

Responses from P152 Draft Report Consultation

Representations were received from the following parties:

| No | Company | File Number | No. BSC Parties Represented | No. Non-Parties Represented |
|-----------|--|--------------------|------------------------------------|------------------------------------|
| 1. | Scottish Power UK plc | P152_DR_001 | 6 | 0 |
| 2. | Midlands Electricity | P152_DR_002 | 1 | 0 |
| 3. | British Gas Trading | P152_DR_003 | 1 | 0 |
| 4. | Powergen | P152_DR_004 | 14 | 0 |
| 5. | AES Corp | P152_DR_005 | 0 | 1 |
| 6. | Shotton Combined Heat and Power (SCHP) Limited | P152_DR_006 | 1 | 0 |
| 7. | EDF Trading Ltd | P152_DR_007 | 2 | 0 |
| 8. | Scottish and Southern Energy | P152_DR_008 | 4 | 0 |

P152_DR_001 – Scottish Power UK plc

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| Respondent: | John W Russell |
| No. of BSC Parties Represented | 6 |
| BSC Parties Represented | Scottish Power UK plc; ScottishPower Energy Management Ltd; Scottish Power Generation Ltd; ScottishPower Energy Retail Ltd; SP transmission Ltd; SP Manweb PLC.). |
| No. of Non BSC Parties Represented | 0 |
| Non BSC Parties represented | N/A |
| Role of Respondent | Consolidator on behalf of Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent |

| Q | Question | Response | Rationale |
|----------|---|-----------------|---|
| 1 | Do you agree with the Panel's views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made? Please give rationale. | Yes | In our previous response, we indicated that certain strict criteria should apply before the automatic repayment of credit cover could be considered. These criteria included the assumption of both past and future debts by any new owner of a defaulting party. However, where such a buyer could not be found, or no such agreement was obtained, but the remaining criteria were satisfied, the matter should be deferred to the Panel for final decision. However, the Panel had already signalled their reluctance to accept responsibility for these decisions and, in the case of the proposer, it seems that only future liabilities are to be assumed. As a result, we are changing our position and now support the Panel's view that this proposal should be rejected. |
| 2 | Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale. | Yes / No | No Comment |
| 3 | Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P152? Please give rationale. | Yes / No | No Comment |
| 4 | Are there any further comments on P152 that you wish to make? | No | |

P152_DR_002 – Midlands Electricity

Midlands Electricity (Formally Aquila Networks) would like to return a response of 'No Comment' to P152 Consultation on draft Modification Report.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Midlands Electricity

P152_DR_003 – British Gas Trading

Dear Sirs,

Re: 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

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P152. British Gas Trading (BGT) agrees with the Panel's provisional recommendation that neither the original nor the alternative Modification Proposals should be made.

At the time of raising P152, BGT agreed with the proposer that there was a defect in the BSC that prevented a Party in default from reclaiming their credit cover. Whilst agreeing with the intent of the proposal BGT did not agree with the proposed solution of allowing a Party to recover its credit cover prior to the end of the reconciliation cycle due to the risks it posed to all other BSC Parties. However BGT believe the approval of modification proposal P127 alleviates the defect identified by P152, by allowing a Party in default to have any unused credit cover returned to them after the 14-month reconciliation period. Therefore the approval of P127 alleviates the concerns of the proposer by providing a route for the return of unused credit cover without unduly increasing the risk of BSC Parties being exposed to a bad debt. Therefore BGT does not believe that the original or alternative proposal better facilitate competition in the generation and supply of electricity.

The proposer also asserts that P152 would reduce the risk of a Party chasing the return of credit cover outside of the BSC and thereby better facilitating Applicable BSC Objective (d). BGT believes the approval of P127 has also mitigated this risk of a party seeking recovery of their credit cover outside of the BSC processes. P127 provides Parties with a defined period of time at which they can request any unused credit cover. Therefore BGT does not believe either the original or the alternative modification proposal better facilitate efficiency in the administration of the BSC arrangements.

