

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

Date of issue: 13 February 2004 **Document reference:** P150RR
Reason for issue: For Authority **Issue/Version number:** 1.0
Decision

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 as no legal text provided

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 Referral 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). Therefore the Panel agreed that Modification P150 should proceed to the Report Phase with a recommendation that the Proposed Modification P150 should **not** be made.

Following the Report Phase consultation, the Panel noted the responses of the consultation and in particular that all the consultation responses expressing an opinion, agreed with the Panel's recommendation and that no new arguments had been expressed.

3 IMPACT ON BSC SYSTEMS AND PARTIES

As no references were made to the Authority no processes will be required to support references and therefore be no impacts on BSC Systems or 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 applied. No legal text had been prepared during the Assessment Procedure for P150. At its meeting of 15 January 2004, the Panel consulted with 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.

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.

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?	5 (25 Parties + 1 Non Party)	-	1 (1 Non Party)
Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150?	4 (24 Parties + 1 Non Party)	-	2 (1 Party and 1 Non Party)

5.1 Summary of the consultation responses

6 respondents (25 Parties and 2 Non Parties) responded to the consultation on Modification Proposal P150.

All respondents who expressed an opinion supported the recommendation of the Panel that the Proposed Modification should not be made. This included the P150 Proposer who fully supported the expeditious conclusion of P150 given the fact that no references had been made to the Authority.

All respondents who expressed an opinion supported the recommended Implementation Date should the Authority agree that the Proposed Modification P150 should be made.

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
0.3	06/02/04	Richard Clarke	Change Delivery	For Panel Decision
1.0	13/02/04	Richard Clarke	Change Delivery	For Authority Decision

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 LEGAL TEXT

No legal text has been prepared for P150 as agreed by the Authority.

ANNEX 2 MODIFICATION GROUP DETAILS

Error Processing Modification Group (EPMG)

Member	Organisation	Email
Justin Andrews	ELEXON (Chairman)	justin.andrews@elexon.co.uk
Richard Clarke	ELEXON (Lead Analyst)	richard.clarke@elexon.co.uk
Neil Smith	Powergen (Proposer)	neil.c.smith@pgen.com
Andrew Colley	Scottish and Southern	Andrew.colley@scottish-southern.co.uk
Man Kwong Liu	Scottish Power	MAN.KWONG.LIU@saic.com
Mark Edwards	Edison Mission	medwards2@edisonmission.com
Mark Manley	BGT	Mark.Manley@centrica.co.uk
Paul Mott	London Electricity	Paul.Mott@edfenergy.com
Rachel Lockley	British Energy	rachel.lockley@british-energy.com
Rekha Patel	Conoco Phillips	rekha.patel@conocophillips.com
Terry Ballard	Innogy	terry.ballard@npower.com

ANNEX 3 CONSULTATION RESPONSES

Responses from P150 Draft Report Consultation

Consultation issued 27 January 2004 with responses back on 3 February 2003.

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	CECL	P150_DR_001	4	1
2.	Derwent Cogeneration Limited	P150_DR_002	1	
3.	Powergen	P150_DR_003	14	
4.	BGT	P150_DR_004	1	
5.	Midlands Electricity	P150_DR_005		1
6.	Scottish and Southern Energy	P150_DR_006	5	

P150_DR_001 – CECL

Respondent:	<i>Chris Ridgway</i>
No. of BSC Parties Represented	4
BSC Parties Represented	<i>CECL, IETS, RPCL, SPAL</i>
No. of Non BSC Parties Represented	1
Non BSC Parties represented	<i>InterGen (UK) Ltd</i>
Role of Respondent	<i>Generator</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P150 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P150 should not be made? Please give rationale.	Yes	As there have been no PNE appeals, this mod has no impact and so should not be made.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150? Please give rationale.	Yes	N/a
3.	Are there any further comments on P150 that you wish to make?	No	

P150_DR_002 Derwent Cogeneration

Respondent:	<i>P J Power</i>
No. of BSC Parties Represented	
BSC Parties Represented	<i>Derwent Cogeneration Ltd</i>
No. of Non BSC Parties Represented	
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>Generator</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P150 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P150 should not be made? Please give rationale.	YES	
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150? Please give rationale.	YES	
3.	Are there any further comments on P150 that you wish to make?	NO	

P150_DR_003 Powergen

Respondent:	<i>Name: Powergen</i>
No. of BSC Parties Represented	14
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). 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</i>
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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Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P150 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P150 should not be made? Please give rationale.	Yes	As no appeals have been raised, we concur with the Panel's recommendation that P150 should not be made. As proposer of this modification we have consistently stated that if no appeals were raised the modification should be ceased in the most expeditious manner.
2.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150? Please give rationale.	Yes	We are in agreement with the Panel's provisional recommendation with regard to the Implementation Date.
3.	Are there any further comments on P150 that you wish to make?	No	

P150_DR_004 BGT

Dear Sirs,

Re: Modification Proposal P150 – Targeting excess costs of PNE appeals process at unsuccessful appellants.

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P150. British Gas Trading (BGT) agrees with the Panel's provisional recommendation that the Modification Proposal should not be made.

If you have any questions regarding this response please contact me 01753 758137.

Yours faithfully

Mark Manley
Contract Manager

P150_DR_005 Midlands Electricity

Midlands Electricity (Formally Aquila Networks PLC) would like to return a response of 'No Comment' to P150 Report Consultation.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group
Midlands Electricity

P150_DR_006 Scottish and Southern Energy

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 three questions contained within your note of 27th January 2004, and the associated Modification Consultation for P150, we have the following comments to make:-

Q1 Do you agree with the Panel's views on P150 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P150 should not be made? Please give rationale.

Yes. We believe that P150 should not be made as there have been no appeals against the PNE process (and therefore the defect which P150 was addressing does not exist).

Q2 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P150? Please give rationale.

If the Modification Proposal P150 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in the Modification Report.

Q3 Are there any further comments on P150 that you wish to make?

Nothing further at this time.

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.