

ASSESSMENT REPORT for Modification Proposal P152

Reduction of Credit Cover for a Trading Party in Default which has ceased trading and which has paid all accrued Trading Charges

Prepared by: P152 Modification Group

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

RECOMMENDATIONS

The P152 Modification Group invites the Panel to;

- **AGREE that the Proposed Modification P152 should not be made;**
- **AGREE that the Alternative Modification P152 should not be made;**
- **AGREE a provisional Implementation Date for the Proposed and Alternative Modification P152 (in the event that the Authority determines that either be made) of 3 November 2004 if an Authority determination is received before or on 16 June 2004 or 23 February 2005 if an Authority determination is received after 16 June 2004 but before or on the 6 October 2004;**
- **AGREE that Modification Proposal P152 be submitted to the Report Phase; and**
- **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting of 11 March 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/bscresl_docs/bsc_Code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as BSCCo has been able to assess the following Parties/documents have been identified as being potentially impacted by Modification Proposal P152.

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

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

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

1.1 Modification Proposal

Modification Proposal P152 "Reduction of Credit Cover for a Trading Party in Default which has ceased trading and which has paid all accrued Trading Charges" ("P152") was raised on 1 December 2003 by Roger Marsh and Michael Horrocks of PricewaterhouseCoopers acting as administrative receivers of Shotton Combined Heat and Power (SCHP) Limited.

P152 seeks to enable a Party that is in Default for reasons of insolvency² and fulfils several criteria, to reduce or reclaim its Credit Cover as would a Party that has ceased trading under regular circumstances. Currently a Trading Party that is in Default is prevented from reducing its Credit Cover under the Balancing and Settlement Code (the Code) section M 2.3, under circumstances where, were it not in Default it would be allowed to do so. This remains the case if the Defaulting Party has stopped trading, paid all invoices and met other contractual obligations in respect of the Code although the Party does not necessarily pose a risk to other Parties.

The Proposer believes that since Credit Cover is intended to cover Energy Indebtedness, if a Party's Energy Indebtedness is zero or less, the Party should be entitled to consequently reduce its Credit Cover if the Party has no other liabilities under the Code.

The Proposer has set out several criteria that a Trading Party in Default for reasons of insolvency would have to fulfil before being able to reduce/claim back Credit Cover. These are that the Party has:

- Ceased all forms of trading pursuant to the Code;
- Paid all Trading Charges due on the Settlement Payment Date for the last Settlement Day on which it traded as well as all previously accrued Trading Charges;
- Transferred or de-registered any Relevant BM Units; and
- Had an Energy Indebtedness of zero or less than zero continuously over the previous 30 days.

Three possible alternative solutions were proposed. One is to treat the Party as any other Party that has ceased trading and allow the existing rules stated in M2.3 to apply to a Party in Default under H3.1.1(g) (option 1). The other suggestions are; reducing the Credit Cover based on a sliding scale at fixed intervals, reductions being based on the probability of further charges being accrued as reconciliation progresses, (option 2) and allowing the Panel to make the decision on whether the Credit Cover should be reduced for each individual case using the criteria listed above (option 3).

The Proposer believes that P152 better facilitates Applicable BSC Objectives (c), promoting effective competition in the generation and supply of electricity and (so far as is consistent therewith) promoting such competition in the sale and purchase of electricity, and (d), efficiency in the implementation and administration of the balancing and Settlement arrangements.

The Proposer asserts that applicable BSC Objective (c) is better facilitated for a number of reasons:

- Having to leave funds trapped as security after cessation of trading and reduction of Energy Indebtedness is a barrier to entry. More particularly, insolvency practitioners will be disinclined from running Generating Plants and trade in receivership for this reason;
- Insolvency practitioners and commercial counter parties or creditors may be relying on the funds that are tied up in Default;

² This refers to being in Default under Section H3.1.1 (g) only.

- Trading Parties in insolvency Default will minimise the Credit Cover they post if they know they cannot reclaim it upon cessation of trading, thus will be more likely to go into Credit Default; and
- P152 ensures consistent treatment of Credit Cover calculations between Parties.

The Proposer also asserts that applicable BSC Objective (d) is better facilitated for a number of reasons since Parties will not seek return of Credit Cover outside of the Code and this will save BSCCo time and cost.

The Proposer requested that P152 should be treated as urgent. Whilst BSCCo acknowledged the issues behind the Modification Proposal, it did not consider that these in themselves warranted urgency. Furthermore, BSCCo consider that changes to the Credit Cover arrangements should generally be given full and detailed assessment. Accordingly BSCCo declined to recommend urgency.

The Initial Written Assessment (IWA) was presented to the Panel at its meeting on 11 December 2003. The Panel recommended a 2 month Assessment Procedure with the Assessment Report being presented at the Panel meeting on the 12 February 2004. The P152 Modification Group met three times, on the 18 December 2003, 5 January 2004 and 28 January 2004. It issued one consultation document and one BSC Central System Agent impact assessment during the Assessment Procedure.

1.2 Proposed Modification

The Modification Group developed the following solution as part of the Proposed Modification. A Trading Party which is in Default solely by virtue of Section H 3.1.1 (g) i.e. it is insolvent or under administration, and wishes to reduce the amount of its Credit Cover can send notice to this effect to BSCCo. BSCCo will then perform the following checks which such a Trading Party has to satisfy. These are that the Party has:

- Ceased all forms of trading pursuant to the Code;
- Paid all Trading Charges due on the Settlement Payment Date for the last Settlement Day on which it traded as well as all previously accrued Trading Charges;
- Transferred or de-registered any Relevant BM Units; and
- Had an Energy Indebtedness of zero or less than zero continuously over the previous 30 days.

Once the Party has fulfilled these criteria they will be able to apply to the Panel in order to receive back a certain amount of their Credit Cover. This amount will be worked out based on the average of the positive Reconciliation Charges over the Reconciliation Timetable that the Party has been liable for over the past year of trading (or amount of time it has been trading, if less than a year). This calculation will be set out in the Code. The Party will then apply to the Panel to receive back the amount of Credit Cover less this calculated amount. The Panel will grant the Party this right unless it believes there are extenuating circumstances. The remainder of the Credit Cover will be returned to the Party at Final Reconciliation Run (RF)³.

1.3 Issues raised by the Proposed Modification

Assessment of Modification Proposal P152 identified several potential areas of impact. These were refined by the Panel to enable a concise treatment of P152 and the following issues were thus addressed during the progression of P152:

³ For the avoidance of doubt, the P152 Modification Group considered that although it in agreement with a majority of the consultation responses considered PF a suitable end point, the implementation of P127 which suggested an RF end point, means for practical reasons an RF end point was more appropriate.

- Risk profile to industry of Parties Defaulting under H3.1.1(g) – are Parties who are insolvent but have fulfilled the criteria outlined in the Modification Proposal more of a risk to industry than non Defaulting Parties who cease trading;
- Mechanism by which Parties should reduce or reclaim their Credit Cover – a list of three options was included in the Modification Proposal;
- Potential interaction between P152 and P127 “Optional De-registration by Insolvent Party” If the P127 Alternative Modification was approved (as recommended by the Panel), this would partially address the P152 issue by allowing a Party in Default to recover their Credit Cover (but only once Final Reconciliation had passed); and
- The requirement for a cost effective and efficient solution.

1.4 Assessment of how the Proposed Modification better facilitates the Applicable BSC Objectives

The Modification Group members were unanimous in concluding that the Proposed Modification would not better facilitate the achievement of Applicable BSC Objectives (c) and (d). However the Proposer, who was a Modification Group attendee, considered that P152 did better facilitate the achievement of Applicable BSC Objectives (c) and (d). The Modification Group during its discussions considered the arguments for and against the Proposed Modification:

- Whether there is a requirement for P152 after the Implementation of the P127 Alternative Modification;

One member of the Group suggested that since a Party such as that described in P152 can receive their Credit Cover back at RF (since P127 was approved) there is no longer a requirement for P152 as the defect is no longer valid. As a counter argument, it was pointed out that P127 was not raised to solve the same problem as P152 and as such did not consider all the issues and whilst it may be considered to go some of the way towards solving the defect outlined in P152 it does not go far enough.

- Whether reducing Credit Cover poses a risk to the market thus having a detrimental effect on promoting competition and the facilitation of Applicable BSC Objective (c);

Several members of the Group considered that giving an insolvent Party any of their Credit Cover back before RF was a risk to the market and was not one it considered the industry would be willing to underwrite. These members believed that there was a greater risk that insolvent Parties would be unable to meet any liabilities which they may accrue in the future. The Proposer acknowledged that there was some risk but considered that not giving a Party any of their Credit Cover back before RF was inequitable and unreasonable. Some members of the Group acknowledged that it seemed reasonable to give a proportion of the Credit Cover back prior to RF, but that it was difficult to justify what this proportion should be as their did not seem to be a methodology that could accurately reflect a Party's future Trading Charges. Therefore some Credit Cover ought to be retained.

- Whether the ability to reduce Credit Cover encourages insolvent Parties to trade thus promoting competition and the facilitation of Applicable BSC Objective (c);

The Proposer commented that the fact that funds would remain trapped as security for a significant period of time would act as a material disincentive to continue or restart generation and would therefore enhance the economic argument for plant mothballing. However, one member of the Group commented that the risk of being liable for a bad debt may constitute more of a barrier to entry than the Credit Cover requirements of an insolvent Party.

- Whether P152 better facilitates the achievement of Applicable BSC Objective (d);

The Proposer considered that P152 will reduce the risk that Parties will seek the return of their Credit Cover through litigation. However it was commented that the likelihood of a Party instigating legal proceedings has been reduced by the Approval of P127. In addition, were an insolvent Party to withdraw their funds and then not pay future Trading Charges, other Parties may decide to make claims against this Party outside the Code and the status of BSCCo would have changed from being a secured to an unsecured creditor hence having a lower likelihood of receiving monies due.

