

Consultation for Modification Proposal P131: Introduction of further provisions relating to the determination of Trading Disputes

A consultation document developed on behalf of the P131 Modification Group.

For Attention of: BSC Parties and all other interested parties.

Date of Issue: 7 August 2003

Responses Due: 15:00 on Thursday 21 August 2003 (To: Modifications@elexon.co.uk)

1. INTRODUCTION

Modification Proposal P131, "Introduction of further provisions relating to the determination of Trading Disputes" ("P131") was raised on 23 June 2003 by the Trading Disputes Committee (TDC) on behalf of the BSC Panel.

The Proposer of the Modification Proposal indicated that P131 had been raised as a result of legal issues arising from the TDC review of the criteria contained in BSCP11 5.15. Legal opinion was, the "hook" that ties BSCP11 to the Code was inadequate and as a consequence use of the criteria in judging Trading Disputes was suspended by the BSC Panel. In addition, legal advice received stated that a Modification to the Code was required if it was felt that criteria should still be applied to Trading Dispute cases. The TDC is of the view that the BSC should place obligations on Parties with regard to the detection of Trading Disputes. Furthermore the TDC believes the emphasis on prompt and accurate rectification of Settlement will promote efficiency in the implementation and administration of the balancing and settlement arrangements, and therefore better facilitate the achievement of Applicable BSC Objective (d).

This document describes the discussions of the P131 Modification Group (the Group) to date and seeks views on:

- whether or not the principle behind P131 is valid;
- whether there are suitable criteria and what is their appropriate form; and
- whether there are any substantive issues that need to be brought to the attention of the Group to be taken into consideration when undertaking an assessment of P131.

2. MODIFICATION GROUP DISCUSSION

At its meetings on 17 and 23 July 2003, the Group discussed the issues raised in the P131 Initial Written Assessment.

'Good Practice'¹ vs Correct Settlement

The Group discussed the principles/ideals of 'good practice' vs correct Settlement in the context of the criteria.

- If 'good practice' is encouraged by having cut off points to raise Trading Disputes then correct settlement may be affected, as a valid settlement error that was raised too late would not be rectified.
- Conversely if correct Settlement is encouraged by allowing a valid settlement error to be rectified whenever and however it is raised then 'good practice' (in the form of timeliness) would be affected.

¹ It was decided that the phrase 'good practice' was not one that should be used in any legal drafting as it is hard to define. The Group viewed good practice as timeliness in the identification of potential errors.

One member felt that the emphasis should be on 'good practice' as there would always be errors in settlement.

Another Group member said that from a Party perspective 'good practice' is preferred. Parties have so much to do to keep up with the settlement cycle (e.g. initial settlement and later reconciliation runs being performed each day, that if 'good practice' was encouraged it could reduce the cost to them (by reducing resource requirements) and to the industry.

The Group agreed that the criteria should aim towards the ideal of 'good practice'.

Timeliness

The Group discussed what options were available to it to ensure/encourage timely raising of Trading Queries.

To aid them the Group considered the historical instances of Trading Disputes and Trading Queries that the TDC has dealt with. These are attached in Appendix 1 of the report.

The distinction between fixed cut off times and incentives to encourage timeliness was made, the latter being for example, increasing charges for delay in raising claims. It was mentioned that Suppliers already have incentives on them in the form of Supplier Charges.

Factors to consider are:

- It is natural for Suppliers to take longer to notice errors than generators, since they have more information to check e.g. because of the larger number of Metering Systems they are registrant for;
- Suppliers seem to be able to live with a degree of settlement error as shown by errors in the present market, e.g. energisation status problems [Panel Paper 61/012], erroneously large EACs etc; and
- Different timescales and demands for Suppliers/generators, CVA/SVA, half hourly vs non half hourly, different BSC Agents, different flows.

The Group agreed that timeliness was an important issue and that its aim was to develop a timing criteria split by market registration class/process/type of data.

Trigger

The Group considered what the trigger for timescales to be measured against should be i.e. how a Party can demonstrate that they have noticed a problem within the correct time frame. The Group suggested several options for this:

- 1) Emails highlighting the problem e.g. emails to Party Agents; or
- 2) Making an ELEXON or BSC Agent/Party Agent Help Desk call; or
- 3) sending in the Trading Query form.

