

ASSESSMENT REPORT for Modification Proposal P163

Clarification of the circumstances in which paragraph 6.5 of Section P (calculation of Error Correction Payment) should apply

Prepared by: Error Processing Modification Group (EPMG)

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RECOMMENDATIONS

The Error Processing Modification Group invites the Panel to:

- **AGREE that the Proposed Modification P163 should be made;**
- **AGREE a provisional Implementation Date for Proposed Modification P163 of 10 Working Days following the Authority decision;**
- **AGREE that Modification Proposal P163 be submitted to the Report Phase; and**
- **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting on 13 May 2004.**

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¹ The current version of the Balancing and Settlement Code (the 'Code') can be found at www.elexon.co.uk/ta/bsc/el_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the EPMG has been able to assess the following parties/documents have been identified as being potentially impacted by Modification Proposal P163.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Transmission Company <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Service Lines <input type="checkbox"/>
Interconnector <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Distribution System Operators <input type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Party Agents		
Data Aggregators <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	J <input type="checkbox"/>	Core Industry Documents
ECVNA <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
MVRNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
BSC Agents		
SAA <input type="checkbox"/>	M <input type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
FAA <input type="checkbox"/>	N <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	P <input checked="" type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
CDCA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
TAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CRA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
SVAA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	V <input type="checkbox"/>	BSCCo
Profile Administrator <input type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
Certification Agent <input type="checkbox"/>	X <input checked="" type="checkbox"/>	Other Documents
MIDP <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
TLFA <input type="checkbox"/>		
Other Agents		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

X = Identified in Report for last Procedure
 N = Newly identified in this Report

1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

1.1 Modification Proposal

Paragraph P6 of the Code sets out how Past Notification Errors (PNE) 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).

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 the proposal and accompanying legal opinion, the Proposer of P163 is of the view that ELEXON's operational interpretation of paragraph P6 of the Code 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 investigation².

As the Proposer of P163 interprets paragraph 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 modify the Code to clarify that all adjustments that result from the determination made by the PNE Committee in respect of a PNE investigation² would be grouped together for the purposes of calculating the ECP.

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)³ (reference 6)) i.e. that P163, by fulfilling the intent of P37, would better facilitate achievement of Applicable BSC Objective (c)³.

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)⁴.

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 P163 be submitted to a two month Assessment Procedure to be carried out by the EPMG.

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 P163;
- ECP invoicing timetable; and
- The intent of P37.

The EPMG met three times during the Assessment Procedure and P163 was issued for industry consultation and impact assessment in order to support the group's assessment.

² The undefined term 'investigation' was used throughout the PNE process when referring to a group of claims with the same underlying cause.

³ (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;

⁴ (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

1.2 Background to and Issues raised by the Proposed Modification

P163 seeks 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.

1.2.1 ECP Requirements

Paragraph P6.5 sets out the requirements for the ECP calculation as follows:

“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:

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

- (a) \mathcal{S}_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.”*

1.2.2 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 claims⁵ 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 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 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 1.2.3 of this document illustrates the issues involved via reference to claims C28a-h and C029a-h.

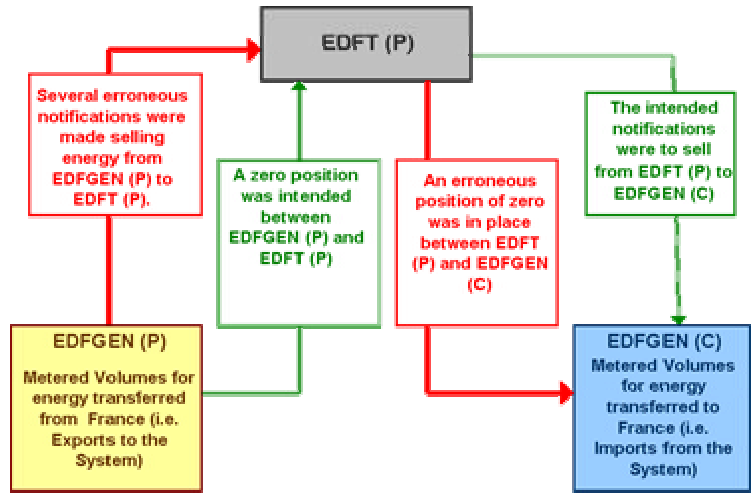
1.2.3 Operational Impact

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

⁵ Each group of PNEs, affecting separate Settlement Periods but resulting from the same Volume Notification, was given a unique identifier of the form Cnnn in the claims process.

1.2.3.1 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.

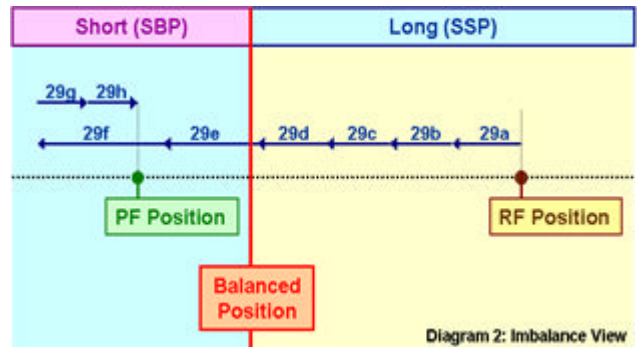


Correction is achieved by applying a series of notifications between EDFT (P) and EDFGEN01 (P) to cancel out the erroneous notifications and adding a series of correct notifications between EDFT (P) and EDFGEN01 (C) (with each individual notification constituting a separate claim). This approach was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

1.2.3.2 Example 1: No overall benefit

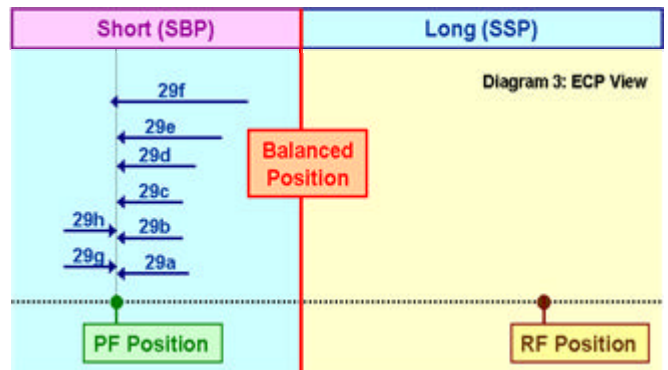
The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a long to a short position (i.e. no overall 'financial benefit'⁶). Energy Account EDFGEN01 (P) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim.



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

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



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.

⁶ In this document the 'financial benefit' relates to Imbalance payments made to a Party as a result of one or more upheld PNE claims.

imbalance charges at SBP price. However, this is not reflected in the calculation of ECP as follows.

For EDFGEN01 (P), the calculation of the benefit for ECP purposes (or ‘ECP Benefit’⁷) 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).

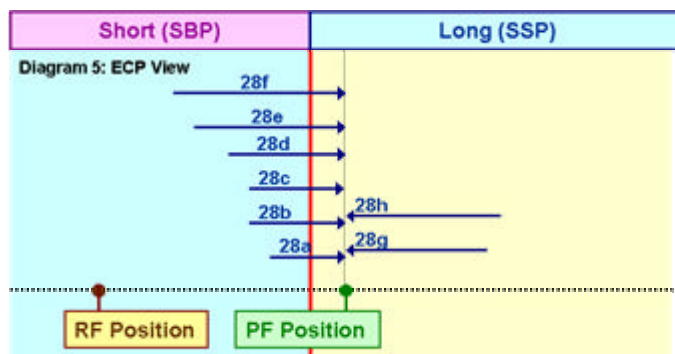
Were all claims to be grouped for the purpose of calculating the ECP there would not appear to be an overall ‘financial benefit’ and no ECP would be generated for EDFGEN01 (P).