BGT agrees with the proposed implementation dates as detailed in the draft modification report.

Yours faithfully
Mark Manley
Contract Manager

P152_DR_004 – Powergen

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| Respondent: | Powergen |
| No. of BSC Parties Represented | 14 |
| BSC Parties Represented | Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy Limited |
| No. of Non BSC Parties Represented | - |
| Non BSC Parties represented | - |
| Role of Respondent | Supplier, Generator, Trader & Exemptable Generator. |

| Q | Question | Response | Rationale |
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| 1 | Do you agree with the Panel’s views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made? Please give rationale. | Yes | This proposal would expose Parties to unnecessary risk. The defaulting Party can be sure that it will receive its security cover in full after RF as long as it does not default on payments due under the code. In contrast, if the cover is returned Parties as whole have no certainty that payments due can, or will, be paid. Therefore, the risk is asymmetric and it is correct that the full amount of cover should be retained until the risk of payment default has passed. |
| 2 | Do you agree with the Panel’s view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale. | Yes | The legal text addresses the intent of the modification. We do not agree that there is a defect to address. |
| 3 | Do you agree with the Panel’s provisional recommendation concerning the Implementation Date for P152? Please give rationale. | Yes | |
| 4 | Are there any further comments on P152 that you wish to make? | No | |

P152_DR_005 – AES Corp

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| Respondent: | Vic Danks |
| No. of BSC Parties Represented | |
| BSC Parties Represented | |
| No. of Non BSC Parties Represented | One |
| Non BSC Parties represented | AES Corp |
| Role of Respondent | Representative of AES Corp (provider of Letter of Credit for AES Fifoots Point Limited)) |

| Q | Question | Response | Rationale |
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| Q | Question | Response | Rationale |
|---|--|----------|--|
| 1 | <p>Do you agree with the Panel's views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made?</p> <p>Please give rationale.</p> | No | <p>The panel does not appear to have considered all the arguments in the proposal or further effects the present rules have on other participants in a similar position. The panel assumes that P127 provides a satisfactory solution for all purposes. This is not the case. A receiver will not be minded to deregister a facility when attempting to sell on an asset in receivership as a going concern. He/she will only do so once the asset has been sold. It is likely that by that time, all charges and imbalances are paid, pre and post appointment of a receiver, and there is no risk to the market for the Credit Cover provider, no longer has the business and therefore is no longer trading, immediately to remove or at the very least to reduce their Credit Cover in the same way as any other Trading Party (irrespective of its credit and financial status) would be able to under the Code. There is no justification for discriminating against a party which is in default simply because of the operation of Section 3.1.1(g) irrespective of the likely risks and the proportionality of the amount of Credit Cover in place.</p> <p>It is our contention that there remains a defect in the rules and the panel is unwilling to recognise this by taking the view it has.</p> <p>The rules as they are, are discriminatory and unworkable in their present format, hindering a receiver and disadvantaging a defaulting party, who, with all charges paid, Final Runs elapsed, cannot remove the Credit Cover, even when another party has assumed responsibility.</p> <p>This compounded by the receiver leasing the business out to a third party who has installed their own Credit Cover to guarantee their operations.</p> |
| 2 | <p>Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?</p> <p>Please give rationale.</p> | Yes | <p>It enables a party in Default under Section H 3.1.1(g) to be treated in a less discriminatory way to other parties once all its Trading Charges etc have been paid and once it is clear that it is not going to incur further Trading Charges.</p> |
| 3 | <p>Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P152?</p> <p>Please give rationale.</p> | No | <p>We can see no reason for not implementing the proposal without due delay. Providing there a clear elapse of the settlement run time scale in the individual cases then the rules will protect the market from any liability.</p> |

| Q | Question | Response | Rationale |
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| 4 | Are there any further comments on P152 that you wish to make? | Yes | We believe that the proposed condition that a Defaulting Party shall have completed de-registration from ownership on any BM Units is irrelevant and should be removed. It is sufficient for the purposes of addressing the risks to the industry for the other proposed conditions to have been satisfied so that no amounts are due from the Defaulting Party and no contract notifications are in place by that party. |

