

ASSESSMENT REPORT for 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

Prepared by: Error Processing Modification Group (EPMG)

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This document has been distributed in accordance with Section F2.1.10¹ of the Balancing and Settlement Code.

RECOMMENDATIONS

The Error Processing Modification Group invites the Panel to:

- **AGREE that Alternative Modification P160 should be made;**
- **AGREE that Proposed Modification P160 should not be made;**
- **AGREE a provisional Implementation Date for Alternative Modification P160 of 10 Working Days following the Authority decision;**
- **AGREE a provisional Implementation Date for Proposed Modification P160 of 10 Working Days following the Authority decision, in the event the Authority determines that the Proposed Modification P160 should be made;**
- **AGREE that Modification Proposal P160 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 P160.

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	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Aggregators <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	J <input type="checkbox"/>	Core Industry Documents
Meter Operator Agents <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
ECVNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
MVRNA <input type="checkbox"/>	M <input type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
BSC Agents	N <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
SAA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
FAA <input type="checkbox"/>	P <input checked="" type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CDCA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
TAA <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
CRA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	V <input type="checkbox"/>	BSCCo
SVAA <input type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
BSC Auditor <input type="checkbox"/>	X <input checked="" type="checkbox"/>	Other Documents
Profile Administrator <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
Certification Agent <input type="checkbox"/>		
MIDP <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 (PNEs) are to be administered. This paragraph was incorporated into the Code following approval by the Authority of Modification Proposal P37 'To provide for the remedy of past errors in Energy Contract Notifications and in Metered Volume Reallocation Notifications' (P37). Paragraph P6 includes provision for an ECP, which the Modification Group assessing P37 agreed should be 20% of the benefit arising from an upheld claim (reference 5).

P160 was raised by EDF Trading Ltd on 29 January 2004 (reference 1). P160 proposes to amend paragraph P6.5 such that upheld claims affecting the same Party Energy Account and the same Settlement Periods would be grouped together for the purposes of calculating the ECP (in order to ensure the calculation and effect of the ECP is consistent for all PNE claimants).

The Proposer, in submitting P160, was of the opinion that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, P160 would better achieve Applicable BSC Objective (c)².

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

ELEXON presented an Initial Written Assessment (IWA) (reference 3) to the Balancing & Settlement Code Panel ('the Panel') at its meeting on 12 February 2004. The Panel agreed with the recommendation in the IWA that P160 be submitted to a two month Assessment Procedure to be carried out by the EPMG.

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

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

The EPMG met three times during the Assessment Procedure and P160 was issued for industry consultation and impact assessment in order to support the group's assessment.

² (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.

1.2 Background

P160 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:

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

- (a) 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 claims³ 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 P160, 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.

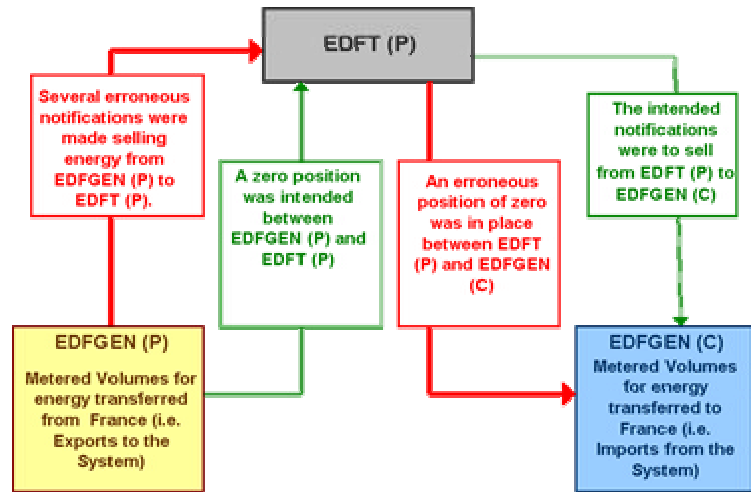
³ Each group of PNEs, affecting separate Settlement Periods but resulting from the same Volume Notification, was given a unique identifier of the form Cnnn in the claims process.

1.2.3 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 that these claims, considered under PNE Investigation I020, result from the same cause).

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.

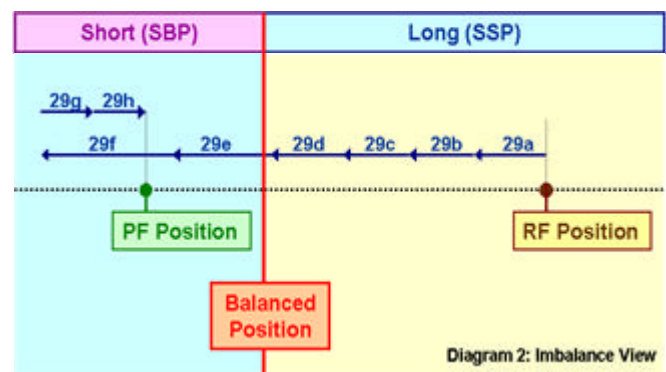
The following three examples illustrate the impact on each of the Energy Accounts involved, in order to illustrate the issues surrounding the calculation of ECP payments individually and independently.

1.2.3.2 Example 1: No overall benefit

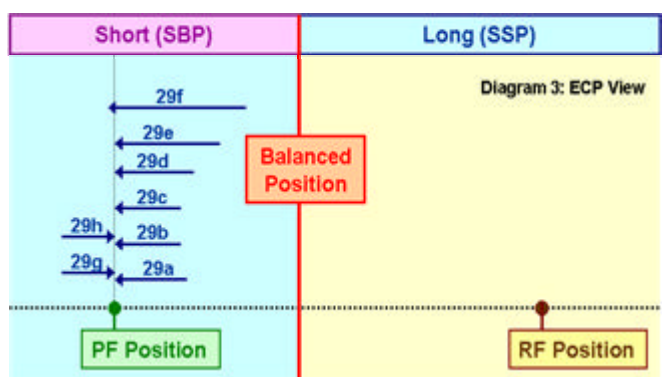
The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a long to a short position (i.e. no overall 'financial benefit'⁴). Energy Account EDFGEN01 (P) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim.

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

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



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



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

For EDFGEN01 (P), the calculation of the benefit for ECP purposes (or 'ECP Benefit'⁵) 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).

⁴ In this document the 'financial benefit' relates to Imbalance payments made to a Party as a result of one or more upheld PNE claims.