1.2.3.3 Example 2: Overall Benefit inaccurately represented

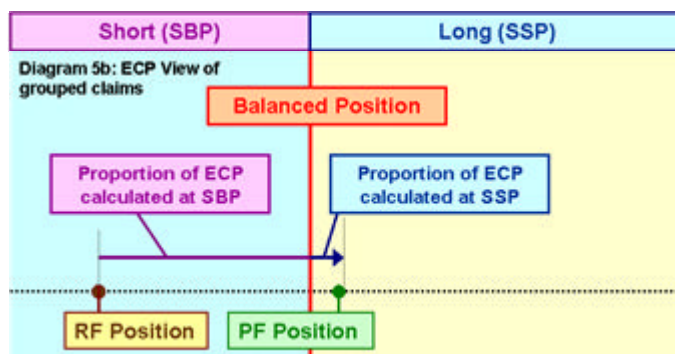
The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a short to a slightly long position (i.e. an overall ‘financial benefit’⁶). Energy Account EDFGEN01 (C) is taken as an example, this account is subject 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.



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.



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.

For EDFGEN01 (C), the calculation of the benefit for ECP purposes (or ‘ECP benefit’⁷) 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

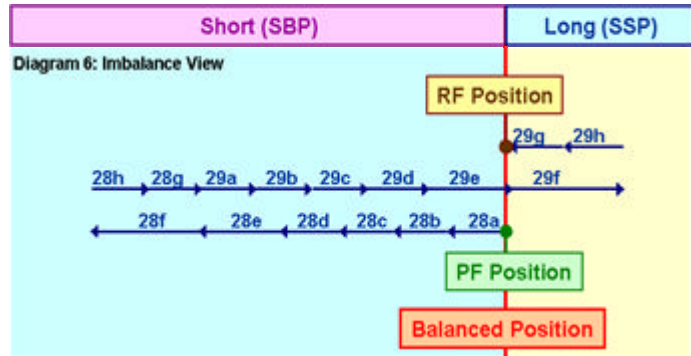
⁷ The apparent ‘ECP benefit’ will differ from the actual ‘financial benefit’ as each claim is considered individually in relation to the PF position (which is why the ECP can exceed 20% of the actual benefit to a Party).

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.

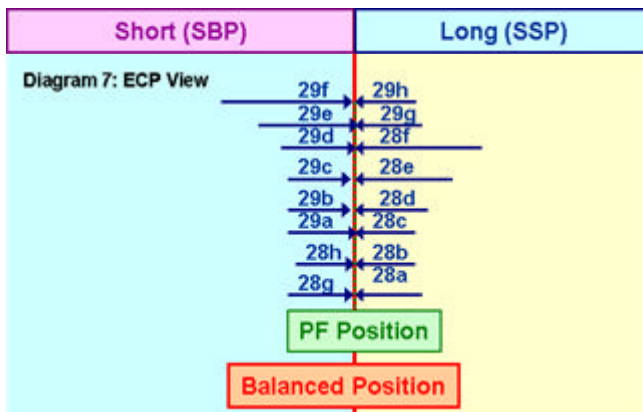
Were all the claims for EDFGEN01 (C) to be grouped and the net effect of all claims considered, a proportion of the ECP would be calculated at SSP and a proportion at SBP, resulting in an ECP payment for the Energy Account representing 20% of the total financial benefit (Diagram 5b).

1.2.3.4 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).

1.2.4 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 Energy 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 '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 there is no financial benefit to Energy Account EDFT).

1.3 Proposed Modification

Under Proposed Modification P163, paragraph P6.5.2 of the Code would be clarified such that claims which affect the same Party Energy Account and Settlement Period would be grouped for the purpose of determining whether an ECP would be payable.

1.4 Issues raised by the Modification Proposal

During the course of the Assessment Procedure, the EPMG considered the following issues:

- Interpretation of Section P of the Code and scope of Proposed Modification P163;
- Potential alternative solutions;
- Grouping of claims for the purpose of the ECP calculation;
- ECP Reallocation;
- Materiality of Claim Grouping;
- Interaction between P163 and P160;
- Retrospection;
- Intent of the P37; and
- ECP Invoicing Timetable.

The following subsections document the discussions and conclusions of the EPMG in relation to each of the above issues.

1.4.1 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 paragraph 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.

1.4.1.1 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 Energy 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 Energy 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.

1.4.1.2 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 1.4.1.1 (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 1.4.1.1 (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 1.4.1.1 (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 1.4.1.1 (b) above). Otherwise P6.5.2 should be applied on a per 'claim for PNE' basis (noting point 1.4.1.1 (c) and 1.4.1.2 (c) above).
- (e) The argument against 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 P6.5.2 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).

1.4.1.3 EPMG View

On consideration of the issues raised in sections 1.4.1.1 and 1.4.1.2 of this document 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. 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.

1.4.2 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 Code relating to the fee payable for claims of PNE. In particular, Modification Proposal P84 suggested that, in clause P6.2.2, 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 Section 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 1.4.1 of this document, the EPMG also 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.

Following the industry consultation, the EPMG confirmed its view that no Alternative Modification P163 exists which, when compared with the Proposed Modification P163, would better facilitate the achievement of the Applicable BSC Objectives.

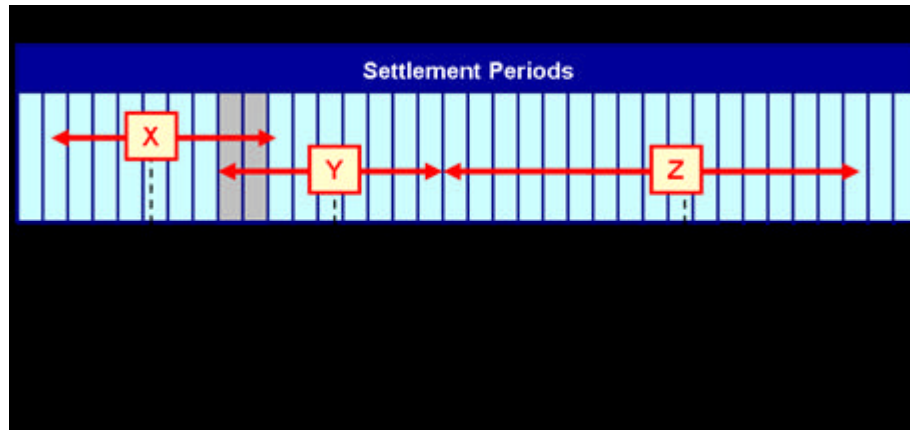
1.4.3 Grouping of claims

In order to address the issues identified with the ECP calculation (see section 1.2), claims which affect the same Party Energy Account and Settlement Period must be grouped for the purpose of calculating the ECP. Both P163 and 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), seek to achieve this grouping, however the form and method is different under both proposals. In order to illustrate the logical progression of the EPMG's discussions the effects and materiality of each proposal are outlined within this document

1.4.3.1 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 are considered in relation to a single Energy Account). Hence, a separate PNE exists for each combination of Settlement Period and Volume Notification. As outlined in section 1.2 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.



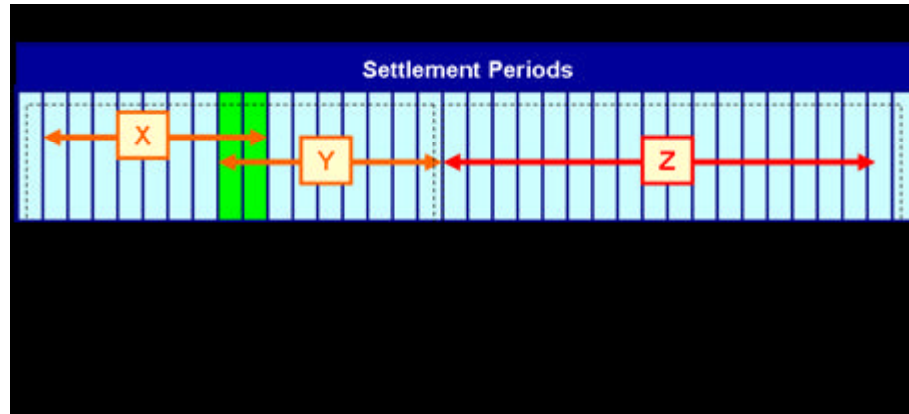
All PNEs associated with Volume Notification X would be grouped for the purpose of paragraph P6.5.2 (this value determines whether there is an overall financial benefit to the Energy Account on which an ECP will be due). Hence, in the example given, an ECP would be calculated for all the PNEs associated 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 1.2 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.