A member commented that only option (3) is appropriate as it is a recognised step and the other two require subjective judgements. Some of the Group commented that TDC had taken into account evidence of detection of error by Parties based on the first two options in the past.

The Group did not come to a conclusion on this issue and considered it should be a question to be included in the consultation document.

Materiality

The Group discussed the existence of materiality criteria at both the detection stage (i.e. one cannot raise a Trading Dispute unless the claim passes a certain materiality threshold), and the rectification stage (i.e. the TDC can uphold a Trading Dispute but refrain from rectifying it on the basis of estimated materiality). The latter is currently a judgement made by the TDC. The Group noted that under NETA it is not usually possible to determine the precise materiality until the last Settlement Run or determination has been made. One member of the Group noted that for this reason some degree of judgement is unavoidable.

Initial materiality criterion:

One member of the Group mentioned that in the past the TDC had considered cases that were below the materiality threshold but were brought up as matters of principle. In this type of case an upheld Trading Dispute would not normally be rectified. Some members of the Group thought that maybe it was important to let cases be heard for that reason. However one member of the Group pointed out that if the principle was important then the Party in question could let the error recur until it built up to the materiality threshold. The Group agreed this and considered that the initial materiality threshold should be fixed.

Rectification materiality judgement:

The Group considered whether the materiality judgement taken by TDC at the rectification stage should be absolute or remain subjective. One member of the Group said that if it was an absolute amount then it would be difficult to set due to the differently sized Parties trading in the market. The Group felt that since Parties could challenge the TDC decision it could remain subjective.

The Group suggested that the initial criterion be objective and the rectification criterion, subjective. They considered that the issue of materiality should be a consultation question.

Criteria

The Group considered whether having criteria would affect any other tools that the industry has to ensure compliance. For example, they were unsure whether having criteria would affect the Technical Assurance Agent (TAA). It is not the duty of the TAA to correct settlement error, however the TAA is concerned with incentives to achieve accurate Settlement.

The Group considered having different timescales for different types of error / dispute, for example CVA metering vs. SVA Half Hourly metering vs. SVA Non Half Hourly metering.

One member of the Group said that currently a Party does not need to raise a Trading Query if they notice a CVA metering error but can simply arrange with the CDCA for it to be changed up until Final Settlement Run. Only if the CDCA refused to change the value would they need to raise a Trading Query.

The Group suggested several criteria to be included in the consultation document. The Group recognise that the following table is not exhaustive or conclusive at this stage but want to give Parties an indication of types/levels of timeliness criteria.

All numbers mentioned in table below refer to Working Days.

D = Settlement Day

SF = initial Settlement Run

RF = Final Reconciliation Run

QAS = BM Unit Applicable Balancing Services Volume

These criteria indicate the stage of Settlement by which settlement errors should be identified, and rectification initiated or a Trading Query or Trading Dispute raised.

Data Type	CVA	SVA Half Hourly	SVA Non Half Hourly
Metering and registration data eg P/C status, GC/DC and LLFs and aggregation rules for BMUs	SF +20	RF +20 ¹	RF +20 ¹
Interconnector	SF +20	N/A	N/A
Profile Coefficients	N/A	N/A	D +3
MDD	N/A	D +2	D +2
Contract Notification	SF +20 ²		
BOAs	SF +20		
Aggregation (GSP Group Takes)	20 mnths	N/A	N/A
BSAD and prices	20 mnths	N/A	N/A
QAS	SF +20	N/A	N/A

1) Currently in BSCP11 the cut off point is RF -40 for Pre-Final Trading Disputes.

2) Only allowed to rectify a settlement error, e.g. an ECVA error.

NOTE: If an error arises on a Settlement or Reconciliation Run that was not present in the previous Settlement or Reconciliation Run it must be identified in R +20 (i.e. 20 days after that Settlement Run).

ELEXON's Role

The Group considered whether there should be different criteria that apply to ELEXON or whether the same criteria should apply to all Parties. A member of the group felt that since ELEXON was not obliged to check Settlement information at specific times they should not be bound by strict timescales but maybe only by the 20 month cut off point to be introduced under P107. The problem the Group envisaged with this was that Parties could bypass the criteria by ringing the ELEXON Helpdesk or notifying their BSC Agent who would notify ELEXON of a settlement error and ELEXON would be obliged to raise it.