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

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

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

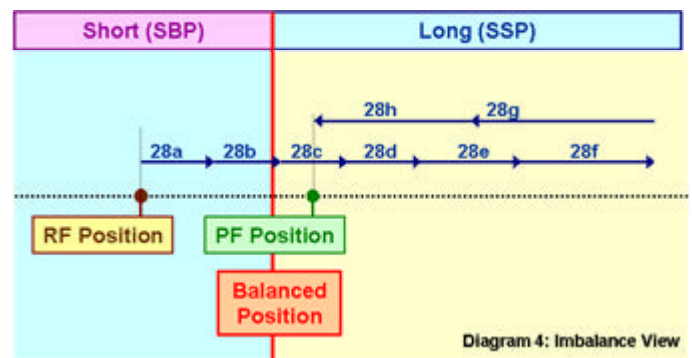


Diagram 4: Imbalance View
From the point of view of Imbalance Settlement, the net effect of claims 28a-h is to move the position from RF (short) to PF (slightly long).

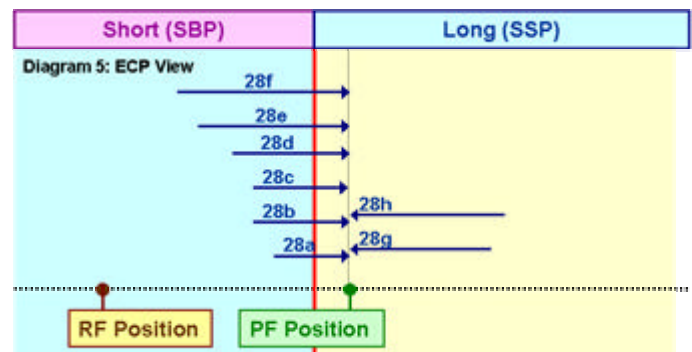


Diagram 5: ECP View
ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 28a-f appear to be beneficial (at mainly SBP), as such a high ECP is generated for each of these claims. Claims 28g and 28h appear not to be beneficial, and do not generate ECPs,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

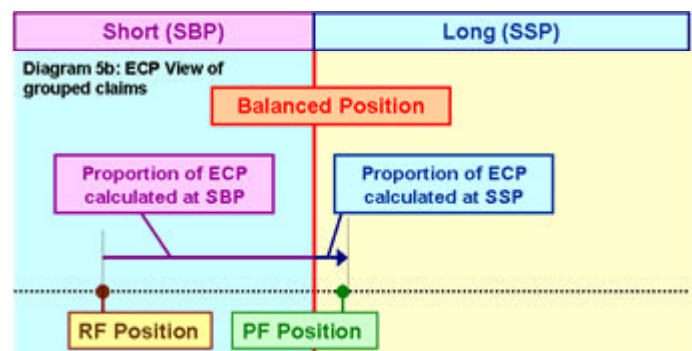


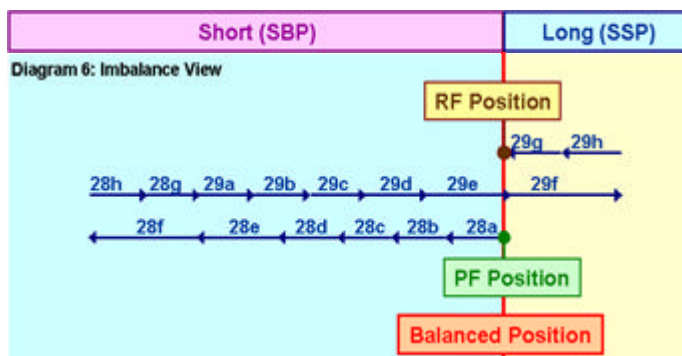
Diagram 5b: ECP View of grouped claims
An ECP is calculated for the grouped claims, starting from the PF position. A proportion of the grouped claims appear to be beneficial at SBP and a proportion beneficial at SSP. The ECP will reflect 20% of the overall financial benefit.

⁵ The apparent 'ECP benefit' will differ from the actual 'financial benefit' as each claim is considered individually in relation to the PF position (which is why the ECP can exceed 20% of the actual benefit to a Party).

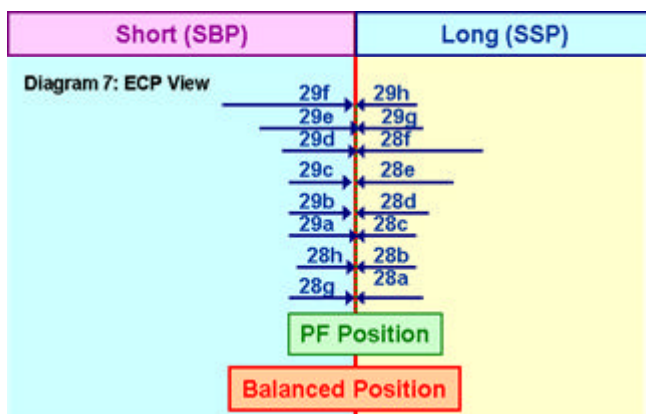
Were all the claims for EDFGEN01 (C) to be grouped and the net effect of all claims considered, a proportion of the ECP would be calculated at SSP and a proportion at SBP, resulting in an ECP payment for the Energy Account representing 20% of the total financial benefit (Diagram 5b).

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 Imbalance or 'financial benefit'.

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

Table 1: Estimated ECP charges

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

The effect is highlighted further when considering the case of Energy Account EDFT (P) alone, (example 3). Throughout the process, the Energy Account remains balanced and imbalance charges will not be generated, hence the associated 'financial benefit' of the claims to EDFT is zero. However, as each claim relates to a separate Volume Notification the ECP for each must be calculated separately and, as a proportion of these claims appear beneficial when considered individually, an estimated ECP charge of £375,000 would be generated (i.e. the ECP is based on a perceived benefit of £1.9m, whereas in practice there is no financial benefit to Energy Account EDFT).

1.3 Proposed Modification

Under Proposed Modification P160, claims which affect the same Party Energy Account and Settlement Period would be grouped for the purpose of calculating the ECP in order to address the issues identified with the ECP calculation (see section 1.2).

1.4 Alternative Modification P160

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

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

On consideration of the materiality of various approaches to grouping claims for the purpose of the ECP calculation (see section 1.5.1), the EPMG agreed that grouping by same cause would ensure the ECP calculation was equitable for all participants. Hence, the EPMG agreed that this approach should be progressed as Alternative Modification P160.

1.5 Issues raised by the Modification Proposal

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

- 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.

