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P160 and P163 Assessment Consultation and Requirements Specification

This document is issued by the Error Processing Modification Group (EPMG) in order to support industry consultation and impact assessment of Modification Proposals P160 and P163

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1 INTRODUCTION

1.1 Scope

This document provides background information on Modification Proposal P160 'Removal of the Anomalous Effect of the Error Correction Payment (ECP) for Multiple Claims Affecting the same Settlement Period and Energy Account' (P160) and Modification Proposal P163 'Clarification of the circumstances in which paragraph 6.5 of Section P (calculation of Error Correction Payment) should apply' (P163). Both P160 and P163 address perceived issues with the calculation of the ECP to be made by Parties in relation to upheld PNE claims. This document, providing background on the issues involved, details of the Modification Proposals and an overview of the EPMG discussions to date, is issued in order to support industry consultation and impact assessment. Areas covered include:

- History of the Modification Proposals;
- Background on the ECP calculation;
- Description of the Modification Proposals;
- Initial Assessment of the Proposals against the Applicable BSC Objectives; and
- Requirements Specifications for the Modification Proposals.

1.2 History of the Modification Proposals

1.3 P160

P160 was raised by EDF Trading Ltd on 29 January 2004 (reference 1). ELEXON presented an Initial Written Assessment (IWA) (reference 3) to the Balancing & Settlement Code Panel ('the Panel') at its meeting on 12 February 2004. The Panel agreed with the recommendation in the IWA that P160 be submitted to a two month Assessment Procedure to be carried out by the EPMG. The P160 Assessment Report will be presented at the Panel meeting on 8 April 2003.

The Panel noted the following issues brought to its' attention in the IWA and determined that these form the Terms of Reference for the EPMG as follows:

- Solution Implications;
- Interaction with P163;
- Retrospection;
- ECP invoicing timetable; and
- The intent of P37.

To date, the EPMG have met twice (on 17 February 2004 and 4 March 2004) to develop the requirements and consider the assessment issues for P160. As a result of these meetings, the EPMG agreed that industry consultation and impact assessment should be conducted to support the groups' continued assessment of P160.

1.4 P163

P163 was raised by RWE Innogy on 2 February 2004 (reference 2). ELEXON presented an IWA (reference 4) to the Panel at its meeting on 12 February 2004. The Panel agreed with the recommendation in the IWA that P163 be submitted to a two month Assessment Procedure to be carried out by the EPMG in parallel with P160. The P163 Assessment Report will be presented at the Panel meeting on 8 April 2003.

The Panel noted the following issues brought to its attention in the IWA and determined that these form the Terms of Reference for the EPMG as follows:

- Interpretation of Section P of the Code;
- Solution Implications;
- Interaction with P160;
- Retrospection;
- ECP invoicing timetable; and
- The intent of P37.

To date, the EPMG have met twice (on 17 February 2004 and 4 March 2004) to develop the requirements and to consider the assessment issues for P160. As a result of these meetings, the EPMG agreed that industry consultation and impact assessment should be conducted to support the groups' continued assessment of P163.

2 BACKGROUND

P160 and P163 both seek to address perceived issues with the calculation of the ECP to be made by Parties in relation to upheld PNE claims. In ELEXON's view the Code currently requires the ECP to be calculated separately for claims relating to separate Volume Notifications but affecting the same Settlement Period. As a result, the total ECP can significantly exceed 20% of the total financial benefit to a Party. This section provides background on the issues involved.

2.1 ECP Requirements

Paragraph P6 of the Code sets out how PNEs are to be administered. This paragraph was incorporated into the Code following approval by the Authority of Modification Proposal P37 'To provide for the remedy of past errors in Energy Contract Notifications and in Metered Volume Reallocation Notifications' (P37). Paragraph P6 includes provision for an ECP, which the Modification Group assessing P37 agreed should be 20% of the benefit arising from an upheld claim (Reference 5). Paragraph P6.5 sets out how the ECP should be calculated:

"6.5.1 Where the Panel determines that a Past Notification Error occurred and should be rectified:

(a) the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Past Notification Error as determined by the Panel;

(b) such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made;

(c) if the Final Reconciliation Settlement Run for the relevant Settlement Period has already taken place before the Panel has made its determination under 6.5.1, such adjustments shall be made as soon as is practicable, and shall be taken into account in a Post-Final Settlement Run or Extra-Settlement Determination for the relevant Settlement Period after such adjustments have been made."

"6.5.2 Where, in relation to a claim for Past Notification Error (or, if claims for more than one Past Notification Error in respect of the same Volume Notification are made, in relation to the sum of all such claims in aggregate), the adjustments to the data as determined pursuant to paragraph 6.5.1 result in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow of the relevant Contract Trading Parties (or either of them individually), such Party or Parties shall be liable to pay to the BSC Clearer the Error Correction Payment(s) applicable to its or their Energy Account(s) in accordance with the further provisions of this paragraph 6.5."

"6.5.3 BSCCo shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:

$ECP_a = 0.2 * \max (\sum_j (NCAEI_{aj} - CAEI_{aj}), 0)$ where:

- (a) \sum_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
- (b) $CAEI_{aj}$ is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j ;
- (c) $NCAEI_{aj}$ (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of $CAEI_{aj}$ for Energy Account a and relevant Settlement Period j , had the Past Notification Error not been rectified."

2.2 ELEXON's interpretation of ECP Requirements

Throughout the PNE process, the definition of a PNE has been interpreted by ELEXON as follows:

- There is one PNE per combination of Settlement Period and Volume Notification (P6.1.1.1 (a)); and
- There is one claim per PNE but these can be aggregated to one claim for each group of PNEs resulting from the same Volume Notification (P6.2.4).

As such, one claim can cover a range of PNEs associated with separate Settlement Periods, providing each PNE is a result of the same Volume Notification. On the basis of the above, ELEXON's operational interpretation of paragraph P6.5 is as follows:

- *The ECP is calculated per PNE per Energy Account (P6.5.1, P6.5.3). One ECP is calculated for each Volume Notification (P6.5.1, P6.5.3 (a)).* In ELEXON's view there is one PNE per Settlement Period per Volume Notification. However, a single claim may encompass all PNEs associated with a single Volume Notification. Each of these claims¹ must then be treated independently for ECP purposes.
- *Rectification is done through Settlement if possible (P6.5.1).* The Post Final Settlement Runs (PFSRs) are being used; the Settlement corrections for all upheld claims are included in PFSRs. It should be noted that the PFSR position will include adjustments made for reasons other than PNE claims, for example erroneous Estimated Annual Consumption/Annualised Advance (EAC/AA) corrections. As such, ELEXON is of the view that the ECP cannot be accurately calculated simply by comparison of the positions at the Final Reconciliation Settlement Run and the Post Final Settlement Run, in any case such an approach could not distinguish the effect of each individual claim as is currently required by the Code.
- *The calculation of the ECP starts with the Settlement position after adjustments have been made to reflect the upheld claims (P6.5.3(b)). The ECP is 20% of the benefit due to the correction of the PNE (P6.5.1, P6.5.3).* The benefit of each claim is determined by starting at the PFSR position and "subtracting" the effect of the claim which corrects that PNE. This in effect gives what would have been the Settlement position had that PNE not been rectified. The benefit due to the claim is then the difference between this calculated position and the PFSR. For this calculation, the System Sell Price (SSP) is applied to "long" portions of the difference in position, and the System Buy Price (SBP) is applied to "short" portions of the

¹ Each group of PNEs, affecting separate Settlement Periods but resulting from the same Volume Notification, is given a unique identifier of the form Cnnn in the claims process.

difference. This approach recognises the PFSR position will include adjustments made for reasons other than PNE claims, for example erroneous EAC/AA corrections.

- *Since claims are treated individually and independently (P6.5.1) the calculation of the benefit for each PNE starts with the PFSR position.*

In relation to P160 and P163, the key feature of the process is that the ECP will be calculated individually for claims associated with separate Volume Notifications but affecting the same Settlement Period and Energy Account. There are consequences of the calculation of ECPs individually and independently which can occur where more than one upheld claim for an Energy Account affects a single Settlement Period. Section 2.3 of this document illustrates the issues involved via reference to claims C28a-h and C029a-h.

2.3 Operational Impact

The operational impact of the ECP requirements, as interpreted by ELEXON, is now considered via refer to example claims C028a-h and C029a-29h (these claims are a result of the same cause and were considered under PNE Investigation I020).

2.3.1 Example: Claims C028a-C028h and C029a-C029h

The intent of these claims is to replace a series of erroneous notifications between Energy Accounts EDFT Production (P) and EDFGEN01 (P) by a series of correct notifications between EDFT (P) and EDFGEN01 Consumption (C). There are multiple claims, arising from separate Volume Notifications, which relate to the same Settlement Periods, each having an additive affect.

Correction is achieved by applying a series of notifications between EDFT (P) and EDFGEN01 (P) to cancel out the erroneous notifications and adding a series of correct notifications between EDFT (P) and EDFGEN01 (C) (with each individual notification constituting a separate claim). This approach was put to and agreed by the PNE Committee.

