

Draft MODIFICATION REPORT for Modification Proposal P150 Targeting excess costs of PNE appeals process at unsuccessful appellants

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Reason for issue: Consultation **Issue/Version number:** 0.2

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

RECOMMENDATIONS

The Balancing and Settlement Code Panel recommends that:

- **the Proposed Modification P150 should not be made;**
- **no legal text is provided; and**
- **the Proposed Modification should have an Implementation Date of 5 Working Days after the Authority decision.**

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¹ The current version of the Balancing and Settlement Code (the 'Code') can be found at www.elexon.co.uk/ta/bsc/el_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

The following parties/documents have been identified as being potentially impacted by Modification Proposal P150.

| Parties | Sections of the BSC | Code Subsidiary Documents |
|--|---------------------------------------|--|
| Suppliers <input type="checkbox"/> | A <input type="checkbox"/> | BSC Procedures <input type="checkbox"/> |
| Generators <input type="checkbox"/> | B <input type="checkbox"/> | Codes of Practice <input type="checkbox"/> |
| Licence Exemptable Generators <input type="checkbox"/> | C <input type="checkbox"/> | BSC Service Descriptions <input type="checkbox"/> |
| Transmission Company <input type="checkbox"/> | D <input type="checkbox"/> | Service Lines <input type="checkbox"/> |
| Interconnector <input 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 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 type="checkbox"/> | Ancillary Services Agreements <input type="checkbox"/> |
| FAA <input type="checkbox"/> | N <input 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 type="checkbox"/> | P <input checked="" 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 type="checkbox"/> |
| Certification Agent <input type="checkbox"/> | X <input type="checkbox"/> | Other Documents |
| MIDP <input type="checkbox"/> | | Transmission Licence <input type="checkbox"/> |
| TFLA <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

| | |
|--|---------------------------|
| Estimated cost for progressing P150 through Modification Procedures | 30 ELEXON man days |
| Cost of implementing Proposed Modification: | Not applicable |

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

1.1 Modification Proposal

Modification Proposal P150 'Targeting excess costs of PNE appeals process at unsuccessful appellants' (P150) (Reference 1) was submitted by Powergen UK plc (the Proposer) on 26 November 2003. P150 proposes that any difference between the ELEXON costs of processing unsuccessful referrals to the Authority, in respect of Past Notification Error (PNE) claim determinations and the fee payable for making the referral, should be recovered from the unsuccessful appellant.

By way of background, the Proposer suggested that the ELEXON costs of administrating the overall PNE process have exceeded the initial expectations of Parties. Any ELEXON costs incurred above that which are to be collected through the application of the PNE claim fee in accordance with paragraph P6.2.2 will be paid by all Parties via the application of BSCCo Charges as defined within Section D of the Code.

On 10 December 2003 the PNE Committee published its determinations in respect of the PNE claims that had been submitted. Following this, Parties had five Business Days in which to refer such a determination to the Authority. Such references to the Authority could only be made in respect of the PNE determinations in the limited circumstances described within paragraph P6.7.3 of the Code. These circumstances are where:

- the procedures set out in paragraph P6 have not been followed in relation to the claim of Past Notification Error(s) forming the subject of the relevant determination; or
- new information has emerged since the relevant determination was made, which is, or is likely to be of relevance to the determination.

Any reference made under the above circumstances, should attract a fee of £5,000 as defined within paragraph P6.7.2 (d) of the Code. The Proposer suggested that the application of this fee for the PNE referral process may not fully recover the ELEXON costs of undertaking work associated with the appeals² process.

The Proposer believed that the ELEXON costs arising from processing each reference to the Authority should be separately identified by BSCCo and that where an individual reference is unsuccessful, the ELEXON costs of processing that reference should be paid by the unsuccessful appellant. This approach, in the view of the Proposer, would enable successful appellants to benefit from the same cost allocation process as that used for the initial PNE determinations albeit with the payment of the additional £5,000 fee, whereas unsuccessful claimants would be required to pay for the ELEXON costs of processing the unsuccessful references.

The initial written assessment (IWA) for P150 was presented to the Balancing and Settlement Code Panel (the Panel) at its meeting on 11 December 2003. The Panel determined that P150 should be submitted to a two-month Assessment Procedure to be undertaken by the Error Processing Modification Group (EPMG). The Panel requested that an Assessment Report should then be presented to the Panel at its meeting on 12 February 2004.

² It should be noted that the Code does not strictly define an "appeal" against a PNE claim determination. Paragraph P6.7 of the Code allows for references of any PNE claim determinations to be made to the Authority. The remainder of this document will therefore confine itself to the use of the term "reference" or "referral" to refer to what the Proposer has termed an "appeal".

1.2 Issues raised by the Proposed Modification

1.2.1 Urgency and Retrospection

The EPMG noted that P150 had been raised with a request for urgency which had been recommended by the Panel. The EPMG noted that if P150 had been granted urgency, it could have been implemented prior to any referrals to the Authority in respect of PNE determinations. On 28 November 2003 the Authority published its decision letter with respect to the urgent treatment of P150 (Reference 2) in which it determined that P150 should not be granted urgent status.

The EPMG noted, however, that included within the Authority decision letter on urgency was a statement about the retrospective implementation of P150. The decision letter stated:

"The Authority notes the desirability of avoiding retrospective effects arising from Code Modification decisions. However, we have previously noted that there could be circumstances where the Authority clearly indicates in advance that particular terms of the code may be subject to change, in which case a decision which has retrospective effect may be able to better facilitate the relevant objectives. The Authority is making such an indication in this matter."