1.4.3.2 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.

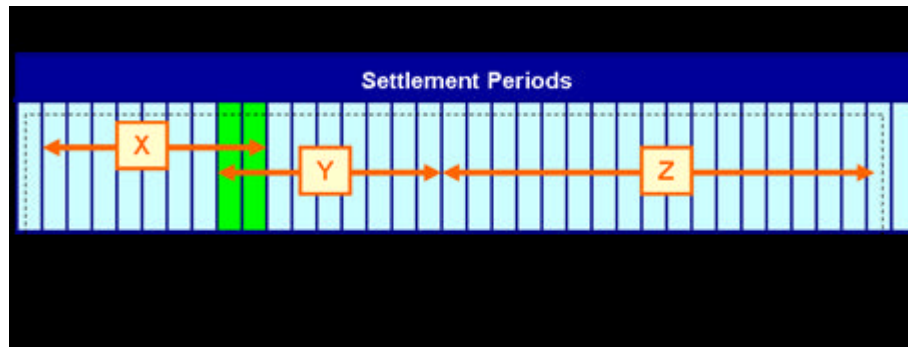
Following application of P6.5.2 to determine whether an ECP should be generated on the basis of the effect on an Energy Account of a group of PNEs, where an ECP is due, the payment to be made is calculated in accordance with paragraph P6.5.3 as follows:

- 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 (and vice versa).

1.4.3.3 Grouping under Alternative Modification P160: Grouping by Investigation

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 investigation²). Diagram 12 illustrates this grouping for an individual Energy Account.



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.

1.4.3.4 Grouping under Proposed Modification P163: Grouping by Investigation for P6.5.2

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 1.2 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 not represent 20% of the actual financial benefit.

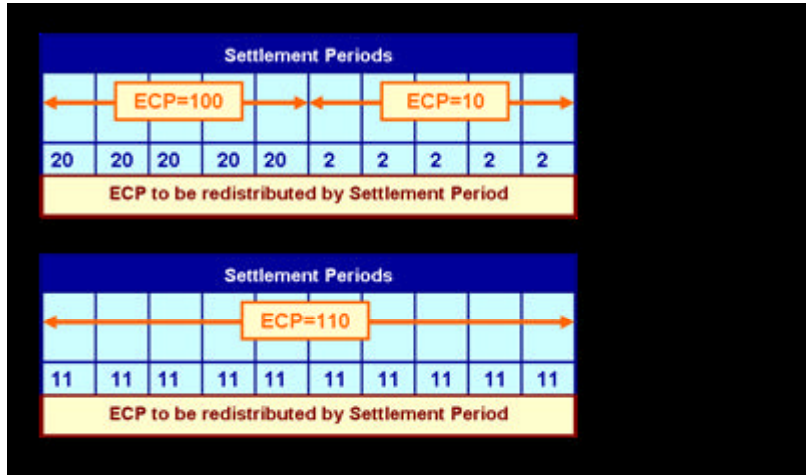
Therefore, this grouping addresses some of the issues identified in relation to multiple upheld claims affecting the same Party Energy Account and Settlement Period. However, it should be noted that, under Proposed Modification P163, the ECP may not represent 20% of the total financial benefit to the 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.

1.4.3.5 Grouping across Energy Accounts

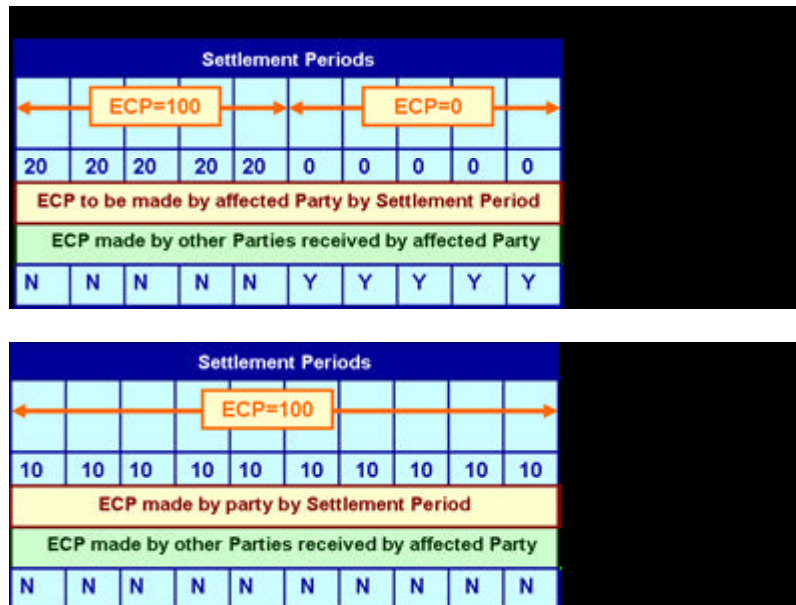
The EPMG noted that any grouping across Energy Accounts is outside the scope of both P160 and P163, as this approach was specifically discussed and dismissed under P37 (reference 5).

1.4.4 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 (ECPR)) 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.



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.



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 counterparty 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 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 for affected Parties.

1.4.5 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 numbers⁵). As such, claims potentially impacted by P160 and P163 are those associated with PNE Investigations I003, I020, I029 and I030.

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 are known.

	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 (8)	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 (8)	0	0	0
	C653-70	Npower	4,201	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)

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 46% 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 would 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).

1.4.6 Interaction between P163 and P160

The EPMG considered the interaction between P160 and P163 and the legal text developed under each proposal, noting that:

- Proposed Modification P160 would stand as an independent Modification;
- Alternative Modification P160 would stand as an independent Modification;
- Proposed Modification P163 would stand as an independent Modification;
- Proposed Modification P160 and Proposed Modification P163 require different forms of claim grouping (see 1.4.3). Hence, Proposed Modification P160 and Proposed Modification P163 are logically inconsistent in some circumstances. Therefore, a solution which would allow both P160 Proposed Modification and P163 Proposed Modification to be implemented does not exist. As such, Approval by the Authority of Proposed Modification P160 and P163 would not be possible;
- Alternative Modification P160 and Proposed Modification P163 require the same form of claim grouping (see 1.4.3). Hence, solutions to Alternative Modification P160 and Proposed Modification P163 exist which are logically consistent and could be implemented in parallel. As such, draft legal text has been developed which allows both Alternative Modification P160 and P163 to be approved by the Authority;

- Should Alternative Modification P160 be approved, Proposed Modification P163 would not be required, as Alternative Modification P160 would provide clarification which is consistent with P163 and therefore addresses the defect identified under P163.

1.4.7 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.

The EPMG considered whether P163 would constitute a retrospective amendment. The EPMG discussed whether or not P163 was a clarification or a change to the existing baseline. The majority of the EPMG agreed that P163 would simply be a clarification and should not be considered a retrospective change. Conversely, some members of the EPMG believed that P163 could be considered a retrospective change as Parties had made a decision as to whether to submit PNE claims based on the drafting relating to the ECP calculation instead of the intent of P37 which was to represent 20% of the financial benefit of any upheld claim. Overall, the majority of the EPMG were of the view that P163 would not constitute a retrospective amendment.

The EPMG also considered whether, if P163 were viewed as a retrospective Modification, a retrospective rule change could be justified in order to address the defect identified under P163. 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 P163 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 P163 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 were 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 P163 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 P163 (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 P163 are a result of the complexities of the investigations affected and could not have been reasonably foreseen.

