trading Party	No	
10 c)	Option C: LEG Account	No	
10 d)	Option D: LEG Neutral Capacity Band	No	A similar modification proposal (P26) has already been discussed and rejected by the industry and Ofgem.
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes/No	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes/No	We do not support this proposal and do not believe it should be progressed to the Assessment Procedure. The defects identified by the Proposer will not be addressed through this proposal. Furthermore, both P74, P78 and P90 have considered in some detail the problems faced by all market participants due to high imbalance prices.

**P95\_DEF\_013 – Immingham CHP**

**P95 Definition Consultation Comments**

Thank you for the opportunity for commenting on the P95 definition consultation. A completed pro forma setting out our views is attached.

The current imbalance price setting rules fails to deliver the intended outcomes. In particular, they load energy imbalance charges, including some associated with system balance, on out of balance parties and unnecessarily increase market risk. The methodology is therefore punitive and penal to parties in imbalance, especially intermittent technologies.

Immingham CHP is not licenced exempt our interest in this matter arises primarily a renewables developer. However we are building the UK's largest CHP and believe that larger facilities face the same problem as smaller ones when they are dependent on inherently variable host demand. This modification should be expanded to include larger CHP and renewable projects where they chooses to opt in to such a scheme.

Please let me know if you would like further clarification on these comments.

**Maureen McCaffrey**

<b>Respondent name</b>	M McCaffrey (Commercial Manager)
<b>BSC Party</b>	Yes
<b>Responding on Behalf of</b>	Immingham CHP
<b>Role of Respondent</b>	Will be a market participant

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	The proposed modification will better facilitate the application of the BSC objective to promote effective competition in the generation and supply of electricity because it removes a barrier in the market that discriminates against intermittent technologies.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes	An average price is simple and easily derivable. <b><u>However, given the inherent volatility in SBPs under the current pricing rules , it is likely that average prices will be systematically higher than SSPs under dual cashout and be subject to peakiness arising from actions to correct the system being short. Arguably those benefits should only be available to notified long actions. Consequently consideration should be given to averaging the first bid and offer in the ordered stacks for the purposes of producing the single average price.</u></b>

3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	<b>No</b>	<b><u>We believe ring fencing the proposed arrangements to LEGs is too narrow, not least because of the arbitrary nature of the 50MW cut off under the licence exemption arrangements. All those with inherently unstable loads who choose to participate in the BSC should be eligible. We also believe that the proposal should be varied so that it is optional, not automatic. It is conceivable that certain types of participant with exemptible facilities may elect to stay with dual weighted pricing.</u></b>
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed.		Exemptible plant are likely to be subject to similar obstacles and commercial constraints under NETA as those outlined for LEGs. It is therefore appropriate that the application of the Modification to these parties should be considered under the Assessment procedure.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes	Licence Exempt Suppliers are, by virtue of their scale, likely to face similar disadvantages under NETA to those faced by LEGs and exemptable plant. It is therefore appropriate to consider such parties under the Procedure.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes	We do not have a view on the level though the principle embodied by 4 (a) suggests that consolidation opportunities would increase the lower the level.
4 d)	Other	No	-

5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	P95 will better facilitate applicable BSC objectives by addressing a number of adverse effects of the current pricing rules upon LEGs. It should be considered as an enduring solution.  A sunset clause is not appropriate, as the impacts it addresses are not time specific. It would be open to any participant to bring forward modifications if and when the conditions changed.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	NETA has, empirically, introduced a barrier to market participation by intermittent technologies. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee's recent report <i>A Sustainable Energy Strategy? Renewables and the PIU Review</i> .
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	The barriers to intermittent technologies should be tackled. This form of remedy through the BSC should not restrict Government and Ofgem in their consideration of the problems facing embedded generators, which need to be addressed further.

