

## Responses from P163 Draft Report Consultation

Consultation Issued 28 April 2004

Representations were received from the following parties

No	Company	File number	No BSC Parties Represented	No Non-Parties Represented
1.	British Energy	P163_DR_001	3	0
2.	EDF	P163_DR_002	2	0
3.	British Gas Trading	P163_DR_003	1	0
4.	Powergen	P163_DR_004	14	0
5.	Innogy	P163_DR_005	10	0
6.	Central Networks	P163_DR_006	1	0
7.	EDF Energy Networks	P163_DR_007	9	0

## P163 DRAFT MODIFICATION REPORT CONSULTATION QUESTIONS

BSC Parties and other interested parties are invited to respond to this consultation expressing their views or provide any further evidence on any of the matters contained within this document. In particular views are sought in respect of the following questions. Parties are invited to supply the rationale for their responses.

<b>Respondent:</b>	<i>Rachel Lockley</i>
<b>No. of BSC Parties Represented</b>	3
<b>BSC Parties Represented</b>	<i>British Energy Power and Energy Trading; Eggborough Power ; British Energy Generation</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state <sup>1</sup>)</i>

<sup>1</sup> Delete as appropriate – please do not use strikeout, this is to make it easier to analyse the responses

Q	Question	Response <sup>1</sup>	Rationale
1.	Do you agree with the Panel's views on Proposed Modification P163 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P163 should be made?	<b>No</b>	<p>BE do not support this modification. 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.</p> <p>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.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	<b>Yes / No</b>	No comment
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P163?	<b>Yes / No</b>	No comment
4.	Do you believe that there are any impacts that have not been highlighted?	<b>Yes / No</b>	No comment

Please send your responses by **17:00 on Wednesday 28 April 2004** to [modification.consultations@elexon.co.uk](mailto:modification.consultations@elexon.co.uk), entitling your email '**P163 Report Consultation**'. Please note that any responses received after the deadline may not receive due consideration by the Panel.

Any queries on the content of the consultation pro-forma should be addressed to Tom Bowcutt on 020 7380 4309, email address [thomas.bowcutt@elexon.co.uk](mailto:thomas.bowcutt@elexon.co.uk).

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

Q	Question	Response Error! Bookmark not defined.	Rationale
1.	Do you agree with the Panel's views on Proposed Modification P163 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P163 should be made?	<b>Yes</b>	EDFT and EDF (Generation) believe that P163 should be approved but that if Alternative P160 is also approved that there is no need to approve P163. P163 solves the defect described in P163, but it does not solve the defect that exists within 6.5 of Section P of the BSC completely. Both P160 and its Alternative correct the wider defect more completely than P163, with the Alternative P160 doing so more than the original P160.
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	<b>Yes</b>	
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P163?	<b>Yes</b>	
4.	Do you believe that there are any impacts that have not been highlighted?	<b>No</b>	

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**ELEXON Limited**  
4<sup>th</sup> Floor  
350 Euston Road  
London  
NW1 3AW

energy management group

**Charter Court**  
50 Windsor Road  
Slough  
Berkshire  
SL1 2HA

Tel. (01753) 758137  
Fax (01753) 758368  
Our Ref.  
Your Ref.  
27 April 2004

Dear Sirs,

**Re: Modification Proposal P163 – Clarification of the circumstances in which paragraph 6.5 of Section P (calculation of Error Correction Payment) should apply**

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P163. British Gas Trading (BGT) agrees with the Panel's provisional recommendation that the proposed Modification should be made.

BGT concur with the majority view of the modification group that this Modification Proposal is a clarification of the existing baseline. Legal advice provided by the proposer and ELEXON suggest that this part of the Code would benefit from some additional clarification. The additional clarity provided by the Modification Proposal reduces the number of instances of an erroneous ECP being calculated. In view of this increased consistency, BGT believe P163 is better than the current baseline and therefore better facilitates competition in the generation and supply of electricity.

BGT recognise that Modification Proposals need to be considered independently, however, the draft Modification report highlights that the effect of approving P160 Alternative would negate the requirement to approve P163. In view of this BGT's preferred solution is approval of Alternative Modification P160 as it address all instances of erroneous ECP being calculated.

BGT agrees with the proposed implementation approach, which is 10 working days following the Authority decision.

If you have any questions regarding this response please contact me 01753 431137.

