

<b>Modification Proposal – BSCP40/03</b>	MP No: P250 <i>(mandatory by BSCCo)</i>
<p><b>Title of Modification Proposal</b> <i>(mandatory by originator):</i></p> <p>Prevention of "Timing Out" of Authority decisions on Modification Proposals</p>	
<p><b>Submission Date</b> <i>(mandatory by originator):</i></p> <p>4 January 2010</p>	
<p><b>Description of Proposed Modification</b> <i>(mandatory by originator)</i></p> <p>This Modification Proposal intends to remove the potential for an Authority decision on a Modification Proposal to "time out". "Timing out" occurred in 2007 when the Authority was unable to provide its decision on Modification Proposals P198, P200, P203 and P204 before the final date allotted for such a decision in the Final Modification Report. A subsequent Judicial Review ruled that when the Authority did not make its decision by the latest date included in the Final Modification Reports, it lost the ability to make any decision on those Proposals.</p> <p>Following the Judgement, Ofgem issued a number of industry consultations, the most recent of which, in May 2009, included indicative modifications to National Grid's Transmission/Transporter licences to try and prevent "timing out" reoccurring. National Grid recognises the issues raised during the industry consultations and considers that raising a Modification Proposal is the most efficient way to address these. We also intend to raise proposals to amend the CUSC and UNC to ensure consistency across the industry codes.</p> <p>This Modification Proposal has two elements:</p> <p>1) A proposal to introduce a code obligation on the BSC Panel to propose Implementation Dates in such a way that "timing out" can be avoided in future. For example, for some proposals, it is working practice for Modification Groups and the Panel, in consultation with ELEXON and the industry, to provide two sets of proposed Implementation Dates in the following format:</p> <p>Implementation date of AA, based on Authority decision received on or before BB; or Implementation date of CC, based on Authority decision received after BB, but on or before DD.</p> <p>Our proposal is to place an obligation on the Panel that, however it constructs Implementation Dates, the construction of these dates must not put the Authority in a position where it can "time out" from being able to make a decision.</p> <p>We recognise that there are potentially several different ways in which this could be achieved in practice, and that different Modification Proposals may require different Implementation Date constructions. For example, documentation-only changes often use an 'X Working Days after an Authority decision' construction, and some modifications occasionally have retrospective Implementation Dates. We therefore do not suggest 'hard-wiring' a specific Implementation Date construction in the Code, but simply to place an obligation on the Panel to ensure that (whatever the construction) "timing out" cannot occur.</p>	

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<p>2) In recognition of industry concerns regarding timely decisions and "shelf-life" of analysis which supports a Panel recommendation for a Modification Proposal, the second part of this proposal seeks to incorporate provisions for the Panel to inform the Authority that the analysis contained in a Final Modification Report may be out of date. Specifically we note that 'decide by' dates, as it the present practice for some Proposals, may offer a way of ensuring analysis does not become out of date. Our Proposal is therefore to introduce a mechanism, to allow the Panel to:</p> <ul style="list-style-type: none"> <li>• Where it is reasonable and prudent to do so, request the Authority to give an indication of the likely date by which the Authority's decision shall be made, for example if the Panel feel there is a reasonable risk that analysis may soon become out of date;</li> <li>• Should the circumstance occur, provide the Authority of any detail of why analysis has become out of date. The purpose of such information would be, for example, to allow the Authority to undertake additional analysis as part of a Regulatory Impact Assessment.</li> </ul> <p>Similar provisions to these exist within the UNC Modification Rules. The relevant section of the Modification Rules is included as an attachment to this Proposal.</p> <p>We note that, as part of Ofgem's Governance Review, Ofgem is proposing to introduce an ability for it to 'send back' Modification Proposals to the Panel for further analysis where it feels that the original analysis in a Final Modification Report is deficient. Our Modification Proposal does not in itself seek to introduce the ability for the Panel to revise analysis, but simply to give the Panel a mechanism (which could be through a letter from the Modification Secretary on behalf of the Panel) for it to alert the Authority that the analysis may be out of date. If Ofgem decides to separately introduce its proposed 'send back' process, this will allow the Panel (if requested by Ofgem) to also update the analysis.</p>	
<p><b>Description of Issue or Defect that Modification Proposal Seeks to Address</b> <i>(mandatory by originator)</i></p> <p>This Modification Proposal seeks to address two issues:</p> <p>a) "Timing Out" of Authority decisions on Modification Proposals. A description of the circumstances which can cause "timing out" is included in the section above. The result of "timing out" is to cause uncertainty among the industry as to the future of a Modification Proposal, as well as the timescales surrounding that proposal. It also has the potential to waste resources in terms of the costs incurred by industry participants in raising and considering a Modification Proposal which may then "time out".</p> <p>b) Ongoing validity of industry analysis supporting a Panel recommendation. There is a concern that, where a significant period of time has elapsed between a recommendation being provided to the Authority and the Authority making a decision, the underlying circumstances will have changed. Such a change could effectively render any supporting analysis "invalid" and therefore bring into question the validity of the recommendation under consideration. This issue was raised in the Judgment published after the hearing on P198, P200, P203 &amp; P204 in May 2008 (see</p>	