1.5 Modification Group's cost benefit analysis of Proposed Modification

The Modification Group sought to ensure that P152 be inexpensive to implement, given that the occurrence of the type of event that P152 covers is likely to be rare. The original costs received from the BSC Central Service Agent, included the development of a new script within the Energy Contract volume Aggregation Agent (ECVAA) system to make the checks as to whether a Trading Party had fulfilled the criteria or not. This was considered excessive by the Group and in the limited time available an impact assessment on another more manual solution based on current working practices was sought. This resulted in a much smaller cost estimate. However the Group, in rejecting the Proposed Modification considered that the benefits of the Modification were not such that it warranted approval, and hence P152 did not justify the implementation costs however minimal.

1.6 Alternative Modification

The Modification Proposal for P152 made specific reference to the generic entity Trading Party⁴. The Group considered the differences between generators, Interconnector Users and other types of Trading Party. Other types of Trading Party have greater and more unpredictable variation in Reconciliation payments than generators and Interconnector Users. So for the latter two Party types it will be easier to predict Reconciliation Charges up to RF and hence use a sliding scale type mechanism for reclaiming Credit Cover whilst also limiting the risk of high Reconciliation payments falling due. One member of the Group had difficulty with this since it does not cater for potential charges arising from Disputes that would cause greater variety in a generators reconciliation payments. However, the Group considered that including only generators in the P152 solution would enable a less arbitrary sliding scale to be used and would diminish the risk to the market of reducing Credit Cover.

The Group then considered how to define the types of trading Party that would be encompassed by the Modification. There are many vertically integrated Parties and these Parties put up a single sum to serve as Credit Cover for a range of activities, hence singling out different types of activities for which Credit Cover can be returned is complicated and perhaps impractical. The Group thus concluded that it would have to include only pure generators or Interconnector Users with no supply side to their business.

The Group also considered charges a Party is liable for that do not come under the category of Trading Charges. Several members of the Group were concerned that a Party that had not paid its BSCCo Charges could receive its Credit Cover back under P152. It was suggested that as part of the Alternative Modification a further criteria should be created to ensure that this could not be the case, "paid all BSCCo Charges up to the date of application to BSCCo". The Group recognised that the intent of Credit Cover was not to deal with BSCCo Charges but thought this criterion was a sensible additional one to use.

The Alternative Modification developed by the Group is as follows:

⁴ Trading Party covers a number of different types of Parties, generators, Suppliers, Interconnector Users etc

A generator or Interconnector User (i.e. a Party that has no Supply business at all), and which has no Metered Volume Reallocation Notifications (MVRNs) with a Supplier which is in Default solely by virtue of Section H 3.1.1 (g) and wishes to reduce the amount of its Credit Cover can send notice to this effect to BSCCo. BSCCo will then perform the following checks which such a generator has to pass. These are that the Party has:

- Ceased all forms of trading pursuant to the Code;
- Paid all Trading Charges due on the Settlement Payment Date for the last Settlement Day on which it traded as well as all previously accrued Trading Charges;
- Paid all BSCCo Charges up to the date of application to BSCCo;
- Transferred or de-registered any Relevant BM Units; and
- Had an Energy Indebtedness of zero or less than zero continuously over the previous 30 days

Once the Party has fulfilled these criteria they will be able to apply to the Panel in order to receive back a certain amount of their Credit Cover. This amount will be worked out based on the average of the positive Reconciliation Charges over the Reconciliation Timetable that a Party has been liable for over the past year of trading (or amount of time it has been trading, if less than a year). This calculation will be set out in the Code. The Party will then apply to the Panel to receive back the amount of Credit Cover less this calculated amount. The Panel will grant the Party this right unless it believes there are extenuating circumstances. The remainder of the Credit Cover will be returned to the Party following the Final Reconciliation Run (RF).

1.7 Issues raised by the Alternative Modification

The issues raised by the Alternative Modification were similar to those raised by the Proposed Modification. Modification Group members were concerned about the risk to industry of generating Parties Defaulting under H3.1.1 (g). A majority of the Group considered that they were more of a risk to industry than non Defaulting Parties who cease trading. In addition the Group desired a cost effective solution.

1.8 Assessment of how the Alternative Modification better facilitates the Applicable BSC Objectives

The Modification Group considered that the Alternative Modification better facilitated the Applicable BSC Objectives relative to the Proposed Modification, the criterion for a valid Alternative Modification, but not when compared to the current baseline.

Limiting the solution to pure generators and Interconnector Users will ensure that only those Parties with lower likelihood of variable Reconciliation Charges will be able to reduce their Credit Cover and in fact a two stage process based on historical average positive Reconciliation Charges is easier to implement for generators and Interconnector Users.

The Group felt that in addition the same arguments for and against the Proposed Modification applied to the Alternative with regards to the Applicable BSC Objectives (section 1.4 above).

Note: Subsequent to the final Modification Group meeting, the Proposer indicated support for the Alternative Modification. The restriction of scope better meets the Proposer's concerns in remedying the existing defect in the Code. The Proposer suggests that the average positive Reconciliation charge is an equitable and prudent level of Credit Cover to cover the future risk to BSC Parties as this is an objective measure that properly assesses the correct magnitude of this number. The Proposer wished to re-iterate that the Alternative Modification better facilitates the achievement of Applicable BSC Objectives (c) and (d). It considered that the focus of P152 was to further lower entry barriers to

technically excellent insolvent Parties in the generation market, whilst keeping an equitable level of Credit Cover in place following the cessation of Trading in order to manage the industry risk. It will also lessen the need to resort to alternative means for the recovery of excess Credit Cover in an acceptable time frame for a distressed company.

1.9 Modification Group's cost benefit analysis of Alternative Modification P152

As with the Proposed Modification, the Modification Group sought a solution that would be inexpensive to implement, given that the occurrence of the event the Alternative is seeking to cover is likely to be rare. The original costs received from ECVAAs included the development of a new script in the ECVAAs system, to make the checks as to whether a Trading Party had fulfilled the criteria or not. This was considered excessive by the Group and in the limited time available an impact assessment on another more manual solution based on current working practices was sought. This resulted in a much smaller cost estimate. However the Group, in recommending rejection of the Alternative Modification considered that the benefits of the Modification were not such that it warranted approval, and hence P152 did not justify the costs however minimal.

1.10 Governance and regulatory framework assessment

During the assessment of the Proposed and Alternative Modification, the P152 Modification Group considered the wider implications of P152 in the context of the statutory, regulatory and contractual framework within which the Code sits, as is required by the Code (Annex F-1, paragraph 1(g)). The P152 Modification Group was of the opinion that, were P152 to be implemented, there would be no such wider implications.

2 COSTS⁵

The costs for P152 are dependent on the outcome of other Modification Proposals and Change Proposals. Below is a short note to explain how. The table contains the costs based on the assumption that neither Modification Proposal P142 "Minor Refinement to allow a Level 2 Default Cure period in Defined Circumstances" nor Change Proposal CP974 "Full review of BSCP65" are approved or implemented. It therefore contains the summed costs of the ECVAAs and the FAA worst case scenarios with regards to cost.

Energy Contract Volume Aggregation Agent (ECVAAs)

The cost is £6k to implement P152 with a £7k charge every time the request is made. This is unless CP974 is approved in which case, instead, there will be a one off cost of £1k to update Local Working Instructions (LWIs).

"Given that ELEXON are able make the 3rd and 4th checks, then the price to set up the manual process for the 1st and 2nd checks under P152 will be around £6K. Every time there is a request to carry out these checks for a Party, the price will be about £7K (on a T&M basis using current rates).

It should be noted that the scripts for checks 1 & 2 are part of CP974. So if CP974 were ordered by ELEXON, then the price would be reduced to around £1K for updating the Local Work Instructions with no charge for performing checks 1 & 2." (See annex 4)

Funds Administration Agent (FAA)

The Defaulting Party could abandon the current minimum eligible amount (MEA) and receive its Credit Cover in 2 defined stages. The FAA currently liaises closely with ELEXON in determining appropriate

⁵ Clarification of the meanings of the cost terms in this section can be found in annex 5 of this report

action for Defaulting Parties. Therefore agreeing the new process of relevant percentages of Credit Cover to be refunded could be assimilated into the existing working arrangements.

There may be a change required to the relevant BSCP (BSCP301) and the FAA's internal working procedures. There would be a minimal impact on service levels, subject to the provision of appropriate staff, and no impact on system performance.

Providing P142 is approved, the FAA can undertake P152 for no extra cost, if P142 is not approved P152 would incur that cost. The cost of P142 is £2k to implement and £12.5k per year operational. (See annex 4)

PROGRESSING MODIFICATION PROPOSALS

Demand Led Cost	£0
ELEXON Resource	65 Man days (equating to approximately £10,920)

TOTAL IMPLEMENTATION COSTS

		Stand Alone Cost	P152 Incremental Cost	Tolerance Of stand alone
Service Provider⁶ Cost	Change Specific Cost	£8,000	£8,000	unknown
	Release Cost	£0		n/a
	Incremental Release Cost	£0	£0	n/a
	Total Service Provider Cost	£8,000	£8,000	unknown
Implementation Cost	External Audit	£480	£480	+/-25%
	Design Clarifications	£300	£300	+/-100%
	Additional Resource Costs	£0	£0	n/a
	Additional Testing and Audit Support Costs	£0		n/a
Total Demand Led Implementation Cost		£9,000	£9,000	unknown

⁶ BSC Agent and non-BSC Agent Service Provider and software Costs

ELEXON Implementation Resource Cost		13 Man days £5,000	13 Man days £5,000	+/- 5%
Total Implementation Cost		£14,000	£14,000	unknown

ONGOING SUPPORT AND MAINTENANCE COSTS

	Stand Alone Cost	P152 Incremental Cost	Tolerance
Service Provider Operation Cost	£19,000 per event	£19,000 per event	+/-0%
Service Provider Maintenance Cost	£840 per annum	£840 per annum	+/-0%
ELEXON Operational Cost	£0 per annum	£0 per annum	n/a

3 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

The P152 Modification Group recommends to the Panel that neither the Proposed Modification nor the Alternative Modification be made as they do not better facilitate the achievement of the Applicable BSC Objectives (c) and (d) (see Section 1.4 and 1.6). This is because the Group, in accordance with a majority of consultation responses, considered that the industry would not be prepared to take on any of the risk of payment of future liabilities for a Trading Party in Default by virtue of H3.1.1 (g). This was especially since such a Party could receive their Credit Cover back with interest at RF following implementation of P127.