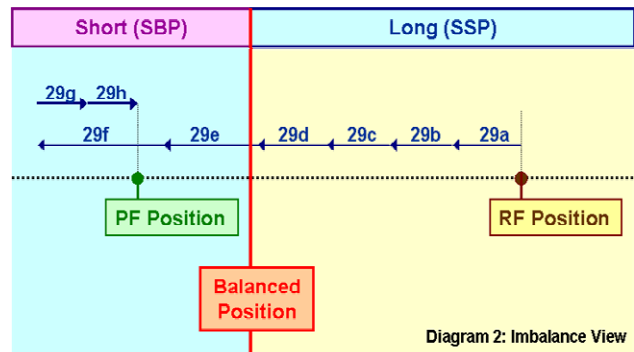
The following three examples illustrate the impact on each of the Energy Accounts involved, in order to illustrate the issues surrounding the calculation of ECP payments individually and independently.

2.3.1.1 EXAMPLE 1: NO OVERALL BENEFIT

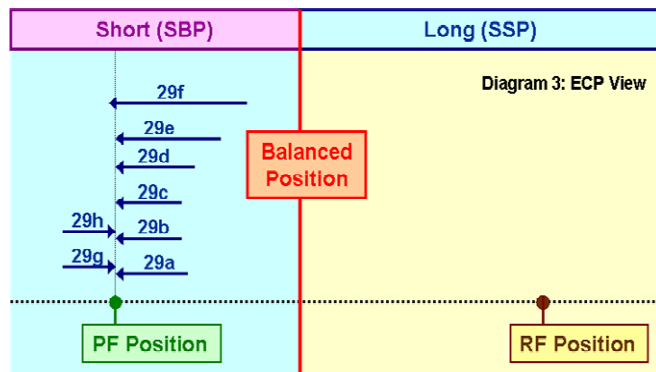
The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a long to a short position (i.e. no overall 'financial benefit'²). Energy Account EDFGEN01 (P) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim.

Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

- The imbalance position of Energy Account EDGEN01 (P) after the PFSR will be slightly short.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to Settlement as a result of the upheld claims for EDFGEN01(P) will not be of 'financial benefit' as a long position will become a short position and be subject to imbalance charges at SBP price. However, this is not reflected in the calculation of ECP as follows.



From the point of view of Imbalance Settlement, the net effect of claims 29a-h is to move the position from RF (long) to PF (short).



ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 29a-f appear not to be beneficial, as such no ECP is generated for these claims. Claims 29g and 29h appear to be beneficial (at SBP), and generate ECPs.

For EDFGEN01 (P), the calculation of the benefit for ECP purposes (or 'ECP Benefit'³) must treat each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 3).

Although the net effect of all of the claims considered together is to make the account shorter (Diagram 2), some claims (29h and 29g), when considered individually, appear to make EDFGEN01's Production Account 'more long'. The apparent or 'ECP benefit' of these claims is significant and attracts a large ECP (as SBP is high).

Were all claims to be grouped for the purpose of calculating the ECP there would not appear to be an overall 'financial benefit' and no ECP would be generated for EDFGEN01 (P).

² In this document the 'financial benefit' relates to Imbalance payments made to a Party as a result of one or more upheld PNE claims.

2.3.1.2 EXAMPLE 2: OVERALL BENEFIT INACCURATELY REPRESENTED

The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a short to a slightly long position (i.e. an overall 'financial benefit'²). Energy Account EDFGEN01 (C) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim (although the total ECP charge will not equal 20% of the overall financial benefit). Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

- The imbalance position of Energy Account EDGEN01 (C) after the PFSR will be slightly long.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to Settlement as a result of the upheld claims for EDFGEN01(C) will be of 'financial benefit' as a short position will become a long position and be subject to imbalance payments at SSP price (Diagram 4). However, this is not reflected in the calculation of ECP payments as follows.

For EDFGEN01 (C), the calculation of the benefit for ECP purposes (or 'ECP benefit'³) treats each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 5).

Considered individually, claims 28a-f appear to be beneficial (mainly at SBP, high) and a large ECP is calculated on this basis. Claims 28h and 28g do not appear individually beneficial and do not attract an ECP, furthermore the netting effect of these claims is not taken into account. Considering the claims individually results in an ECP which is significantly more than 20% of the actual 'financial benefit' (potentially resulting in a payment several times the magnitude of the financial benefit). This occurs as a proportion of the claims are actually of financial dis-benefit (28h and 28g) and the netting effect of these claims is not taken into account.

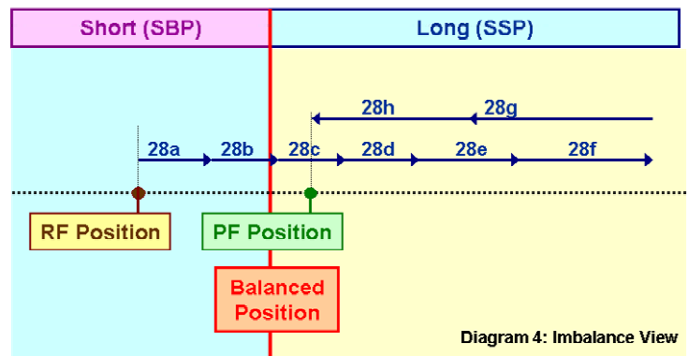


Diagram 4: Imbalance View
From the point of view of Imbalance Settlement, the net effect of claims 28a-h is to move the position from RF (short) to PF (slightly long).

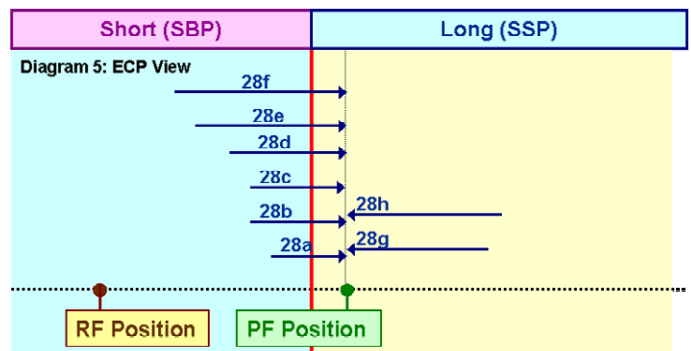


Diagram 5: ECP View
ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 28a-f appear to be beneficial (at mainly SBP), as such a high ECP is generated for each of these claims. Claims 28g and 28h appear not to be beneficial, and do not generate ECPs, furthermore there is no cancelling effect on claims 28a-f.

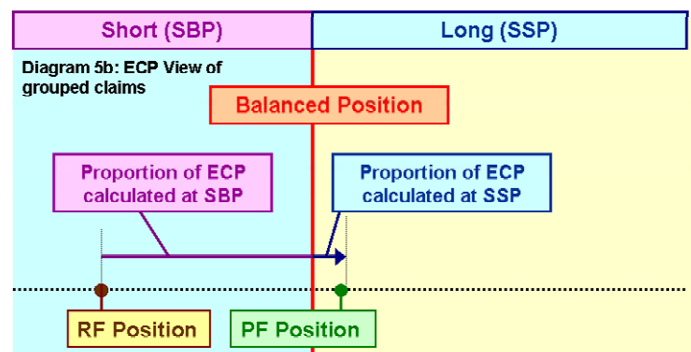


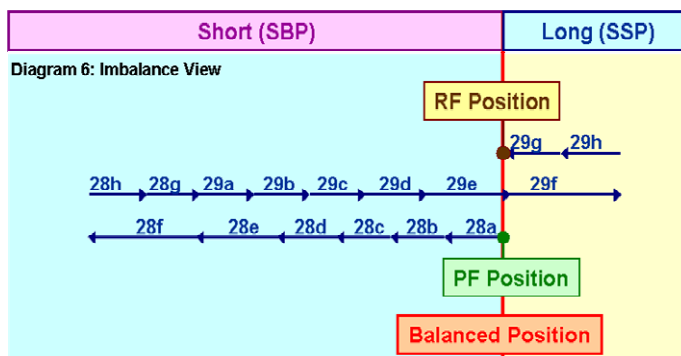
Diagram 5b: ECP View of grouped claims
An ECP is calculated for the grouped claims, starting from the PF position. A proportion of the grouped claims appear to be beneficial at SBP and a proportion beneficial at SSP. The ECP will reflect 20% of the overall financial benefit.

³ The apparent 'ECP benefit' will differ from the actual 'financial benefit' as each claim is considered individually in relation to the PF position (which is why the ECP can exceed 20% of the actual benefit to a Party).

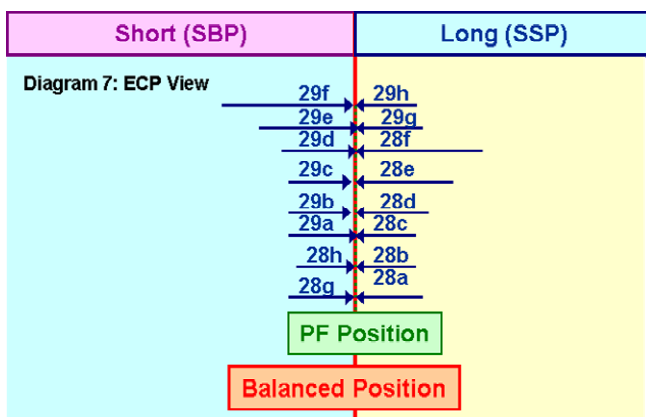
Were all the claims for EDFGEN01 (C) to be grouped and the net effect of all claims considered, a proportion of the ECP would be calculated at SSP and a proportion at SBP, resulting in an ECP payment for the Energy Account representing 20% of the total financial benefit (Diagram 5b).

