



Nick Simpson  
Ofgem  
9 Millbank  
London  
SW1P 3GE

27 November 2003

Dear Nick,

**Request for Urgency for Modification Proposal P150 'Targeting excess costs of the PNE appeals process at unsuccessful appellants'**

In accordance with the procedures set out in Section F2.9 of the Balancing and Settlement Code (the Code), ELEXON has recommended that Modification Proposal P150 'Targeting excess costs of the PNE appeals process at unsuccessful appellants' (P150) should be progressed as an Urgent Modification Proposal and this has been agreed by the Panel.

P150 was raised by Powergen Uk plc on 26 November 2003. I am therefore writing to seek the Authority's approval of this course of action and endorsement of the process and timetable to be followed in respect of this proposal.

Issues Addressed by the Modification Proposals

Copies of P150 and the accompanying letter, received from Powergen Uk plc, are attached to this letter.

Paragraph P6.7.2 of the Code sets out the fee payable by a Party referring a determination in relation to a Past Notification Error (PNE) claim to the Authority. This fee has been set at £5,000 for each such reference. P150 states that there is significant risk that the cost of any PNE appeals process may far exceed the revenue raised from any appeal fee. It is therefore important that non PNE appellants do not have to pay a share of the costs of unsuccessful appeals.

P150 requires any excess ELEXON costs incurred as a result of a particular appeal (over and above the £5,000 fees paid for lodging such an appeal) to be paid by the appellant where the appeal is unsuccessful.

Panel Views

Attempts were made to contact all Panel Members. Of the 9 Panel Members contacted, 6 were supportive of the urgent treatment of this Modification Proposal. 1 Panel member was not supportive of the urgent treatment (via an alternate) and 1 Panel member abstained (via an alternate). The remaining Panel Members could not be contacted. The Distribution System Operators' representative did not comment on the question of urgency.

The urgent treatment of P150 is justified on the basis that failure to expedite resolving the issue could lead to any change to the appeal fee being dealt with retrospectively. If P150 were to be resolved before the appeals window has closed then it could be treated as a prospective modification and will avoid uncertainty of appellants over who will pay for the process if ELEXON costs exceed the £5,000 appeal fee.

#### Proposed Process and Timetable

The proposed process and timetable that would be adopted if this Modification Proposal were to be treated as Urgent is set out in the table below. The aim would be to submit an Urgent Modification Report in respect of P150 to the Authority on Friday 5 December 2003.

#### **P150 Proposed Process and Timetable**

<b>ACTIVITY</b>	<b>DATE</b>
Modification Group Meeting 1 – Agree issues/requirements/principles for consultation	1/12/03 10:00
Issue draft consultation document to group for review by	Close of business 1/12/03
Comments from group back by	Midday 2/12/03
Issue consultation document	Close of business 2/12/03
Receive consultation responses	Close of business 3/12/03
Modification Group Meeting – Consider consultation responses and formulate arguments for the draft Urgent Modification Report.	4/12/03 10:00
Issue Urgent Modification Report to Panel	Close of Business 4/12/03
Panel Meeting to decide on Final Recommendations in Urgent Modification Report	5/12/03 10:00
Final Urgent Modification Report to the Authority	5/12/03

#### Decision Required

You are invited to confirm whether the Authority agrees that Modification Proposal P150 should be treated as an Urgent Modification Proposal and, if so, to direct the processes and timetables to be followed. Given the proposed timing of the first Modification Group Meeting on 1 December 2003 and the meeting of the Panel on 5 December 2003, I would be grateful if you could reach a timely decision on this matter.

Yours sincerely,

Nicholas Durlacher  
**BSC Panel Chairman**

Enc: 1. Modification Proposal P150  
 2. Covering Letter for Modification Proposal P150.