P152_DR_006 – Shotton Combined Heat and Power (SCHP) Limited

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| Respondent: | Roger Marsh and Michael Horrocks |
| 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 and Original Proposer of Modification P152 |

| Q | Question | Response | Rationale |
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| 1 | Do you agree with the Panel's views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made? Please give rationale. | No | <p>We strongly disagree.</p> <p>The Credit Cover that we, as Proposer, currently have in place is manifestly disproportionate to the potential liability that could arise from any future Reconciliation Runs. The amount of Credit Cover retained after cessation of trading is based entirely on the amount that was put in place for the purposes of trading, regardless of potential liability – the current rules are arbitrary in that they require the same Credit Cover to be retained irrespective of whether it is ten times or one thousand times future liability. This fact has been recognised by the members of the Modification Working Group and highlights a clear and remediable defect in the Code. To this end, we submit that the Alternative Proposal provides an equitable and appropriate solution to this defect, for a Trading Party in the circumstances described in P152, as it allows the Credit Cover to be reduced to a level that can be calculated objectively, and is equitable to all Parties involved.</p> <p>Notwithstanding the fact that Modification P127 provides a mechanism for the return of Credit Cover to an insolvent Trading Party at RF, we believe the Alternative Proposal better facilitates Applicable BSC Objectives (c) and (d):</p> <p>Objective (c)</p> <p>The current situation remains a barrier to entry.</p> <p>Removing this barrier will contribute to the promotion of effective competition in the generation and supply of electricity and (so far as consistent therewith) promote such competition in the sale and purchase of electricity (BSC Objective (c)).</p> |

| Q | Question | Response | Rationale |
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| | | | <p>We accept that a new market entrant is unlikely to be deterred from entry by the current rules. However, in the specific case of an insolvency practitioner, the fact that funds will remain trapped as security subsequent to it ceasing trading (and meeting the other requirements of P152) are a material disincentive to continuing or restarting generation (to trade in receivership) and increase the likelihood that such a generator will be mothballed. This will reduce the plant margin and act against the interests of promoting competition.</p> <p>Furthermore, the existing provisions could lead to serious difficulties as follows:</p> <p>(i) To Receivers, administrators or other insolvency practitioners</p> <p>These persons are, broadly, subject to a legal duty to act in the best interests of the relevant creditors, including gathering in and realising the assets of a Trading Party. The enforced withholding of Credit Cover for longer than is necessary or prudent interferes with the receiver's ability to carry out these duties. We stress that a receiver only has the insolvent Trading Party's own assets to facilitate this (including posting Credit Cover, and meeting all of the Trading Party's other liabilities) – in particular, they do not use their own funds for this purpose.</p> <p>(ii) To entities who are connected to the relevant insolvent Trading Party by virtue of being either lenders or commercial counterparties</p> <p>Such entities could be relying to a material extent on payments due from the Trading Party. In turn, the Trading Party could be relying on funds for its survival (and to meet outstanding contractual obligations, many of which may be owed to other BSC Parties) which could be released were it not for this defect.</p> <p>Generally in the case of generators, including those that meet the criteria in Alternative Modification P152, the statistical likelihood of a significant liability arising out of the reconciliation process appears to be negligible (although greater variances may occur in the case of suppliers).</p> <p>It is inequitable to require a Party, which is in the unfortunate position described in Alternative Modification P152, to underwrite risks that would not be required of a non-Defaulting Trading Party (regardless of its financial position or its ability to meet PNE Claims or a claim arising from a Trading Dispute). The Panel has accepted the position that Credit Cover is not intended to cover either PNE Claims or a Trading Dispute in the case of a Trading Party that has ceased trading (see ELEXON's report on Modification Proposal P132).</p> <p>In conclusion, the implementation of the Alternative Modification Proposal P152 ensures a greater consistency in the treatment of Credit Cover between Trading Parties and the treatment is based on their actual circumstances and liability profile, rather than simply whether they happen to be in Default or not. We elaborate further below why basing Credit Cover on the fact of Default is inconsistent. The calculation proposed under the Alternative Modification ensures adequate security is retained by BSCCo on the one hand, whilst allowing the return of excess Credit Cover to financially distressed companies on the other.</p> <p>Objective (d)</p> <p>The current situation may encourage a Trading Party to seek the return of the excess Credit Cover outside the BSC. This would have material time</p> |