2.3.1.3 EXAMPLE 3: NO CHANGE

The following example outlines how ECP charges are to be calculated where multiple upheld claims have no overall effect on the imbalance position of the Energy Account. Energy Account EDFT (P) is taken as an example, this account is subject to multiple apparently beneficial claims (when considered individually some of the claims appear beneficial) and a separate ECP will be calculated for each.



From the point of view of Imbalance Settlement, there is no net effect due to claims 28a-h and 29a-h.



ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 29a-f, 28h and 28g appear to be beneficial (at SBP), as such an ECP is generated for each of these claims. Claims 28a-f, 29g and 29h appear not to be beneficial, and do not generate ECPs.

Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

- Energy Account EDFT (P) after the PFSR will be balanced.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to settlement will be zero as a result of the upheld claims for EDFT(P), as each claim has an equal and opposite partner claim (Diagram 6). However, this is not reflected in the calculation of ECP payments as follows.

For EDFT (P), the calculation of the benefit for ECP purposes must treat each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 7). Although the net effect of all of the claims is zero (Diagram 6), some claims (29a-f, 28h and 28g) appear to make EDFT’s Production Account ‘more long’), these claims appear to have an imbalance benefit to EDFT and attract a large ECP (as SBP, high).

Were all claims to be grouped for the purpose of calculating ECP there would not appear to be a financial benefit and no ECP would be generated for EDFT (P).

2.3.1.4 FINANCIAL IMPACT

The estimated charges for each of the three Energy Accounts in the previous examples are set out in Table 1 below. NB: The 'ECP Benefit' is the value of each claim calculated for the purposes of the ECP, i.e. the effect starting from the PFSR position for each claim individually, rather than the actual Imbalance or 'financial benefit'.

Claim	EDFT (P)			EDFGEN01 (P)			EDFGEN01(C)		
	Volume change (MWh)	ECP Benefit (£)	ECP (£)	Volume change (MWh)	ECP Benefit (£)	ECP £	Volume change (MWh)	ECP Benefit (£)	ECP (£)
28a	-804	-9,052	0				804	79,756	16,167
28b	-6,708	-75,530	0				6,708	745,877	149,392
28c	-624	-7,026	0				624	59,477	12,105
28d	-624	-7,026	0				624	59,477	12,105
28e	-840	-9,659	0				840	29,562	6,129
28f	-612	-6,891	0				612	58,093	11,835
28g	773	83,869	16,774				-773	-9,791	0
28h	6,216	701,323	140,265				-6,216	-71,071	0
Sub Tot	-3,223		157,038				3,223		207,734
29a	804	90,712	18,142	-804	-7,972	0			
29b	6,708	756,833	151,367	-6,708	-74,449	0			
29c	624	70,403	14,081	-624	-5,945	0			
29d	624	70,403	14,081	-624	-5,945	0			
29e	840	32,339	6,468	-840	-556	0			
29f	612	69,049	13,810	-612	-5,810	0			
29g	-773	-8,710	0	773	83,869	16,774			
29h	-6,216	-69,990	0	6,216	701,323	140,265			
Sub Tot	3,223		217,948	-3,223		157,038			
TOTAL	0		374,986	-3,223		157,038	3,223		207,734

Table 1: Estimated ECP charges

Overall, the total ECP charge for the three Energy Accounts involved is estimated to be £740,000, in comparison with a net Imbalance or 'financial benefit' for the three Energy Accounts of £250,000.

The effect is highlighted further when considering the case of Energy Account EDFT (P) alone, (example 3). Throughout the process, the Energy Account remains balanced and imbalance charges will not be generated, hence the associated 'financial benefit' of the claims to EDFT is zero. However, as each claim relates to a separate Volume Notification the ECP for each must be calculated separately and, as a proportion of these claims appear beneficial when considered individually, an estimated ECP charge of £375,000 would be generated (i.e. the ECP is based on a perceived benefit of £1.9m, whereas in practice it is £250k).

3 DESCRIPTION OF THE PROPOSALS

3.1 P160

P160 seeks to modify the method for calculating the ECP to be made by Parties in relation to upheld PNE claims.

P160 proposes to amend paragraph P6.5 such that upheld claims affecting the same Party Energy Account and the same Settlement Periods would be grouped together for the purposes of calculating the ECP (see section 4.3.2).

The Proposer of P160 is of the view that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, P160 would better achieve Applicable BSC Objective (c)⁵.

Furthermore, the Proposer of P160 is of the view that P160 would be consistent with the Authority conclusion regarding P37 (which was Approved on the basis of better facilitating achievement of applicable BSC Objective (c) (reference 6)) i.e. that P160, by fulfilling the intent of P37, would better facilitate achievement of Applicable BSC Objective (c).

3.2 P163

P163 seeks to clarify the method for calculating the ECP to be made by Parties in relation to upheld PNE claims.

On the basis of the arguments put forward in reference 9, the Proposer of P163 is of the view that ELEXON's operational interpretation of paragraph P6 of the Code (see section 2) is incorrect. As such, the Proposer of P163 is of the view that the ECP should be calculated on the basis of all adjustments to data resulting from a PNE investigation⁴.

As the Proposer of P163 interprets section P6.5 of the Code in a different manner to ELEXON, the Proposer of P163 perceives a defect constituting a lack of clarity in the drafting of paragraph P6 of the Code. Therefore, P163 seeks to introduce an additional paragraph (P6.5.7) into section P of the Code, to clarify that all adjustments that result from the determination made by the PNE Committee in respect of a PNE investigation⁴ would be grouped together for the purposes of calculating the ECP (see section 4.3.3).

The Proposer of P163 is of the view that P163 would be consistent with the Authority conclusion regarding P37 (which was Approved on the basis of better facilitating achievement of applicable BSC Objective (C)⁵ (reference 6)) i.e. that P163, by fulfilling the intent of P37, would better facilitate achievement of Applicable BSC Objective (c)⁵.

The Proposer of P163 is also of the view that the Authority indicated, via the P37 decision letter, that the intention of the adjustment was to include an ECP equivalent to 20% of the value of the error and that the methodology for calculation proposed by ELEXON goes further than this. Therefore, it is the view of the Proposer that P163 would also better facilitate achievement of Applicable BSC Objective (d)⁶.

⁴ The undefined term 'investigation' was used throughout the PNE process when referring to a group of claims with the same underlying cause.

⁵ (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;

⁶ (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

4 DISCUSSION OF THE MODIFICATION GROUP

This section outlines the discussions of the EPMG as of 4 March 2004 and is provided to support industry consultation on P160 and P163.

4.1 Interpretation of Section P of the Code and scope of Proposed Modification P163

The EPMG noted that the perceived defect identified in P163 is a lack of clarity in the drafting of section P6.5.2 of the Code, such that it is unclear how the determination of whether an ECP is due should be made. Therefore, the EPMG considered whether or not a lack of clarity (and as such the perceived defect) exists.

4.1.1 Legal opinion

The EPMG noted P163 had been raised on the basis of legal opinion provided to the Proposer on the computation of the ECP (reference 9). On consideration of this legal opinion the EPMG noted three main points which had been raised:

- (a) That there was the potential for ELEXON to interpret the Code on the basis of the Authority's policy statements rather than the literal drafting of the Code.
- (b) That the definition of Account Imbalance Cashflow (CAEI), as being in relation to an Energy Account and Settlement Period, precludes the possibility of more than one ECP being calculated for any unique combination of Party Energy Account and Settlement Period. Hence, requiring that ECPs be calculated on the basis of all claims for PNE affecting an individual combination of Party Energy Account and Settlement Period. NB: the term used, 'Relevant Account Imbalance Cash Flow (RCAEI)', is derived from a summation of Settlement Period and Energy Account specific values of CAEI.
- (c) That any reference to "a claim for PNE" should be interpreted as encapsulating all Settlement Periods and Volume Notifications affected by one underlying error.

4.1.2 Further Legal Advice

The EPMG noted that, in light of the legal opinion provided (reference 9), ELEXON had taken further external legal advice (reference 10) on the application of Section P6 and had been advised as follows:

- (a) In the absence of any formal direction to the contrary, ELEXON should apply the literal drafting of the Code rather than any policy statement made by the Authority (see point 4.1.1 (a) above).
- (b) In the absence of any formal direction to the contrary, any reference to "a claim for PNE" should be interpreted as being Volume Notification specific (see point 4.1.1 (c) above).
- (c) In the absence of any formal direction to the contrary, ELEXON should consider that the scope of P6.5.3 is not open for interpretation on the basis of the RCAEI argument (point 4.1.1 (b) above), as the PNE specific term NCAEI is utilised in this paragraph. Hence, ELEXON should apply 6.5.3 on 'a claim for PNE' specific basis (unless formally directed that the arguments as to the scope of a 'claim for PNE' should be accepted).
- (d) In the absence of any formal direction to the contrary, the drafting of P6.5.2 should only be considered as unclear in relation to the argument that RCAEI is restricted to a single value for any combination of Energy Account and group of 'relevant Settlement Periods' (see point 4.1.1

(b) above). Otherwise 6.5.2 should be applied on a per 'claim for PNE' basis (noting point 4.1.1 (c) and 4.1.2 (c) above).