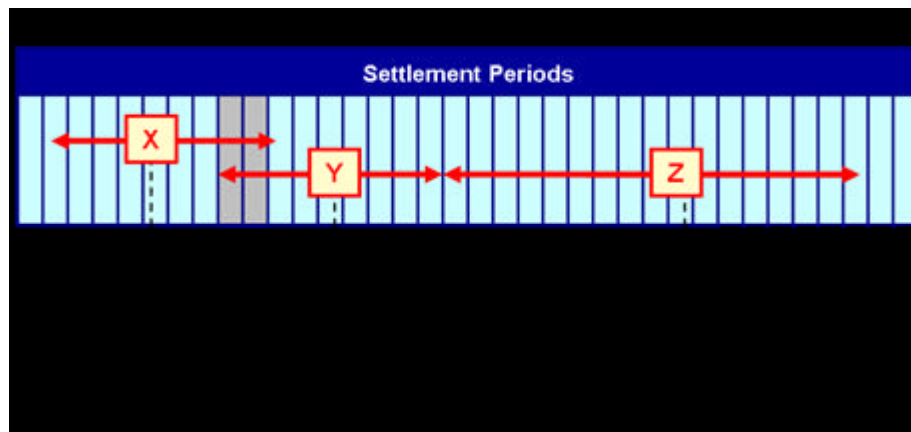
The following subsections document the discussions and conclusions of the EPMG in relation to each of the above issues.

1.5.1 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 P160 and Modification Proposal P163 'Clarification of the circumstances in which paragraph 6.5 of Section P (calculation of Error Correction Payment) should apply' (P163), seek to achieve this grouping, however the form and method is different under both proposals. This section outlines the discussions of the EPMG on the grouping of claims under both P160 and P163. In order to illustrate the logical progression of the EPMG's discussions the effects and materiality of each proposal are outlined within this document.

1.5.1.1 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 1.2.2 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.

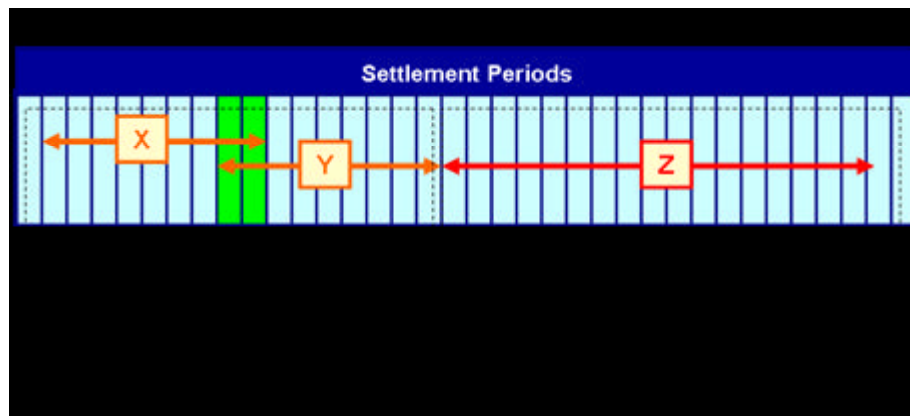
Following application of P6.5.2 to determine whether an ECP should be generated for a group, where an ECP is due, the actual payment to be made is calculated in accordance with paragraph P6.5.3. Under paragraph P6.5.3, each Volume Notification is considered individually. For those Settlement Periods 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.

1.5.1.2 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:

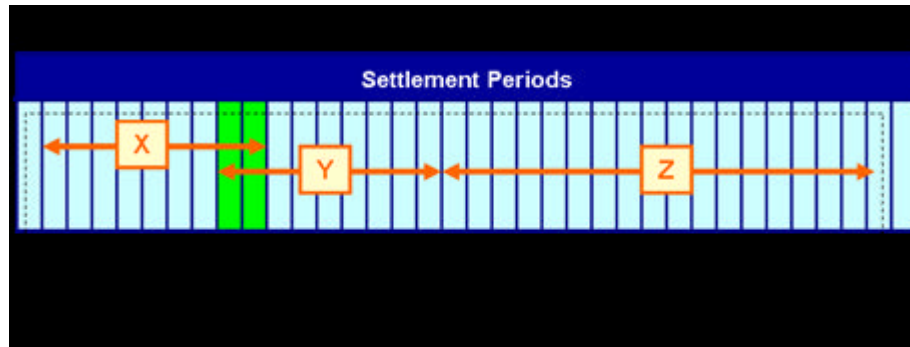
- An ECP will be calculated for group XY. This ECP will reflect either 20% of the net financial benefit of this group or, if the net overall effect of the group is of dis-benefit, zero.
- A separate ECP will be calculated for group Z. This ECP will reflect either 20% of the net financial benefit of this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

1.5.1.3 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 investigation). 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.

1.5.1.4 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.

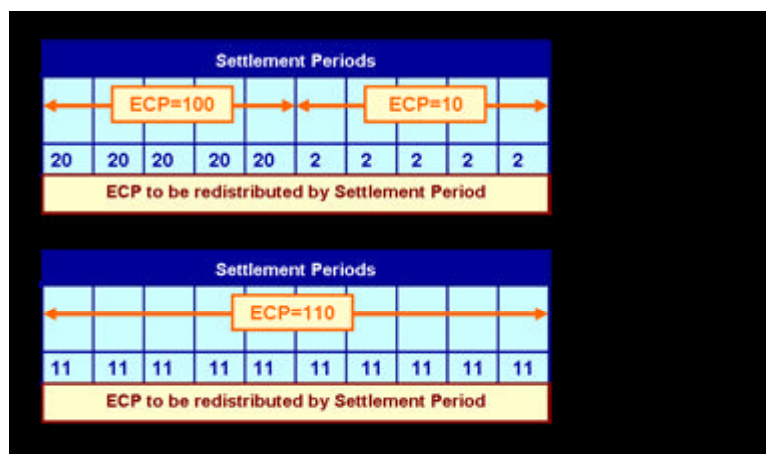
1.5.1.5 Grouping across Energy Accounts

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).