8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	<p><b>Cost reflectivity.</b></p> <p>A single, average price will ensure that the clearing price for <b>qualifying participants</b> is closer to the optimal clearing price for a balanced market over a greater proportion of periods, thereby improving cost-reflectivity.</p> <p><b>Illiquidity.</b></p> <p>The OTC markets and power exchanges do not present a practical option for managing the risks of smaller participants, owing to the lack of liquidity in the market place and the transaction costs. In presenting a viable alternative to trade, P95 will mitigate the deleterious effects presented by these factors.</p> <p><b>Embedded benefits.</b></p> <p>Through ameliorating the risk and consequent costs of managing this risk under the present dual cash-out arrangements, P95 will improve the commercial position of intermittent technologies and smaller participants with respect to suppliers, thereby allowing them to recover a greater proportion of embedded benefits.</p> <p><b>Administrative costs.</b></p> <p>P95 will mitigate many of the risks presented by the dual cash-out arrangements and provide a route to market. In doing so, it will reduce the administrative costs associated with managing these risks either directly through participation trading or indirectly through risk management services procured via a third party. Such costs discriminate disproportionately against the smallest parties.</p>
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9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	No	P95 corrects for aspects of the present arrangements that – in the absence of any inherent correction mechanism within the market – discriminates against intermittent technologies. The proposals represent a correction of an existing discrimination. In so far as the change would result in specific treatment for specific types of player, the discrimination is proportionate (i.e. it is not undue discrimination).
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	All the proposed implementation options have merit and would appear, as they are set out in the consultation, to present a solution to the barriers described in the Proposal and to better facilitate the BSC objectives. All should be considered under the Assessment process against a common set of criteria.
10 b)	Option B: LEG Trading Party	Yes	See 10 a)
10 c)	Option C: LEG Account	Yes	See 10 a)
10 d)	Option D: LEG Neutral Capacity Band	Yes	See 10 a)
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	<b><u>Under the Renewables Obligation, only suppliers are subject to the costs. It is for consideration whether costs arising from incentivising exemptible supplies should be similarly treated, and the cost of administering the arrangements through the beer fund targeted on suppliers only.</u></b>
12	Are there any further comments on Modification Proposal P95 that you wish to make?	No	

## P95\_DEF\_014 – Powergen

<b>Respondent name</b>	Paul Jones
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited & Diamond Power Generation Limited
<b>Role of Respondent</b>	Licensed Generator and Supplier

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	Expanded further in following boxes, but in summary: It is discriminatory. It creates a cross subsidy between participants. It increases suppliers' administrative burden with respect to LEGs. We do not agree with the perceived defect. It does not address the perceived defect.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes/No	No comment, given our fundamental disagreement with the principle of P95.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	It is clear from the proposal that this is intended to be restricted to Licence Exempt Generation, rather than small, unpredictable generation for instance.
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	No	Please give rationale for each  a) This would make it less discriminatory. However, even with this extension of the definition we disagree with the modification.



4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	No	b) Same comment as for a) above.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	c) Same comment as for a) above.
4 d)	Other	No	d) Same comment as for a) above.
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	P95 should be considered and assessed on whether or not it better meets the BSC objectives. If it is deemed to do so, then there should be no reason why it should be regarded as a transitory measure.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	No	<p>We have yet to see hard evidence to suggest that generators are disadvantaged purely by being exempt from the requirement to hold a generation licence. Licence exemptions allow smaller generators to avoid certain obligations (such as signing up to the BSC) that licensed generators must meet and to that extent they actually have less to do to enter the market than a licensed generators. In addressing the claimed barriers in turn:</p> <p>Cost reflectivity. There was much discussion, and disagreement, about the cost reflectivity of current cash out prices in the assessment of P74 and P78. This mainly focussed on the correct split between energy and system balancing actions, which comes down to a subjective opinion as it is impossible to fully distinguish the two in some cases. Even if you take the view that present prices are not cost reflective, it is not apparent that this would disadvantage LEGs more than other generators. Clearly we would not disagree that LEGs are finding the market difficult at the moment and there have been many representations made to this effect. However, this is true for licensed generators as well as exempt generators and is due to the low levels of wholesale electricity price relative to fuel costs. We do not accept that exempt generators have been particularly hit and have not seen a</p>

