

Modification Proposal – BSCP40/03	MP No: P264 <i>(mandatory by BSCCo)</i>
<p>Title of Modification Proposal <i>(mandatory by originator):</i></p> <p>Two-thirds majority requirement for Panel recommendations on licence originated Modifications</p>	
<p>Submission Date <i>(mandatory by originator):</i></p> <p>2nd August 2010</p>	
<p>Description of Proposed Modification <i>(mandatory by originator)</i></p> <p>This modification proposes a requirement for a two-thirds majority on votes that determine the Panel’s recommendation for implementation on licence originated Modifications. For the avoidance of doubt, in this context licence originated Modifications shall mean Modifications that the licensee is obligated to raise; an example being those Modifications that result from the conclusion of a Significant Code Review (SCR). This would replace the current arrangements, where a simple majority would be required to recommend the implementation of a licence originated Modification.</p> <p>As an example, where a licensee has been directed to raise a Modification in line with the conclusions of a SCR (as set out by Ofgem), the voting principle used by the Panel for determining a recommendation on the resulting Modification would be subject to the two-thirds majority voting principle. It is proposed that the two-thirds majority voting principle would require the number of votes in favour of approval to be at least twice the number of votes against approval; if this hurdle is not reached, the Panel will recommend that the Modification is rejected in order to preserve the appeal route, should the Modification to change the current arrangements be approved by the Authority.</p> <p>For all other Modifications that are not covered by the above description, the current simple majority voting principle shall prevail for Panel recommendation votes.</p>	
<p>Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by originator)</i></p> <p>Under the current process, the Panel takes a vote on whether to recommend the approval of a given Modification and provides the result of such vote to the Authority as part of the Final Modification Report. This recommendation ultimately determines the ability of a Party (or Parties) to appeal the Authority’s final determination on a Modification; in order to appeal a determination made by the Authority, the Authority must determine a course of action that is contrary to the recommendation provided by the Panel.</p> <p>The implementation of Ofgem’s Code Governance Review recommendations (via the associated changes to Licence conditions) will enable Ofgem to conduct SCRs. As stated in their <i>Code Governance Review – Final Proposals</i> document (dated 31 March 2010), Ofgem propose that:</p> <p style="text-align: center;"><i>“Ofgem should have the ability to start a SCR where a modification proposal is likely to have significant impacts on consumers, competition or other issues relevant to our statutory duties</i></p>	

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such as sustainable development.” (paragraph 2.29)

As such, the issues addressed by SCRs and the potential licence originated Modifications that result from the SCR process are more likely to address issues where the industry has been unable to reach consensus in the past. Therefore, resultant licence originated Modifications are more likely to be contentious in nature than the majority of historic Modifications.

In the case of the SCR process, a SCR will be initiated by Ofgem and will aim to determine an appropriate set of principles to address an issue identified by Ofgem. Upon completion of a given SCR process, Ofgem may then decide to issue a SCR Direction that requires a licensee to raise a Modification to implement the conclusions of the SCR. The Modification raised by the licensee will then follow the BSC Modification process and will result in the Authority making the final determination.

Ofgem stated in their *Code Governance Review – Final Proposals* document that:

“To the extent that parties believe that further checks and balances are needed in relation to SCR modification proposals, it may be possible to pursue them through changes to the modification rules. For instance, while panel recommendations are currently made on the basis of a simple majority, the rules could be changed to require a different threshold for SCR modification proposals.” (paragraph 1.65)

This proposal seeks to introduce an appropriate check to ensure that where potentially contentious issues are addressed via licence originated Modifications, an appropriate bar is set for votes on Panel recommendations that will ultimately determine the ability of a party to access the appeal route.