The Group initially agreed that ELEXON should be bound by the same criteria as Parties but felt that this was a question that should be part of the consultation document.

Guidelines vs Obligations

The Group expressed the desire to have a mechanistic process.

The Group agreed that they wanted to develop obligations and not guidelines.

Objective vs Subjective

The Group felt that subjective criteria were too difficult to rule by and would bring up legal issues.

One member of the Group pointed out that the TDC was made up of different members and the makeup of the group has a potential to change on a meeting by meeting basis.

The Group agreed that it would be better to have objective criteria.

Code amendment

P131 was raised as a result of legal issues arising from the TDC review of the criteria contained in BSCP11 5.15. Legal advice was that a Modification to the Code was required if it was felt that criteria should still be applied to Trading Dispute cases.

On the basis of BSCCo legal advice, the Group initially agreed that a Code amendment was required.

Panel / arbitration

The Group considered the escalation processes in Section W (Appeals to the Panel and the arbitration processes) and whether they felt that they should remain in place and what their purpose was.

Appeals to the Panel:

The Group agreed that being able to appeal to the Panel was valuable and should remain. They felt that the Panel should consider a case using the same criteria as the TDC would and would also look at whether the process followed was correct.

Arbitration:

The Group agreed that Parties should still have the facility to take cases to arbitration. It was pointed out that arbitration was expensive and so would be unlikely to be used often.

The Group initially agreed that the Panel and arbitration processes should remain in principle.

P107

The reduction in the limit for raising a Trading Dispute from 36 months to 20 months as a result of P107 implementation in November 2003 was noted.

Contract Law – right to restrict ability to correct settlement errors

A member of the Group questioned whether it was possible to restrict the right to have a settlement error corrected by using criteria i.e. was the right within the BSC or some wider legal framework such as contract law.

Initial legal advice is that the right to have settlement errors corrected comes from within the Code and thus the introduction of a restriction would be valid.

The Group requested that they receive this in writing from the ELEXON Legal Team.

The legal representative added that if the Group were to suggest very tight timescales as part of the criteria they should consider having an 'exceptional circumstances' clause as part of the criteria as someone who missed the timescales may complain on grounds of fairness that they ought not have failed.

The Group thought that this issue should form a consultation question.

BSC Objectives

The Group were asked to consider whether P131 better facilitated achievement of Applicable BSC Objective (c) as well as (d). They recognised that this was a discussion that should take place as part of the Assessment Procedure. However the Group agreed that P131 better facilitated Applicable BSC Objective (d) and were undecided with respect to Applicable BSC Objective (c) but felt P131 may only have limited impact on (c).

P114 Legal Problem

The Ofgem representative wanted the Group to note the difficulties the Authority face with Modifications such as P114 "Entitlement of Licence Exemptable Generators ("LEGs") and other Non-trading Parties to BSC Membership Without Evidence of Trading". This is due to its reliance on a document separate to the BSC, in the case of P114, a licensing agreement. If in the P131 solution there is a reliance on changes to BSCP11 then this would have to be drafted as part of the Modification Report for Ofgem to be able to properly consider it. It also raised questions about future changes to the BSCP.

The Group noted this issue and any implications this may have on the length of the Assessment Procedure (if agreed by Panel).

Rectification and Resolution of Disputes

It was noted that the Trading Dispute process had three distinct stages, detection (Parties/BSC Agents notice the error), consideration/resolution (by the TDC) and rectification (via an agreed process e.g. ESD).

A member of the Group asked whether encouraging prompt rectification was also within the scope of P131. The member stressed the importance of this and pointed out that if rectification takes a long time the companies that are supposed to give money back may no longer be Parties.

The Group read the defect outlined in the Modification Proposal and considered that technically this was in the scope of the P131. However they felt that this had not been the intention of the Modification Proposal and that since it is a significant issue in its own right, a majority of Group members thought that it should be considered out of scope. The intention was for the reported defect to read:

The TDC is of the view that the BSC should place obligations on Parties with regard to the detection and as a result the rectification of Trading Disputes.