The P152 Modification Group recommends an Implementation Date of 3 November 2004 if an Authority determination is received before or on 16 June 2004, or 23 February 2005 if an Authority determination is received after 16 June 2004 but on or before the 6 October 2004. This would provide sufficient time for BSCCo and its BSC Agents to make the necessary changes to documentation and internal working procedures. The Group felt that to minimise the cost of implementation the Implementation Date should correspond with a scheduled BSC Systems release date.

4 IMPACT ON BSC SYSTEMS AND PARTIES

An assessment has been undertaken in respect of BSC Systems and Parties and the following areas have been identified as potentially being impacted by the Proposed Modification and the Alternative Modification.

4.1 BSCCo

BSCCo will have to perform checks to ensure the relevant Party meets the criteria outlined. These will use current BSCCo systems and processes. In addition BSCCo will perform the calculation set out in the Code that is based on a measure of the average positive Reconciliation Charges a Party has been liable for historically. BSCCo will present these matters to the Panel. There will be a slight increase in the workload for the Panel and for BSCCo in supporting the Panel. BSCCo would then inform the FAA whether and by how much a Party can reduce their Credit Cover.

4.2 BSC Systems

See BSC Agent impact assessments in annex 4.

System / Process	Potential Impact of Proposed/Alternative Modification
Clearing, Invoicing and Payment	BSCCo will inform the FAA whether and by how much a Party can reduce their Credit Cover and the FAA will act accordingly – using a process assimilated into current working practices.

4.3 Parties and Party Agents

Parties meeting the criteria and wanting Credit Cover back are impacted by the new process but the impact is minimal since it is a manual process.

5 IMPACT ON CODE AND DOCUMENTATION

5.1 Balancing and Settlement Code

Both the Proposed Modification and the Alternative Modification will require changes to be made to Sections M and Section N, see legal text attached in annex 1.

5.2 Code Subsidiary Documents

An initial assessment has been undertaken in respect of all Code Subsidiary Documents and the following documents have been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
BSCP301: Clearing, Invoicing and Payment	Changes to reflect the fact that Defaulting Parties under the specific circumstances outlined can reduce their Credit Cover according to the equation set out in the relevant section of the Code.
Funds Administration Agent (FAA) Service Description	Changes to reflect the fact that certain types of Defaulting Parties can reduce their Credit Cover by an amount specified to the FAA by BSCCo (calculated according to an equation set out in the Code).

5.3 BSCCo Memorandum and Articles of Association

No changes will be required to BSCCo Memorandum and Articles of Association as a consequence of either the Proposed Modification or Alternative Modification.

5.4 Impact on Core Industry Documents and supporting arrangements

An assessment has been undertaken in respect of Core Industry Documents and supporting arrangements and no impact was identified.

6 SUMMARY OF CONSULTATIONS

A consultation document was issued to industry on 9 January 2004 with responses to be returned by 23 January 2004.

Consultation question	Respondent agrees	Respondent disagrees	No opinion expressed
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Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	3	3	1
Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code?	4	2	1
Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	0	6	1
Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer? Please give rationale and if none are considered suitable state suggested alternative.	Option 1 Option 3 Option 1 and 3	1 1 1	3 – do not consider any option appropriate 1
If a) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used? b) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)	1	1	5
For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run?	DF RF	3 2	1 (neither appropriate) 1
Does P152 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	0	6	1

6.1 Modification Group's summary of the consultation responses

7 responses (25 Parties) were received to the consultation. One of these respondents made no comment to any of the questions asked.

Three respondents (12 Parties) considered that Proposed Modification P152 better facilitated the achievement of the Applicable BSC Objectives. Those who considered that P152 better facilitated the achievement of Applicable BSC Objective (c) considered so for the following reasons:

Administrators might be disinclined to post Credit Cover if they believed it would not be returned once a buyer had been secured. If no Credit Cover was posted, the Party would be unable to trade and competition in the market consequently reduced. The fact that funds would remain trapped as security for a significant period of time (notwithstanding P127), would act as a material disincentive to continuing or restarting generation and enhance the economic argument for plant mothballing. Additionally, entities connected to the relevant Trading Party (by virtue of being either lenders or commercial counter parties) could be relying to a material extent on funds which would have been released in any other circumstances given that the Trading Party has ceased trading.

In addition one respondent commented that the probability of a significant payment arising out of the Reconciliation Runs is very much lower for Generators than for Suppliers. The principle underlying the Credit Cover calculation reflects the specific trading position and strategy of the BSC Party in question, irrespective of the position of other BSC Parties. The locking in or trapping of funds thereby distorts

this specificity of Credit Cover and creates an asymmetry between the level of Credit Cover and reconciliation payment risk for Generators in Default and Suppliers in Default respectively. This is in violation of the principle underpinning the Credit Cover calculation. In addition one respondent commented that it should be the feature of a market that Parties are free to leave (as well as join) subject to them meeting certain criteria, which, in the case of them exiting the market, should be that they have paid all costs and fees due by them to the BSC community. In the case of a Defaulting Party such costs and fees will amount to much less than the level expected at Initial Settlement. On the balance of probabilities, it therefore seems unnecessary to further penalise Parties experiencing financial hardship by continuing to tie up working capital that is not needed to protect the BSC community.

One respondent considered that P152 better facilitated the achievement of Applicable BSC Objective (d) since it will reduce the need for Parties to seek their remedies in alternative fora (i.e. outside the Code), which would have material time and cost implications not only for the Code but also for BSCCo, which would have to deal with any such applications.

Three respondents (12 Parties) considered that P152 did not better facilitate the achievement of the Applicable BSC Objectives. One respondent considered that the introduction of P152 would represent an increased risk to the remaining signatories of the Code after the Defaulting Party has withdrawn. Furthermore this respondent added that for a number of proposed options it is necessary to define the percentage of Credit Cover required and it believes that it would be difficult to determine this level without it being arbitrary. One respondent acknowledged a possible argument that P152 might encourage plant to be offered back to the market following financial difficulties, but believed this enhancement would be slight relative to the increased risk to the remaining BSC Parties after the Defaulting Party has withdrawn its Credit Cover. One respondent recognised the concerns of the Proposer at the time of raising P152 when there was no mechanism available within the Code for an insolvent Party to recover their outstanding Credit Cover. However the recent Authority decision in respect of P127 provides a route for an insolvent Party to reclaim any unused Credit Cover after the final Reconciliation Run therefore this respondent believes that although at the time P152 was raised there was a defect within the Code, approval of P127 has removed the defect and no defect now exists.

One respondent noted that the Proposer asserted there is a barrier to entry with the current rules due to having to leave funds trapped as security. This respondent did not believe the exit process for an Insolvent Party would factor heavily in the decision making process of a potential new entrant when considering acceding to the Code and, furthermore, believed the risk of being liable for a bad debt may constitute more of a barrier to entry than the Credit Cover requirements of an insolvent Party. In addition the Proposer also asserted P152 will reduce the risk that Parties will pursue the return of their Credit Cover through litigation. The respondent concurs with the P152 Modification Group that the likelihood of a Party instigating legal proceedings has been mitigated by the Approval of P127. The cost and timescales associated with such a process are unlikely to be justified in light of the approval of P127.

Four respondents (17 Parties) considered that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to the industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code. Reasons given were that a Party due to the reconciliation timeframe, could amass costs and /or fees due and any significant sums are likely to be withheld by the Administrator subject to the ranking of the claims from creditors. In addition there is a higher probability that there will be someone to pay future Reconciliation Charges for a Party who withdraws from the Code in a controlled manner. One respondent recognised there are instances when such a Party may not be more of a risk, an example of which was the run off process prior to and after the disposal of Shotton CHP, but that this might not always be the case.

One respondent stated that although it does have some general concerns about the ability of a solvent Party to request a MEA calculation and the impact this could have on their ability to pay future Reconciliation Charges, fundamentally believes that an insolvent Party poses a greater risk in respect of non-payment of Trading Charges.

Two respondents (7 Parties) considered that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 did not pose more of a risk to the industry. Reasons given were that if the criteria are satisfied, then the risk should be no greater. All Trading Charges will have been paid in full suggesting only a very small risk to the industry. Moreover a solvent Party may leave the Code but then fail to meet further liabilities arising from subsequent reconciliation. However, this respondent considered that it should be a requirement of any change implemented under P152 that a buyer has been secured for the Defaulting Party and that the buyer has agreed to assume all present and future liabilities accrued under the Code. This is not a criterion suggested under P152.

One respondent pointed out that Default under H3.1.1(g) may be 'technical' only, as such a Trading Party may not be insolvent and could own significant assets, including cash. In addition, it is entirely possible that a Trading Party (not in Default) may have a similar or worse credit-standing than one that is in Default. The respondent referred to P132 "Redefinition of Credit Cover Requirements to account for Reconciliation Charges" (P132) Modification Report which stated that this risk is considered acceptable to industry.

This respondent also believes that it is inequitable to treat a Party fulfilling the requirements of P152 differently for two reasons.

- The Credit Cover calculation under the Code draws no distinction between a solvent Trading Party and an insolvent Trading Party; and
- A Trading Party that goes into Default is under no obligation to increase its Credit Cover as a result of such Default. Therefore it would follow that a Trading Party whose Credit Cover requirement has been reduced to zero (in accordance with the MEA calculation in the Code) should be entitled to the return of such Credit Cover irrespective of whether it is in Default under Section H3.1.1 (g) or otherwise.

Three respondents (12 Parties) did not suggest a mechanism by which a Party could reduce its Credit Cover under P152 since they believe that a Defaulting Party should not be allowed to remove its Credit Cover from the Code as this represents too much risk for the remaining participants. One respondent considered that option 1 places the risk on the remaining Parties and options 2a, 2b and 3 all require a determination of an intermediate figure based on the perceived risk of future payment. This respondent considered that until such time as a demonstrably fair system can be made to quantify such risk then the status quo has to remain.