Therefore, the EPMG believed that, if P150 better facilitated the achievement of the Applicable BSC Objectives, there would be no issues related to the retrospective implementation. This was because a possible retrospective implementation of P150 had been clearly signalled in advance. The EPMG noted that this letter had been published prior to the time period commencing during which references to the Authority could be made and that any such referrals would be made with the full knowledge of the potential for the referral fee as defined within paragraph P6.7.2(d) to be changed.

1.2.2 Referrals' Process

The EPMG discussed how the referrals process might work once a reference to the Authority had been made and in particular questioned what ELEXON costs could be incurred. The Authority representative indicated that the Authority's process for overseeing references made to them pursuant to paragraph P6.7 of the Code had not yet been finalised. However, the Authority representative stated that there may be circumstances where the PNE Committee would be required to be involved in the referrals process, for example if a review of any new evidence was required or to correct any omission in the process that had been identified. The EPMG noted this and members of the group expressed concern that the ELEXON costs could therefore increase above the £5,000 referrals fee.

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

The EPMG believed that as no references had been made to the Authority, then the introduction of a Code Modification reallocating the costs of the ELEXON process for dealing with any references would introduce inefficiencies into the Code. The EPMG believed that P150 would not better facilitate the achievement of any of the Applicable BSC Objectives.

1.4 Modification Group's cost benefit analysis of Proposed Modification

The EPMG did not believe that there would be any benefits from the introduction of P150 were no references to the Authority, pursuant to paragraph P6.7 made.

1.5 Alternative Modification

No Alternative Modification was progressed by the EPMG

1.6 Governance and regulatory framework assessment

The Panel considered the wider implications of P150 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 Panel was of the opinion that, were P150 to be implemented, there would be no such wider implications.

2 RATIONALE FOR PANEL'S RECOMMENDATIONS

The EPMG presented the Panel with an Interim Report at its January 2004 meeting. The Interim Report requested that as no references to the Authority, pursuant to paragraph P6.7 had been made, the Assessment Procedure for P150 be stopped in accordance with paragraph F2.2.11 of the Code.

The Panel agreed with the view expressed by the EPMG for the reasons described above and as set out within its Interim Report and therefore agreed that Modification P150 should proceed to the Report Phase.

3 IMPACT ON BSC SYSTEMS AND PARTIES

As no references were made to the Authority there will be no impacts on BSC Systems, the systems and processes used by Parties or Party Agents.

4 IMPACT ON CODE AND DOCUMENTATION

4.1 Balancing and Settlement Code

Were P150 to be implemented, amendments would be required to Section P of the Code to ensure that the correct mechanism for charging unsuccessful Parties making a reference to the Authority were correctly charged. As no legal text had been prepared during the Assessment Procedure for P150, at its meeting of 15 January 2004, the Panel consulted the Authority to determine if such text was required to be present within the Modification Report. The Authority confirmed that such text was not required to be included within the Modification Report.

4.2 Other Documentation

P150 would not impact any Code Subsidiary Documents, the BSCCo Memorandum and Articles of Association, Core Industry Documents and supporting arrangements [Insert summary of any changes that would be required to Code Subsidiary Documents as a consequence of the Proposed Modification or Alternative Modification.]

5 SUMMARY OF CONSULTATIONS

| Consultation question | Respondent agrees | Respondent disagrees | Opinion unexpressed |
|--|-------------------|----------------------|---------------------|
| Do you agree with the Panel's views on P150 and the provisional recommendation to the Authority contained in the draft Modification Report that P150 should be made? | | | |
| Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150? | | | |
| Are there any further comments on P150 that you wish to make? | | | |

5.1 Summary of the consultation responses

[To be completed following completion of the draft Modification Report Consultation.]

5.2 Comments and views of the Panel

[To be completed following completion of the draft Modification Report Consultation.]

6 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

6.1 Analysis

None commissioned

7 SUMMARY OF EXTERNAL ADVICE

None commissioned

8 DOCUMENT CONTROL

8.1 Authorities

| Version | Date | Author | Reviewer | Change Reference |
|---------|----------|----------------|-----------------|------------------|
| 0.1 | 23/01/04 | Richard Clarke | Change Delivery | Initial Draft |
| 0.2 | 26/01/04 | Richard Clarke | Change Delivery | For consultation |

8.2 References

| Ref | Document | Owner | Issue date | Version |
|-----|--|-------|------------------|---------|
| 1 | Modification Proposal P150 | - | 26 November 2003 | |
| 2 | Authority Decision on Urgent Treatment of P150 | | 28 November 2003 | |

ANNEX 1 DRAFT LEGAL TEXT

No legal text has been prepared for P150.

ANNEX 2 MODIFICATION GROUP DETAILS

[Listing members (and companies) of the Modification Group. List of number of Assessment Procedure Modification Group meetings and attendees. Terms of reference.]

ANNEX 3 CONSULTATION RESPONSES

[To be completed following report Phase Consultation]

ANNEX 4 TRANSMISSION COMPANY ANALYSIS

None commissioned

ANNEX 5 BSC AGENT IMPACT ASSESSMENTS

None commissioned

ANNEX 6 PARTY IMPACT ASSESSMENTS

None commissioned

ANNEX 7 COST BENEFIT ANALYSIS

No cost benefit analysis has been undertaken.

ANNEX 8 CORE INDUSTRY DOCUMENT OWNER IMPACT ASSESSMENTS

None commissioned

ANNEX 9 PROPOSED TEXT TO MODIFY BSCCO MEMORANDUM AND ARTICLES OF ASSOCIATION

Not applicable.

ANNEX 10 TERMS OF REFERENCE AND REPORT/ANALYSIS OF EXTERNAL CONSULTANTS/ADVISORS

Not applicable.