		<p>specific argument to prove this.</p> <p>Embedded benefits. The argument here is that LEGs are not acquiring a sufficient share of embedded benefits from suppliers as the suppliers are in the stronger bargaining position. A myth surrounding the sharing of embedded benefits is the view that the generator should always receive a share of the benefit from the supplier regardless of the balance of supply and demand. This is not so. In an equilibrium situation no benefits would be shared. Embedded benefits arise from suppliers and generators embedded in a distribution network trading with each other below the GSP and, therefore, both avoiding charges associated with use of the transmission system. The generator's embedded benefit is the ability to avoid the charges, as is the supplier's. Presently embedded generators are a rare commodity so suppliers pay them a consideration or share the embedded benefits to acquire their business. This can be as high as a sharing of 80% of the benefit. Therefore, generators presently are in the stronger position. If suppliers were in a stronger bargaining position, it would be fair to assume that generators would have to share their benefits with them to acquire their business.</p> <p>There probably is too low liquidity in the market for small volumes of energy. However, if LEGs were to sell through the exchanges, surely these would have to be notifiable under the BSC for it to be of use to the supplier? The generator would then become subject to imbalance charges at SBP and SSP. Therefore, if there were sufficient liquidity in small volumes in the market, how would this protect LEGs from exposure to the dual prices?</p> <p>Administrative burdens. We accept that the administrative costs of participating under the BSC may be prohibitive to small parties. Therefore, they do not have to sign up to the BSC unless they require a licence. This is the attraction of being licence exempt.</p>
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			As in 3 above, if they did participate they would be exposed to cash out prices of SBP and SSP anyway. We are therefore not sure how this would help.
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	No	If there is an issue with cost reflectivity of prices then the BSC is the appropriate place to address it. However, as stated above no clear argument has been made that suggests the price is less cost reflective to LEGs so this issue appears irrelevant. A change to the cash out regime will have no effect on the levels of embedded benefits which will be shared. Low liquidity will not be affected by a change in the cash out regime. Administrative costs of joining the BSC will not be affected by a change in the cash out regime.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	No	P95 simply means that an amount of money will be refunded to suppliers who contract with LEGs and this will be reflected in the price that the LEGs can command. As mentioned in the answer to Q7 above, it does not address the perceived defects and only represents a shifting of wealth between some participants to others for no cost reflective purpose. Therefore, it provides a cross subsidy and creates a distortion in the market.
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	Yes	As P95 refers purely to Licence Exempt Generators it discriminates against all other parties, be they Licensed Generators, Licensed Suppliers or Licence Exempt Suppliers.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	No	Please give views on each option:  This would significantly increase the administrative burden for Parties dealing with LEGs. Additionally, it appears to be a considerable amount of work under the BSC to create the new agent and a significant change to central systems. As one of the

			methods suggested by the proposer this should be considered further if the proposal goes to assessment. However, we do not feel that this modification proposal should be taken further in the process and should go straight to report stage with a recommendation that it be rejected.
10 b)	Option B: LEG Trading Party	No	Represents a large change within the BSC to create the special Trading Party or agent. Appears to be a significant increase in Party administrative burden too to deal separately with the LEG Trading Party and to make the necessary declarations of generation capacity. Again, as one of the methods suggested by the proposer this should be considered further if the proposal goes to assessment.
10 c)	Option C: LEG Account	No	Represents a large change to central systems and to the BSC. Additional burden for Parties will be created to manage an extra account and to make the declarations of maximum capacity.
10 d)	Option D: LEG Neutral Capacity Band	No	It is difficult to see how this would work in practice as not much definition has been provided, but would appear to be similar to modification proposal P26 which was rejected by the Authority because it created a cross subsidy between parties.
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	No	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	No.	