One respondent did not recommend any of the options for the following reasons. Option 1 significantly increases the risks faced by the remaining signatories to the Code. BSCCo would have reduced chances of recovering any future liabilities that may accrue through future Reconciliation Runs thus BSCCo's position as a creditor would be altered from that of a secured to an unsecured creditor. Option 2 would be the preferred choice as it is the lowest risk option as it releases the Credit Cover lodged on a scaled basis with the ability to prevent release in defined circumstances. However, the respondent does not believe that there would be any justification for such a sliding scale percentage, owing to the added level of complexity that this would introduce and the consequential impact this would have on the cost of developing the solution. The respondent has similar concerns with option 3 as this introduces an element of subjectivity, which could cause issues in respect of consistency of treatment for Defaulting Parties. Furthermore it does not agree with the view that this power fits with the responsibility the Panel already has in respect of the treatment of Defaulting Parties. The Panel can choose to allow a Party to recommence trading. However in doing so the Panel is protected by the

mechanistic calculation of a Party's Energy Indebtedness. If a Party breaches the levels specified in the Code then the Panel can suspend the ability of a Party to trade. The Panel does not have the ability to acquire cash from a Party that is not paying its Trading liabilities.

One respondent, the Proposer, considered that option 1 is the most equitable and appropriate solution as the calculation of Credit Cover required for all Trading Parties whilst they are actively trading is based on the MEA. A Party not in Default has the ability to withdraw Credit Cover irrespective of its financial position or ability to meet reconciliation and other future payments whereas a Party in Default whose Credit Cover is frozen may have a better ability to meet future payments than a solvent Party withdrawing all of its Credit Cover. The logical solution to such inequitable treatment is to permit a Defaulting Party that satisfies the criteria in P152 to withdraw all its Credit Cover on the same basis as any other Party.

Another respondent preferred option 3, since cases will vary and this approach allows the Panel to judge the situation on the merits of the case at hand.

Finally one respondent considered that a combination of options 1 and 3 would be preferable, since 2a and 2b would be too complex, either requiring detailed analysis or the application of arbitrary figures. This does not add to the efficiency of the Code and would increase the costs of any solution. In addition this respondent believed that using options 1 or 3 in isolation might be problematic. In particular, the Panel may not wish to have their powers extended in this regard, and the respondent believes that the Code should at least prescribe a set of guidelines that the Panel could refer to. However, simply applying option 1 would remove the situational consideration that option 3 would allow the Panel. Nonetheless, there may be instances where there is clear justification for the return of Credit Cover without involving the Panel. The respondent suggested that, where the administrator has secured a buyer that is willing to assume the debts of the Defaulting Party, their Credit Assessment Load Factor (CALF) value could be recalculated under M 2.3, as with a non-Defaulting Party, allowing them to reclaim the Credit Cover. However, where a buyer has not been found, or where the buyer does not assume the debts, but the other criteria set down in P152 have been met, the matter should be referred to the Panel for decision.

The discussion of an intermediate figure for options 2a and 2b was not commented on by a majority of respondents. However there were two comments:

One respondent suggested that the use of any intermediate figure is fraught with difficulties because such figures would inevitably have to be arbitrary.

The Proposer in its response suggested that if Option 2a were to be implemented, the sliding scale should be based upon a statistical analysis of further amounts falling due and payable, and the likely quantum of such amounts in respect of the relevant Trading Party. This is because, Trading Parties in Default (under the condition of P152) should not be penalised by holding a level of Credit Cover necessary to meet a worst-case scenario, incommensurate to the real potential Settlement risks arising from Reconciliation Runs in respect of that Trading Party. This respondent noted the discussions concerning whether it is appropriate to draw a distinction in scale and/or retention percentage between Suppliers and Generators. Its understanding is that the size of potential liability for Generators is likely to decrease very sharply over time such that it is very small relative to the original level of Credit Cover required. The case study of a large Supplier shown as Annex 4 of P132 Modification Report, suggests that Reconciliation Run payments are seen to be making a significant contribution to the overall balance for such a Trading Party withdrawing from the Code. This should be reflected in the level of retention. It has no objection to such a distinction being made to reflect the different future uncertainties in the reconciliation payments of Suppliers and Generators.

A majority of respondents (three representing 15 Parties) considered an end point of Post Final Settlement Run (PF) was appropriate if the Proposed Modification required one. Reasons given were that the materiality of PF Runs can be significant and it would be prudent for a Party's Credit Cover to remain in place until all potential Trading Charge liabilities have been settled. This would represent a lower level of risk for the remaining market participants. Since data quality issues could be around for some time, so might re-running Settlement after Final Reconciliation Settlement Runs and retaining Credit Cover provides a reassurance that whenever a dispute process is finalised there will be funds available from all Parties to cover their liabilities. One respondent added that PF should be used until such time as PFs are not common place when it should revert to RF.

Two respondents (3 Parties) considered RF to be the most appropriate date. One respondent acknowledged that awaiting the PF Run would minimise the risk to remaining Parties but also acknowledged that for consistency following P127 approval that the RF Run might be deemed to be the most appropriate. One respondent considered that RF should be the relevant date for three reasons:

- P127 acknowledged that allowing insolvent Parties to withdraw at RF posed a risk in respect of contingent liabilities arising after that date, but concluded that the risk was acceptable. It noted that the same risk exists in respect of other Parties withdrawing from the Code, and that this had been accepted as part of the baseline. In rejecting P132, it was concluded that this baseline should not be changed.
- PF is inherently uncertain, it is not a fixed date and can be extended indefinitely beyond 28 months under the Code. Further, it is not possible to say with certainty at RF whether a PF will in fact occur at all. This uncertainty would significantly increase the likelihood that a Party satisfying the criteria of P152 would take action to recover its Credit Cover outside of the Code.
- If insolvent Parties satisfied the conditions entitling them to retrieve their Credit Cover under both P152 and P127, they would simply withdraw from the Code at RF and retrieve the balance of their Credit Cover back pursuant to P127 rather than wait a further 14 months to get their Credit Cover back under P152.

Other comments were made by two respondents. The Proposer drew attention to the fact that P152 was raised by Roger Marsh and Michael Horrocks of PricewaterhouseCoopers acting as administrative receivers of Shotton Combined Heat and Power (SCHP) Limited on 1 December 2003. That is to say, these are personal appointments to the named individuals, both of whom are also partners of PricewaterhouseCoopers. It stressed that PricewaterhouseCoopers is the administrative receiver of Shotton Combined Heat and Power Limited. PricewaterhouseCoopers is taking instructions from the administrative receivers but is not acting, in any capacity, in its own name

In addition one respondent suggested that it would be good, outside of P152, to review whether Credit Cover should cover outstanding Reconciliation Charges as well, and not be limited to just Trading Charges.

6.2 Comments and views of the Modification Group

The Modification Group considered the consultation responses in respect of whether P152 better facilitated the achievement of the Applicable BSC Objectives. These discussions are outlined in section 1.4. In summary there were those in the Modification Group who considered that Parties that had fulfilled the criteria outlined in the Modification Proposal were more of a risk to industry and since the Party could reclaim the Credit Cover at RF anyway they didn't think that there was a good enough reason to confer this risk onto participants. Other members of the Group considered that whilst recognising a slight increase in risk it was inequitable not to give Parties their Credit Cover back since the principle underlying the Credit Cover calculation reflects the specific trading position and strategy of the BSC Party in question, irrespective of the position of other BSC Parties and no account of

reconciliation is taken within the current indebtedness calculation. The Group recognised that this was the case but considered that in practice amounts owed due to lack of payment of Reconciliation Charges are taken from Credit Cover and the Group considered a Defaulting Party to be at an increased risk of not paying their Reconciliation Charges and as such wanted to keep some Credit Cover. In addition, the Proposer considered that Parties may resort to other means to recover their Credit Cover outside the Code and this would detract from Applicable BSC Objective (d) as it would cost BSCCo time and perhaps money. Other members of the Modification Group considered this to be less of a consideration since the introduction of P127 as well as the fact that if a Party under P152 did not pay their Reconciliation Charges other Parties may see monies outside the Code.

The Group considered the consultation responses in respect of which of the mechanisms to reduce Credit Cover would form the Proposed Modification. Several members of the Group did not consider any of the options (see section 1.1) were appropriate as they were more comfortable with the status quo and did not feel that the industry should take any risk of non payment at all from the Defaulting Party. The Proposer considered that sharing the risk between the Defaulting Party and the industry would be more equitable, as with a solvent Party that withdraws from the Code. The Proposer preferred option 1 for this reason as it would enable a Party to reduce its Credit Cover to zero just as non Defaulting Parties who withdraw from the Code can. One other member of the Group favoured option 1 since no other options seemed possible due to the perceived arbitrariness of choosing a particular sliding scale. Other members of the Group considered that option 1 put an excessive risk on the industry members and that some sort of sliding scale type mechanism with Panel involvement would be more appropriate. The Group considered how to select a meaningful sliding scale mechanism. They deliberated over the differences between generators and other Trading Parties with regards to Reconciliation payments. Other Trading Parties have greater and more unpredictable variation in Reconciliation payments than generators, so for generators it is easier to predict Reconciliation Charges up to RF and hence use a sliding scale type mechanism for reclaiming Credit Cover whilst also limiting the risk of high Reconciliation payments falling due. One member of the Group had difficulty with this since it does not cater for potential charges arising from Disputes that would cause greater variety in a generators reconciliation payments. However the Group considered that excluding any non generators from the P152 solution would enable a non arbitrary sliding scale to be used and would reduce the risk to the market of reducing Credit Cover. The Group considered that the most conservative estimate would be the average positive Reconciliation Charges a Party has had over the past year (for equation see legal text annex 1). This solution, limitation to generators, would form the Alternative Modification whilst the Proposed Modification would refer to all Trading Parties.

The Group also considered charges a Party is liable for that do not come under the category of Trading Charges. Several members of the Group were concerned that a Party that had not paid its BSCCo Charges could receive its Credit Cover back under P152. It was suggested that as part of the Alternative Modification a further criteria was created to ensure that this could not be the case, "paid all BSCCo Charges up to the date of application to BSCCo".