In addition, this proposal addresses a further issue raised by industry participants during the Code Governance Review process, which is related to “split” Panel recommendation votes and the potential for the Panel chair to provide a casting vote. The *Code Governance Review – Final Proposals* document noted the following concern:

“We have noted the concern that the independent chair’s casting vote should not be able to determine whether or not an SCR proposal is subject to appeal. We note that a casting vote is only relevant where there would otherwise be deadlock and the panel is required to make a determination. We do not consider that a casting vote is necessary in the case of a recommendation, which can legitimately reflect a split vote without hindering the ongoing progress of a proposal; it will simply be recorded as such in the modification report to the Authority.” (paragraph 3.35)

A further benefit of this proposal is that a Panel recommendation on such potentially contentious / high impact Modifications will never result in a split vote for Panel recommendations (i.e. where no decisive recommendation is provided to the Authority); this will provide greater clarity to Parties with regards to whether the appeal route remains open (following the final determination of the Authority), which potentially avoids future legal challenge. Further to this, a situation where a Panel recommendation to approve a licence originated Modification is decided by a one vote majority is also significantly reduced.

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<p>Overall, this proposal aims to ensure a suitable check is implemented within the BSC to protect the appeal route for those that stand to be commercially affected by licence originated Modifications. It also lessens the risk of legal challenge associated with licence originated Modifications, where the Panel is unable to provide a decisive Panel recommendation and the Panel chair does not provide a casting vote.</p>	
<p>Impact on Code <i>(optional by originator)</i></p>	
<p>Impact on Core Industry Documents or System Operator-Transmission Owner Code <i>(optional by originator)</i></p>	
<p>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by originator)</i></p>	
<p>Impact on other Configurable Items <i>(optional by originator)</i></p>	
<p>Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by originator)</i></p> <p>This proposal better facilitates the achievement of Applicable BSC Objective (c) by ensuring minority concerns (that Panel Members believe to be relevant) are better able to influence the outcome of Panel recommendations, which helps to protect the appeal process where change resulting from a high impact licence originated Modification is approved by the Authority.</p> <p>The proposal also better facilitates the achievement of Applicable BSC Objective (d) by providing greater certainty over the progression / implementation of change and by reducing the risk of legal challenge, which would save both time and money. The two-thirds majority voting principle could equally be applicable to any future process that makes use of licence originated Modifications (i.e. other than the SCR process), thereby mitigating the need for future Modifications to address similar issues.</p>	

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Urgency Recommended: <i>(delete as appropriate) (optional by originator)</i>	
No; however, it is recommended that this proposal is subject to a timetable that allows a decision to be taken by the Authority at the same time as those Modifications related to the implementation of the Code Governance Review proposals.	
Justification for Urgency Recommendation <i>(mandatory by originator if recommending progression as an Urgent Modification Proposal)</i>	
Details of Proposer:	
<i>Name</i> Stuart Cotten	
<i>Organisation</i> Drax Power Limited	
<i>Telephone Number</i> 01757 612 751	
<i>Email Address</i> stuart.cotten@draxpower.com	
Details of Proposer's Representative:	
<i>Name</i> Stuart Cotten	
<i>Organisation</i> Drax Power Limited	
<i>Telephone Number</i> 01757 612 751	
<i>Email Address</i> stuart.cotten@draxpower.com	
Details of Representative's Alternate:	
<i>Name</i>	
<i>Organisation</i>	
<i>Telephone Number</i>	
<i>Email address</i>	

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Attachments: <i>(delete as appropriate) (mandatory by originator)</i> No. If Yes, Title and No. of Pages of Each Attachment:	

4.6. MP Form Guidelines

These guidelines are to be used to assist in the completion of the MP Form, contained in Appendix 4.5. The guidelines state who should complete each item on the form and whether it is mandatory or optional. They also give a brief description of the information that should be given for each item. For further guidance please contact BSCCo.