Overall, it was the view of the EPMG that the perceived defect identified under P163 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 P163 aside from previous Authority decisions on Modification Proposals, the majority of 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 majority view of the EPMG that a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163.

In conclusion, the majority of 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.

1.4.8 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 thinking on P37.

1.4.9 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 noted ELEXON's intent to delay the invoicing of ECPs until such a time as the Authority has made a determination on Modification Proposal's P160 and P163.

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

1.5 Assessment of how the Proposed Modification will better facilitate the Applicable BSC Objectives

Having considered the assessment issues (see section 1.4) and reviewed the consultation responses (see section 7), the EPMG have concluded that Proposed Modification P163 would better facilitate achievement of Applicable BSC Objectives in comparison to the current baseline. The EPMG considered the arguments for and 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 in general retrospective changes to rules do not facilitate competition and have a negative effect on the achievement of Applicable BSC Objective (c). The majority of the EPMG were of the view Proposed Modification P163 would provide clarification rather than a retrospective amendment. However, some members of the EPMG supported ELEXON's current operational interpretation of the Code and therefore viewed P163 as a retrospective Modification Proposal. The majority of the group were of the view the issues with the ECP calculation identified under P163 should be addressed whether or not this required a retrospective amendment; and
- 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 majority of the EPMG agreed that Proposed Modification P163 would provide clarification rather than a retrospective amendment and would provide potential benefits to competition resulting from increased consistency in the calculation of the ECP. Therefore, the majority of the EPMG concluded that Proposed Modification P163 would better facilitate achievement of the Applicable BSC Objectives in comparison to the current baseline.

It was noted by the EPMG that, although Proposed Modification P163 would offer an improvement over the existing baseline, some issues with the ECP calculation would remain unresolved. The EPMG noted that these issues were addressed under P160. Furthermore, the EPMG noted that, should Alternative Modification P160 be approved, Proposed Modification P163 would not be required, (as Alternative Modification P160 would provide clarification which is consistent with P163 and therefore addresses the defect identified under P163).

2 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

The majority of the EPMG believes that Proposed Modification P163 would better facilitate the Applicable BSC Objectives in comparison to the existing baseline. Therefore, by a majority, the EPMG recommends that the Panel:

- AGREE that Proposed Modification P163 should be made;
- AGREE a provisional Implementation Date for Proposed Modification P163 of 10 Working Days following the Authority decision;
- AGREE that Modification Proposal P163 be submitted to the Report Phase; and
- AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting on 13 May 2004.

The EPMG's assessment of P163 against the Applicable BSC Objectives is contained in sections 1.5 of this document and the rationale for the Proposed Implementation Dates is contained in section 8.

3 COSTS⁸

PROGRESSING MODIFICATION PROPOSAL	
Demand Led Cost	£0
ELEXON Resource	42 Man days £11,120

IMPLEMENTATION COSTS				
		Stand Alone Cost	P163 Incremental Cost	Tolerance
Service Provider⁹ Cost	Change Specific Cost	£0	£0	N/A
	Release Cost	£0	£0	N/A
	Incremental Release Cost	£0	£0	N/A
	Total Service Provider Cost	£0	£0	N/A
Implementation Cost	External Audit	£0	£0	N/A
	Design Clarifications	£0	£0	N/A
	Additional Resource Costs	£0	£0	N/A
	Additional Testing and Audit Support Costs	£0	£0	N/A
Total Demand Led Implementation Cost		£0	£0	N/A
ELEXON Implementation Resource Cost		15 Man days £6,000	15 Man days £6,000	+/- 10% +/- £600
Total Implementation Cost		£6,000	£6,000	+/- 10%

ONGOING SUPPORT AND MAINTENANCE COSTS				
		Stand Alone Cost	P163 Incremental Cost	Tolerance
Service Provider Operation Cost		£0	£0	N/A
Service Provider Maintenance Cost		£0	£0	N/A
ELEXON Operational Cost		£0	£0	N/A

⁸ Clarification of the meanings of the cost terms in this section can be found in annex 8 of this report

⁹ BSC Agent and non-BSC Agent Service Provider and software Costs

4 IMPACT ON BSC SYSTEMS AND PARTIES

An assessment has been undertaken in respect of BSC Systems and Parties and no areas have been identified as potentially being impacted by P163. However, BSCCo will need to amend the BSCCo system to be used for calculating the ECP.

4.1 BSCCo

The changes required to the ECP calculation system and the incorporation of the changes to the Code will be of the order of 15 Man Days effort.

4.2 BSC Systems

No impact identified

4.3 Parties and Party Agents

No impact has been identified on Party and Party Agent Systems (see Annex 6). However, there will be a financial effect as a result of the revised ECP calculation (see section 1.4.3).

5 IMPACT ON CODE AND DOCUMENTATION

5.1 Balancing and Settlement Code

Draft legal text to give effect to Proposed Modification P163 is included in Annex 1 of this document.

5.2 Code Subsidiary Documents

No impact on Code Subsidiary Documents has been identified.

5.3 BSCCo Memorandum and Articles of Association

No impact on the BSCCo Memorandum and Articles of Association has been identified.

5.4 Impact on Core Industry Documents and supporting arrangements

No impact has been identified.

6 GOVERNANCE AND REGULATORY FRAMEWORK ASSESSMENT

It is envisaged that were Proposed Modification P163 to be approved; there would be no impact on the governance and regulatory framework.

7 SUMMARY OF CONSULTATION REPOSESES

10 responses (representing 53 Parties) were received to the consultation on P163 as summarised in the table below:

Consultation question	Respondent agrees	Respondent disagrees	Opinion unexpressed
Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives?	6 (33)	3 (19)	1 (1)
Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation?	8 (49)	1 (3)	1 (1)
Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account?	8 (49)	1 (3)	1 (1)
Do you believe P163 would introduce a clarification rather than a retrospective amendment?	6 (33)	3 (19)	1 (1)
Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163?	4 (17)	4 (25)	2 (11)
Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	1 (2)	8 (50))	1 (1)

7.1 Modification Group's summary of the consultation responses

7.1.1 Achievement of the Applicable BSC Objectives: Proposed Modification

The majority of respondents agreed that P163 would better facilitate the achievement of the Applicable BSC Objectives.

The arguments expressed **in support** of the Proposed Modification better facilitating the achievement of the Applicable BSC Objectives were:

- P163 correctly addresses the defect in P6.5.2;
- The lack of clarity in P6.5.2 could result in an interpretation that produces a substantial ECP for an Energy Account even though the Energy Account does not benefit from the rectification of the errors permitted by the PNE Committee decision, this is an unintended outcome;
- P163 better facilitates the Applicable BSC Objectives (c) and (d), by ensuring that the ECP is calculated as intended and by lessening the likelihood of legal challenge in this area;
- Whilst P163 does not necessarily result in an ECP of 20% of the delivered benefit it does reduce the percentage of ECP that is due under the current baseline; and

- P163 better facilitates Applicable BSC Objective (d) due to the distinct possibility of a legal challenge if this situation is not resolved. If there is a legal challenge, ELEXON would incur costs which would be funded by BSC Parties, this cannot be an efficient use of ELEXON resource and BSC Parties money.

The arguments expressed **not in support** of the Proposed Modification better facilitating the achievement of the Applicable BSC Objectives were:

- P163 would not increase competition in the market. The issue of PNE claims and the associated ECP payments is a one off event and only effects a limited number of current incumbents;
- One respondent indicated support for the principle of P163 as it would help to deliver the expected ECP's. However the respondent remained unconvinced that P163 would not represent a retrospective Modification Proposal; and
- One respondent agreed with ELEXON's interpretation of paragraph P6 of the Code. It believed that P163 sought to 'clarify' the BSC in a manner that is inconsistent with this interpretation.