The Group discussed possible Implementation Dates. The Group considered an Implementation Date of 3 November 2004 if a decision is received by 16 June 2004, or 23 February 2005 if a decision is received after 16 June 2004 but before the 6 October 2004 was appropriate. This would provide sufficient time for BSCCo and its Agents to make the necessary changes to documentation and internal working procedures. The Group felt that to minimise the cost of implementation the Implementation Date should correspond with a scheduled programme release date.

The P152 Modification Group believe it addressed all the new issues raised by the consultation respondents.

Note: Subsequent to the final Modification Group meeting, the Proposer indicated it believed the Implementation Date could be brought forward on account of the Panel discretion, negligible

implementation costs and highly infrequent likelihood of actual occurrence of the event in the Proposal. This in its opinion would ensure that there can be an earlier release of surplus Credit Cover not required by BSCCo.

7 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

7.1 Analysis

The Transmission Company did not formally respond to the P152 consultation. It did however state that it is generally in support of the sentiment of the Modification Proposal but feels that the detail of the proposed solution should be the subject of Modification Group discussions in addition to consultation responses received.

8 SUMMARY OF EXTERNAL ADVICE

No external advice was sought.

9 DOCUMENT CONTROL

9.1 Authorities

Version	Date	Author	Reviewer
0.1	03/02/04	Dena Harris	Modification Group
0.2	04/02/04	Dena Harris	Change Delivery
0.3	05/02/04	Dena Harris	Change Delivery
1.0	06/02/04	Dena Harris	For Decision

9.2 References

Ref	Document	Owner	Issue date	Version
P152AC	P152 Assessment Consultation "Reduction of Credit Cover for a Trading Party in Default which has ceased trading and which has paid all accrued Trading Charges"	ELEXON	09/01/04	1.0
P127RR	P127 Modification Report "Optional De-registration by Insolvent Party"	ELEXON	15/10/03	1.0
P132MR	P132 Modification Report "Redefinition of Credit Cover Requirements to account for Reconciliation Charges"	ELEXON	15/10/03	1.0
MRP142	P142 Modification Report "Minor refinement to allow a Level 2 Default Cure period in defined circumstances"	ELEXON	20/01/04	1.0
CP974v.2	CP974 "Full review of BSCP65"	ELEXON	16/09/03	2.0

ANNEX 1 DRAFT LEGAL TEXT

- Text for Proposed Modification see attached document
- Text for Alternative Modification see attached document

ANNEX 2 MODIFICATION GROUP DETAILS

Member	Organisation	Email	18/12/03	05/01/04	28/01/04
Roger Salomone	ELEXON (Chairman)	Roger.salomone@elexon.co.uk	✓	✓	✓
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Fred Barasi	ELEXON	Fred.barasi@elexon.co.uk	✓	✓	✓
Lisa Deverick	ELEXON (Legal)	Lisa.deverick@elexon.co.uk	✓	X	✓
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James Nixon	Scottish Power	James.Nixon@saic.com	✓	✓	X
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Phil Russell	Not Applicable	Phil.russell@bigfoot.com	X	X	✓
John Sykes	Scottish and Southern	john.sykes@scottish-southern.co.uk	X	X	X
Louise Wilks	National Grid	Louise.Wilks@ngtuk.com	X	X	X
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Steve Drummond	EDF Trading	steve.drummond@edftrading.com	✓	✓	✓

Attendee	Organisation	Email	18/12/03	05/01/04	28/01/04
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Sean Prior	Linklaters	sean.prior@linklaters.com	✓	X	X
Jerome Williams	Ofgem	Jerome.Williams@Ofgem.gov.uk	✓	✓	✓

ANNEX 3 CONSULTATION RESPONSES

Responses from P152 Assessment Consultation

Consultation issued 09 January 2004

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	Shotton Combined Heat and Power (SCHP) Limited	P152_ASS_001	1	0
2.	Scottish Power UK plc	P152_ASS_002	6	0
3.	EDF Energy Networks (EPN) plc	P152_ASS_003	9	0
4.	Aquila Networks plc	P152_ASS_004	1	0
5.	Scottish and Southern Energy	P152_ASS_005	5	0
6.	EDF Trading Ltd and EDF (Generation)	P152_ASS_006	2	0
7.	British Gas Trading (BGT)	P152_ASS_007	1	0



P152_ASS_001 – Shotton Combined Heat and Power (SCHP) Limited

Respondent:	Roger Marsh and Michael Horrock
No. of BSC Parties Represented	1
BSC Parties Represented	Shotton Combined Heat and Power (SCHP) Limited
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	Administrative receivers of Shotton Combined Heat and Power (SCHP) Limited

1.1	Question	Response	Rationale
1.	Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	<p>Modification P127 (approved by the Authority on 23 December 2003) defines the time period over which an insolvent Trading Party can claim back its unused Credit Cover as RF (14 months). However, where an insolvent Trading Party has ceased trading and paid all its accrued Trading Charges and met all its liabilities and obligations under the BSC, in all respects but for insolvency being identical to a non-Defaulting Trading Party, we submit that P127 is insufficient as it can lead to serious financial difficulties for receivers, administrators and insolvency practitioners.</p> <p>To this end, we believe P152 extends P127 and better facilitates Applicable BSC Objectives (c) and (d) for the reasons set out in the Proposal and as elaborated below.</p> <p>(i) Objective (c)</p> <p>The inability of a Party in Default under Section H3.1.1(g) to recover any of its Credit Cover when its Energy Indebtedness is less than or equal to zero</p> <p>and the other requirements of P152 have been met, constitutes a barrier to entry.</p>

1.1	Question	Response	Rationale
			<p>Removing this barrier would better promote effective competition in the generation and supply of electricity as well as in the sale and purchase of electricity (BSC Objective (c)).</p> <p>Although a new market entrant may not be deterred from entry by the current rules, in the case of a receiver, administrator or insolvency practitioner faced with the decision of running or mothballing a plant, the fact that funds will remain trapped as security for a significant period of time, subsequent to the eventual cessation of trading and sale of the asset (having met all the other requirements of P152), act a material disincentive to continuing or restarting generation and enhance the economic argument for plant mothballing. This is particularly true if funds are not readily available to be posted for Credit Cover. Note that receivers only have the Trading Party’s own assets for the purposes of posting Credit Cover and meeting liabilities and have no other access to funds – they do not use their own funds for this purpose. It is clear that the consequent withdrawal of capacity will inhibit competition.</p>

1.1	Question	Response	Rationale
			<p>(A receiver, administrators or other insolvency practitioners is, broadly speaking, subject to a legal duty to act in the best interests of the relevant creditors which duty includes proactively gathering in and realising the assets of a Trading Party.)</p> <p>Additionally, entities connected to the relevant Trading Party (by virtue of being either lenders or commercial counter parties) could be relying to a material extent on funds which would have been released in any other circumstances given that the Trading Party has ceased trading. The release of these funds would enable the Trading Party to better meet its obligations to other BSC Parties, which again gives better effect to Applicable BSC Objective (c).</p>
			<p>We note that the Panel has accepted (see ELEXON's report on P132) that if a Trading Party not in Default ceases trading, it need not post or retain Credit Cover in respect of Trading Disputes and PNE Claims. Therefore holding back of funds for a Trading Party in technical Default (and generally in the position of P152) to underwrite this risk when no other Party is required to do so (irrespective of its financial position or ability to meet PNE or Trading Dispute claims) is an inconsistency in the Credit Cover calculations.</p>

1.1	Question	Response	Rationale
			<p>Finally, we are informed that the probability of a significant payment arising out of the Reconciliation Runs is very much lower for Generators than for Suppliers. The principle underlying the Credit Cover calculation reflects the specific trading position and strategy of the BSC Party in question, irrespective of the position of other BSC Parties. The locking in or trapping of funds thereby distorts this specificity of Credit Cover and creates an asymmetry between the level of Credit Cover and reconciliation payment risk for Generators in Default and Suppliers in Default respectively. This is in violation of the principle underpinning the Credit Cover calculation.</p> <p>The transition to a fully competitive market involves eliminating inconsistencies in the treatment and application of Credit Cover between Trading Parties. The Proposed Modification ensures greater consistency in the treatment of Credit Cover calculations and so further enhances Applicable BSC Objective (c).</p> <p>(ii) Objective (d)</p> <p>Modification P127 allows the recovery of unused Credit Cover for an insolvent Trading Party after a 14-month period. We submit that this does not constitute an equitable, timely or appropriate remedy if the Trading Party has ceased trading, and paid all its accrued Trading Charges and met all its liabilities and obligations under the BSC, in light of the concerns detailed in the Modification Proposal for P152. Requiring Credit Cover to remain in place for 14 months longer than other Parties who have ceased trading may induce Parties to seek remedies outside the BSC with the consequent cost and time implications, and if this period was extended to DF (as long as 28 months) the likelihood of</p>

1.1	Question	Response	Rationale
			<p>Parties seeking alternative remedies would increase significantly. It is therefore submitted that there are strong arguments of merit in favour of BSC Objective (d), notwithstanding the forthcoming implementation of P127.</p> <p>Therefore, the modification is likely to promote more effectively Applicable BSC Objective (d), namely efficiency in the implementation and administration of the balancing and Settlement arrangements. It will reduce the need for parties to seek their remedies in alternative fora (and outside the BSC), which would have material time and cost implications not only for the BSC but also for BSCCo, which would have to deal with any such applications.</p>
2.	<p>Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code?</p> <p>Please give rationale</p>	No	<p>A Trading Party in Default under H3.1.1(g), but which has fulfilled the proposed criteria in P152, does not necessarily pose more of a risk to the industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code.</p> <p>This is because a Default under H3.1.1(g) may be technical only, as such a Trading Party may not be insolvent and could own significant assets, including cash. In addition, it is entirely possible that a Trading Party (not in Default) may have a similar or worse credit-standing than one that is in Default. For example, a Party not in Default could voluntarily liquidate itself and cease trading after the return of its Credit Cover thereby creating a greater risk of non-payment of Reconciliation Charges than a Party in Default that meets the P152 criteria. It is clear from the report on Modification Proposal P132 that this risk is considered acceptable to industry and for the reasons described in the paragraph below, it is inequitable to treat a Party fulfilling the requirements of P152 differently.</p> <p>The Credit Cover calculation under the BSC draws no</p>