- (e) An argument against the application of P6.5.2 on 'a claim for PNE' specific basis exists via an argument as to whether RCAEI is single value for an Energy Account and group of 'relevant Settlement Periods'. However, as a counter argument to this point also exists (reference 10), in the absence of any external direction to the contrary ELEXON should apply 6.5.2 on a claim by claim basis.
- (f) In recognition that arguments as to whether multiple values of RCAEI can exist for an Energy Account and group of 'relevant Settlement Periods', ELEXON should view a Modification clarifying paragraph P6.5.2 as beneficial. However, it would be for the assessing Modification Group to determine the form of this clarification (i.e. whether to clarify P6.5.2 as 'claim for PNE' specific or to be applied to all claims affecting a Party Energy Account).

Therefore, the EPMG agreed that a lack of clarity in paragraph P6.5.2 (and as such the perceived defect identified under P163) did exist as follows:

- Had ELEXON accepted the arguments in the opinion and implemented the ECP calculation as suggested, it could be considered that the defect identified under P163 would not exist. However, the EPMG noted that ELEXON had been advised against this approach. Furthermore, the group noted that, on the basis of the contradictory arguments raised and in the absence of any clarification, the ECP calculation could still remain open to challenge.
- If the arguments put forward in the opinion had been viewed as flawed in their entirety and, as such, there was no opportunity for clarification, the perceived defect identified in P163 could be considered non-existent. However, the EPMG noted ELEXON's external legal advice indicating that clarification of P6.5.2 should be viewed as beneficial. Furthermore, the very existence of P163 and P160 suggested the potential for some form of clarification. The group also noted that, on the basis on the contradictory arguments raised and in the absence of any clarification, the ECP calculation could still remain open to challenge.
- If a lack of clarity was acknowledged then the perceived defect would exist, it would then remain open to the EPMG to determine the form of this clarification.

In light of the previous, the EPMG unanimously agreed that the perceived lack of clarity identified under P163 exists. The EPMG next considered what form any clarification should take under P163 as follows:

- The EPMG considered whether, under P163, paragraph P6.5 should be clarified in line with ELEXON's existing interpretation of the ECP calculation as being Volume Notification specific. The EPMG unanimously agreed that this approach would not address the underlying issues with the ECP calculation and should not be progressed.
- The EPMG considered whether, under P163, the definition of a PNE should be clarified as being in relation to all Settlement Periods and Volume Notifications resulting from the same underlying cause (error) throughout section P6 of the Code. The EPMG noted that, although this would address all issues with the ECP calculation, there would be potential consequences throughout section P6 of the Code. Furthermore, the EPMG noted ELEXON's external legal advice that the scope of PNE should not be considered open to interpretation. Therefore, the EPMG agreed that this approach should not be progressed.
- The EPMG considered whether, under P163, paragraph P6.5.2 should be clarified such that the determination of whether an ECP for an individual Energy Account was due would be based on the effect of an entire PNE investigation on such Energy Account. The EPMG noted that this approach would not address the issues with the ECP calculation for all Energy Accounts (see

section 4.3 of this document). However, the EPMG noted ELEXON's legal advice that the scope for clarification should be limited to paragraph P6.5.2. Furthermore, it was noted that P163 had been raised specifically against P6.5.2.

In summary, the EPMG agreed that, under Proposed Modification P163, paragraph P6.5.2 would be clarified such that the determination of whether an ECP was due for an Energy Account would be based on the effect of an entire PNE investigation on such Energy Account. The EPMG noted that no comment or judgement on the validity of the arguments presented in the legal opinion (reference 9) and further legal advice taken by ELEXON (Reference 10) had been made in agreeing the scope of Proposed Modification P163. Therefore, in the absence of any clarification, the calculation of the ECP could remain open to challenge on the grounds of the arguments which had been put forward.

4.2 Potential Alternatives

The EPMG have considered potential alternative solutions to the defects identified under P160 and P163.

4.2.1 P160: Potential alternative solution

P160 seeks to address a perceived defect whereby the Energy Account ECP for Parties with upheld PNE claims can be greater than 20% of the total financial benefit to the Energy Account. Under Proposed Modification P160 this would be achieved by grouping claims which affect the same Party Energy Account and Settlement Period for the purpose of the ECP calculation.

The EPMG identified a potential alternative solution to the defect identified under P160 whereby all claims resulting from the same 'cause' (this term is utilised under existing paragraph P6.2.6 for grouping claims for fee calculation) would be grouped for the purpose of the ECP calculation. This approach would ensure the ECP for an Energy Account is not significantly more than 20% of the financial benefit to the Energy Account. As such, this potential alternative solution would address the defect identified under P160 and is considered a valid Alternative Modification P160.

On consideration of the materiality of various approaches to grouping claims for the purpose of the ECP calculation, as outlined in section 18 of this document, the EPMG agreed that grouping by same cause would ensure the ECP calculation was equitable for all participants. Hence, the EPMG agreed that this approach should be progressed as Alternative Modification P160.

4.2.2 P163: Potential alternative solutions

Two potential alternative solutions to the perceived defect identified under P163 have been considered by the EPMG as follows.

P163 seeks to address a perceived defect consisting a lack of clarity in the drafting of the Code, such that it is un-clear that the "adjustments to the data" referred to in paragraph 6.5.2 of Section P refers to all adjustments that result from the determination made by the PNE Committee in respect of a PNE investigation.

A precedent was set in this area under Modification Proposal P84-'Amendment To Process For Past Notification Errors (2)' (P84) (reference 8). P84 asserted that there were some difficulties with the then current drafting of paragraph 6 of Section P of the BSC, relating to the fee payable for claims of PNE. In particular, Modification Proposal P84 suggested that, in clause 6.2.2, the basis for the claim fee was unclear and potentially discriminatory. The Modification Group assessing P84 were not required to make a judgement on the correct interpretation of the scope of a claim for PNE, instead the group developed Alternative Modification P84 which achieved the same effect. This is indicated in the P84 Modification Report (Reference 8) as follows:

"The Modification Group addressed next whether the principal issue to be considered was any lack of clarity in the current BSC or the equity of the current arrangements. The Modification Group considered whether the current drafting of clause P6 of the BSC was ambiguous in respect of the Fee. The Modification Group noted that the implication that multiple fees would be payable by a single claimant (one for each Volume Notification) had been explicitly discussed when P6 had been drafted: however, overwrite and other notification strategies had not been explicitly considered at that time. The Group also noted that there had been no formal challenge to the current drafting since it had been recommended to the Authority, and that the majority of consultation respondents viewed the basis of the fee as clear. The Group therefore took the view that the effect of the current arrangements, rather than their clarity, was the more important issue to be addressed."

As such, the P84 Modification Group developed Alternative Modification P84 which, rather than clarifying what constituted a PNE claim for the purpose of the fee, allowed grouping of claims which resulted from the same cause for the purpose of the fee alone. The EPMG considered taking a similar approach under P163, i.e. the introduction of claim grouping based on PNE investigation (or in order to utilise an existing term 'same cause') for the purpose of the ECP only (paragraph P6.5). This would then remove any ambiguity from the calculation of the ECP and thereby address the defect identified under P163. Furthermore, it would not require re-interpretation of what constitutes a PNE claim throughout paragraph P6 of the Code. As such, this would constitute a valid Alternative Modification P163. However, the EPMG were of the view that this approach could be considered a retrospective change to the ECP calculation and, as such, would be identical to Alternative Modification P160 (which would also group claims by same cause for the purpose of paragraph P6.5 only).

As outlined in section 4.1 of this document, the EPMG considered an alternative solution to the defect identified under P163 whereby the definition of a PNE would be clarified as being in relation to all Settlement Periods and Volume Notifications resulting from the same underlying cause (error) throughout section P6 of the Code. The EPMG noted that, this would address all issues with the ECP calculation. However, under this solution, there would be potential consequences throughout section P6 of the Code. Furthermore, the EPMG noted ELEXON's external legal advice that, in the absence of formal direction to the contrary, the scope of a PNE should not be considered open to interpretation and that any change in this area should not be considered a clarification. Therefore, the EPMG agreed that this approach should not be progressed. The EPMG agreed, subject to industry consultation that neither of the alternative solutions to the perceived defect identified under P163 should be progressed as an Alternative Modification.