7.1.2 Requirement for clarification

The majority of respondents agreed with the need to clarify the existing paragraph P6.5.2 within the Code and expressed the following arguments:

- The PNE Committee has already ruled on which claims are linked by a 'single cause' – this would seem to be consistent with the interpretation of a PNE being an event that caused (an) error(s) in (a) Volume Notification(s);
- It is desirable to remove the ambiguity in P6.5.2 in order to preclude any subsequent challenge to the method by which ELEXON calculate the ECP;
- It is logical that the ECP for an Energy Account takes into consideration all notified volumes and claims within a PNE Investigation; and
- There would be a benefit derived from clarifying P6.5.2 in light of the conflicting legal opinion expressed by Council for the Proposer and ELEXON's legal advisors.

No rationale was provided by the one respondent who did not agree the need for clarification of paragraph 6.5.2.

7.1.3 Intent of the ECP

The majority of respondents agreed that the ECP, as introduced under P37, had been intended to be 20% of the overall financial benefit to the Energy Account.

The main arguments in support of this view were that:

- This was clear from the documentation accompanying P37;
- Whilst it was not specifically stated that the intent of P37 had been to ensure an ECP that was 20% of the overall financial benefit, this had been respondents interpretation.

The argument expressed not in support of this view indicted it is not an appropriate time to make changes to the ECP process and this should have been dealt with earlier in the process for P37.

7.1.4 Clarification or retrospection

The majority of the respondents agreed that P163 would provide clarification rather than a retrospective amendment. The main arguments expressed in favour of this view were:

- That it was clear from the legal opinions and the debates that there is ambiguity in P6.5.2. and this would need to be addressed via a clarification to the legal baseline;
- Counsel's opinion and ELEXON's legal advice both suggest there is ambiguity in P6.5.2. Clarifying the wording such that it produces the result envisaged in the Authority's decision on P37, as further described in the P37 Modification Report, can only be construed as a clarification and thus is not a retrospective modification; and
- P163 is a clarification and does not impact a process that has already taken place.

The arguments expressed not in support of this view were that:

- It was not appropriate to make such changes at this point in time. Such matters should have been dealt with during the P37 processes;
- The meaning of the original text is not ambiguous. The nature of this proposal is to change the original text so that it has a different effect, which represents more than a clarification; and
- It would seek to amend payments, which, although not yet charged, are already defined. This is therefore a retrospective amendment.

7.1.5 Justification of retrospection

Respondents were evenly balanced between those that believed a retrospective change to be justified to address the defect identified under P163 and those that did not.

Views expressed indicating that Proposed Modification P163 would constitute a valid retrospective change were:

- It was not foreseen that multiple claims could affect the same Settlement Period or Energy Account. Therefore this clarification to the legal drafting is necessary to ensure that the correct solution for P37 is implemented;
- Approval of P163 would result in Parties that had financially benefited from their upheld claim paying an ECP of approximately 20 per cent in all but 1 occurrence.

Views expressed indicating that Proposed Modification P163 would not constitute a valid retrospective change were:

- Parties who stood to be affected by the ECP should have taken reasonable care to ensure that the calculation delivered that which was intended. It seems reasonable to have expected an affected Party to test the methodology. Retrospective changes increase uncertainty and serve to damage confidence in the market. Such circumstances ultimately undermine competition and therefore have a negative impact on the Applicable BSC Objectives.

7.1.6 Alternative Solutions

One alternative solution was suggested, clarification in line with ELEXON's current operational interpretation. This solution had been previously considered by the EPMG as outlined in section 1.4.1 of this document and had agreed by that this approach would not better facilitate better achievement of the Applicable BSC Objectives.

7.1.7 Any further issues/comments

One respondent observed that agreeing to P163 without agreeing to P160 would mean anomalies remained within the calculation of ECPs as previously considered by the EPMG (see sections 1.4.3 and 1.4.6).

Another respondent stated that the clarification of P6.5.2 that is sought by P163 raises the issue of how the ECP should be calculated, however it was noted that this issue is addressed under P160.

8 IMPLEMENTATION APPROACH

The EPMG recommends an Implementation Date of 10 Working Days after an Authority decision. This would provide sufficient time to make the required changes to the ECP calculation system and the Code.

It is estimated that making the necessary changes to the ECP calculation system and the Code would require 15 Man Days of ELEXON effort.

9 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

No Transmission Company analysis was requested during the Assessment of P163.

10 SUMMARY OF EXTERNAL ADVICE

Legal opinion on the computation of the Error Correction Payment was provided by the Proposer of P163 (reference 9). External legal advice on the issues raised in this opinion was commissioned by the EPMG (reference 10). This information is provided is contained within separate attachments to this document.

11 DOCUMENT CONTROL

11.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	25/03/04	Richard Clarke	Change Delivery	Initial Draft
0.2	31/03/04	Thomas Bowcutt	EPMG	For EPMG review
0.3	02/04/04	Thomas Bowcutt	Change Delivery	For Final Review

11.2 References

Ref	Document	Owner	Issue date	Version
1	Modification Proposal P160	ELEXON	29/01/04	1.0
2	Modification Proposal P163	ELEXON	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 Milton 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
12	P160 and P163 Assessment Consultation and Requirements Specification (P160AC)	ELEXON	08/03/04	1.0

ANNEX 1 DRAFT LEGAL TEXT

Legal Text for the Proposed Modification P163 is contained within a separate attachment to this document.

ANNEX 2 MODIFICATION GROUP DETAILS

Member	Organisation
Sarah Parsons	ELEXON (Chairman)
Thomas Bowcutt	ELEXON (Lead Analyst)
Steve Drummond	EDF Trading
David Tolley	RWE Innogy (Proposer P163)
Neil Smith	Powergen
Andrew Colley	Scottish and Southern
Man Kwong Liu	Scottish Power
Mark Edwards	Edison Mission
Mark Manley	BGT
Rachel Lockley	British Energy
Helen Bray	London Electricity

ANNEX 3 CONSULTATION RESPONSES

Responses from P163 Assessment Report Consultation

Consultation issued 15 March 2004

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	Aquila Networks	P163_AR_001	1	0
2.	EDF Trading Ltd	P163_AR_002	2	0
3.	British Energy	P163_AR_003	3	0
4.	Innogy	P163_AR_004	10	0
5.	EDF Energy	P163_AR_005	9	0
6.	British Gas Trading	P163_AR_006	1	0
7.	Scottish Power	P163_AR_007	6	0
8.	Powergen	P163_AR_008	14	0
9.	Edison Mission Energy	P163_AR_009	2	0
10.	Scottish and Southern LATE RESPONSE	P163_AR_010	5	0

P163_AR_001 – Aquila Networks

Good Morning,

Midlands Electricity (formally Aquila Networks PLC) would like to return a response of 'No Comment' to P160 and P163 Assessment Consultations.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Midlands Electricity

P163_AR_002 - EDF Trading Ltd

Respondent:	<i>EDF Trading Ltd</i>
No. of BSC Parties Represented	2
BSC Parties Represented	EDF Trading Ltd and EDF (Generation)
No. of Non BSC Parties Represented	<i>None</i>
Non BSC Parties represented	<i>N/A</i>
Role of Respondent	<i>Trader and Generator</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	P163 correctly addresses the defect in P6.5.2, although it does not fully correct the anomalous calculation of the Error Correction Payments for those claims that were successful in the PNE process. It would correct the situation for those Energy Accounts in balance, but not for any other Energy Accounts also affected by the same notification error. Nevertheless and when compared to the existing BSC text, P163 does better facilitate the achievement of the BSC Objectives (c) and (d), through more parties paying the an ECP of '20%' as intended and through it lessening the likelihood of legal challenge. However, on this last point, although it would lessen the likelihood it would not necessarily reduce it as much as P160.