1.1	Question	Response	Rationale
			<p>distinction between a solvent Trading Party and an insolvent Trading Party. Second, a Trading Party that goes into Default is under no obligation to increase its Credit Cover as a result of such Default. Therefore it would follow that a Trading Party whose Credit Cover requirement has been reduced to zero (in accordance with the Minimum Eligible Amount calculation in the BSC) should be entitled to the return of such Credit Cover irrespective of whether it is in Default under Section H3.1.1 (g) or otherwise.</p>
3.	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale</p>	No	<p>As stated in response to Question 4 below, we believe option 1 is the most appropriate. However, the Modification Proposal highlighted three possible alternatives, each of which we believe are appropriate for consideration for implementation.</p>
4.	<p>Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer? Please give rationale and if none are considered suitable state suggested alternative.</p>	Option 1	<p>Option 1 is the most equitable and appropriate solution as the calculation of Credit Cover required for all Trading Parties whilst they are actively trading is based on the Minimum Eligible Amount (the "MEA").</p> <p>The method of calculation applies regardless of a Party's creditworthiness and whether or not it is in Default. If a Party in Default meets the criteria in P152 the MEA is zero but unlike a Party that is not in Default and which also has a MEA of zero, it cannot withdraw all or any of its Credit Cover upon ceasing trading. The Party not in Default has the ability to withdraw irrespective of its financial position or ability to meet reconciliation and other future payments.</p> <p>As explained in response to question 2 above, a Party in Default whose Credit Cover is frozen may have a better ability to meet future payments than a Party withdrawing all of its Credit Cover. The logical solution to such inequitable treatment is to permit a Defaulting Party that satisfies the criteria in P152 to withdraw all its Credit Cover on the same basis as any other Party.</p>

1.1	Question	Response	Rationale
5.	<p>If</p> <p>c) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?</p> <p>d) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)</p>		<p>Whilst our preference remains for Option 1 (for the reasons outlined above), if Option 2a were to be implemented, the sliding scale should be based upon a statistical analysis of further amounts falling due and payable, and the likely quantum of such amounts in respect of the relevant Trading Party.</p> <p>Trading Parties in Default (under the condition of P152) should not be penalised by holding a level of Credit Cover necessary to meet a worst-case scenario, incommensurate to the real potential Settlement risks arising from Reconciliation Runs in respect of that Trading Party.</p> <p>We note the discussions concerning whether it is appropriate to draw a distinction in scale and/or retention percentage between Suppliers and Generators. Our understanding is that the size of potential liability for Generators is likely to decrease very sharply over time such that it is very small relative to the original level of Credit Cover required, whilst using the Case Study of a large Supplier shown as Annex 4 of Modification Document P132, Reconciliation Run payments are seen to be making a significant contribution to the overall balance for such a Trading Party withdrawing from the Code. This should be reflected in the level of retention. We have no objection to such a distinction being made to reflect the different future uncertainties in the reconciliation payments of Suppliers and Generators.</p>
6.	<p>For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run?</p> <p>Please give rationale</p>	RF	<p>Final Reconciliation Settlement Run ("RF") should be the relevant date for three reasons:</p> <p>(i) This issue was considered very recently in relation to P127 - see section 1.6 of the Modification Report. Whilst it was acknowledged that allowing insolvent parties to withdraw at RF posed a risk in respect of contingent liabilities arising after that date, it was concluded that the risk was acceptable. It was also noted that the</p>

1.1	Question	Response	Rationale
			<p>same risk existed in respect of other parties withdrawing from the BSC, and that this had been accepted as part of the baseline of the BSC. In rejecting P132, it was concluded that this baseline should not be changed.</p> <p>(ii) DF is inherently uncertain. Under the BSC U2.2.4 it states that DF will be a date not more than 28 months after the Settlement Date subject to BSC P6.5.1(c). BSC P6.5.1(c) provides for this 28-month deadline to be extended in circumstances where the Panel determines that a Past Notification Error occurred that still requires rectifying. Therefore, DF, unlike RF, is not a fixed date for it can be extended indefinitely beyond 28 months under the BSC. Further, it is not possible to say with certainty at RF whether a DF will in fact occur at all. This uncertainty would significantly increase the likelihood that a Party satisfying the criteria of P152 would take action to recover its Credit Cover outside of the BSC.</p> <p>(iii) If insolvent Parties satisfied the conditions entitling them to retrieve their Credit Cover under both P152 and P127, they would simply withdraw from the BSC at RF and retrieve the balance of their Credit Cover back pursuant to P127 rather than wait a further 14 months (or possibly longer if BSC P6.5.1(c) applied) to get their Credit Cover back under P152.</p>
7.	Does P152 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P152 that you wish to make?	Yes	The second line of the Introduction section of the Consultation Document should read "... (P152) was raised by Roger Marsh and Michael Horrocks of PricewaterhouseCoopers acting as administrative receivers of

1.1	Question	Response	Rationale
			<p>Shotton Combined Heat and Power (SCHP) Limited on 1 December 2003.” That is to say, these are personal appointments to the named individuals, both of whom are also partners of PricewaterhouseCoopers. Could you please amend and make a note for future reference.</p> <p>It is therefore incorrect to say that PricewaterhouseCoopers is the administrative receiver of Shotton Combined Heat and Power Limited. PricewaterhouseCoopers is taking instructions from the administrative receivers but is not acting, in any capacity, in its own name.</p>

P152_ASS_002 - Scottish Power UK plc

Respondent:	John W Russell (SAIC Ltd)
No. of BSC Parties Represented	6
BSC Parties Represented	Scottish Power UK plc; ScottishPower Energy Management Ltd.; ScottishPower Generation Ltd; ScottishPower Energy Retail Ltd.; SP Transmission Ltd; SP Manweb plc.
No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	Supplier / Generator / Trader / Consolidator / Exemptable Generator / Party Agent

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	Yes	<i>Administrators might be disinclined to post Credit Cover if they believed it would not be returned once a buyer had been secured. If no Credit Cover was posted, the Party would be unable to trade and competition in the market consequently reduced. Applicable Objective C, therefore, seems most suitable.</i>
2.	Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code? Please give rationale	No	<i>If the criteria are satisfied, then the risk should be no greater. All Trading Charges will have been paid in full by a Party in Default only under H3.1.1(g) suggesting only a very small risk to other BSC members. At the same time, a solvent Party may leave the Code but then fail to meet further liabilities arising from subsequent reconciliation. Nonetheless, it should be a requirement of any change implemented under P152 that a buyer has been secured for the Defaulting Party and that the buyer has agreed to assume all present and future liabilities accrued under the BSC.</i>
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	<i>The only alternative identified by the group required different treatment of Parties, depending on their role within the BSC. However, some parties perform multiple roles, which would make this section of the Code both difficult to implement and discriminatory.</i>

Q	Question	Response	Rationale
4.	<p>Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer?</p> <p>Please give rationale and if none are considered suitable state suggested alternative.</p>	<p>Option 1 and Option 3</p>	<p><i>A combination of 1 and 3 would be preferable.</i></p> <p><i>2a and 2b would be too complex; either requiring detailed analysis or the application of arbitrary figures, at each event. This does not add to the efficiency of the BSC and would increase the costs of any solution.</i></p> <p><i>Using 1 or 3 in isolation might be problematic. In particular, the Panel may not wish to have their powers extended in this regard, but we also believe that the Code should at least prescribe a set of guidelines that the Panel could refer to. However, simply applying Option 1 would remove the situational aspect that Option 3 would otherwise provide. Nonetheless, there may be instances where there is clear justification for the return of Credit Cover without involving the Panel.</i></p> <p><i>Therefore, we would argue that, where the administrator has secured a buyer that is willing to assume the debts of the Defaulting Party, their CALF value could be recalculated under M 2.3, as with a non-Defaulting Party, allowing them to reclaim the Credit Cover. However, where a buyer has not been found, or where the buyer does not assume the debts, but the other criteria set down in the proposal have been met, the matter should be referred to the Panel for decision.</i></p>
5.	<p>If</p> <p>e) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?</p> <p>f) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)</p>		<p><i>N/A</i></p>
6.	<p>For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run?</p> <p>Please give rationale</p>	<p>Non-Specific (see rationale)</p>	<p><i>In the case of 3, it is our view that the same timescale should be employed as for a non-Defaulting Party wishing to reduce its Credit Cover. This would see the Credit Cover returned either upon application, after satisfying the requirements of M 2.3 or, in the case of a Party that has not found a buyer to assume its liabilities under the BSC, following Panel approval.</i></p>

Q	Question	Response	Rationale
7.	Does P152 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	
8.	Are there any further comments on P152 that you wish to make?	No	

P152_ASS_003 – EDF Energy Networks (EPN) plc

Respondent:	Tony Diccio
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

1.7	Question	Response	Rationale
1.	Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	The introduction of P152 would represent an increased risk to the remaining signatories of the Code after the Defaulting Party has withdrawn. This would not better facilitate achievement of the Applicable BSC Objectives. Furthermore, for a number of proposed options it is necessary to define the percentage of Credit Cover required and EDF Energy believe that it would be difficult to determine this level without it being arbitrary.
2.	Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code? Please give rationale	Yes	Yes, EDF Energy believe that there is a higher probability that there will be someone to pay future Reconciliation Charges for a Party who withdraws from the Code in a controlled manner, as stated in Section 2.1.2. of the Assessment Consultation report.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	EDF Energy believes that all appropriate alternatives have been explored by the SSMG.

1.7	Question	Response	Rationale
4.	<p>Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer?</p> <p>Please give rationale and if none are considered suitable state suggested alternative.</p>	None	EDF Energy believes that a Defaulting Party should not be allowed to remove its Credit Cover from the Code as this represents too much risk for the remaining participants.
5.	<p>If</p> <p>g) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?</p> <p>h) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)</p>	N/A	
6.	<p>For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run?</p> <p>Please give rationale</p>	DF	EDF Energy believe that a Defaulting Party should have Credit Cover lodge to cover any Reconciliation Charges that may arise from the Disputes Final Settlement Run. This would represent a lower level of risk for the remaining market participants. The latest Audit resulted in BSC Auditor issuing a qualified audit, data quality issues are likely to be around for some time. This will mean re-running Settlement disputes runs after Final Reconciliation Settlement Runs have been performed. Retaining Credit Cover provides a reassurance that whenever a dispute process is finalised there will be funds available from all Parties to cover their liabilities.
7.	<p>Does P152 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure?</p> <p>Please give rationale</p>	No	
8.	<p>Are there any further comments on P152 that you wish to make?</p>	Yes	Generally, it would be good to review whether Credit Cover should cover outstanding Reconciliation Charges as well, and not be limited to just Trading Charges.