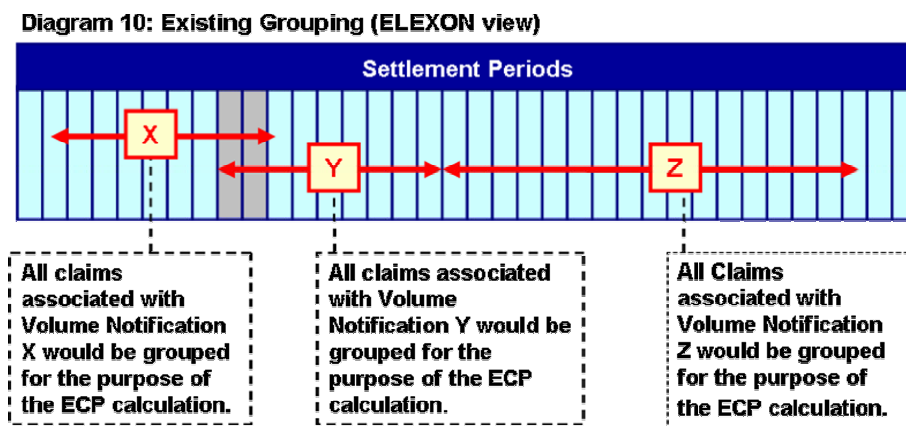
4.3 Grouping of claims

In order to address the issues identified with the ECP calculation (see section 2), claims which affect the same Party Energy Account and Settlement Period must be grouped for the purpose of calculating the ECP. P160 and P163 both seek to achieve this grouping, however the form and method is different under both proposals. This section outlines the discussions of the EPMG on the grouping of claims under P160 and P163 and illustrates the effects of each proposal.

4.3.1 Existing grouping-By Volume Notification (ELEXON view)

Diagram 10 illustrates ELEXON’s view of the grouping, for the purpose of ECP calculation, currently specified under the Code. In the example, three erroneous Volume Notifications (X, Y and Z) are to be corrected (NB: all Volume Notifications impact a single Energy Account). Hence, a separate PNE exists for each combination of Settlement Period and Volume Notification. As outlined in section 2.2 of this document, the effects on the relevant Energy Account of all PNEs associated with an individual corrected Volume Notification are considered on a net basis for the purpose of the ECP calculation.

Effects of the grouping illustrated in Diagram 10 are now considered in the context of paragraph P6.5 of the Code.



All PNEs associated with Volume Notification X would be grouped for the purpose of paragraph P6.5.2 (this value determines whether there is an overall financial benefit to the Energy Account on which an ECP will be due). Hence, in the example given, an ECP would be calculated for all the PNEs associated with Volume Notification X if the overall effect of the group is of financial benefit to the Energy Account. Similarly, all PNEs associated with Volume Notification Y would be considered as a group for the Purpose of P6.5.2 and also those associated with Volume Notification Z. As such, any netting effect of Volume Notifications X and Y across the common Settlement Periods is not taken into account when determining whether an ECP will be due.

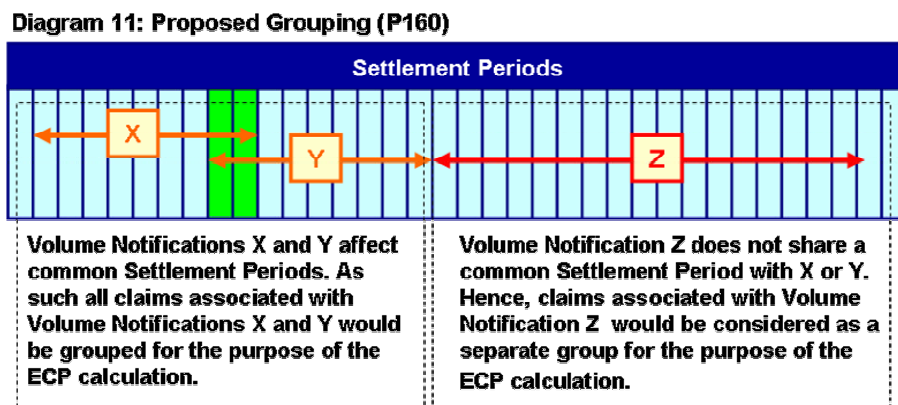
Following application of P6.5.2 to determine whether an ECP should be generated for a group, where an ECP is due, the actual payment to be made is calculated in accordance with paragraph P6.5.3. Under paragraph P6.5.3, each Volume Notification is considered individually. For those Settlement Periods impacted by only one corrected Volume Notification the ECP will be either 20% of the financial benefit or, if there is a financial dis-benefit, zero. However, if two or more corrected Volume Notifications impact a common Settlement Period, there will be two separate claims which must be considered individually for the purpose of P6.5.3. Hence, the ECP will be calculated on the apparent benefit of each corrected Volume Notification considered individually. As a result, the total ECP may not represent 20% the actual financial benefit to the Energy Account (see section 2 for further details). In Diagram 10, there are common Settlement Periods affected by both Volume Notifications X and Y, hence the sum of the Energy Account ECPs calculated for these two groups may not represent 20% of

the actual financial benefit to the Energy Account (which results from the net effect of the two Volume Notifications).

In order to address the issue, claims affecting the same Party Energy Account and Settlement Period must be grouped in some way, such that the net effect of claims will be considered for the purpose of paragraphs P6.5.2 and P6.5.3.

4.3.2 Grouping under Proposed Modification P160: Grouping by common Settlement Periods

The EPMG have considered the form of grouping that would be introduced under Proposed Modification P160. Under Proposed Modification P160, the impact on an Energy Account of all corrected Volume Notifications affecting one or more common Settlement Periods would be considered on a net basis for the purpose of the ECP calculation. Diagram 11 illustrates this grouping for an individual Energy Account.



Effects of the grouping illustrated in Diagram 11 are now considered in the context of paragraph P6.5 of the Code.

The net effect on the relevant Energy Account of Volume Notifications X and Y would be considered for the purpose of paragraph P6.5.2 (this paragraph determines whether there is an overall financial benefit on which an ECP will be due). Hence, in the example given, an ECP would be calculated for the two Volume Notifications (X and Y) if the net effect of this group is of financial benefit to the Energy Account. Volume Notification Z would be considered as a separate group for the purpose of P6.5.2 and would attract a separate ECP if of financial benefit to the Energy Account.

Following application of P6.5.2 to determine whether an ECP should be generated on the basis of the effect on an Energy Account of a group of PNEs, where an ECP is due, the payment to be made is calculated in accordance with paragraph P6.5.3 as follows:

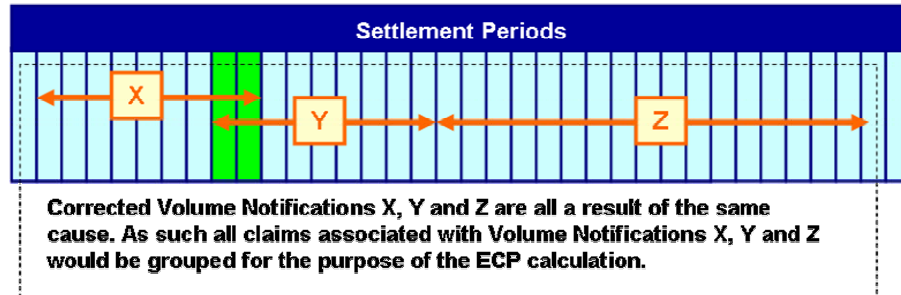
- An ECP will be calculated for group XY. This ECP will reflect either 20% of the net financial benefit of this group or, if the net overall effect of the group is of dis-benefit, zero.
- A separate ECP will be calculated for group Z. This ECP will reflect either 20% of the net financial benefit of this group or, if the net overall effect of the group is of dis-benefit, zero.

Therefore, this grouping addresses the issues identified in P160 in relation to multiple upheld claims affecting the same Party Energy Account and Settlement Period. However, it should be noted that, under Proposed Modification P160, the ECP could be more than 20% of the total financial benefit of all claims on the Energy Account. This occurs because, if Volume Notification Z is of dis-benefit, the netting effect would not be taken into account when calculating the ECP for claim group XY.

4.3.3 Grouping under Alternative Modification P160

Under Alternative Modification P160, the ECP would be calculated on the basis of all adjustments to an Energy Account resulting from the same cause (i.e. per PNE investigation⁴). Diagram 12 illustrates this grouping for an individual Energy Account.

Diagram 12: Grouping by same cause (P160 Alternative)



The effects of the grouping illustrated in Diagram 12 are now considered in the context of paragraph P6.5 of the Code.

All adjustments to data, associated with Volume Notifications X, Y and Z and affecting the relevant Energy Account, would be grouped for the purpose of paragraph P6.5.2 (this paragraph determines whether there is an overall financial benefit to the Energy Account on which an ECP will be due). Hence, in the example given, an ECP would be calculated for the group of three Volume Notifications as a whole, if the net effect is of financial benefit to the Energy Account.

Following application of P6.5.2 to determine whether an ECP should be generated for the group as a whole, where an ECP is due, the actual payment to be made is calculated in accordance with paragraph P6.5.3 as follows:

- An ECP will be calculated for group XYZ. This ECP will reflect either 20% of the total financial benefit the group or, if the net overall effect of the group is of dis-benefit, zero.

Therefore, this grouping addresses all issues identified in P160 in relation to multiple upheld claims affecting the same Party Energy Account and Settlement Period, ensuring the ECP would represent 20% of the total financial benefit for all Energy Accounts.

4.3.4 Grouping under Proposed Modification P163

Under Proposed Modification P163, all claims resulting from the same cause would be considered as a group for the purpose of paragraph P6.5.2 (under which it is determined whether an ECP will be due). The scope of this grouping is identical to that illustrated in Diagram 12 (grouping by same cause under Alternative Modification P160). However, as this grouping would only apply to paragraph P6.5.2 the consequences are as follows:

All adjustments to data, associated with Volume Notifications X, Y and Z and affecting the relevant Energy Account, would be grouped for the purpose of paragraph P6.5.2 (this paragraph determines whether there is an overall financial benefit to the Energy Account on which an ECP will be due). Hence, in the example given, an ECP would only be calculated for the group of three Volume Notifications if the net effect of this group is of financial benefit to the Energy Account.