Q	Question	Response	Rationale
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	All the notification volumes together, within the claim, produced the Imbalance Volume and hence the original Imbalance Charge. Therefore, it is logical that the ECP for each Energy Account should also be calculated from the financial benefit derived from all the volume notifications involved within the claim as well.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	Absolutely. Without doubt the wide perception was that it would be 20%, it is clear from the P37 documentation that this was the intent. The Authority's decision letter also reflected this perception. It was not and could not have been the intention to have a 'discount' that could have exceeded the original claim.
4.	Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i>	Yes	It is clear from the legal opinions and the debates that there is ambiguity in P6.5.2. The intention of this modification is to clarify the intention of the paragraph so that it is interpreted in a consistent manner with the intent of P37 and, therefore, this should not be considered as a retrospective modification.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	Yes	Nevertheless, were it to be regarded as a retrospective modification, it should still be justified since it corrects an anomaly (albeit partially) in the central arrangements, the effects of which could not have been reasonably foreseen prior to the claims being made.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	

Q	Question	Response	Rationale
8.	Are there any further comments on P163 that you wish to make?	Yes	Agreeing to P163, whilst not agreeing to P160, would lead to some anomalies remaining still in the ECP calculation. However agreeing to both P160 and P163 would allow the legal text of P6.5 to be redrafted such that the anomaly would be fully corrected and therefore avoid any possibility of legal challenge as it would deliver the intent of P37 to all parties in a non-discriminatory way.

P163_AR_003 – British Energy

Respondent:	<i>British Energy</i>
No. of BSC Parties Represented	3
BSC Parties Represented	British Energy Generation; British Energy Power and Energy Trading; Eggborough Power Ltd
No. of Non BSC Parties Represented	0
Non BSC Parties represented	N/A
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ¹⁰)</i>

Q	Question	Response	Rationale
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¹⁰ Delete as appropriate – please do not use strikethrough, this is to make it easier to analyse the responses

Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale an state objective(s)</i></p>	No	<p>We do not believe that this modification would increase competition in the market. The issue of PNE claims and the associated ECP payments is a one off event and only effects a limited number of current incumbents. We therefore believe that this will not deter new entrants into the market. Current industry players should have been more careful in the assessments of their claims. As Ofgem say in their decision letter for P84 "the governance process is intended to provide time and opportunity for all Parties, especially those who are likely to be affected, to ensure that the Proposal and any Alternative are a robust solution to address the issue." We therefore believe that this issue should have been dealt with at the time of P84 and that claimants should have taken this into account before putting their claim in. They should not be allowed continuous chances at getting their preferred option.</p>
2.	<p>Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i></p>	No	
3.	<p>Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i></p>	No	<p>As Ofgem say in their decision letter for P84 "the governance process is intended to provide time and opportunity for all Parties, especially those who are likely to be affected, to ensure that the Proposal and any Alternative are a robust solution to address the issue." We therefore believe that this issue should have been dealt with at the time of P84 and that claimants should have taken this into account before putting their claim in. They should not be allowed continuous chances at getting their preferred option.</p>
4.	<p>Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i></p>	No	

Q	Question	Response	Rationale
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	No	BE believe that retrospective modifications increase risk and undermine confidence in the balancing process and should not be supported. Without firm rules known in advance, inefficient investment decisions will be made and electricity prices will reflect the resulting risk. We do not support this modification proposal in either its original or alternative forms.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_004 – Innogy

Respondent:	<i>David Tolley</i>
No. of BSC Parties Represented	10
BSC Parties Represented	<i>RWE Trading GmbH., RWE Innogy, Innogy Cogen Ltd., Innogy Cogen Trading Ltd., Npower Ltd., Npower Direct Ltd., Npower Northern Ltd., Npower Northern Supply Ltd., Npower Yorkshire Ltd., Npower Yorkshire Supply Ltd..</i>
No. of Non BSC Parties Represented	None
Non BSC Parties represented	<i>n/a</i>
Role of Respondent	<i>Supplier/Generator/ Trader / Consolidator / Exemptable Generator/ Party Agent</i>

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	The lack of clarity in P6.5.2 could result in an interpretation that produces a substantial ECP for an Account even though the Account does not benefit from the rectification of the errors permitted by the PNEC decision. This is clearly a perverse and unintended outcome. By bringing clarity to the manner in which paragraph P6.5.2 should be interpreted P163 would enable the original purpose of P37 to be delivered and thus better achieve Applicable BSC Objective (c). Furthermore in allowing the efficient implementation of the outcome of the PNEC determinations this modification also better achieves Applicable BSC Obligation (d).
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	It is desirable to remove the ambiguity in P6.5.2 in order to preclude any subsequent challenge to the method by which Elexon calculate the ECP.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	This is our view. It seems clear from both the P37 Mods report and the Authority's decision letter that the intention of the ECP calculation was to produce an ECP that was 20% of the benefit derived from the claim.
4.	Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i>	Yes	Counsel's opinion and Elexon's legal advice both suggest there is ambiguity in P6.5.2. Clarifying the wording such that it produces the result envisaged in the Authority's decision on P37, as further described in the P37 Modification' Group's report, can only be construed as a clarification and thus is <u>not</u> a retrospective modification.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	Yes / No	Modification P163 addresses paragraph P6.5.2 whereas the calculation of ECP is contained in P6.5.3. It may be appropriate to contemplate a change to the ECP calculation such that it is consistent with the clarification of P6.5.2, but changing the ECP calculation would not of itself address the defect perceived under P163

Q	Question	Response	Rationale
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	It is difficult to envisage how a perceived defect of a lack of clarity can be addressed other than by providing clarification.
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	Yes	The clarification of P6.5.2 that is sought by P163 raises the issue of how the ECP should be calculated. However, this issue is addressed by P160.
8.	Are there any further comments on P163 that you wish to make?	Yes	Please also see our comments on P160.

P163_AR_005 – EDF Energy

Respondent:	Tony Diccico – EDF Energy
No. of BSC Parties Represented	9
BSC Parties Represented	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power) EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; London Energy plc; Seeboard Energy Limited
No. of Non BSC Parties Represented	0
Non BSC Parties represented	N/A
Role of Respondent	Supplier/Generator/ Trader/ Party Agent

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	EDF Energy believes that P163 does better facilitate the Applicable BSC Objectives (c) and (d), by ensuring that the ECP is calculated as intended and through lessening the likelihood of legal challenge.
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	It is logical that the ECP for an Energy Account takes into consideration all notified volumes and claims within a PNE Investigation.

Q	Question	Response	Rationale
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	It is clear from the documentation supporting the P37 Assessment Procedure.
4.	Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i>	Yes	P163 is a clarification and does not impact a process that has already taken place.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	Yes	EDF Energy believes that during the Assessment Procedure for P37 it was not foreseen that multiple claims could affect the same Settlement Period or Energy Account. Therefore this clarification to the legal drafting is necessary to ensure that the correct solution for P37 is implemented.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_006 – British Gas Trading

Respondent:	Mark Manley
No. of BSC Parties Represented	
BSC Parties Represented	British Gas Trading (BGT)
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	<p>BGT believe P163 does better facilitate Applicable BSC Objective (c) and (d). Whilst P163 does not necessarily result in an ECP of 20 percent of the delivered benefit it does reduce the percentage of ECP that is due under the current baseline.</p> <p>BGT also believes this better facilitates Applicable BSC Objective (d) due to the distinct possibility of a legal challenge if this situation is not resolved. If there is a legal challenge, ELEXON would incur costs which would be funded by BSC Parties this cannot be an efficient use of ELEXON resource and BSC Parties money.</p>
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	Both the proposer and BSCCo have provided legal advice that has suggested that P6.5.2 of the BSC should be clarified. In light of this advice BGT agree with the view of the EPMG that there would be a benefit derived from clarifying P6.5.2. This clarification would alleviate the concerns of a number of Parties that are currently facing an ECP of greater than 20 percent of the financial benefit derived from the upheld claim.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	BGT concur with the view of the proposer in respect of the ECP being 20 percent of the overall financial benefit to an Energy Account. This is consistent with our interpretation and the basis upon which we constructed our budget requirements.
4.	Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i>	Yes	The current drafting of the BSC has been interpreted differently by BSCCo and the proposer of P163. Making the appropriate change to the BSC would clarify Section P6.5.2 of the BSC to ensure it more accurately reflect the level of the ECP.

