

Modification Proposal	MP No: 152 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Reduction of Credit Cover for a Trading Party in Default which has ceased trading and which has paid all accrued Trading Charges	
Submission Date <i>(mandatory by proposer):</i> 1 December 2003	

Modification Proposal

MP No: 152
(mandatory by BSCCo)

Description of Proposed Modification (mandatory by proposer):

1. It is submitted that the BSC should be modified so that a Trading Party which:

(i) is in Default, but by virtue only of an event or circumstance arising under Section H 3.1.1(g);

(ii) has ceased all forms of trading¹ pursuant to the BSC;

(iii) has 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;

(iv) has transferred or de-registered any relevant BM Units; and

(v) has had an Energy Indebtedness of zero or less than zero continuously over the previous 30 days,

may make an application pursuant to Section M 2.3.1 of the BSC to reduce its Credit Cover in a manner which is otherwise in accordance with the rules set out in that Section M (but subject to Part 2 below).

2. There are three possible alternatives which may be appropriate to deal with the determination of any such reduction:

(i) The Credit Cover could be determined in accordance with the existing principles set out in the BSC. Therefore, given the Settlement Payment Date for the last Settlement Day would have passed, the "minimum eligible amount" pursuant to Section M 2.3.2(b) would be zero and the Party would be entitled to a return of all Credit Cover. This is the usual position for a Trading Party which has ceased trading and is reaffirmed in Elexon's Modification Report submitted to Ofgem in relation to Modification Proposal P132.

(ii) Alternatively, the modification could recognise that notwithstanding the Trading Party's compliance with all payment and contractual obligations and its cessation of trading, it would nonetheless be in technical Default and the conditions for a complete reduction to zero should be adjusted accordingly. Practically, this could be effected by reducing the Credit Cover based on a sliding scale at fixed intervals (coinciding with the programme of Timetabled Reconciliation Settlement Runs) and reflecting in the reductions the statistical probability (at the time of each reduction) of further amounts falling due and payable and the likely quantum of any such amount following (a) the reconciliation process, (b) the PNE Claims process and (c) any Trading Dispute.

(iii) Another method of incorporating the same principle in relation to the Default would be to grant the Panel the discretion to decide the level of reduction in Credit Cover. The Panel would decide this based on the key principle set out in (ii) above, namely that Credit Cover should be reduced to reflect the likelihood at the time of future amounts falling due and payable by the relevant Trading Party and the quantum of any such amounts (possibly within specified parameters). Because the Trading Party is in Default, the Panel would, pursuant to the powers granted to it under the BSC, also be able to impose appropriate conditions, depending on the circumstances, in connection with the return of the Credit Cover (e.g. that the Trading Party will not trade without Panel consent). This option allows greater flexibility for the Panel in making its decision on the individual circumstances in each case.

A consequential drafting change to Paragraph N 2.5 is also envisaged, making such paragraph subject to the right of the relevant Trading Party to apply for a reduction in Credit Cover pursuant to Section M as set out above.

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Description of Issue or Defect that Modification Proposal Seeks to Address *(mandatory by proposer):*

There is a lacuna in the BSC relating to the provisions for reduction in Credit Cover in Section M.

Credit Cover is provided in respect of a Trading Party's Energy Indebtedness (Section M 1.1). As currently drafted, a Trading Party may apply pursuant to Section M 2.3.1 to reduce its Credit Cover, but that reduction may not reduce the Credit Cover below the "minimum eligible amount" (Sections M 2.3.1 and M 2.3.2(b)).

In accordance with the principles described in the Modification Report relating to Modification Proposal P132, the minimum eligible amount in respect of any Trading Party, following payment by it on the Settlement Payment Date for its final Settlement Day of trading, is zero. Therefore, a Trading Party can, at that time, on application reduce its Credit Cover to zero notwithstanding that all Timetabled Reconciliation Settlement Runs have not taken place for that Final Settlement Day (and possibly for other Settlement Days too) and that amounts could become payable pursuant to PNE Claims or Trading Disputes.

However, if a Party is in Default of any sort then it is not permitted to make an application to reduce its Credit Cover as above (Section M 2.3.1). This applies even if it has stopped trading, punctually paid all invoices including those on the Settlement Payment Date for its last Settlement Day of trading, promptly met all contractual obligations in respect of the BSC, and would but for the Default be in a position where its required Credit Cover would be zero.

The result of this is that a Trading Party which is in Default can technically never receive its Credit Cover back or even apply for a reduction under the BSC. In addition, such a party is prevented from doing so notwithstanding the fact that a Trading Party in an identical position in terms of the statistical likelihood of future amounts becoming due and payable by it (but not in Default) would be entitled to have all Credit Cover returned at that stage, regardless of its financial position or its ability to pay such future amounts.

We discuss the justification for the proposed modification in greater detail below.

Impact on Code *(optional by proposer):*

Impact on Core Industry Documents *(optional by proposer):*

Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties *(optional by proposer):*

Impact on other Configurable Items *(optional by proposer):*

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Justification for Proposed Modification with Reference to Applicable BSC Objectives (mandatory by proposer):

Please Attachment A.

Details of Proposer:

Name: Roger Marsh and Michael Horrocks in their capacities as joint administrative receivers of Shotton Combined Heat and Power Limited (in receivership) and without personal liability

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Details of Proposer's Representative:

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Details of Representative's Alternate:

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Attachments: YES

If Yes, Title and No. of Pages of Each Attachment:

ATTACHMENT A: 2 PAGES