1.5.2 ECP Reallocation

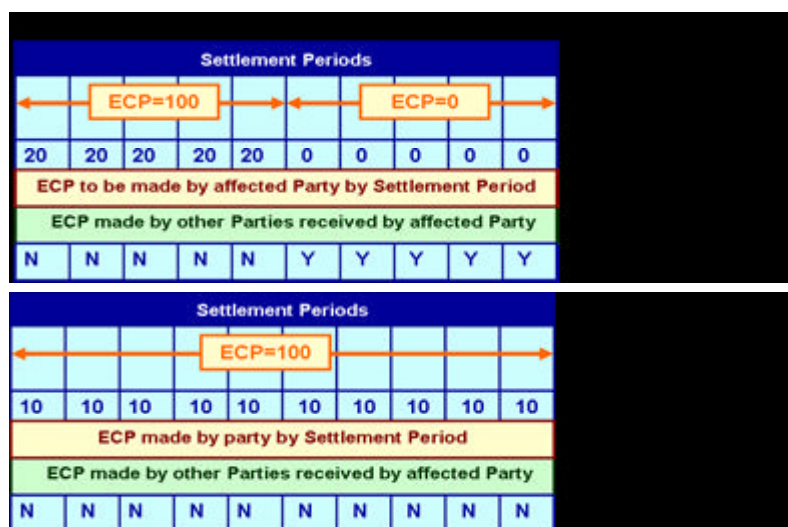
The EPMG noted that there would be a second order impact of grouping claims for the purpose of the ECP calculation which would occur via the re-allocation of ECPs in accordance with paragraphs P6.5.4 and P6.5.5. Under paragraphs P6.5.4 and P6.5.5, any ECPs (made by Parties financially benefiting from 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.

1.5.3 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 numbers³). 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.

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

	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

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).

1.5.4 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 1.5.1). 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 1.5.1). 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.

1.5.5 Retrospection

The EPMG noted that there is a principle of legal policy such that an amending rule should generally change the relevant matter only from the time the rule change commences. In other words, changes to rules that potentially impact the character of past transactions completed on the basis of then existing rules should be avoided. Furthermore, the EPMG noted that the Authority has indicated (via previous

decision letters) that only limited circumstances would give rise to the need for a retrospective Modification of this type.

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

The majority of the EPMG were of the view that P160 (Proposed or Alternative) would constitute a retrospective Modification. It was the view of the majority that P160 would amend the ECP calculation which has been approved and agreed by the industry under P37 and, as such, Proposed Modification P160 would constitute a retrospective amendment. Contrary to the majority, some members of the EPMG expressed the view that P160 would not constitute a retrospective Modification. It was the view of these members that the original intent of P37 was to include an ECP at 20% of the financial benefit of upheld PNE claims (see section 1.5.6). However, the current Code drafting does not deliver this intent in the scenario where multiple claims affect the same Party Energy Account and Settlement Period. As such, the Code is currently inconsistent with the intent of P37 and the industry perception of how the ECP calculation would work. Therefore, P160 would implement a correction to an oversight in the original legal drafting of P37 rather than a retrospective rule change.

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

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

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

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

- **Clearly Flagged to the Participants**

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

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

It was the view of the EPMG that the issues identified with the ECP calculation 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 P160 could be viewed as an error or fault directly attributable to Central Arrangements.

- **Circumstances not Reasonably Foreseeable**

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

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

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

Considering P160 aside from previous Authority decisions on Modification Proposals, the 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 P160.

1.5.6 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.

1.5.7 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 current intent to put the invoicing of ECPs on hold until such a time as the Authority has made a determination on Modification Proposal's P160 and P163.

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

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

Having considered the assessment issues (see section 1.3) and reviewed the consultation responses (see section 7), the EPMG have concluded that Proposed Modification P160 would better facilitate achievement of Applicable BSC Objectives in comparison to the current baseline. The EPMG considered the arguments for or against the better achievement of the Applicable BSC Objectives under Proposed Modification P160 as follows:

- The EPMG supported the rationale provided by the Proposer i.e. that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, would better achieve Applicable BSC Objective (c).
- The EPMG noted that in general retrospective changes to rules do not facilitate competition and, as such, Proposed Modification P160 could be considered to have a negative effect on the achievement of Applicable BSC Objective (c). In particular a number of EPMG members noted that Parties should have considered the effects of the ECP prior to raising any claims and, as such, a retrospective amendment may not be viewed as justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. As such, the EPMG concluded a retrospective change was desirable in this case.
- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed that Proposed Modification P160 would better facilitate achievement of Applicable BSC Objective (d)⁶.

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

1.7 Assessment of how the Alternative Modification will better facilitate the Applicable BSC Objectives

Having considered the assessment issues (see section 1.3) and reviewed the consultation responses (see section 7), the EPMG have concluded that Alternative Modification P160 would better facilitate achievement of Applicable BSC Objectives in comparison to the current baseline. The EPMG considered the arguments for or against the better achievement of the Applicable BSC Objectives under Proposed Modification P160 as follows:

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

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

a retrospective amendment may not be viewed as justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. As such, the EPMG concluded a retrospective change was desirable in this case.

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

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

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

2 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

The majority of the EPMG believes that Proposed Modification P160 would better facilitate the Applicable BSC Objectives in comparison to the existing baseline. Furthermore, the majority of the EPMG believes that Alternative Modification P160 would better facilitate the Applicable BSC Objectives in comparison to both the existing baseline and Proposed Modification P160. Therefore, by a majority, the EPMG recommends that the Panel:

- AGREE that Alternative Modification P160 should be made;
- AGREE that Proposed Modification P160 should not be made;
- AGREE a provisional Implementation Date for Alternative Modification P160 of 10 Working Days following the Authority decision;
- AGREE a provisional Implementation Date for Proposed Modification P160 of 10 Working Days following the Authority decision, in the event the Authority determines that the Proposed Modification P160 should be made;
- AGREE that Modification Proposal P160 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 assessment of P160 against the Applicable BSC Objectives is contained in sections 1.6 and 1.7 of this document and the rationale for the Proposed Implementation Dates is contained in section 8.

3 COSTS⁷

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

IMPLEMENTATION COSTS				
		Stand Alone Cost	P160 Incremental Cost	Tolerance
Service Provider ⁸ 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	P160 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

⁷ Clarification of the meanings of the cost terms in this section can be found in annex 8 of this report

⁸ 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 the P160 (proposed or Alternative). However, BSCCo will need to amend the BSCCo system/process 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. There will however be a financial effect as a result of the revised ECP calculation (see section 1.5.1).

5 IMPACT ON CODE AND DOCUMENTATION

5.1 Balancing and Settlement Code

Draft legal text to give effect to both Proposed Modification P160 and Alternative 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 either Proposed Modification P160 or Alternative Modification P160 to be approved there would be no impact on the governance and regulatory framework.

7 SUMMARY OF CONSULTATIONS

9 responses (representing 47 Parties) were received to the consultation on P160 as summarised in the table below:

Consultation question	Respondent agrees	Respondent disagrees	Opinion unexpressed
Do you believe Proposed Modification P160 better facilitates the achievement of the Applicable BSC Objectives?	6 ⁹ (29)	2 (17)	1 (1)
Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)?	6 (29)	2 (17)	1 (1)
Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account	7 (43)	1 (3)	1 (1)
Do you believe P160 is a retrospective Modification Proposal?	5 (19)	-	4 (27) – <i>Includes 3 “yes/no” responses</i>
Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160?	6 (29)	2 (17)	1 (1)
Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160?	6 (29)	2 (17)	1 (1)
Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	1 (2)	7 (44)	1 (1)
Does P160 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	-	8 (46)	1 (1)
Are there any further comments on P160 that you wish to make	2 (12)	6 (34)	1 (1)

⁹ Including one response indicating partial support.