Following application of P6.5.2 to determine whether an ECP should be generated for the group, where an ECP is due, the actual payment to be made would be calculated on the basis of the effect of each corrected Volume Notification individually in accordance with paragraph P6.5.3 as follows:

- An ECP will be calculated for group X, this ECP will reflect either 20% of the perceived benefit of the Volume Notification when considered individually.
- An ECP will be calculated for group Y, this ECP will reflect either 20% of the perceived benefit of the Volume Notification when considered individually.
- An ECP will be calculated for group Z, this ECP will reflect either 20% of the perceived benefit of the Volume Notification when considered individually.

As a result, the total ECP may not represent 20% the actual financial benefit to the Energy Account (see section 2 for further details).

Hence under Proposed Modification P163, when considering a group of claims: either

- If there is either no overall benefit, or a dis-benefit to the Energy Account, no ECP would be generated; or
- If there is a benefit to the Energy Account an ECP would be generated. However, as this ECP is calculated on a claim by claim basis this ECP may exceed 20% of the actual financial benefit.

Therefore, this grouping addresses some of the issues identified in relation to multiple upheld claims affecting the same Party Energy Account and Settlement Period. However, it should be noted that under Proposed Modification P163 the ECP may not represent 20% of the total financial benefit to the Energy Account in some cases. This occurs because, if multiple Volume Notifications are to be corrected and an overall benefit is received such that an ECP is due, the netting effect between Volume Notifications would not be taken into account when calculating the ECP.

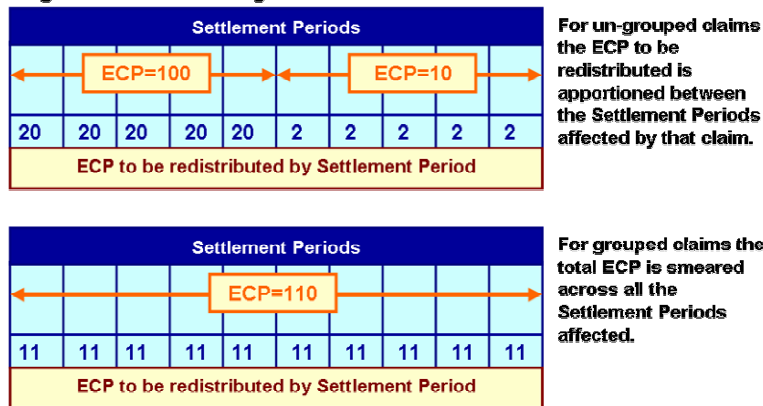
4.3.5 Grouping across Energy Accounts

The EPMG noted that any grouping across Energy Accounts is outside the scope of both P160 and P163, as this approach was specifically discussed and dismissed under P37 (reference 5).

4.3.6 ECP Reallocation

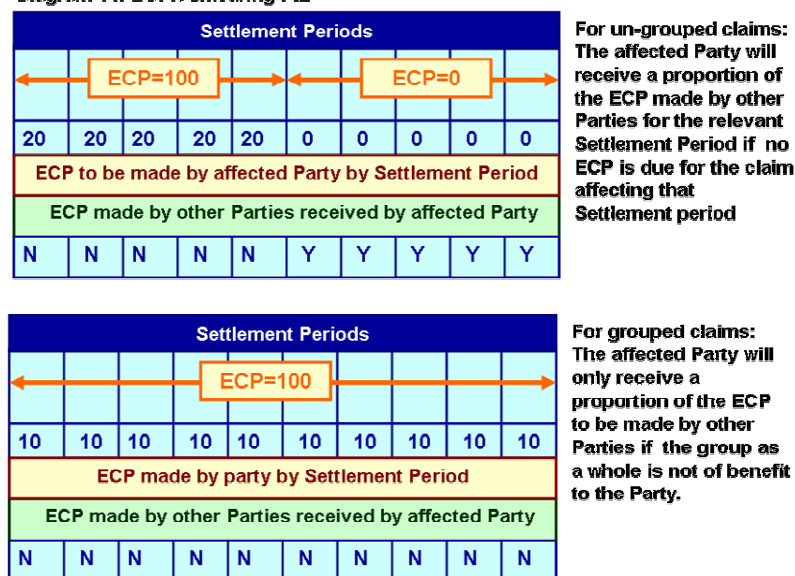
The EPMG noted that there would be a second order impact of grouping claims for the purpose of the ECP calculation which would occur via the re-allocation of ECPs in accordance with paragraphs P6.5.4 and P6.5.5. Under paragraphs P6.5.4 and P6.5.5, any ECPs (made by Parties financially benefiting from upheld PNE claims) are redistributed (via the Error Correction Payment Reallocation (ECRP)) to all Party Energy Accounts which do not receive a financial benefit from upheld PNE claims in the affected Settlement Periods. Re-allocation is performed in proportion to a Party's Residual Cashflow Reallocation Proportion (RCRP) for the affected Settlement Periods.

Diagram 13: ECRP smearing



Grouping for the purpose of the ECP calculation has two potential effects. Primarily Parties which do not benefit from a group of upheld PNEs and, as such, receive a portion of any ECPs made by other Parties via the ECPR would be affected. The ECPR a Party receives may be increased or decreased, as a result of any grouping, via a 'smearing' of the ECPs as illustrated in Diagram 13. This occurs as the ECPR for an individual Party Energy Account is proportional to the Party's RCRP for that Settlement Period. Hence, any smearing of claims across Settlement Periods may impact the ECPR received by an individual Party.

Diagram 14: ECRP smearing Pt2



Secondly, a Party which has multiple upheld claims may be affected. When considered individually a claim may be of financial dis-benefit to the Party, and as such no ECP will be due. As a consequence, the affected Party would receive a proportion of any ECPs made by other Parties for the relevant

Settlement Periods (including that made by the counter Party in the claim). However, when considered as a group, these multiple upheld PNEs may be of financial benefit to the Party Energy Account. As such, an ECP would be generated for the group as a whole. Therefore, the Party would not receive an ECPR payment for any Settlement Periods affected by the group of claims as illustrated in diagram 14. It should be noted that, for any individual claim which is of dis-benefit to an individual Party Energy account, there will typically be an associated Energy Account receiving a benefit on which an ECP is due. Hence, although a wider grouping of claims could reduce the ECP payment made by a Party it would also reduce the ECPR received.

The EPMG noted that the materiality of any second order effects of claim grouping would be marginal in comparison to the effect on the ECP payment for affected Parties.

4.3.7 ECP materiality of claim grouping

The EPMG have considered the materiality of grouping claims for the purpose of the ECP calculation. Both P160 and P163 would only impact the ECP calculation for those PNE investigations involving more than one Volume Notification (i.e. those investigations with multiple Cnnn numbers¹). As such, claims potentially impacted by P160 and P163 are those associated with PNE Investigations I003, I020, I029 and I030.

	Claims	Energy Account	Estimated Financial Benefit (£k)	Estimated ECP (£k) (as %age of Financial benefit to Energy Account)			
				Current	P160 Proposed	P160 Alternative	P163
I003	C034	AESDRAX	318	64 (20)	64 (20)	64 (20)	64 (20)
	C714	BEPET001	-63	6.8 (-11)	6.8 (-11)	0	0
I020	C028	EDFT	0	375 (∞)	0	0	0
	C029	EDFGEN (P)	-45	157 (-350)	0	0	0
		EDFGEN (C)	295	208 (71)	59 (20)	59 (20)	208 (71)
I029	C629-46	Innogy	0	850 (∞)	0	0	0
	C653-70	Npower	4,200	830 (20)	830 (20)	830 (20)	830 (20)
		YE	-501	15 (-3)	15 (-3)	0	0
I030	C647-52	Innogy	-390	0	0	0	0
		YE	626	125 (20)	125 (20)	125 (20)	125 (20)

For those claims potentially affected by P160 and P163, the estimated ECP to be made under the current baseline (ELEXON's view, grouping by Volume Notification), Proposed Modification P160 (grouping by common Settlement Period), Alternative Modification P160 (grouping by same cause) and Proposed Modification P163 (grouping by same cause for 6.5.2 only) is outlined in the table 2. It should be noted that these estimates are based on indicative figures and will be subject to change when the results of the PFSR position for the affected Settlement Days is known.

Table 2: ECP Estimates

The EPMG considered the estimated materiality of the ECP calculation outlined in the table 2 as follows:

Current Baseline:

The EPMG noted that the estimated ECPs calculated under ELEXON's view of the current baseline (grouping by Volume Notification) would result in ECPs for some Energy Accounts which significantly exceed 20% of the total financial benefit. The EPMG noted in particular the case of I020 and I029 where the total ECP for all Energy Accounts affected had been estimated as approximately 300% and 71% respectively of the total financial benefit to the Parties involved.