P152_ASS_004 – Aquila Networks plc

Good Afternoon,

Midlands Electricity formally (Aquila Networks PLC) would like to return a response of 'No Comment' to P152 Assessment Consultation.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Midlands Electricity

P152_ASS_005 – Scottish and Southern Energy

Dear Sirs,

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

In relation to the eight questions contained within your note of 9th January 2004, and the associated Assessment Consultation for P152, we have the following comments to make:-

Q1 Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)

On balance yes we do believe that Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives as it should be the feature of a market that Parties are free to leave (as well as join) subject to them meeting certain criteria, which, in the case of them exiting the market, should be that they have paid all costs and fees due by them to the BSC community. In the case of a Defaulting Party such costs and fees will amount to much less than the level expected at Initial Settlement. On the balance of probabilities it therefore seems unnecessary to further penalise Parties experiencing financial hardship by continuing to tie up working capital that is not needed to protect the BSC community.

Q2 Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code? Please give rationale

Yes. By the very fact that they are in Default. It poses more of a risk to the BSC community as these Parties, due to the reconciliation timeframe, could amass costs and /or fees due to the BSC community and any significant sums are likely to be withheld by the Administrator subject to the ranking of the claims from creditors.

Q3 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale

No.

Q4 Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer? Please give rationale and if none are considered suitable state suggested alternative.

We prefer Option 3, that is by way of Panel decision as cases will vary, and this approach allows the Panel to judge the situation on the merits of the case at hand.

Q5 If (a) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?

(b) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)

Not Applicable (see our response to Q4 above).

Q6 For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run? Please give rationale

Dispute Final Run. DF should be used until such time as DFs are not common place (as they are now) when it should revert to RF (which should be the most common approach).

Q7 Does P152 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

Nothing further at this time.

Q8 Are there any further comments on P152 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

P152_ASS_006 – EDF Trading Ltd and EDF (Generation)

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

1.8	Question	Response	Rationale
1.	Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	There is an argument that the modification might encourage plant to be offered back to the market following financial difficulties, but this enhancement would be slight. Whereas, should P152 be approved, there would be an increased risk (albeit small) to the remaining BSC Parties after the Defaulting Party has withdrawn. Overall, it can not be considered therefore to better facilitate achievement of the Applicable BSC Objectives.
2.	Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code? Please give rationale	Yes	Albeit small, there has to be an increased finite risk to the remaining parties. Even if the insolvent Party is still there, the liability would be amongst the list of other creditors with the strong likelihood that any recompense would be limited.
3.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	

1.8	Question	Response	Rationale
4.	<p>Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer?</p> <p>Please give rationale and if none are considered suitable state suggested alternative.</p>	None	<p>Option 1 places the risk on the remaining parties and options 2a, 2b and 3 all require a determination of an intermediate figure based on the perceived risk of future payment. Until such time as a demonstrably fair system can be made to quantify such risk then the status quo has to remain.</p>
5.	<p>If</p> <p>i) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?</p> <p>j) you prefer Option 2b, can you suggest an appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)</p>	No	<p>The use of any intermediate figure is fraught with difficulties because such figures would inevitably have to be arbitrary. For that reason also it makes Option 3 very difficult as well. Hence only Option 1 is a viable alternative should the mod be approved.</p>
6.	<p>For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run?</p> <p>Please give rationale</p>	DF	<p>Awaiting the DF Run would minimise the risk to remaining parties but it is acknowledged that for consistency following P127 approval that the RF Run might be deemed to be the most appropriate for the time being. Were this to be the case it may well be that another mod would be raised to ensure that all Defaulting parties did have to wait for the DF Run.</p>
7.	<p>Does P152 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>Please give rationale</p>	No	
8.	<p>Are there any further comments on P152 that you wish to make?</p>	No	

P152_ASS_007 - British Gas Trading (BGT)

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

1.9	Question	Response	Rationale
1.	Do you believe Proposed Modification P152 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	No	<p>BGT do not believe the Proposed Modification does better facilitate the Applicable BSC Objectives. BGT recognise the concerns of the Proposer at the time of raising the proposal. There was no mechanism available within the BSC for an Insolvent Party to recover their outstanding Credit Cover. However BGT note the recent Authority decision in respect of P127 which provides such a route for Insolvent Party to reclaim any unused Credit Cover after the final reconciliation run. BGT believe that at the time P152 raised there was a defect within the BSC, However BGT believe that approval of P127 has removed the defect and no defect now exists within the BSC.</p> <p>BGT note one of the reasons provided by the Proposer for P152 better facilitating Applicable BSC Objective (c). The Proposer asserts there is a barrier to entry with the current rules due to having to leave funds trapped as security. BGT do not believe the exit process for an Insolvent Party would factor heavily in the decision making process of a potential new entrant when considering acceding to the BSC. Furthermore BGT believe the risk of being liable for a bad debt may constitute more of a barrier to entry due to the perception of risk. BGT believe the current baseline helps to minimise that risk.</p>

1.9	Question	Response	Rationale
			<p>The Proposer also asserts that Applicable BSC Objective (d) will be better facilitated as the proposal will reduce the risk that Parties will chase the return of their Credit Cover through litigation. BGT concur with the Modification Group that the likelihood of a Party instigating legal proceedings has been mitigated by the Approval of P127. The cost and timescales associated with such a process are unlikely to be justified in light of the P127 decision making process.</p>
2.	<p>Do you think that Parties in Default under H3.1.1(g) that have fulfilled the criteria outlined in P152 pose more of a risk to industry in terms of lack of payment of Reconciliation Charges, than solvent Parties withdrawing from the Code? 1.10 Please give rationale</p>	Yes	<p>As a general rule BGT perceive that a Party in Default due to insolvency is a greater risk than a solvent Party. BGT do recognise there are instances when this is not the case, an example of which was the run off process prior to and after the disposal of Shotton CHP.</p> <p>BGT do have some concerns about the ability of a solvent Party to request a Minimum Eligible Amount calculation and the impact this could have on their ability to pay future Reconciliation Charges. However fundamentally BGT believe that an insolvent Party poses a greater risk in respect of non-payment of Trading Charges.</p>
3.	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale</p>	No	
4.	<p>Four options for the mechanism by which Parties will receive their Credit Cover back have been developed (see consultation document Sections). Which, if any, do you prefer? Please give rationale and if none are considered suitable state suggested alternative.</p>	Option 1/ /Option 2a/ /Option 2b /Option 3/ /None/	<p>BGT does not support the Modification Proposal and as such does not believe any of the proposed options provide an appropriate level of assurance.</p> <p>Option 1 significantly increases the risks faced by the remaining signatories to the BSC. BGT believes this option is too risky and would reduce the chances of BSCCo recovering any future liabilities that may accrue through future reconciliation runs. Under this option BSCCo's position as a creditor would be altered from that of a secured to an unsecured creditor. BGT believe BSCCo's ability to recover future liabilities would be severely</p>

1.9	Question	Response	Rationale
			<p>diminished under this option.</p> <p>Option 2 would be BGTs’ preferred choice as it is the lowest risk option as it releases the Credit Cover lodged on a scaled basis with the ability to prevent release in defined circumstances. However BGT does not believe that such a sliding scale percentage could be calculated with any suitable level of justification. Therefore the percentage reduction would be arbitrary and as such the assumption could not be justified. BGT also recognise the added level of complexity that this would introduce and the consequential impact this would have on the cost of developing the solution.</p> <p>BGT has similar concerns with Option 3 as it with Option 2 namely the arbitrary method of defining the sliding scale reduction.</p> <p>BGT does not support the option of passing the responsibility to the Panel to consider each instance on a case by case basis. This introduces an element of subjectivity, which could cause issues in respect of consistency of treatment for Defaulting Parties.</p> <p>Furthermore BGT does not agree with the view that this power fits with the responsibility the Panel already has in respect of the treatment of Defaulting Parties. The Panel can choose to allow a Party to recommence trading. However in doing so the Panel is protected by the mechanistic calculation of a Party’s Energy Indebtedness. If a Party breaches the levels specified in the BSC then the Panel can suspend the ability of a Party to trade. The Panel does not have the ability to acquire cash from a Party that is not paying its Trading liabilities.</p>
5.	<p>If</p> <p>k) you prefer Option 2a, can you suggest an appropriate sliding scale that could be used?</p> <p>l) you prefer Option 2b, can you suggest an</p>	No	

1.9	Question	Response	Rationale
	appropriate percentage that could be retained for security (see Section 2.10 for what was used in P&SA)		
6.	For the relevant options (2a, 2b and potentially 3) should the time at which the relevant Party can receive the remainder of its Credit Cover be at the Final Reconciliation or Dispute Final Run? Please give rationale	DF	BGT believe that a Party should be able to reclaim any unused Credit Cover after the Dispute Final Run (DF) or once BSCCo has stated that no DF Run will take place. This is consistent with the view BGT expressed when responding to the Assessment phase of P127. BGT believe the materiality of DF Runs or Extra Settlement Determinations (ESDs) can be significant. BGT believe it would be prudent for a Party's Credit Cover to remain in place until all potential Trading Charge liabilities have been settled.
7.	Does P152 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P152 that you wish to make?	No	



ANNEX 4 BSC AGENT IMPACT ASSESSMENTS

FAA Impact Assessment

NETA Change Form		ELEXON Reference
		<i>P152AS</i>
Title		Version No.
ion of Credit Cover for a Trading Party in Default which has trading and which has paid all accrued Trading Charges		<i>1.0</i>
		EPFAL Reference
		<i>P152</i>
Type of Assessment	Date CP Received	Date IA Issued
DLIA / Quotation	28/1/04	3/2/04
Brief Summary of Change		
<p>P152 seeks to enable a Party that is in default for reasons of insolvency and fulfils several criteria, to reduce or reclaim its Credit Cover as would a Party that has ceased trading under regular circumstances.</p>		
Logica EPFAL's Proposed Solution		
<p>The FAA has been requested by ELEXON to respond to the 2 proposed solutions detailed in the P152 Requirement Specification. Firstly, the Sliding Scale proposal and secondly the solution whereby the Panel determines how much Credit Cover should be returned prior to the Final Reconciliation Run.</p> <p>The Sliding Scale option (2b) would best suit the current working practices governing the FAA's custodianship of the trading Party's Credit Cover. The defaulting Party could abandon the current Minimum Eligible Amount (MEA) and receive its Credit Cover in 2 defined stages. The FAA currently liaises closely with ELEXON in determining appropriate action for defaulting Party's. Therefore agreeing the new process of relevant percentages of credit cover to be refunded could be assimilated into the existing working arrangements.</p>		
Deviation from ELEXON's Solution / Requirements		

Whilst the FAA would respect the determinations of any Panel decision in relation to Credit Cover reduction appeals, it believes that in the interest of audit requirements and uniformity the defaulting Party's interests would be best served if the FAA liased with ELEXON in co-ordinating reductions of Credit Cover.