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 Proposed Modification P160 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:

Applicable BSC Objective (c)

- P160 will correct an anomaly that exists within P6.5 such that the ECPs will be 20% of the benefit to the Energy Account of the error being corrected. The correction of this anomaly would ensure fair treatment of the Parties affected and equal treatment with other successful PNE claimants;
- P160 would bring greater consistency to the outcome of the P6.5.3 formula for all successful claims. A more consistent outcome to the ECP calculation would create a more level playing field;
- ECPs should be 20% of the benefit;
- One respondent stated that they had expected an ECP of 20% to accrue from claims that were upheld where there was a financial benefit. This has not always happened using the current methodology, meaning Parties have been exposed to unexpected and unnecessary costs. It was this respondent's opinion that P160 would therefore benefit competition; and
- Another respondent was persuaded by the arguments put forward by the Proposer of P160.

Applicable BSC Objective (d)

- A number of respondents suggested that approval of P160 may reduce possible subsequent legal challenge. These respondents identified that were a legal challenge to be made, then additional costs within the balancing and settlement arrangements would be incurred which would be inefficient.

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

Applicable BSC Objective (c)

- There would be no increase in competition in the generation and supply of electricity as the effect of the recalculation would only affect current incumbents (i.e. would not decrease the barriers to entry into the market);
- Retrospective modifications damage confidence and could introduce uncertainty in to the market which ultimately harms competition; and
- One respondent agreed that the perceived defect is real and should be addressed, however they were not convinced that Proposed Modification P160 deals with the perceived defect in the optimal manner (This respondent did support Alternative Modification P160).

7.1.2 Achievement of the Applicable BSC Objectives: Alternative Modification

The majority of respondents expressed support for the view that the Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives to a greater extent than Proposed Modification P160.

The arguments expressed by respondents are summarised below:

- Alternative Modification P160 would group all the notifications associated with the overall claim i.e. from the same cause for each of the Energy Accounts to determine whether there is a benefit or not and, as such, whether an ECP is due. Whereas, Proposed Modification P160 will group only those notifications that affect the same Settlement Periods for each of the Energy Accounts;
- Whilst Proposed Modification P160 would remove the bulk of the perversities that can arise from the P6.5.3 formula, some will remain. Alternative Modification P160 would produce an even more consistent ECP outcome for the relevant claims;
- Applicable BSC Objective (c) is better facilitated over the Proposed Modification as the Alternative Modification P160 represents a fairer treatment for all Parties;
- The Alternative Modification which groups for the purposes of calculating the ECP by common cause more accurately achieves the original intent of P37; and
- The Alternative Modification ensures a greater level of consistency for the ECP across claimants.

The arguments expressed against the Alternative Modification P160 were that:

- Claimants should have taken into account the ECP calculation prior to making any PNE claims; and
- Retrospection as introduced by P160 or its Alternative Modification would have a negative effect on competition.

7.1.3 Intent of ECP

The majority of respondents agreed with the Proposer that the ECP made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account.

The main arguments to support this were:

- It was not and could not have been the intention to have a 'discount' that could have exceeded the original claim;
- It seems clear from both the P37 Modification Group's 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; and
- This view was consistent with one respondent's interpretation who had made budgetary decisions based on such an assumption.

The main arguments against this view were:

- This issue should have been dealt with in more appropriate timescales (i.e. during the assessment of P37 or subsequent assessment of Modification Proposal P84);
- Claimants should have taken into account, the effect of the legal drafting prior to making any PNE claims. Such claimants should not be allowed further opportunities to obtain their preferred options;

- It is not possible to state what the intention was in relation to interacting claims (as this possibility had not been directly considered during assessment of P37). The respondent further indicated that there was evidence to suggest that only 2 Energy Accounts would be included within any claim; and
- Any Party seeking to make such claims would have been wise to bring the issue up in the P37 discussions so that the intention was made clear and encapsulated in the legal drafting.

7.1.4 Clarification or Retrospection

The majority of respondents believed that P160 would represent a retrospective Modification Proposal.

The main views expressed in relation to whether P160 should be regarded as retrospective were:

- P160 is retrospective however it meets the criteria set out by the Authority for retrospective Modification Proposals such that it could be possible to approve;
- 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;
- One respondent commented that whilst P160 could be considered retrospective, the calculation of the ECP has yet to be undertaken;
- P160 would result in the amendment of the ECP calculation which had been approved and agreed by the industry under P37; 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

The majority of respondents supported the view that a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160.

The views expressed in support of a retrospective rule change are:

- This is a clear case where there would be discriminatory treatment of certain Parties through the 'incorrect codification of P37 into the BSC'. This is clearly due to 'central arrangements' which had not foreseen the particular scenario where multiple claims affect the same Settlement Period and Energy Account;
- Parties could not have reasonably foreseen this occurrence prior to raising the claims; modelling of all the potential outcomes and interpretations would not have been practicable and, moreover, they had been led to believe that the ECPs would in effect be 20%;
- If P160 were construed as retrospective, then it would still appear justified as it would meet the particular circumstance of a fault or error that occasioned a loss that was directly attributable to central arrangements; and
- Under 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;

The views expressed against a retrospective rule change are:

- 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; and

- Affected Parties should have taken reasonable care to ensure that the ECP calculation did deliver what was intended by P37.

7.1.6 Grouping of claims

The majority of respondents supported the EPMG in its provisional view i.e. that grouping by same cause would provide the optimal solution to the defect identified. The arguments in favour of this view were:

- It provides a fairer treatment to all the Parties affected by the anomaly; and
- This will deliver an outcome where the ECP is 20% of the benefit from upheld claims.

The arguments against this view were:

- The rules are set out in the Code for all Parties to follow. If certain Parties do not take account of these eventualities then they should face the consequences;
- All affected Parties should have taken reasonable care to ensure that the ECP calculation did deliver that which was intended; and
- One respondent, although in agreement with the principle of grouping claims for the ECP calculation, was of the view that grouping by pair of Energy Accounts within an investigation would be more consistent with the Code as presently written.