Proposed Modification P160:

The EPMG noted that the estimated ECP calculated under Proposed Modification P160 (grouping by common Settlement Period) would ensure that the ECP reflected 20% of the financial benefit for the majority of Energy Accounts. However, the EPMG noted that ECPs would still be generated for some Energy Accounts which were at a dis-benefit from the rectification of upheld PNE claims (BEPET001 and YE). As such, the EPMG agreed that Proposed Modification P160 would offer an improvement over grouping by Volume Notification, however some issues with the ECP calculation would remain unresolved.

Alternative Modification P160:

The EPMG noted that grouping by same cause would ensure the ECP for each Energy Account would reflect 20% of the financial benefit to that Energy Account. As such, the EPMG agreed that Alternative Modification P160 resolve all issues with the ECP calculation identified under P160.

Proposed Modification P163:

The EPMG noted that the estimated ECP calculated under Proposed Modification P163 (grouping by same cause for the purpose of P6.5.2 only) would ensure that the ECP reflected 20% of the financial benefit for the majority of Energy Accounts. However, the EPMG noted that, for any Energy Account which received a benefit as a result of multiple upheld claims, the ECP could still significantly exceed 20% of the financial benefit to that Energy Account. In particular the EPMG noted that the ECP for EDFGEN (C) associated with I020 was estimated to be 71% of the financial benefit to that Energy Account. As such, the EPMG agreed that Proposed Modification P163 would offer an improvement over grouping by Volume Notification but would leave some issues with the ECP calculation unresolved. The EPMG concluded that grouping by same cause (as would be achieved under Alternative Modification P160) would ensure the ECP calculation was equitable for all participants (i.e. 20% of the benefit to the affected Energy Account).

4.4 Retrospection

The EPMG noted that there is a principle of legal policy such that an amending rule should generally change the relevant matter only from the time the rule change commences. In other words, changes to rules that potentially impact the character of past transactions completed on the basis of then existing rules should be avoided. Furthermore, the EPMG noted that the Authority has indicated (via previous decision letters) that only limited circumstances would give rise to the need for a retrospective Modification of this type.

Hence, the EPMG has considered whether the proposed changes to the calculation of ECPs under P160 and P163 would constitute retrospective Modifications and whether, if this were the case, a retrospective rule change could be justified.

4.4.1 Retrospection under P160 (Proposed and Alternative)

The EPMG have considered two issues in relation to retrospection under P160, primarily whether P160 would constitute a retrospective amendment, and secondly whether any element of retrospection would be justified.

The majority of the EPMG were of the view that P160 would constitute a retrospective Modification. It was the view of the majority that P160 would amend the ECP calculation which has been approved and agreed by the industry under P37 and, as such, Proposed Modification P160 would constitute a retrospective amendment. Contrary to the majority, one member of the EPMG expressed the view that P160 would not constitute a retrospective Modification. It was the view of this member that the original intent of P37 was to include an ECP at 20% of the financial benefit of upheld PNE claims (see section 4.4.3). However, the current Code drafting does not deliver this intent in the scenario where multiple claims affect the same Party Energy Account and Settlement Period. As such, the Code is currently inconsistent with the intent of P37 and the industry perception of how the ECP calculation would work. Therefore, P160 would implement a correction to an oversight in the original legal drafting of P37 rather than a retrospective rule change.

On consideration of whether a retrospective rule change could be justified in order to address the defect identified under P160, the EPMG noted Authority comments on retrospective rule changes indicated in previous decision letters. In the decision letter for Modification Proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' (P19) (Reference 7) the Authority laid down certain criteria, which if satisfied, might, in its' view, give rise to the need for a retrospective rule change. This test was subsequently repeated by the Authority in its decision letter on P37 (Reference 6). The Authority stated as follows:

"Ofgem is, in general, against approving modifications which have retrospective effects. However, despite the general principle against retrospective rule changes, Ofgem believes that there may be small number of particular circumstances that could give rise to the need for a modification which would have a retrospective effect as evidenced in a small number of modifications approved for the Network Code. The particular circumstances which could give rise to the need for a retrospective rule change could, for instance, include:

- a situation where the fault or error occasioning the loss was directly attributable to central arrangements;*
- combinations of circumstances that could not have been reasonably foreseen; or*
- where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and the process of the change to be finalised with retrospective effect."*

The EPMG have considered whether the perceived defect identified under P160 is an example of the particular circumstances (indicated in the P19 decision letter) which could give rise to the need for a retrospective rule change:

- Clearly Flagged to the Participants**

It was the view of the EPMG that the possibility of retrospective action as proposed under P160 had not been flagged to participants in advance.

- **Fault or error directly Attributable to Central Arrangements**

It was the view of the EPMG that the issues identified with the ECP calculation was a result of the Code drafting developed under P37 not being robust to the scenario where multiple claims affect the same Settlement Period and Party Energy Account. As such, the perceived defect identified under P160 could be viewed as an error or fault directly attributable to Central Arrangements.

- **Circumstances not Reasonably Foreseeable**

It was the majority view of the EPMG that the issues with the ECP calculation identified under P160 (which arise from the nature of the calculation when multiple claims affect the same Settlement Period and Party Energy Account) are an example of a circumstance which could not be reasonably foreseen. Contrary to the majority view, the view was expressed that the ECP calculation was clearly defined in the Code and that Parties should have considered the potential results prior to raising claims. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. As such, the EPMG concluded a retrospective change was desirable.

Overall, it was the view of the EPMG that the perceived defect identified under P160 is an example of the circumstances (as indicated by the Authority in the decision letter for P19) where a retrospective rule change could be justified. However, the EPMG noted that the circumstances indicated in the P19 decision letter directly related to the particular issues considered under P19 (i.e. retrospective changes to contract notifications). Furthermore, that the Authority had indicated that any retrospective Modification Proposal should be considered independently, as indicated in the P19 decision letter as follows:

"Ofgem considers that, in general, it is more appropriate to consider any retrospective modifications on a case by case basis, in the light of the circumstances relevant to the particular event and the proposals and reasons for rectification. Even if only one company was affected, this would not, of itself, mean that an appropriate Modification Proposal could not better facilitate the BSC objectives or be inconsistent with the Authority's duties under Sections 3A-C of the Electricity Act 1989."

Considering P160 aside from previous Authority decisions on Modification Proposals, the EPMG agreed that it would be desirable to address the scenario where an ECP would significantly exceed 20% of the total financial benefit of a multiple claims, even if this required retrospective amendment of the ECP calculation. Hence, it was the unanimous view of the EPMG that a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160.

4.4.2 Retrospection under P163

The EPMG considered whether P163 would constitute a retrospective amendment and agreed that P163 would provide clarification rather than introducing a retrospective change. Furthermore, the EPMG agreed that, even if P163 were viewed as a retrospective amendment, the proposed changes would still be considered desirable in order to address the scenario where an ECP would significantly exceed 20% of the total financial benefit of a multiple claims (see rationale provided for P160 in section 4.4.1 above).

4.4.3 Intent of P37

The EPMG considered whether the ECP calculation, as introduced under Approved Alternative Modification P37, was designed to result in ECP payments at 20% of the total financial benefit to an Energy Account. The EPMG noted the Authority Decision letter for P37 (reference 6) as follows:

"Ofgem continues to believe that, even in the circumstances covered by this Modification Proposal where notification errors may be corrected, it is not generally appropriate to expect that a Party should recover its losses in full nor should it expect to do so. Ofgem notes that the Panel has recommended that the discount proposed by P37 of 20% should be accepted. Ofgem's concerns on this matter have been expressed elsewhere. However, Ofgem does not consider that the cap on recovery, proposed in the original P37, is appropriate and therefore believes that P37 alt better achieves the BSC objective."

Furthermore, the EPMG noted the provisional thinking of the Authority on P37 (reference 11) which had specifically addressed recovery of financial losses associated with notification errors as follows:

The responses to the consultation of Modification Proposal P37 were broadly split between recommending rejection of the modification (and therefore an implied limit on recovery of nil%) and support of the proposal of a limit on recovery of 80%, albeit with some parties supporting higher values. The Authority currently thinks, in the light of the evidence and discussions to date and taking a view on the level of incentives that would have been necessary, that the value of 80% recovery may be too high, whereas recovery of no monies may be too low in the case of the necessarily exceptional circumstances."

The EPMG noted that comments made by the Authority in its' decision letters could not be taken as an indication of the intent of any particular Approved Modification. However, the EPMG noted that the Authority had indicated that recovery of nil% of the financial impact of a notification error (as would be the case if an ECP of greater than 100% was generated) may be too low. Therefore, the EPMG agreed that calculation of the ECP on a Volume Notification basis (potentially resulting in recovery of nil% of the financial benefit of a corrected notification error) could be considered as inconsistent with the views expressed by the Authority in its' provisional think on P37.

The EPMG agree that the industry views on whether the ECP calculation was designed to result in ECP payments at 20% of the total financial benefit to an Energy Account should be obtained via industry consultation.

4.5 ECP invoicing timetable

The EPMG has considered the payment calendar for ECPs. The EPMG noted that ELEXON has not yet published a payment calendar for the invoicing of ECPs. Furthermore, that the invoicing of ECPs is expected to occur once all the Post Final Settlement Runs (PFSRs) for the affected Settlement Days have been executed (scheduled for late June 2004). As such, the EPMG agreed that, if approved, P160 and P163 should be implemented prior to the initiation of ECP invoicing if possible.