## P95\_DEF\_015 – CHPA

<b>Respondent name</b>	Graham Meeks
<b>BSC Party</b>	<b>NO</b>
<b>Responding on Behalf of</b>	The Combined Heat and Power Association
<b>Role of Respondent</b>	Other – Trade Association

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	<p>The proposed modification will better facilitate the application of the BSC objective to promote effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in sale and purchase of electricity.</p> <p>This will be achieved through removal of certain of the barriers to the operation of existing Licence Exempt Generators (LEGs), and the development of new LEGs, that NETA has introduced. The maintenance of these barriers under NETA is having a damaging and discriminatory effect upon LEGs, as compared to other generators, thereby inhibiting competition. In removing these discriminatory barriers LEGs are better able to compete, resulting in better facilitation of the BSC objective.</p> <p>Data collated by the Office for National Statistics and published by DTI in <i>the Digest of UK Energy Statistics 2002</i> demonstrates that for the c. 940 CHP generators included in the survey:</p> <p>Investment has collapsed by 95%, from a high for the post-privatisation era of 844 MW<sub>e</sub> in 2000, to a low of 38 MW<sub>e</sub> in 2001.</p> <p>Electrical output has collapsed, from a high of 26.8 TWh in 2000 – even with the prevailing high price of gas over the year - to a level of 22.2 TWh in 2001.</p> <p>CHP exports to the market (i.e. excluding sales within a Qualifying Group) fell by 37% between 2000 and 2001.</p> <p>The load factor of existing plant has fallen to its lowest level since 1996. The fall in load factor between 2000 and 2001 is equivalent to losing over 800 MW<sub>e</sub> of installed CHP capacity.</p>
1			LEGs are effectively discriminated against and disadvantaged by

(cont.)			<p>the NETA framework insofar as:</p> <p>They are in a relatively weak commercial position with respect to suppliers, limiting their capacity to secure full value for their output taking account of such factors as the embedded benefits that they offer;</p> <p>They are subject to the same imbalance risk as other generators – by virtue of the scope for suppliers to pass-through imbalance costs – however they are not able, in practice to:</p> <p>manage these costs through trading ahead of gate closure on a similar cost basis as other generators;</p> <p>influence the direction of the market</p> <p>offset these costs with revenues earned through active participation in the Balancing Mechanism or Balancing Services contracts.</p>
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes	An average price is a simple and intuitive definition, since it will tend to represent the imbalance price in an efficiently balanced market. It is therefore appropriate to adopt this definition. It should be preferred to a market price that may be determined through a wider interaction of factors, or under imperfect market conditions.
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	
4 a)	<p>Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):</p> <p>EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)</p>	Yes	Exemptible plant are likely to be subject to similar obstacles and commercial constraints under NETA as those outlined for LEGs. It is therefore appropriate that the application of the Modification to these parties should be considered under the Assessment procedure.
4 b)	Licence Exempt Suppliers in addition to Licence Exempt	Yes	b) Licence Exempt Suppliers are, by virtue of their scale, likely to

	Generators		face similar disadvantages under NETA to those faced by LEGs. It is therefore appropriate to consider such parties under the Procedure.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes	c) The Association does not hold a view in respect of small suppliers.
4 d)	Other	No	d)
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	As set out in section 1, the Association believes that P95 will better facilitate applicable BSC objectives by addressing a number of the deleterious effects of NETA upon LEGs. It is therefore appropriate that it should be considered as an enduring solution.  A sunset clause is not appropriate. Any cessation, in whole or part, of the arrangements proposed under P95 should only be implemented when it is evident that the prevailing conditions under the Code no longer present an adverse or discriminatory effect for LEGs.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	The evidence that has emerged in DUKES 2002, as set out in response to Question 1, provides a clear indication that NETA has introduced a barrier to market participation by LEGs. The discussions of the DTI's Consolidation Working Group suggested evidence of barriers including an asymmetry of market power between LEGs and suppliers and through a net reduction in embedded benefits. Further evidence has been presented in the PIU <i>Energy Review</i> of 2002, the Environmental Audit Committee Fifth Report <i>A Sustainable Energy Strategy? Renewables and the PIU Review</i> (paras. 68-82) and the Second Report of the Trade and Industry Select Committee <i>Security of Energy Supply</i> (paras. 63-69).
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	The barriers to LEGs described are a fundamental, intrinsic consequence of the existing provisions of the Code. It is therefore logical and appropriate that these barriers should be addressed