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paragraph 83).	
<p><b>Impact on Code</b> <i>(optional by originator)</i></p> <p>National Grid considers that amendments to Section F of the BSC will be required to effect this change.</p>	
<p><b>Impact on Core Industry Documents or System Operator-Transmission Owner Code</b> <i>(optional by originator)</i></p> <p>National Grid is not aware of any impacts on Core Industry Documents or the STC.</p>	
<p><b>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties</b> <i>(optional by originator)</i></p> <p>This proposal may impact on the processes undertaken by ELEXON, Modification Groups and the Panel to provide proposed Implementation Dates.</p>	
<p><b>Impact on other Configurable Items</b> <i>(optional by originator)</i></p> <p>National Grid is not aware of any impacts on other Configurable Items.</p>	
<p><b>Justification for Proposed Modification with Reference to Applicable BSC Objectives</b> <i>(mandatory by originator)</i></p> <p>National Grid considers that the Proposed Modification better facilitates achievement of Applicable BSC Objective (d) "<i>promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2</i>" by:</p> <ol style="list-style-type: none"> <li>a) reducing/removing the potential for Authority decisions on Modification Proposals to "time out", thereby preventing a potential waste of industry resource and the associated costs incurred;</li> <li>b) ensuring that the validity of underlying assumptions/analysis which support a Panel recommendation can be questioned should circumstances surrounding the Modification Proposal change after a period of time has elapsed.</li> </ol>	

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<b>Urgency Recommended:</b> No	
<b>Justification for Urgency Recommendation</b> <i>(mandatory by originator if recommending progression as an Urgent Modification Proposal)</i>	
N/A	
<b>Details of Proposer:</b>	
<i>Name: David Smith</i>	
<i>Organisation: National Grid Electricity Transmission plc</i>	
<i>Telephone Number: 01926 65534</i>	
<i>Email Address: david.m.smith@uk.ngrid.com</i>	
<b>Details of Proposer's Representative:</b>	
<i>Name: Alex Thomason</i>	
<i>Organisation: National Grid Electricity Transmission plc</i>	
<i>Telephone Number: 01926 656379</i>	
<i>Email address: alex.thomason@uk.ngrid.com</i>	
<b>Details of Representative's Alternate:</b>	
<i>Name</i> .....	
<i>Organisation</i> .....	
<i>Telephone Number</i> .....	
<i>Email address</i> .....	
<b>Attachments: Yes</b>	
<b>If Yes, Title and No. of Pages of Each Attachment:</b>	
Attachment A: Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009 (1 page)	

**Attachment A: Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009****9.5 Further Consultation**

9.5.1 If, in respect of a Modification Proposal which is the subject of a Modification Report previously submitted to the Authority by the Transporters in accordance with paragraph 9.3.4 or 10.2:

(a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or

(b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to that Modification have materially changed,

the Secretary shall place that Modification Proposal on the Agenda for consideration at the next Modification Panel meeting.

9.5.2 Having considered the circumstances relating to the Modification Proposal which is subject to paragraph 9.5.1, the Modification Panel may determine that:

(a) the Secretary should request the Authority to give an indication of the likely date by which the Authority's decision shall be made; or

(b) the Transporters should within five (5) days of the date of the meeting prepare and circulate a notice to each Transporter, Users and Non-Code Parties outlining the change in circumstances or reasons for delay and inviting further representations within ten (10) days of the date of the notice; or

(c) the Secretary should place the Modification Proposal on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel.

9.5.3 If the Modification Panel makes a determination in accordance with 9.5.2(a) then the Secretary shall within five (5) Business Days formally request a response from the Authority and place the Modification Proposal on the Agenda for further consideration at the next Modification Panel meeting, it being recognised at all times that the Authority is not obliged, as a result of a request pursuant to 9.5.2(a), to provide any response or indication.

9.5.4 If the Modification Panel makes a determination in accordance with 9.5.2(b) the Transporters shall within five (5) Business Days of the date upon which the invitation for representations closed prepare, and submit to the Secretary a supplemental report (which need not be in the form of a Modification Report) and also procure that the Secretary submits that report and copies of any representations received to the Authority and circulates a copy to each Transporter, Users and Non-Code Parties.

9.5.5 Any Report submitted to the Authority under paragraph 9.5.4 shall be supplemental to the Modification Report. Supplemental reports may, but need not, express a view and recommendation which confirms those expressed in the Modification Report to which it refers.