| Q | Question | Response | Rationale |
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| | | | <p>and cost implications for the BSC and also for BSCCo, which would have to deal with any such applications.</p> <p>By setting out a more equitable mechanism for the return of Credit Cover, the Alternative Modification Proposal will significantly reduce the likelihood of parties seeking their remedies in alternative fora outside the BSC. This will promote efficiency in the implementation and administration of the balancing and settlement arrangements (BSC Objective (d)).</p> <p>P127</p> <p>The return of Credit Cover under P127 does not constitute an equitable, timely or appropriate remedy in light of the concerns raised in Alternative Modification P152. P127 was not designed to deal with the defect described in P152 and indeed we understand that in P127 the 14 month period to RF had elapsed in relation to the proposer. The retention of the full amount of Credit Cover until RF could lead to serious financial difficulties for administrative receivers and other insolvency practitioners (as described above) of otherwise fully BSC Trading Charge-compliant generators.</p> <p>The current position as set out in the Code is a barrier to market entry for administrative receivers and other insolvency practitioners. Rather than restarting or continuing electricity generation, it increases the likelihood of plant mothballing. By withholding the release of difficult-to-raise funds for 14 months after the cessation of trading and payment of outstanding liabilities, the Code is clearly dis-incentivising ongoing trading operations.</p> <p>The Alternative Modification Proposal provides for a reasonable and equitable level of Credit Cover during the 14-month period, thereby removing the barrier to entry and reducing the economic case for mothballing. Although we note that NGC did not have any comments to add regarding this issue, the Proposer, is an administrative receiver and therefore in a strong position to confirm the validity of this issue. On this basis, we strongly believe P152 would further enhance P127 in remedying the defect in the Code, thereby better facilitating BSC Objectives (c) and (d).</p> <p>We submit that a Party in Default (as per the criteria set out in P152) does not necessarily pose more of a risk to the industry than a non-Defaulting Party. Hence, it is necessary to treat each P152 Trading Party on a case-by-case basis. The following examples are illustrative in this regard:</p> <ul style="list-style-type: none"> (i) Default under H3.1.1(g) may be technical only. Such a Party is not necessarily insolvent and may in fact own significant assets, including cash; (ii) It is entirely possible that a Party that is not in Default may have a similar or worse credit-standing than one that is in Default; (iii) 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 (risks that are considered acceptable to the industry following the report on Modification Proposal P132); (iv) Such a distinction between Defaulting and Non-Defaulting Trading Parties is inconsistent with the requirements for Credit Cover during trading: The calculation of Credit Cover required |