			<p>directly through the Code, in preference to an external approach that permits the existing distortions or defects to persist.</p> <p>In presenting an approach that better facilitates the objectives of the Code, a more efficient, enduring solution is likely to result.</p>
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	<p><b>Cost reflectivity.</b> The present dual cash-out price is not cost-reflective, since at any period in time the market can only be short <i>or</i> long – not both – and hence only a single clearing price can pertain. Furthermore, the dual cash-out arrangement makes no allowance for the natural balancing effect between parties of a heterogeneous, interconnected network, and hence tends to recover costs in excess of the actual costs of intervention necessary to balance the system. A single, average price will ensure that the clearing price for LEGs is closer to the optimal clearing price for a balanced market over a greater proportion of periods, thereby improving cost-reflectivity.</p> <p><b>Illiquidity.</b> The OTC markets and power exchanges do not present a practical option for managing the risks of for LEGs, owing to the granularity of the market, the lack of liquidity and the transaction costs. In presenting a viable alternative, P95 will mitigate the barriers presented by these factors.</p> <p><b>Embedded benefits.</b> Through ameliorating the risk and consequent costs of managing this risk under the present dual cash-out arrangements, P95 will improve the commercial position of LEGs with respect to suppliers, thereby allowing them to recover a greater proportion of the embedded benefit that they bring to the system.</p> <p><b>Administrative costs.</b> P95 will mitigate the risks presented by the dual cash-out arrangements. In so doing it will reduce the administrative costs associated with managing these risks either directly through participation in trading or indirectly through risk management services procured via a third party. Such costs are regressive and discriminate most against the smallest parties.</p>



9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	No	P95 corrects for aspects of the present arrangements that – in the absence of any inherent correction mechanism within the market - discriminate directly against the LEGs. The existing discrimination occurs as a consequence of the common application of a set of market rules; a process that fails to recognise fundamental variation in the capability of different parties to respond to these rules. The proposals represent a correction of an existing discrimination, not the introduction of a new one.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	All the proposed options have merit and would appear, as they are set out in the consultation, to present a solution to the barriers described in the Proposal and to better facilitate the BSC objectives. All should be considered under the Assessment process. Prime considerations under the Assessment process should be the need for prompt introduction of the mechanism, simplicity, and low administrative costs.
10 b)	Option B: LEG Trading Party	Yes	See 10 a)
10 c)	Option C: LEG Account	Yes	See 10 a)
10 d)	Option D: LEG Neutral Capacity Band	Yes	See 10 a)
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	As set out in 10, the need for the prompt introduction of a solution is vital to offset the serious and persistent damage that NETA has inflicted upon LEGs in general, and CHP in particular.
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes/No	As set out in response to Question 1, data published by DTI for the year 2001 has demonstrated the extent of the negative impact that NETA has brought upon existing CHP plant and upon new investment in the sector. The breadth of responses upon which this survey has drawn suggests that it represents a more accurate reflection of the true situation facing CHP than that contained in <i>The review of the first year of NETA</i> , published by OFGEM in July.

## P95\_DEF\_016 – BP Gas Marketing

<b>Respondent name</b>	Ian M. Mullins
<b>BSC Party</b>	<b>YES</b>
<b>Responding on Behalf of</b>	BP Gas Marketing Limited.
<b>Role of Respondent</b>	Other

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	No	The debate of single price cash-out is being examined by the PIMG in P74/78. We believe that it would be inappropriate to allow single pricing to exist in a sub-division of the industry before Modifications P74/78 are decided upon.
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	No	See above
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	This modification appears to be addressing the situation for those areas of the electricity industry least represented under NETA. To this extent, it should be concerned with those parties that do not have an agreed licence.