It should be noted that, as the ECP calculation will be performed separately from the PFSRs, there is no interaction between both proposal (P160 and P163) and the PFSR timetable.

4.6 Initial assessment against the Applicable BSC Objectives

The EPMG have performed an initial assessment of both P160 and P163 against the Applicable BSC Objectives and details of these initial discussions are provided in order to support industry consultation. Views provided via industry consultation will be considered by the EPMG when finalising its' assessment of P160 and P163.

4.6.1 Proposed Modification P160

The EPMG considered the arguments for or against the better achievement of the Applicable BSC Objectives under Proposed Modification P160 as follows:

- The EPMG supported the rationale provided by the Proposer in P160, i.e. that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, would better achieve Applicable BSC Objective (c).
- The EPMG noted that in general retrospective changes to rules do not facilitate competition and, as such, Proposed Modification P160 could be considered to have a negative effect on the achievement of Applicable BSC Objective (c). In particular a number of EPMG members noted that Parties should have considered the effects of the ECP prior to raising any claims and, as such, a retrospective amendment could not be justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. As such, the EPMG concluded a retrospective change was desirable.
- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed that Proposed Modification P160 would better facilitate achievement of Applicable BSC Objective (d).

Overall, the EPMG agreed that the benefits to competition of increased consistency in the calculation of the ECP would outweigh any negative effect of introducing a retrospective rule change. Therefore, the EPMG concluded that Proposed Modification P160 would better facilitate achievement of the Applicable BSC Objective in comparison to the current baseline.

4.6.2 Alternative Modification P160

The EPMG considered the arguments for or against the better achievement of the Applicable BSC Objectives under Alternative Modification P160 as follows:

- The EPMG supported the rationale provided by the Proposer in P160, i.e. that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, would better achieve Applicable BSC Objective (c).
- The EPMG noted that in general retrospective changes to rules do not facilitate competition and, as such, Alternative Modification P160 could be considered to have a negative effect on the achievement of Applicable BSC Objective (c). In particular one member of the EPMG noted that Parties should have considered the effects of the ECP prior to raising any claims and, as such, a retrospective amendment could not be justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of

the investigations affected and could not have been reasonably foreseen. As such, the EPMG concluded a retrospective change was desirable.

- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed that Alternative Modification P160 would better facilitate achievement of Applicable BSC Objective (d).

Overall, the EPMG agreed that potential benefits to competition resulting from increased consistency in the calculation of the ECP would outweigh any negative effect of introducing a retrospective rule change. Therefore, the EPMG concluded that Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to the current baseline.

Furthermore, the EPMG agreed that Alternative Modification would ensure that the effect of the ECP is consistent across claimants to a greater extent than Proposed Modification P160. Therefore, the EPMG agreed that Alternative Modification P160 would better facilitate achievement of the BSC Objectives in comparison to Proposed Modification P160.

4.6.3 Proposed Modification P163

The EPMG considered the arguments for or against the better achievement of the Applicable BSC Objectives under Proposed Modification P163 as follows:

- The EPMG agreed that clarifying the ECP calculation, such that the majority of Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would better achieve Applicable BSC Objective (c).
- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed Proposed Modification P163 would better facilitate achievement of Applicable BSC Objective (d).

Overall, the EPMG concluded that P163 would better facilitate achievement of Applicable BSC Objectives in comparison to the current baseline.

5 REQUIREMENT SPECIFICATION FOR MODIFICATION PROPOSALS P160 AND P163

This section outlines the requirements of P160 and P163 as of the 4 March 2004 and is provided to support industry impact assessment of P160 and P163.

5.1 Grouping of claims for the purpose of the ECP calculation

As indicated in section 4.3, the key requirement of both P160 and P163 is to ensure grouping of PNE claims for the purpose of the ECP calculation.

5.1.1 Proposed Modification P160

As indicated in section 4.3.2 of this document, under Proposed Modification P160, claims which affect the same Party Energy Account and Settlement Period would be grouped for the purpose of the ECP calculation. Under Proposed Modification P160 this would be achieved via the introduction of a new Code defined term 'ECP Claim Group' to be used for the purpose of paragraph P6.5.

The impact of grouping claims for the purpose of the ECP is considered in section 4.3 of this document.

5.1.2 Alternative Modification P160

As indicated in section 4.3.3 of this document, under Alternative Modification P160, claims which result from the same cause would be grouped for the purpose of the ECP calculation. Under Proposed Modification P160 this would be achieved via the introduction of a new Code defined term 'ECP Claim Group' to be used for the purpose of paragraph P6.5.

The impact of grouping claims for the purpose of the ECP is considered in section 4.3 of this document.

5.1.3 Proposed Modification P163

As indicated in section 4.3.4 of this document, under Proposed Modification P163, claims which result from the same cause would be grouped for the purpose of Paragraph P6.5.2 only. The impact of grouping claims for the purpose of the ECP is considered in section 4.3 of this document.

6 IMPACTS

6.1 Changes to the Code

6.1.1 Proposed Modification P160

- **Section P**

Section P will be amended such that PNE claims affecting the same Party Energy Account and Settlement Periods are grouped for the purpose of the ECP calculation and re-allocation.

6.1.2 Alternative Modification P160

- **Section P**

Section P will be amended such that PNE claims resulting from the same cause are grouped for the purpose of the ECP calculation and re-allocation.

6.1.3 Proposed Modification P163

- **Section P**

Section P will be amended such that PNE claims resulting from the same cause are grouped for the purpose of P6.5.2 (determination of whether an ECP is due) only.

6.2 Amendments to Code Subsidiary Document

No changes to Code subsidiary documents under P160 and P163 have been identified by the EPMG.

6.3 Requirements for BSC Systems and Processes

No change to BSC Systems and processes under P160 and P163 have been identified by the EPMG.

6.4 Impact on BSCCo Systems and Processes

6.4.1 Calculation of the ECP

Under both P160 and P163, BSCCo's internal procedures for the calculation of ECP charges would require amendment. BSCCo has developed an ECP calculator to assist invoicing of upheld PNE claims. It is envisaged that the existing system could be utilised under both P160 and P163.

6.5 Impact on Parties

The ECP charge for Parties with upheld PNE claims associated with PNE Investigations I003, I020, I029 and I030 are potentially affected as detailed in section 4.3 of this document.

All Parties would be affected by changes to the ECP calculation via ECPR payments, as considered further in section 4.3 of this document.

6.6 Impact on Core Industry Documents

No changes to Core Industry Documents under P160 or P163 have been identified by the EPMG.

6.7 Requirements for the BSC Panel

No changes to Panel processes under P160 or P163 have been identified by the EPMG.

ANNEX 3: DOCUMENT CONTROL

a. Authorities

Version	Date	Author	Signature	Change Reference
0.1		Change Delivery		Initial Draft
0.2		Change Delivery		Updated following Peer Review
0.3		Change Delivery		Updated following EPMG comment
1.0		Change Delivery		Updated following review

Version	Date	Reviewer	Signature	Responsibility
0.1		Change Delivery		Peer review
0.2		EPMG		Modification Group Review
0.3		Change Delivery		Final review
0.3		EPMG		Final Review
1.0		Industry		Consultation and Impact Assessment

b. Related Documents

Ref.	Title	Owner	Issue date	Version
1	Modification Proposal P160		29/01/04	1.0
2	Modification Proposal P163		02/02/04	1.0
3	P160 Initial Written Assessment (IWA P160)	ELEXON	05/02/04	1.0
4	P163 Initial Written Assessment (IWA P163)	ELEXON	05/02/04	1.0
5	Urgent Modification Report Modification Proposal P37	ELEXON	05/12/01	1.0
6	Modification to the Balancing and Settlement Code ("BSC") - Decision and Direction in relation to Modification Proposal P37	Ofgem	10/05/02	1.0
7	Modification to the Balancing and Settlement Code ("BSC") – Decision and Notice in relation to Modification Proposal P19:	Ofgem	01/08/01	1.0
8	Urgent Modification Report Modification Proposal P84	ELEXON	27/05/02	1.0
9	'Opinion on the computation of the Error Correction Payment' (David Mildon QC)	RWE Innogy	01/03/04	1.0
10	Comment on the 'Opinion on the computation of the Error Correction Payment'	ELEXON	02/03/04	1.0
11	Ofgem's Provisional thinking on Urgent Modification Proposal P37	Ofgem	12/10/01	1.0

ANNEX 2: MODIFICATION GROUP

The Panel agreed with the recommendation in the IWA that the Error Processing Modification Group (EPMG) be convened to progress P160 and P163, as the Modification's subject matter falls within the remit of its Terms of Reference. The table below indicates the membership of the EPMG that is considering P160 and P163.

MEMBER	ORGANISATION
Sarah Parsons (Chairperson)	ELEXON
Thomas Bowcutt (Lead Analyst)	ELEXON
Steve Drummond (Proposer P160)	EDF Trading Ltd
David Tolley (Proposer P163)	Innogy
Mark Manley	British Gas Trading
Neil Smith	Powergen
Andrew Colley	Scottish and Southern
Man Kwong Liu	Scottish Power
Mark Edwards	Edison Mission
Rachel Lockley	British Energy