Operational Solution and Impact

If option 2b is adopted the new process could subsumed into the existing working practices.

As part of the Operational Solution and Impact the FAA would propose a walkthrough of any new agreed processes

Testing Strategy

Unit		Change Specific		End to End	√
Module		Operational Acceptance	√	Participant Testing	
System		Performance		Parallel Running	
Regression		Volume		Deployment/ Backout	

Other:

N/A

Validated Assumptions

N/A

Outstanding Issues

N/A

Changes to Service			
Services Impacted <i>[Tick boxes to show impacted systems and associated documentation]</i>			
	Funds Transfer System	Other 1	Other 2
Software			
IDD Part 1	√		
IDD Part 2			
URS			
SS			
DS			
OSM			
RTP	<i>[indicate which Regression Test Pack will need to be updated]</i>		
Comms	<i>[provide commentary explaining how comms might be impacted]</i>		
Other	<i>[DR Sync Proc, Unplanned Outage Proc, Planned Outage Proc, etc]</i>		
Nature of Documentation Changes			
<p>There maybe a change required to the relevant BSCP and the FAA's internal working procedures</p>			
Nature / Size of System Changes			

NA	
Type of Release Costed:	Stand alone
Deployment Issues, eg Outage Requirements:	NA
Impact on Service Levels:	Minimal, subject to the provision of appropriate staff
Impact on System Performance:	No impact

Responsibilities of ELEXON
<p>The FAA will require a closer working relation with ELEXON once a trading Party has been declared in default to ensure the correct percentage of cover is returned and to ensure all outstanding FAA liabilities have been met.</p>
Acceptance Criteria
N/A
Any Other Information

N/A		
Attachments		
PRICING		
Price Breakdown		
Item description	ks	ex VAT)
Change Specific Cost		
Project Overhead		
Total Price		<i>[Price excluding VAT]</i>
Project Duration		<i>[Total project time in weeks]</i>
Operational Price (eg per annum or event)		<i>[Price excluding VAT per annum or event]</i>
Rationale		
<p>ing the cost of implementing P142, 'Minor Refinement to allow a Level 2 Default Cure in Defined Circumstances', can be met the FAA can undertake the above Modification for a cost.</p>		
Annual Maintenance Price		<i>[Price excluding VAT]</i>
Rationale		

N/A	
Validity Constraints	
N/A	
Authorised Signature	Date Signed

ECVAA Impact Assessment

ECVAA originally sent in an Impact Assessment (attached below) that was based on developing a new script to perform the criteria checks. It was asked to update its estimate and the following note was received:

"Given that ELEXON are able make the 3rd and 4th checks listed below, then the price to set up the manual process for the 1st and 2nd checks under P152 will be around £6K. Every time there is a request to carry out these checks for a Party, the price will be about £7K (on a T&M bases using current rates).

It should be noted that the scripts for checks 1 & 2 are part of CP974. So if CP974 were ordered by ELEXON, then the price would be reduced to around £1K for updating the Local Work Instructions with no charge for performing checks 1 & 2."

Original Impact Assessment

NETA Change Form		ELEXON Reference
		MP 152
Title		Version No.
Reduction of Credit Cover for a Trading Party in Default which has ceased trading and which has paid all accrued Trading Charges		Version 0.1
		LogicaCMG Reference
		ICR 577
Type of Assessment	Date CP Received	Date IA Issued
Impact Assessment	9-Jan-2004	23-Jan-2003
Brief Summary of Change		

Enable a Party that is in default for reasons of insolvency and fulfils several criteria, to reduce or reclaim its Credit Cover as would a Party that has ceased trading under regular circumstances.

This assessment is against the P152 dated 1st December 2003

LogicaCMG's Proposed Solution

The Modification Proposal identified the following three possible alternatives, which may be appropriate to deal with the determination of a reduction in a Party's Credit Cover.

Option 1:

The Credit Cover could be determined in accordance with existing principles set out in the BSC.

Option 2:

Credit cover would be based on a Sliding Scale (multi-step & two-step)

Option 3:

The Panel has the discretion to decide the level of Credit Cover.

For all three Options LogicaCMG propose the development of a new script (or Oracle Report) to check that the criteria to apply for a reduction in Credit Cover have been met by a Participant.

For the specified Participant, the script will report:

BM Unit registrations.

Market Role registrations for the Party.

Effective Notifications.

Indebtedness for previous 30 days.

(For Option 2 and Option 3 it has been assumed that there is no ECVAA involvement .)

Deviation from ELEXON’s Solution / Requirements							
none							
Operational Solution and Impact							
none							
Testing Strategy							
Unit	X	Change Specific	X	End to End			
Module	X	Operational Acceptance	X	Participant Testing			
System	X	Performance		Parallel Running			
Regression		Volume		Deployment/ Backout			
Other:							
Validated Assumptions							
none							
Outstanding Issues							
It has been assume that there is no ECVAA involvement if the Sliding Scale (Option 2) or Panel Decision (Option 3) options are chosen.							
Changes to Service							
Services Impacted							
	BMRA	CDCA	CRA	ECVAA	SAA	TAA	Other
Software				X			
IDD Part 1 (Docs)							
IDD Part 1 (S’Sheet)							
IDD Part 2 (Docs)							
IDD Part 2 (S’Sheet)							
URS				X			
SS							
DS							
MSS				X			
OSM				X			
LWIs							
RTP	[None]						
Comms	[None]						
Other	[None]						

Nature of Documentation Changes	
ECVAA URS / OSM / MSS will require update to describe the use of the new script, and the new trigger for the Minimum Eligible Amount calculation.	
Nature / Size of System Changes	
Small	
Type of Release Costed:	Standalone Patch
Deployment Issues, e.g. Outage Requirements:	None
Impact on Service Levels:	None
Impact on System Performance:	None
Responsibilities of ELEXON	
Within reasonable levels, ELEXON will make available appropriate staff to assist LogicaCMG during the development of this change.	
Acceptance Criteria	
Documentation:- Address of ELEXON review comments leading to final DCR issue being provided.	
Software:- This is covered by the acceptance criterion 2 in the "CVA Program – Release Acceptance Criteria" document for the Feb03 release.	
Any Other Information	
None.	
Attachments	
P152 Price Presentation	

PRICING		
Price Breakdown		
Item description	ks	ex VAT)
Change Specific		£19,140
Variable Release Costs		£4,679
Fixed Release Costs		£215,159
Total Price (ex VAT)		£238,977
Price Tolerance		0 %
Project Duration		4 weeks
Operational Price (e.g. per annum or event) (ex VAT)		£0
Rationale		
N/a		
Annual Maintenance Price (ex VAT)		£2,680
Rationale		
The Annual Maintenance Price is derived as 14% of the Change Specific Price.		

Validity Constraints	
<p>Price excludes provision for indexation of daily rates from 1st April 2004. Price and duration assume that this change is developed in isolation and the effects of other changes are excluded. Price is for creating DCRs, not a formal documentation issue. No allowance is included for the final solution being different from the CP No allowance is included for supporting PwC activities. Any effort will be charged at contracted T&M rates No allowance is included for supporting ELEXON assurance activities. Any effort will be charged at contracted T&M rates No allowance is included for End to End/Participant Testing activities. Any effort will be charged at contracted T&M rates No allowance is included for Walkthrough activities. Any effort will be charged at contracted T&M rates</p> <p>The validity period for this quote is 30 days and the offer is based on the following payment schedule: LogicaCMG will invoice in full for this change on deployment or within one month of the change being ready for deployment Maintain charges will be invoiced monthly in arrears with part months charged pro rata</p>	
Authorised Signature	Date Signed

ANNEX 5 CLARIFICATION OF COSTS

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

- **Stand Alone Cost** – the cost of delivering the Modification as a stand alone project outside of a CVA or SVA Release, or the cost of a CVA or SVA Release with no other changes included in the Release scope. This is the estimated maximum cost that could be attributed to any one Modification implementation.
- **Incremental Cost** - the cost of adding that Modification Proposal to the scope of an existing release. This cost would also represent the potential saving if the Modification Proposal was to be removed from the scope of a release before development had started.

- **Tolerance** – the predicted limits of how certain the cost estimates included in the template are. The tolerance will be dependent on the complexity and certainty of the solution and the time allowed for the provision of an impact assessment by the Service Provider(s).

The cost breakdowns are shown below:

PROGRESSING MODIFICATION PROPOSALS	
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 PROVIDER⁷ 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 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

⁷ 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.

	Provider Costs, with a tolerance of +/- 100%.
Additional Resource Costs	<p>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.</p> <p>For SVA BSC Systems Releases, this will include the management and operation of the Acceptance Testing and the associated testing environment.</p> <p>This cost relates solely to the short-term employment of contract staff to assist in the implementation of the release.</p>
Additional Testing and Audit Support Costs	<p>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.</p>

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.
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