- **MP No.** – mandatory completion by BSCCo – unique number allocated for each individual MP in the Modification Register.
- **Title of Modification Proposal** – mandatory completion by originator – title of Modification Proposal – should be unique where possible.
- **Submission Date** – mandatory completion by originator – the date on which the originator raised the MP.
- **Description of Proposed Modification** – mandatory completion by originator – a description in reasonable but not excessive detail of the proposed modification and of its nature and purpose.
- **Description of Issue or Defect that Modification Proposal Seeks to Address** – mandatory completion by originator – a description in reasonable but not excessive detail of the issue or defect which the proposed modification seeks to address.
- **Impact on Code** – optional completion by originator – where possible, an initial indication of those parts of the Code which would require amendment in order to give effect to (and/or would otherwise be affected by) the proposed modification and an indication of the nature of those amendments or effects. This will be superseded by the detailed formal Impact Assessments undertaken by the Modification Group that progresses the Modification Proposal.
- **Impact on Core Industry Documents or System Operator-Transmission Owner Code (STC)** – optional completion by originator – initial list of all Core Industry Documents or STC potentially affected by proposed solution(s). Brief details of how each document will be affected should also be included, if known. The list of Core Industry Documents is defined in Electricity Act Licences. This will be superseded by the detailed formal Impact Assessments undertaken by the Modification Group that progresses the Modification Proposal.
- **Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties** – optional completion by originator – where possible, an initial indication of the impact of the proposed modification on BSC Systems and processes and other relevant systems and processes used by Parties. This will be superseded by the detailed formal Impact Assessments undertaken by the Modification Group that progresses the Modification Proposal.
- **Impact on Other Configurable Items** – optional completion by originator – an initial list of all Configurable Items potentially affected by proposed solution(s). Brief details of how each Configurable Item will be affected should be included, if known. This will be superseded by the detailed formal Impact Assessments undertaken by the Modification Group that progresses the Modification Proposal. A definition of ‘Configurable Item’ can be found in section 2.2 of this Procedure.

- **Justification for Proposed Modification** – mandatory completion by originator – brief description of how the proposed modification would better facilitate achievement of the Applicable BSC Objective(s) as compared with the then current version of the Code.
- **Urgency Recommended** – optional completion by originator – confirmation of whether the originator is recommending that the progression of the Modification Proposal should be expedited as an Urgent Modification Proposal.
- **Justification for Urgency Recommendation** – mandatory completion by originator if recommending progression as an Urgent Modification Proposal – a description of why the progression of the Modification Proposal should be expedited as an Urgent Modification Proposal. This description will be considered by the BSC Panel in formulating its recommendation to the Authority regarding urgency, and by the Authority in determining whether urgency should be granted. When completing this item, the originator may therefore choose to consider the following guidance:
 - The Authority has previously expressed the view that a Modification Proposal should only be treated as an Urgent Modification Proposal if it could not appropriately be treated as non-urgent. The Authority has also expressed the view that Urgent Modification Proposals are likely to exhibit at least one of the following characteristics:
 - a) There is a very real likelihood of significant commercial impact upon the Transmission Company, industry parties, or customers if a Modification Proposal is not urgent;
 - b) Safety and security of the network is likely to be impacted if a Modification Proposal is not urgent; and/or
 - c) The Modification Proposal is linked to an imminent date-related event.

Please note that the above areas represent guidance only, and are not definitive criteria. There may therefore be occasions where a Modification Proposal is deemed to be urgent by the Authority even where it does not exhibit these characteristics (or, conversely, be deemed non-urgent where one or more of the characteristics is exhibited). If urgency is not being recommended, this item on the MP form should be left blank.

- **Proposer's Details** – mandatory completion by originator – the name, organisation, email address and telephone number of the proposer. Also, the name and organisation of the person who will represent the Proposer at the BSC Panel on matters relating to the proposed modification proposal and his/her alternate. For the avoidance of doubt, the Proposer's Representative does not need to be an employee of the originator's company.

- **Attachments** - mandatory completion by originator – confirmation of whether any attachments have been submitted together with the MP Form. Where attachments have been included, a list of the titles and number of pages of each of these should be provided. Attachments may be used to provide extra material and information in relation to the Modification Proposal and to expand on the items required in the MP Form.