4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes	a) See above (Comments Q3)
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes	b) See above
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes	c) Unknown. This needs to be statistically established by the P95MG
4 d)	Other	No	d)
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	Any modification to the BSC needs to be treated as enduring, until it is superseded by a later modification.
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	Administrative burdens and risk exposures of BSC participation. Lack of development of many LEG schemes (e.g. CHPs) due to unfavourable market conditions.
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	Access to the market needs to be given to allow the LEGs to participate. Modifications are not the only process as LEGs are also affected by legislation from HM C&E and the Treasury.
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	P95 offers possible approaches to tackle the perceived defects as listed.

9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	No	Care needs to be taken here. While P95 is proposed to address a perceived discrimination currently within the BSC, the answer is NOT to counter it with another discrimination (i.e. positive discrimination). To abide by the rules of BSC, it is important to ensure that any solution is beneficial to ALL parties to the BSC, or at least does not discriminate against them, while still aiming to aid the application of the BSC Objectives.
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	It is important for the issue of cost reflectivity that any extra costs are apportioned to the parties responsible for those costs. Further it should be judged that the development costs for this modification/systems do not significantly outweigh the benefits to the parties concerned.
10 b)	Option B: LEG Trading Party	Yes	See above.
10 c)	Option C: LEG Account	Yes/No	See above.
10 d)	Option D: LEG Neutral Capacity Band	Yes/No	See above.
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	No	Refer to details in 10 a)
12	Are there any further comments on Modification Proposal P95 that you wish to make?	No	Please give your comments

## P95\_DEF\_017 – British Sugar

<b>Respondent name</b>	Ian Calvert
<b>BSC Party</b>	<b>NO</b>
<b>Responding on Behalf of</b>	British Sugar plc
<b>Role of Respondent</b>	Licensed Exempt Generator

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	<p>The proposed modification will better facilitate the BSC objective to promote effective competition in the generation and supply of electricity.</p> <p>NETA currently has created barriers to the participation of LEGS in the marketplace. Clearly this inhibits competition, and if left to run for several years will result in the elimination of this sector from the traded electricity market.</p> <p>The current system of imbalance charging is a key component of the barriers to LEGs within NETA. By addressing it, the mod will allow LEGs to access the markets on a non discriminatory basis and thus it does further the BSC objective.</p>

2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes	<p>The System Average Price is indeed the most appropriate definition. It is simple and avoids the complexity of using a market price which could introduce another set of problems if it is not representative of actual energy trades (e.g. because of high levels of vertical integration and low liquidity).</p> <p>Unfortunately the SSP and SBP prices are still flawed in that they can be set at levels without and real trades being carried out at that price and are set by a limited number of players which are a subset of the market. This is a core feature of NETA and thus it is difficult to address within the context of this mod.</p>
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	The Class Exemption regulations define which plants should qualify. These rules give the best available proxy for the plants which are most adversely impacted by the discriminatory features of NETA.
4 a)	<p>Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):</p> <p>EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)</p>	Yes	<p>Whilst exemptable plant is not affected by the NETA barriers to the same extent as plant owned by non portfolio companies, it should be covered by the scope of P95.</p> <p>Indeed, it can be seen that P95 is a rational mod because these plants will simply benefit less than stand alone plants; demonstrating that P95 is a move to put these plants on a more equal footing in the marketplace.</p>

4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Not relevant, so No	The Supply market under NETA is different to the Generation market in many important respects. The definition of licence exempt supplier is not analogous to that of a LEG, as one would expect given these differences. It should be accepted that this is a mod to address the Generation side issues. Including suppliers would only be done for cosmetic reasons i.e. in order to appear reasonable and symmetrical and will have little importance in practice.
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	No	<p>None of the discussion in the mod group so far appears to have been driven by the problems facing small suppliers. Therefore whilst it is clear that some of the central NETA issues concerning penal non cost reflective imbalance prices and their mitigation by portfolio effects will impact on them, it is not really appropriate to target this mod at them. As noted above the markets are different and there is little to recommend transposing rules from generation to supply for its own sake.</p> <p>Several supplier based mods have been considered already e.g. P7. This mod is targeted at solving problems which NETA has thrown up for the hundreds of small generators, not the handful of smaller suppliers, who are already signatories to the code and have therefore been able to raise their own mods.</p>
4 d)	Other	No	It is up to other groups to put their evidence to the mod group as is being done in this case.
5	<p>Do you believe that P95 should be considered as an enduring solution?</p> <p>If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?</p>	Yes	