Q	Question	Response	Rationale
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	Yes	BGT do not believe that P163 would be constitute a retrospective change but believe it would be a clarification. However if it was deemed by Ofgem to be a retrospective change then BGT believe it would be justified. Approval of P163 would result in Parties that had financially benefited from their upheld claim paying an ECP of approximately 20 per cent in all but 1 occurrence.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_007 – Scottish Power

Respondent:	<i>John W Russell (SAIC Ltd)</i>
No. of BSC Parties Represented	6
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). Scottish Power UK plc; ScottishPower Energy Management Ltd; Scottish Power Generation Ltd; ScottishPower Energy Retail Ltd; SP transmission Ltd; SP Manweb PLC.</i>
No. of Non BSC Parties Represented	0
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ¹¹) Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent</i>

Q	Question	Response	Rationale
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¹¹ Delete as appropriate – please do not use strikethrough, this is to make it easier to analyse the responses

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	We believe that by clarifying the drafting to the effect of reducing any anomalies better facilitates the BSC Objective (c). The clarification would also reduce ant challenges to the administration of the BSC and therefore better facilitates the BSC Objective (d).
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	We accept the legal advice and while the interpretation and the clarification may be arguable, we agree that it minimises the anomalies and gives a more sensible result.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	ECP in P37 relates to benefit resulted from a claim, which would attract a 20% ECP, and while it is not specific that the intent was on overall financial benefit of the Energy Account, this has been the interpretation of some parties.
4.	Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i>	Yes	As P163 only clarifies the drafting of P6.5.2, which the legal advice suggested as required to avoid any challenge, it cannot be considered retrospective. While the interpretation and the clarification may be arguable, we agree that it minimises the anomalies and gives a more sensible result.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i>	No	See comments above.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	No	
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	

Q	Question	Response	Rationale
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_008 – Powergen

Respondent:	Powergen
No. of BSC Parties Represented	14
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
No. of Non BSC Parties Represented	Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy
Non BSC Parties represented	0
Role of Respondent	Supplier, Generator, Trader and Exemptable Generator

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	Powergen believe in principle that modification P163 could help to deliver the expected ECP's. However, despite the considerations of the modification group we remain unconvinced that this proposal does not represent a retrospective modification. ELEXON must feel that the code is sufficiently clear if it has been necessary to raise a modification to change the potential outcome. Although we have sympathy with the intention of this modification we are concerned that this may set a precedent and widen the scope for further retrospective modifications. We believe that retrospective decisions damage regulatory certainty and as such should be avoided where possible.
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes	If the Authority deems this modification to either not be retrospective or suitable for retrospection, we would agree that the proposed solution would address the perceived defect.

Q	Question	Response	Rationale
3.	<p>Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account?</p> <p><i>Please give rationale</i></p>	Yes	We believe that the original intention was to ensure that the Error Correction Payment represented 20% of the claim value.
4.	<p>Do you believe P163 would introduce a clarification rather than a retrospective amendment?</p> <p><i>Please give rationale</i></p>	No	A clarification purely seeks to confirm the interpretation of an ambiguous section of text. In this circumstance, the meaning of the original text is not ambiguous. The nature of this proposal is to change the original text so that it has a different effect, which represents more than a clarification.
5.	<p>Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163?</p> <p><i>Please give rationale</i></p>	No	We would not consider a retrospective change to be appropriate for this modification. We do not believe that the criteria for retrospection, as described in the P37 decision letter from the Authority, have been met. Those parties who stood to be affected by the ECP should have taken reasonable care to ensure that the calculation delivered that which was intended. It seems reasonable to have expected an affected party to test the methodology. Retrospective changes increase uncertainty and serve to damage confidence in the market. Such circumstances ultimately undermine competition and therefore have a negative impact on the applicable BSC objectives.
6.	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?</p> <p><i>Please give rationale</i></p>	No	
7.	<p>Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?</p> <p><i>Please give rationale</i></p>	No	

Q	Question	Response	Rationale
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_009 Edison Mission Energy

Respondent:	Edison Mission Energy
No. of BSC Parties Represented	2
BSC Parties Represented	First Hydro Company, Edison First Power
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	Generator

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	We agree with Elexon's interpretation of BSC Section P6. This modification seeks to 'clarify' the BSC in a manner that is inconsistent with this interpretation. It is not therefore a 'clarification' but is a modification. A proposal which seeks to clarify the code in a manner that is at odds with the drafting cannot be said to promote efficiency in the administration of the code (objective (d)).
2.	Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? <i>Please give rationale</i>	Yes (if P163 supported)	Were the legal advice to clearly support Innogy's interpretation of the existing BSC P6 (which it does not), we would support a clarification. The PNEC has already ruled on which claims are linked by a 'single cause' – this would seem to be consistent with the interpretation of a PNE being an event that caused (an) error(s) in (a) volume notification(s). However it should be stipulated that only claims within an investigation for which the 'single cause' claim was upheld should be treated together.

Q	Question	Response	Rationale
3.	<p>Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i></p>	<p>Yes, in relation to a claim involving two accounts and one notification</p>	<p>The discussions related to P37 envisaged PNE claims between two energy accounts. It was expected that correction of a PNE would result in a net gain to the two accounts, although one might suffer a loss. The ECP was intended to be 20% of the gain to any benefiting energy account, but there would be no reduction in ECP relating to any non-benefiting energy account. As such it was expected that the ECP would be greater than 20% of the overall value.</p> <p>The discussions on P37 do not seem to have considered more complex sets of claims, involving more than 2 accounts or multiple notifications affecting the same 2 accounts. This is highlighted in a number of sections of P6 where a claim appears only to relate to two Parties/accounts. These include:</p> <ul style="list-style-type: none"> i) P6.2.3 – this envisages one other Contract Trading Party ii) P6.4.4(ii) – another reference to the other trading party iii) P6.5.2 – the phrase '<i>or either of them individually</i>' is included. <p>We believe that it is not possible to state what the intention was in relation to such interacting claims. However there is evidence to suggest that only 2 trading accounts would be included within any claim. Any Party seeking to make such claims would have been wise to bring in the issue up in the P37 discussions so that the intention was made clear and encapsulated in the legal drafting.</p>
4.	<p>Do you believe P163 would introduce a clarification rather than a retrospective amendment? <i>Please give rationale</i></p>	<p>No</p>	<p>See response to (1) above – we believe that the proposed change is an amendment, not a clarification. It would seek to amend payments, which, although not yet charged, are already defined. This is therefore a retrospective amendment.</p>

Q	Question	Response	Rationale
5.	<p>Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? <i>Please give rationale</i></p>	No	<p>OFGEM have provided advice on retrospective modifications in their decision letter on Modification Proposal P19.</p> <p>i) In relation to investigation I020 there is a '<i>situation where the fault or error occasioning the loss was directly attributable to the central arrangements</i>'. This is not true for any other investigations related to upheld PNE claims – only I020 suffers an ECP greater than the imbalance benefit, and consequently '<i>a loss</i>'. ii) This modification partially (and only in relation to I020) satisfies the requirement that the circumstances could not have been reasonably foreseen. The details of the ECP calculation were clear in the original P6 drafting. This made it possible for any BSC Party to estimate the value of ECP relating to their own, or other Parties' claims. Indeed, such calculations were made by Edison Mission Energy as early as July/August 2002 – these indicated the approximate values of the claims under investigation I029 to the parties involved and show ECP values similar to those included in the P160/163 assessment document. We therefore believe that the ECP values under I029 were reasonably foreseeable. I020 is slightly different, in that this originally only included 2 claims (not the full 16 claims) – it was only at a relatively late stage in the PNEC proceedings that each original claim was sub-divided into 8. We estimate that the original 2 claims would have attracted an ECP of around £120K, 48% of the imbalance cost of £248K – this level of ECP was reasonably foreseeable (and was included within EME's estimations in August 2002)..</p>

Q	Question	Response	Rationale
			iii) The possibility of retrospective action was not flagged advance. However, since the perceived defect is a lack of clarity in the code drafting, P163 does not provide an argument to support a retrospective change.
6.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? <i>Please give rationale</i>	Yes	As the perceived defect in the code is that there is a lack of clarity in the definition of how ECP is calculated and this lack of clarity has been highlighted by there being conflicting legal advice, it would be advantageous to modify the code to add clarity. An alternative modification would be to clarify the code in accordance with Elexon's (and our own) interpretation.
7.	Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>	No	
8.	Are there any further comments on P163 that you wish to make?	No	

P163_AR_010 – Scottish and Southern

Dear Sirs,

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

In relation to the eight questions contained within your note of 9th March 2004, and the associated Assessment Consultation for P163, we have the following comments to make:-

Q1 Do you believe Proposed Modification P163 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)

Yes. We are persuaded by the arguments put forward by the Proposer.