7.1.7 Alternative Solutions

One respondent suggested an alternative solution to that proposed by the EPMG. The EPMG discussed this solution which was that the appropriate grouping of claims should be the claims under a single PNE investigation between the same two Energy Accounts (see also section 1.5.1.5). The EPMG did not believe that this approach would better facilitate the achievement of the Applicable BSC Objectives over the Alternative Modification P160.

7.2 Comments and views of the Modification Group

The EPMG noted that the responses did not raise any new, substantive issues that required further consideration. However the EPMG were able to consider fully the two main issues it had debated in previous meetings with the knowledge of the views of consultation respondents. The two main issues were:

- What had been the intent of ECP within Modification Proposal P37; and
- Whether the Proposed Modification P160 or Alternative Modification P160 should be considered retrospective.

7.2.1 Intent of the ECP

The EPMG concluded that the intent of the ECP, introduced under P37, was to produce a payment equivalent to 20% of the financial benefit to an individual Energy Account resulting from an upheld PNE claim and that it was not appropriate to make a charge greater than the financial benefit obtained by a Party. This was based on the documentation and discussions of the Modification Group that assessed P37 (see section 1.5.6).

7.2.2 Retrospection

The majority of the EPMG concluded that P160 would be a retrospective change. This was because P160 would alter the basis for the calculation of the ECP, however the EPMG considered that the

criteria set out in previous decision letters from the Authority could be satisfied by the introduction of either the Proposed Modification P160 or the Alternative Modification P160 (see section 1.5.5).

8 IMPLEMENTATION APPROACH

The EPMG recommends an Implementation Date of 10 Workings 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 P160.

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	EPMG	Initial Draft
0.2	31/03/04	Thomas Bowcutt	Change Delivery	Updated following EPMG review
0.3	01/ 04/04	Thomas Bowcutt	Change Delivery	Updated following technical review
1.0	01/ 04/04	Thomas Bowcutt	Panel	Updated for Panel 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 Mildon QC)	RWE Innogy	01/03/04	1.0
10	Comment on the 'Opinion on the computation of the Error Correction Payment'	ELEXON	02/03/04	1.0
11	Ofgem's Provisional thinking on Urgent Modification Proposal P37	Ofgem	12/10/01	1.0
12	P160 and P163 Assessment Consultation and Requirements Specification (P160AC)	ELEXON	08/03/04	1.0

ANNEX 1 DRAFT LEGAL TEXT

Draft Legal Text for Proposed Modification P160 and Alternative Modification P160 are 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 (Proposer P160)
David Tolley	RWE Innogy
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 P160 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	P160_AR_001	1	0
2.	EDF Trading Ltd	P160_AR_002	2	0
3.	British Energy	P160_AR_003	3	0
4.	Innogy	P160_AR_004	10	0
5.	EDF Energy	P160_AR_005	9	0
6.	British Gas Trading	P160_AR_006	1	0
7.	Powergen	P160_AR_007	14	0
8.	Edison Mission Energy	P160_AR_008	2	0
9.	Scottish and Southern (LATE RESPONSE)	P160_AR_009	5	0

P160_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

P160_AR_002 – EDF Trading Ltd

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

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P160 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	P160 will correct an anomaly that exists within P6.5 such that the ECPs will be 20% of the benefit to the Energy Account of the error being corrected. Currently this can be significantly more than 20% and in the EDF case can be many times the amount of the original claim. P37 had intended to cater for a discount, set at 20%, not 'an arbitrary and irrational' amount that can either offset a large proportion or even all of the claim. The correction of this anomaly would ensure fair treatment of the parties affected and equal treatment with other successful PNE claimants. Furthermore it is fully in keeping with the intent of the P37 decision. Therefore it better facilitates BSC Objective (c) and because its approval will avoid any possible subsequent follow-up legal challenge it will better meet Objective (d) as well.
2.	Do you believe Alternative Modification P160 better	Yes	P160 Alternative will group all the notifications associated with the overall

Q	Question	Response	Rationale
	<p>facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i></p>		<p>claim ie from the same cause for each of the Energy Accounts to determine whether there is a benefit or not and, as such, whether an ECP is due. Whereas, P160 will group only those notifications that affect the same Settlement Periods for each of the Energy Accounts. EDFT and EDF note that both P160 and P160Alt would address the defect from their point of view, but that P160Alt offers fairer treatment to other parties as well. Therefore EDFT and EDF consider that Alternative Modification P160 not only better achieves the BSC Objectives (c) and (d) as stated above, but it does so in comparison with the original proposed P160.</p>
3.	<p>Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i></p>	Yes	<p>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.</p>
4.	<p>Do you believe P160 is a retrospective Modification Proposal? <i>Please give rationale</i></p>	Yes / No	<p>We believe that it needn't be regarded as a retrospective modification because it is delivering the intent of P37 and that the ECP calculation has yet to be carried out. However, we have acknowledged the widely held view that it is retrospective and are willing to accept that, on the basis that the grounds for granting retrospection fit this particular case.</p>
5.	<p>Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160? <i>Please give rationale</i></p>	Yes	<p>Absolutely. This is a clear case where there would be discriminatory treatment of certain parties through the incorrect codification of P37 into the BSC. This is clearly due to 'central arrangements' which had not foreseen the particular scenario where multiple claims affect the same Settlement Period and Energy Account. Furthermore parties could not have reasonably foreseen this occurrence prior to raising the claims; modelling of all the potential outcomes and interpretations would not have been practicable and, moreover, they had been led to believe that the ECPs would in effect be 20%.</p>
6.	Do you support the view of the	Yes	This gives fairer treatment to all the

Q	Question	Response	Rationale
	EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? <i>Please give rationale</i>		parties affected by the anomaly.
7.	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	
8.	Does P160 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	
9.	Are there any further comments on P160 that you wish to make?	Yes	To believe that either P160 or the Alternative does not better meet the BSC Objectives is to believe that the current wording of P6.5 actually better meets those Objectives, that it is correct to not only discount certain claimants significantly more than the 20% (as originally intended, but also to cause them to suffer severe financial burden through reasons only caused by an error in the BSC text. This cannot be right logically, morally and more importantly legally.