6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	The mod proposer has demonstrated compelling evidence that there are barriers to LEG market participation under NETA. There is widespread and well documented evidence that these barriers are caused by discrimination on grounds of size and are not just a natural reverse economy of scale.
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	<p>It is the Code that defines NETA and encompasses the key rules regarding the treatment of imbalance. The "sizeist" nature of NETA is therefore built into the code and it is appropriate to address it by code mods.</p> <p>There are other code mods which can help address parts of the problems facing LEGS such as P74, but it is entirely appropriate that the problem is addressed directly by P95. Indeed outside agencies expect that the internal NETA mechanisms should be used to the full to sort any distortions before complex, difficult (and slow!) external actions are required to ensure that we maintain a base of hundreds of generators.</p>



8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	<p>P95 tackles head on the imbalance issue whereby Suppliers can use their market power over LEGs to charge the non cost reflective imbalance prices to the LEG. It therefore addresses the cost reflectivity issue.</p> <p>This improvement is bargaining position really only extends to the imbalance charging unless it gives a useful tool to the supplier as many of the options do (with Option D doing it transparently).</p> <p>P95 does address the Illiquidity/granularity issue by allowing a LEG to trade, without being part of a portfolio, with a power exchange or other trader without facing penal imbalance exposure. This should increase liquidity across the market, which furthers NETA aims.</p> <p>P95, if applied in a way that the suppliers like, should reduce the need for LEGs to have to sign the code and trade directly. If P95 is implemented such that small generators have to submit half hourly notifications to central settlements then the mod would actually have the opposite effect and increase admin.</p>
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	No	This is an attempt to mitigate against existing discrimination inherent in the overly complex and penal systems which constitute some parts of NETA.

10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	All these mechanisms should be considered in assessment. From our perspective the over-riding criteria for any solution should be simplicity (which aids transparency) given that we are aiming here at small players whose main business is not always power generation, but whose output is valuable in terms of diversity, security, competition and the environment.
10 b)	Option B: LEG Trading Party	Yes	See above
10 c)	Option C: LEG Account	Yes	See above
10 d)	Option D: LEG Neutral Capacity Band	Yes	See above
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	If P95 is not the answer, what is the route that LEGs should take to get NETA reformed before further long lasting harm is done to UK generation?
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	It is a bit late to be recognising these issues which should have been addressed during design. Since implementation the lack of progress on this issue is doing damage to the wider perception of NETA which may soon be seen to be seriously flawed.

## P95\_DEF\_018 – Fibrowatt Limited

<b>Respondent name</b>	James Davison
<b>BSC Party</b>	<b>NO</b>
<b>Responding on Behalf of</b>	Fibrowatt Limited
<b>Role of Respondent</b>	Owner of three License Exempt Generating Stations

Q	Question	Response	Rationale
1	Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?	Yes	
2	The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?	Yes	
3	Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.	Yes	
4 a)	Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):  EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)	Yes	a)
4 b)	Licence Exempt Suppliers in addition to Licence Exempt Generators	Yes	b)
4 c)	Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?	Yes	c)

4 d)	Other	No	d)
5	Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?	Yes	
6	Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.	Yes	
7	Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?	Yes	
8	Do you believe that P95 actually addresses the perceived defects listed in the Modification?	Yes	
9	Do you believe that P95 unduly discriminates for / against a particular sector of the market? If YES is this Modification the best way of or is there an alternative Modification that could be considered?	No	
10 a)	The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure: Option A: Leg Rebate Agent	Yes	
10 b)	Option B: LEG Trading Party	Yes	
10 c)	Option C: LEG Account	Yes	
10 d)	Option D: LEG Neutral Capacity Band	Yes	
11	Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?	Yes	
12	Are there any further comments on Modification Proposal P95 that you wish to make?	Yes	