At the second Modification Group meeting, the Group agreed that prompt rectification is already incorporated into the BSC (W4.1.1) and that one might want to further encourage prompt resolution of a Trading Dispute but that should not be considered within the scope of P131.

A majority of the Group felt that the detection aspect of the Trading Dispute process should be considered to constitute the substance of P131.

Dispute Status and Process

The Group contemplated, as part of the process of considering a purported Trading Dispute, when the TDC should consider whether there was a settlement error. The Group agreed that the TDC should first consider whether a Party had fulfilled the criteria and only if a Party passed that stage would the TDC contemplate the existence of a settlement error.

A majority of the Group agreed that Parties should be obliged to pass the criteria before the existence of a settlement error is considered

3. CONSULTATION

This consultation seeks respondent's views on the issues raised by P131.

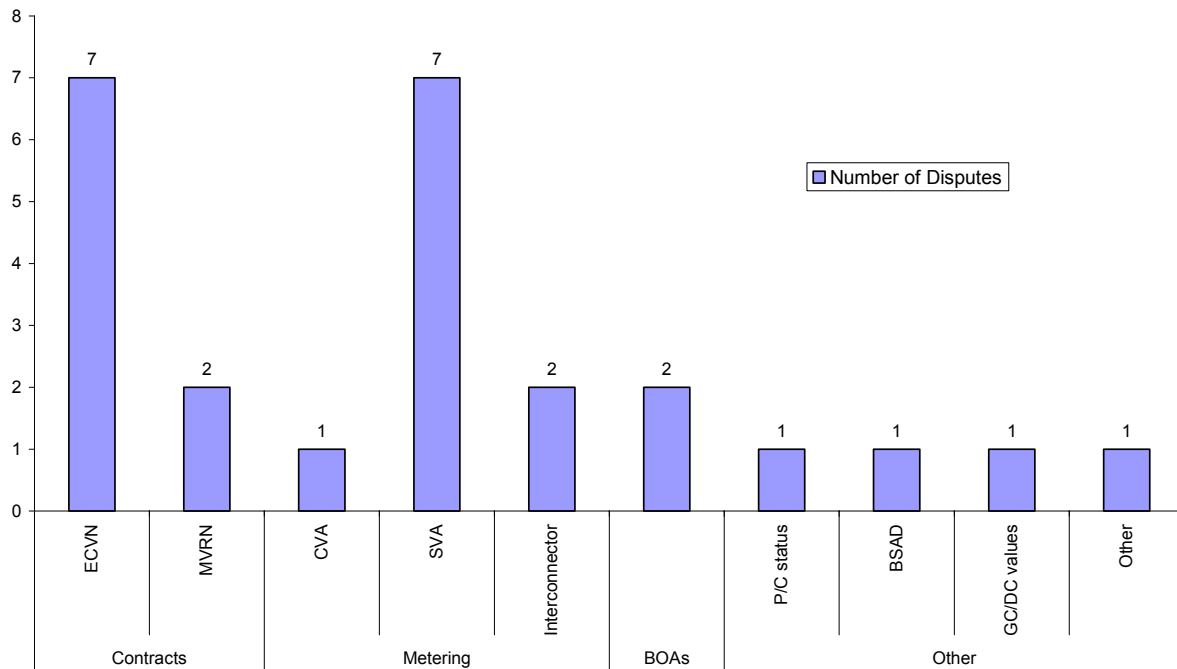
For information the Applicable BSC Objectives are;

- (a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;
- (c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.
- (e) without prejudice to the foregoing objectives and subject to paragraph 3A, the undertaking of work by BSCCo (as defined in the BSC) which is:
 - (i) necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and
 - (ii) relevant to the proposed GB wide balancing and settlement code;and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

You are invited to provide a response in respect of the questions on the attached pro forma.

Please send your responses entitled 'P131 Definition Consultation' by 15:00 on Thursday 21 August 2003 to the following email address: Modifications@elexon.co.uk

Any queries on the content of the consultation pro-forma should be addressed to Dena Harris (020 7380 4364) e-mail address Dena.Harris@elexon.co.uk

APPENDIX 1**Disputes heard by the TDC in the last 12 months****Queries raised in past 12 months**