P160_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	(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ¹⁰)

Q	Question	Response	Rationale
1.	Do you believe Proposed	No	We do not believe that this modification

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

Q	Question	Response	Rationale
	<p>Modification P160 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i></p>		<p>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.	<p>Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i></p>	No	<p>Claimants should have taken this into account before putting in their PNE claim.</p>
3.	<p>Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims 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 P160 is a retrospective Modification Proposal? <i>Please give rationale</i></p>	Yes	<p>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</p>

Q	Question	Response	Rationale
			made and electricity prices will reflect the resulting risk. We do not support this modification proposal in either its original or alternative forms.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160? <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 support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? <i>Please give rationale</i>	No	The rules are set out in the BSC for all Parties to follow. If certain Parties do not take account of these eventualities then they should face the consequences.
7.	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	
8.	Does P160 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	
9.	Are there any further comments on P160 that you wish to make?	No	

P160_AR_004 – Innogy

Respondent:	<i>David Tolley</i>
No. of BSC Parties Represented	<i>10</i>
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	<i>None</i>

Parties Represented	
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
1.	Do you believe Proposed Modification P160 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Yes	P160 would bring greater consistency to the outcome of the P6.5.3 formula for all successful claims. At present the P6.5.3 formula can produce widely differing results not only between claimants but also depending upon the degree to which a set of claims succeeded under a PNEC investigation. A more consistent outcome to the ECP calculation would create a more level playing field, and thus better achieve Applicable BSC objective (c)
2.	Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i>	Yes	Although P160 will remove the bulk of the perversities that can arise from the P6.5.3 formula, some will remain. The P160 Alternative will produce an even more consistent ECP outcome for the relevant claims.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	This accords with our own view. It seems clear from both the P37 Modification Group's 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 P160 is a retrospective Modification Proposal? <i>Please give rationale</i>	Yes	Whether or not P160 is strictly a retrospective Modification depends upon the interpretation that is given to a PNE. This is currently in issue.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160? <i>Please give rationale</i>	Yes	If P160 were construed as retrospective, then it would still appear justified since:- 1. it would meet the particular circumstance of a fault or error that occasioned a loss that was directly attributable to central arrangements. This is because the drafting of paragraph P6.5.3 does not appear to have contemplated the diversity of trading arrangements that might have

Q	Question	Response	Rationale
			to be considered by the PNEC. ; and 2. Furthermore such circumstances might not have been reasonably foreseen.
6.	Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? <i>Please give rationale</i>	Yes	This should generally deliver the outcome of the ECP being 20% of the benefit from the upheld claims for each Account.
7.	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	The Alternative identified by the Modifications Group appears to deliver the intent of the Authority's P37 decision letter.
8.	Does P160 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	P160 focuses only on P6.5.3 and as such it and its Alternative appear comprehensive.
9.	Are there any further comments on P160 that you wish to make?	Yes	Please also see our comments on P163.

P160_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 P160 better facilitates the achievement of the Applicable BSC Objectives?	Yes	EDF Energy believes that P160 will better facilitate Applicable BSC Objectives (c) and (d) because ECPs should be 20% of the benefit to the Energy Account of the

Q	Question	Response	Rationale
	<i>Please give rationale and state objective(s)</i>		error being corrected. The clarification of the process would help promote efficiency by reducing the possibility of a legal challenge.
2.	Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i>	Yes	EDF Energy believes that the grouping under the Alternative Modification P160 better facilitates the Applicable BSC Objectives for the same reasons as stated in Q1. We note that Applicable Objective (c) is better facilitated over the Proposed Modification as the alternative represents a fairer treatment for all Parties.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims 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 P160 is a retrospective Modification Proposal? <i>Please give rationale</i>	Yes / No	We believe that P160 could be considered to be retrospective, however, we would like to point out that the ECP calculation has not yet 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 P160? <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 support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? <i>Please give rationale</i>	Yes	This ensures that the ECP is equal to 20% of the net financial benefit.
7.	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	
8.	Does P160 raise any issues that you believe have not been	No	

Q	Question	Response	Rationale
	identified so far and that should be progressed as part of the Assessment Procedure? <i>Please give rationale</i>		
9.	Are there any further comments on P160 that you wish to make?	No	

P160_AR_006 – British Gas

Respondent:	Mark Manley
BSC Parties Represented	British Gas
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	<p>Do you believe Proposed Modification P160 better facilitates the achievement of the Applicable BSC Objectives?</p> <p><i>Please give rationale and state objective(s)</i></p>	Yes	<p>BGT do not generally support retrospective changes. Retrospection introduces an unnecessary and unmanageable level of risk, which can undermine competition in the market place. However in this instance BGT does agree that this modification better facilitate Applicable BSC Objective (c). BGT expected an ECP of 20 percent to accrue from claims that were upheld where there was a financial benefit. This has not happened using the current methodology, meaning Parties have been exposed to unexpected and unnecessary costs. This negatively impacts on competition. BGT also believes this better facilitates Applicable BSC Objective (d) due to the 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> <p>The current baseline in a limited number of circumstances results in a perverse scenario where the Error Correction Payment (ECP) is larger than the materiality of the upheld claim. This result is not consistent with the original intent of P37 and the BSC should be modified to reflect the original intent, which would mean Parties that have had their claim upheld would be liable for an ECP of 20 percent of the upheld claim.</p>
2.	<p>Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)?</p> <p><i>Please give rationale and state objective(s)</i></p>	Yes	<p>BGT agree that P160 Alternative better facilitates Applicable BSC Objectives (c) and (d) for the reasons provided in question 1. The Alternative approach which groups for the purposes of calculating the ECP by common cause more accurately achieves the original intent of P37. Therefore this is BGT preferred approach.</p>

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 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 P160 is a retrospective Modification Proposal? <i>Please give rationale</i>	Yes	BGT believe P160 is a retrospective modification. P160 is seeking to amend the ECP calculation after P37 was approved and therefore this does constitute a retrospective change to the baseline.
5.	Do you believe a retrospective change to the ECP calculation would be justified in order to address the perceived defect identified under P160? <i>Please give rationale</i>	Yes	The consultation documentation references the P19 decision letter as the test for a retrospective change. Assuming that the P19 decision letter is still consistent with the views of Ofgem then BGT believe that both P160 and the Alternative meet the requirements of a retrospective change. The decision letter references a number of tests including the error being attributable to the central arrangements and if the financial implications could not have been reasonably foreseen. On the basis that the BSC constitutes the 'central arrangements' BGT believe the fault was directly attributable to central arrangements. BGT also believe there may be some merit in the argument that in these limited cases the financial implications could not have been reasonably foreseen.
6.	Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? <i>Please give rationale</i>	Yes	BGT do concur with the view of the EPMG that grouping claims by investigation solely for the purpose of undertaking the ECP calculation is the most equitable solution. This should ensure that for the claims that were upheld by the PNE committee, the ECP should reflect 20 percent of the financial benefit of that Energy Account.