Yours faithfully

Mark Manley  
Contract Manager

**A *centrica* business**

British Gas Trading Limited Registered in England No.3078711. Registered Office: Millstream, Maidenhead Road, Windsor, Berkshire SL4 5GD  
www.gas.co.uk

## P163 DRAFT MODIFICATION REPORT CONSULTATION QUESTIONS

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<b>Respondent:</b>	<i>Powergen</i>
<b>No. of BSC Parties Represented</b>	14
<b>BSC Parties Represented</b>	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
<b>No. of Non BSC Parties Represented</b>	N/A
<b>Non BSC Parties represented</b>	N/A
<b>Role of Respondent</b>	<i>Supplier/ Generator/ Trader / Exemptable Generator</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
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<b>Q</b>	<b>Question</b>	<b>Response</b> Error! Bookmark not defined.	<b>Rationale</b>
1.	Do you agree with the Panel's views on Proposed Modification P163 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P163 should be made?	<b>No</b>	<p>We do not agree with the view of the Panel on proposed modification P163.</p> <p>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.</p> <p>We note that the modification has been described as a clarification rather than an amendment but consider this logic to be flawed. 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.</p>
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	<b>Yes</b>	Although we believe the legal text to constitute a retrospective amendment, it would address the perceived defect.
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P163?	<b>Yes</b>	

Q	Question	Response Error! Bookmark not defined.	Rationale
4.	Do you believe that there are any impacts that have not been highlighted?	<b>Yes</b>	<p>We are concerned about the assertion that avoiding potential legal challenge better meets the applicable BSC objective (d). There are very few modifications which receive unanimous support from participants. It is therefore hypothetically possible for every decision to be legally challenged. In recognising that the threat of litigation is potentially ever present, we see no value in pre-empting such action when considering applicable BSC objectives against the current baseline. To accept that the potential avoidance of litigation better meets BSC objectives sets an undesirable precedent. If this becomes standard practice it is likely to damage market certainty and create an unnecessary and inefficient 'catch all' criteria for the assessment of modifications.</p> <p>A modification should be judged on its own merits and not on speculation about what the proposer may or may not do if it is not approved by the Authority.</p>

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<b>Respondent:</b>	<i>David Tolley</i>
<b>No. of BSC Parties Represented</b>	<i>10</i>
<b>BSC Parties Represented</b>	<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>
<b>No. of Non BSC Parties Represented</b>	<i>None</i>
<b>Non BSC Parties represented</b>	<i>n/a</i>
<b>Role of Respondent</b>	<i>Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent</i>

<b>Q</b>	<b>Question</b>	<b>Response</b> Error! Bookmark not defined.	<b>Rationale</b>
1.	Do you agree with the Panel's views on Proposed Modification P163 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P163 should be made?	<b>Yes</b>	Because the Modification better meets the BSC Objectives than the Baseline
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	<b>Yes</b>	
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P163?	<b>Yes</b>	
4.	Do you believe that there are any impacts that have not been highlighted?	<b>No</b>	

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From: Sue Pritchard  
Sent: 28 April 2004 10:10  
To: Modification Consultations  
Subject: Central Networks Response to P160 and P163 Report Phase  
Consultation

Good Morning,

Central Networks would like to return a response of 'No comment' to P160 and P163 Report Phase consultation.

Regards,

Deborah Hayward  
Distribution Support Office &  
Deregulation Control Group  
Central Networks West PLC

Coventry CV4 8LG.  
Registered in England & Wales No. 2366970

Powergen Retail Limited, Westwood Way, Westwood Business Park, Coventry CV4  
8LG. Registered in England and Wales No: 3407430

Telephone +44 (0) 2476 42 4000  
Fax +44 (0) 2476 42 5432

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<b>Respondent:</b>	Tony Diccico (EDF Energy)
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	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
<b>No. of Non BSC Parties Represented</b>	0
<b>Non BSC Parties represented</b>	N/A
<b>Role of Respondent</b>	Generator/ Trader / Supplier / Party Agent

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on Proposed Modification P163 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P163 should be made?	Yes	EDF Energy agrees with the Panel's view that the Proposed Modification P163 should be made. However, we note that Modification Proposal P160 is trying to solve a similar defect and request that the Authority does not need to approve P163 if P160 Proposed or Alternative is to be implemented.
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	Yes	
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P163?	Yes	
4.	Do you believe that there are any impacts that have not been highlighted?	No	

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