**P90\_DEF\_019 – Aquila Networks**

Please find that Aquila Networks Plc response to P95 Definition Consultation is 'No Comment'.

regards  
Rachael Gardener

Deregulation Control Group & Distribution Support Office  
AQUILA NETWORKS

**P95\_DEF\_020 – British Energy**

British Energy does not support the above modification to the BSC. BE believes that this modification is clearly discriminatory and therefore does not better facilitate BSC Objectives (c) [promoting effective competition] and (d) [promoting efficiency in the operation of BSC arrangements]. We also believe that the issues raised in this modification should not be dealt with within this forum as it is beyond the vires of the BSC.

Regards

Rachel Ace

On behalf of  
British Energy Generation  
British Energy Power and Energy Trading  
Eggborough Power Ltd

**P90\_ASS\_021 – Scottish and Southern**

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

In relation to the twelve questions contained in the Assessment Consultation Paper, contained within your note of 14th August 2002 concerning Modification Proposal P95, we have the following comments to make:-

1 Do you believe that the principle of allowing imbalance resulting from Licence Exempt Generators to be settled at a neutral price, better facilitates the applicable BSC Objectives?

No, as we believe it will unduly discriminate by allowing one class of BSC parties to; as indicated in the second paragraph of item 2 on page 4 of the First Consultation Document; "ameliorate perceived failings in the market that the Proposer believes are damaging the economic viability of both existing and potential LEGs"; i.e. to make better or improve a situation that one BSC party deduces may be financial non beneficial to them rather than, broadly speaking, all BSC parties in general.

2 The neutral price is defined within P95 as the average of SSP and SBP. Do you agree that this is the most appropriate definition or is there a different definition that could be considered during the Assessment Procedure?

Should this Modification Proposal proceed, we believe that a different neutral price should be defined, rather than the average of SSP and SBP.

3 Do you agree with the Modification Group definition of Licence Exempt Generator to be used for P95.

4 a) Of the possible alternatives to the application of this Modification which could be considered during the Assessment Procedure and which are detailed below, please indicate which you think should be assessed further (more than one can be chosen):

EXEMPTABLE plant (as defined in section K 1.2.2 (c) of the Code)

4 b) Licence Exempt Suppliers in addition to Licence Exempt Generators

4 c) Small suppliers in addition to Licence Exempt Generators, if so what level should the cut off point be and why?

5 Do you believe that P95 should be considered as an enduring solution? If a sunset clause were to be used, what criteria should be used to set an end for the P95 arrangements?

6 Do you believe there is evidence of barriers, for or against, LEGs market participation e.g. cost reflectivity, embedded benefits, illiquidity/granularity, administrative burdens, other.

7 Do you believe that a Modification to the Code (be it P95 or a different Modification) is the most appropriate means by which to address the perceived defect(s)?

No.

8 Do you believe that P95 actually addresses the perceived defects listed in the Modification?

9 Do you believe that P95 unduly discriminates for / against a particular sector of the market?

If YES is this Modification the best way of or is there an alternative Modification that could be considered?

Yes, it discriminates in favour of LEGs at the expense of other BSC Parties.

10 a) The P95 Modification Group discussed several options, details of which are given in the attached document. Please give your views on the options and if you believe they should be carried forward to the assessment procedure:

Option A: Leg Rebate Agent

10 b) Option B: LEG Trading Party

10 c) Option C: LEG Account

10 d) Option D: LEG Neutral Capacity Band

11 Does P95 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure P95, should the Panel decide to submit P95 to the Assessment Procedure?

There appears to be little merit in proceeding with this Modification Proposal at this time.

12 Are there any further comments on Modification Proposal P95 that you wish to make?

Regards

Garth Graham

Scottish & Southern Energy plc