Q	Question	Response	Rationale
7.	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	
8.	Does P160 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	
9.	Are there any further comments on P160 that you wish to make?	No	

P160_AR_007 - Powergen

Respondent:	<i>Powergen</i>
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> 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
No. of Non BSC Parties Represented	0
Non BSC Parties represented	0
Role of Respondent	Supplier, Generator, Trader and Exemptable Generator

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P160 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	No	Powergen agree in principle that the ECP calculation does not deliver the outcome which had been expected by many participants. We feel that the proposed modification would provide a better reflection of how many parties believed the Error Correction would work. We therefore believe that the proposal would facilitate an equitable outcome for parties and as a result competition could benefit. However, we are conscious that in order to implement this modification it will be necessary to make a retrospective change. It is our opinion that retrospective modifications damage confidence and introduce uncertainty in to the market which ultimately harms competition. We note the arguments in favour of P160 but consider the negative impacts on applicable objective 'c' to outweigh the potential positive effects.
2.	Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i>	No	We concur with the modification group that P160 Alternative ensures a greater level of consistency for the ECP across claimants. On this basis we consider P160 Alternative to be superior to P160 Original. However, both P160 and P160 Alt represent retrospective modifications and as such they are likely to have a negative effect on competition.
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes	We believe that the original intention was to ensure that the Error Correction Payment represented 20% of the claim value.
4.	Do you believe P160 is a retrospective Modification Proposal? <i>Please give rationale</i>	Yes	P160 would result in the amendment of the ECP calculation which had been approved and agreed by the industry under P37. On this basis P160 should be considered as a retrospective modification.

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 P160?</p> <p><i>Please give rationale</i></p>	No	<p>We are concerned about the use of retrospective modifications. Although we agree that there is genuine belief that the Error Correction Payment calculation does not reflect the original intention, we believe that all affected parties should have taken reasonable care to ensure that the ECP calculation did deliver that which was intended. It seems reasonable and rationale to expect an affected party to have tested the ECP methodology at an early stage.</p> <p>Powergen recognise that it would be desirable to ensure an ECP outcome which reflects the original intention. However, in the interests of good governance, we would have preferred the avoidance of this situation in the first instance. The consequences of grouping claims should have been scrutinized to a higher degree.</p> <p>In the Ofgem decision letter for P84, the Authority gave a clear signal as to the responsibility of parties to ensure robust outcomes.</p> <p><i>"The governance process is intended to provide the 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 are therefore disappointed that this Proposal was not put forward until after the implementation date of Modification Proposal P37. In future, we would expect Parties to adopt a more constructive approach so as to facilitate the efficient administration of the BSC."</i></p> <p>Ofgem 'P84' Decision Letter 28 May 2002</p> <p>We believe that the above statement is as relevant to P160 and alternative as it was for P84.</p>
6.	<p>Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160?</p> <p><i>Please give rationale</i></p>	Yes	<p>Grouping the upheld claims within a PNE investigation would achieve a solution for the perceived defect. However our concerns regarding retrospection override our sympathy for the proposed solution.</p>

Q	Question	Response	Rationale
7.	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	
8.	Does P160 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	
9.	Are there any further comments on P160 that you wish to make?	No	

P160_AR_008 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 P160 better facilitates the achievement of the Applicable BSC Objectives? <i>Please give rationale and state objective(s)</i>	Partially	We believe that the perceived defect is real and should be addressed. A more consistent treatment of the ECP calculation would support objective c). However we are not convinced that the proposed grouping under P160 is either the most appropriate or the most consistent with the principles of BSC P6.

Q	Question	Response	Rationale
2.	Do you believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? <i>Please give rationale and state objective(s)</i>	Yes	Alternative modification P160 offers a better solution than the original P160, although we believe that grouping claims by investigation and pairs of energy accounts is more consistent with the existing P6 (see later).
3.	Do you support the view of the Proposer that the ECP to be made in relation to upheld PNE claims was intended to be 20% of the overall financial benefit to the Energy Account? <i>Please give rationale</i>	Yes, in relation to a claim involving two accounts and one notification	<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. 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.	Do you believe P160 is a retrospective Modification Proposal? <i>Please give rationale</i>	Yes	It would seek to amend payments, which, although not yet charged, are already defined. This is therefore a retrospective amendment.

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 P160?</p> <p><i>Please give rationale</i></p>	Yes	<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>.</p> <p>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> <p>iii) The possibility of retrospective action was not flagged advance. We therefore believe that a retrospective modification may be appropriate to ads the spurious ECP in relation to I020.</p>

Q	Question	Response	Rationale
6.	<p>Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160?</p> <p><i>Please give rationale</i></p>	No	<p>The perceived defect is related to the anomalous effect of the ECP calculation in relation to multiple claims relating to the same energy account(s). It could be considered discriminatory if the ECP was dependent on the way a party's notification strategy (e.g. additive or overwrite) affected the calculation of the ECP (note that this argument on discrimination was used in support of the acceptance of Modification Proposal P84). For example, had EDF used an overwrite strategy, rather than additive, there could be just two notifications affected by the claims under I020, and the ECP would be reduced below the imbalance benefit.</p> <p>We believe that the issue should be resolved in a manner that addresses this defect and follows the available information on discussions leading to the acceptance of P37. As such, we believe that the appropriate grouping of claims should be the claims under a single PNE investigation between the same two energy accounts – this fits in with the drafting of P6 suggesting that a claim includes two accounts. Under this scenario, each of I020 and I029 would include two ECP claims groups.</p>
7.	<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>	Yes	<p>See response to question 6 - the appropriate grouping of claims should be the claims under a single PNE investigation between the same two energy accounts.</p>
8.	<p>Does P160 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	
9.	<p>Are there any further comments on P160 that you wish to make?</p>	No	

P160_AR_009 – 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 nine questions contained within your note of 9th March 2004, and the associated Assessment Consultation for P160, we have the following comments to make:-

Q1 Do you believe Proposed Modification P160 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 believe Alternative Modification P160 better facilitates the achievement of the Applicable BSC Objectives (in comparison to both the current baseline and Proposed Modification P160)? Please give rationale and state objective(s)

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 was intended to be 20% of the overall financial benefit to the Energy Account? Please give rationale

Yes.

Q4 Do you believe P160 is a retrospective Modification Proposal? 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 P160? Please give rationale

Yes. For the reasons outlined under the heading "Fault or error directly Attributable to Central Arrangements" in Section 4.4.1 of the Assessment Consultation document.

Q6 Do you support the view of the EPMG that grouping all upheld claims within a PNE Investigation for the purpose of the ECP calculation offers the most equitable solution to the perceived defect identified under P160? Please give rationale

Yes.

Q7 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale

No.

Q8 Does P160 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.

Q9 Are there any further comments on P160 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 P160

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 included in this report 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 ¹¹ 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

¹¹ 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.