Q2 Do you agree with the view of the EPMG that, under P163, paragraph P6.5.2 should be clarified as referring to all upheld claims within a PNE Investigation? Please give rationale

Yes. For the reasons outlined in Section 4 of the Assessment Consultation document.

Q3 Do you support the view of the Proposer that the ECP to be made in

relation to upheld PNE claims (introduced under P37) was intended to be 20% of the overall financial benefit to the Energy Account? Please give rationale

Yes. For the reasons outlined in Section 4 of the Assessment Consultation document.

Q4 Do you believe P163 would introduce a clarification rather than a retrospective amendment? Please give rationale

Yes.

Q5 Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P163? Please give rationale

Yes.

Q6 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale

No.

Q7 Does P163 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale

No.

Q8 Are there any further comments on P163 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

ANNEX 4 TRANSMISSION COMPANY ANALYSIS

None commissioned.

ANNEX 5 BSC AGENT IMPACT ASSESSMENTS

None commissioned.

ANNEX 6 PARTY IMPACT ASSESSMENTS

Party impact assessment of P160 was commissioned. One response was received and no impact was identified as follows:

MC00080: High Level Impact Assessment of P163

Please provide responses to the following questions:

1. Would any of the Proposed Modification implementation options, as outlined in the attached Requirements Specification, impact your organisation? **NO**
2. If yes, please indicate which of the options would impact your organisation and provide a brief description of the impact, any costs incurred, and the implementation timescale required:
3. Any other comments:

Name: **Sue Macklin**

BCA/PACA

Organisation: **Scottish and Southern Energy; Southern Electric; Keadby Generation Ltd; and SSE Energy Supply Ltd.**

Date: **16th March 2004**

ANNEX 7 CORE INDUSTRY DOCUMENT OWNER IMPACT ASSESSMENTS

None commissioned.

ANNEX 8 CLARIFICATION OF COSTS

There are several different types of costs relating to the implementation of Modification Proposals. ELEXON implements the majority of Approved Modifications under its CVA or SVA Release Programmes. These Programmes incur a base overhead which is broadly stable whatever the content of the Release. On top of this each Approved Modification incurs an incremental implementation cost. In order to give Stakeholders a feel for the estimated cost of implementing an Approved Modification the templates shown in Attachment 1 have three columns:

- **Stand Alone Cost** – the cost of delivering the Modification as a stand alone project outside of a CVA or SVA Release, or the cost of a CVA or SVA Release with no other changes included in the Release scope. This is the estimated maximum cost that could be attributed to any one Modification implementation.
- **Incremental Cost** - the cost of adding that Modification Proposal to the scope of an existing release. This cost would also represent the potential saving if the Modification Proposal was to be removed from the scope of a release before development had started.
- **Tolerance** – the predicted limits of how certain the cost estimates included in the template are. The tolerance will be dependent on the complexity and certainty of the solution and the time allowed for the provision of an impact assessment by the Service Provider(s).

The cost breakdowns are shown below:

PROGRESSING MODIFICATION PROPOSAL	
Demand Led Cost	This is the third party cost of progressing a Modification Proposal through the Modification Procedures in accordance with Section F of the Code. Service Provider Impact Assessments are covered by a contractual charge and so the Demand Led cost will typically be zero unless external legal assistance or external consultancy is required.
ELEXON Resource	This is the ELEXON Resource requirement to progress the Modification Proposal through the Modification Procedures. This is estimated using a standard formula based on the length of the Modification Procedures.

SERVICE PROVIDER ¹² COSTS	
Change Specific Cost	Cost of the Service Provider(s) Systems development and other activities relating specifically to the Modification Proposal.
Release Cost	Fixed cost associated with the development of the Service Provider(s) Systems as part of a release. This cost encompasses all the activities that would be undertaken regardless of the number or complexity of changes in the scope of a release. These activities include Project Management, the production of testing and deployment specifications and reports and

¹² A Service Provider can be a BSC Agent or a non-BSC Agent, which provides a service or software as part of the BSC and BSC Agent Systems. The Service Provider cost will be the sum of the costs for all Service Providers who are impacted by the release.

	various other standard release activities.
Incremental Release Cost	Additional costs on top of base Release Costs for delivering the specific Modification Proposal. For instance, the production of a Test Strategy and Test Report requires a certain amount of effort regardless of the number of changes to be tested, but the addition of a specific Modification Proposal may increase the scope of the Test Strategy and Test Report and hence incur additional costs.

IMPLEMENTATION COSTS	
External Audit	Allowance for the cost of external audit of the delivery of the release. For CVA BSC Systems Releases this is typically estimated as 8% of the total Service Provider Costs, with a tolerance of +/- 20%. At present the SVA Programme does not use an external auditor, so there is no External Audit cost associated with an SVA BSC Systems Release.
Design Clarifications	Allowance to cover the potential cost of making any amendments to the proposed solution to clarify any ambiguities identified during implementation. This is typically estimated as 5% of the total Service Provider Costs, with a tolerance of +/- 100%.
Additional Resource Costs	Any short-term resource requirements in addition to the ELEXON resource available. For CVA BSC Systems Releases, this is typically only necessary if the proposed solution for a Modification Proposal would require more extensive testing than normal, procurements or 'in-house' development. For SVA BSC Systems Releases, this will include the management and operation of the Acceptance Testing and the associated testing environment. This cost relates solely to the short-term employment of contract staff to assist in the implementation of the release.
Additional Testing and Audit Support Costs	Allowance for external assistance from the Service Provider(s) with testing, test environment and audit activities. Includes such activities as the creation of test environments and the operation of the Participant Test Service (PTS). For CVA BSC Systems Releases, this is typically estimated as £40k per release with at tolerance of +/-25%. For SVA BSC Systems Releases this is estimated on a Modification Proposal basis.

TOTAL DEMAND LED IMPLEMENTATION COSTS	
This is calculated as the sum of the total Service Provider(s) Cost and the total Implementation Cost. The tolerance associated with the Total Demand Led Implementation Cost is calculated as the weighted average of the individual Service Provider(s) Costs and Implementation Costs tolerances. This tolerance will be rounded to the nearest 5%.	

ELEXON IMPLEMENTATION RESOURCE COSTS

Cost quoted in man days multiplied by project average daily rate, which represents the resources utilised by ELEXON in supporting the implementation of the release. This cost is typically funded from the "ELEXON Operational" budget using existing staff, but there may be instances where the total resources required to deliver a release exceeds the level of available ELEXON resources, in which case additional Demand Led Resources will be required.

The ELEXON Implementation Resource Cost will typically have a tolerance of +/- 5% associated with it.

ONGOING SUPPORT AND MAINTENANCE COSTS

ELEXON Operational Cost	Cost, in man days per annum multiplied by project average daily rate, of operating the revised systems and processes post implementation.
Service Provider Operation Cost	Cost in £ per annum payable to the Service Provider(s) to cover staffing requirements, software or hardware licensing fees, communications charges or any hardware storage fees associated with the ongoing operation of the revised systems and processes.
Service Provider Maintenance Cost	Cost quoted in £ per annum payable to the Service Provider(s) to cover the maintenance of the amended BSC Systems.