| Q | Question | Response | Rationale |
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| | | | <p>for all Parties whilst they are actively trading is based on the Minimum Eligible Amount (the "MEA"). The method of calculation applies regardless of a Party's creditworthiness and whether or not it is in Default. In addition, a Party that goes into Default is under no obligation to increase its Credit Cover as a result of such Default.</p> <p>Any Trading Party (including those in Default) whose Credit Cover requirement has been reduced to Zero (in accordance with the MEA calculation in the BSC) should be entitled to the return or at least an appropriate reduction of its posted Credit Cover.</p> <p>If a Defaulting Trading Party (as per P152) has an MEA of zero, it cannot elect to withdraw or reduce its Credit Cover upon ceasing trading, unlike a non-Defaulting (but otherwise identical) Trading Party. The non-Defaulting Trading Party can withdraw irrespective of its financial position or ability to meet reconciliation and other future liabilities. The logical solution to such inequitable treatment is to permit a Defaulting Party (as per P152) to reduce its Credit Cover to a level commensurate with the actual credit risk that Party poses (the insolvency premium).</p> <p>Under the Alternative Modification Proposal P152, the use of the average positive reconciliation charge for the determination of Credit Cover to be retained until RF (to cover future risk to BSC Parties) is a prudent yet equitable measure to apply to a Defaulting Trading Party. It positively addresses the existing inequity under the Code and the Panel's concern with the real potential settlement risks arising from that Trading Party's Reconciliation Runs.</p> |
| 2 | <p>Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.</p> | Yes | <p>We Agree.</p> |
| 3 | <p>Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P152? Please give rationale.</p> | No | <p>We Disagree.</p> <p>We submit that the recommended Implementation Date for P152 of 3 November 2004 can be brought forward.</p> <p>The reason this date appears to have been recommended was to minimise costs corresponding to a scheduled BSC Systems release date (a batch release). However, on account of the negligible implementation costs and system changes (set out in the draft Modification Report), and given the very limited probability of cases in which this proposal needs to be activated, we believe that an earlier release of excess Credit Cover is more equitable and aligned with the rationale underlying P152.</p> |
| 4 | <p>Are there any further comments on P152 that you wish to make?</p> | Yes | <p>The wider impacts of P152 relate to the industry, and indirectly, also to consumers. These wider implications are significant as they relate to Section 3A of the Electricity Act 1989.</p> <ul style="list-style-type: none"> • There is an increased likelihood of being plant mothballed in receivership (and incurring additional costs on starting up). |

| Q | Question | Response | Rationale |
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| | | | <ul style="list-style-type: none"> Withdrawal of capacity in the short-term, and potentially in the longer term also (as an older mothballed plant may not find an owner) has implications on the National Grid's obligation to provide a safe and secure transmission network. The reduction in generating capacity will inhibit the development of competition and hence, drive up electricity prices. <p>The Code as it is currently stands is inequitable and discriminatory towards generating plant in administrative receivership, which have otherwise paid all their Trading Charges and behaved in an exemplary fashion towards meeting all liabilities. The Proposer simply requests that the level of Credit Cover is realigned with the true level of potential liability arising from any future Settlement Runs.</p> |

P152_DR_007 – EDF Trading Ltd

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| Respondent: | EDF Trading Ltd |
| No. of BSC Parties Represented | 2 |
| BSC Parties Represented | EDF Trading Ltd and EDF (Generation) |
| No. of Non BSC Parties Represented | |
| Non BSC Parties represented | |
| Role of Respondent | Trader and Generator |

| Q | Question | Response | Rationale |
|---|---|----------|---|
| 1 | Do you agree with the Panel's views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made? Please give rationale. | Yes | Albeit that the risk might be small to the rest of the market, there is no reason for the market to bear the risks involved. The party will get their credit cover back in any case after 14 months following the approval of P127. |
| 2 | Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale. | Yes | |
| 3 | Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P152? Please give rationale. | Yes | |
| 4 | Are there any further comments on P152 that you wish to make? | No | |

P152_DR_008 – Scottish and Southern Energy

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

Further to your note of 17th February 2004, and the four questions listed in the Modification Report for P152, we have the following comments to make:-

Q1 Do you agree with the Panel's views on P152 and the provisional recommendation to the Authority contained in the draft Modification Report that P152 should not be made? Please give rationale.

Yes, we agree with the proposed BSC Panel recommendation to the Authority that Modification Proposal P152 should not be made.

Q2 Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.

It appears to.

Q3 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P152? Please give rationale.

If the Modification Proposal P152 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in the Modification Report.

Q4 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