

DEFINITION REPORT for Modification Proposal P131

Introduction of further provisions relating to the determination of Trading Disputes

Date of issue:	04/09/03	Document reference:	P131DR10
Reason for issue:	For Decision 109	Issue/Version number:	1.0

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

RECOMMENDATIONS

The P131 Modification Group recommends that the Panel to:

- **ENDORSE the recommendation of the P131 Modification Group and proceed to the Assessment Procedure; and**
- **AGREE the Assessment Procedure timetable such that an Assessment Report should be completed and submitted to the Panel for consideration at their meeting of December 11 2003.**

Intellectual Property Rights and Copyright - This document contains materials the copyright and other intellectual property rights in which are vested in ELEXON Limited or which appear with the consent of the copyright owner. These materials are made available for you to review and to copy for the purposes of the establishment, operation or participation in electricity trading arrangements in England and Wales under the BSC. All other commercial use is prohibited. Unless you are a person having an interest in electricity trading in Great Britain under the BSC you are not permitted to view, download, modify, copy, distribute, transmit, store, reproduce or otherwise use, publish, licence, transfer, sell or create derivative works (in whatever format) from this document or any information obtained from this document otherwise than for personal academic or other non-commercial purposes. All copyright and other proprietary notices contained in the original material must be retained on any copy that you make. All other rights of the copyright owner not expressly dealt with above are reserved.

Disclaimer - No representation, warranty or guarantee is made that the information provided is accurate, current or complete. Whilst care is taken in the collection and provision of this information, ELEXON Limited will not be liable for any errors, omissions, misstatements or mistakes in any information or damages resulting from the use of this information or any decision made or action taken in reliance on this information.

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

CONTENTS TABLE

Summary of impacted parties and documents	3
1 Description of Proposed Modification and assessment against the Applicable BSC Objectives.....	4
1.1 Modification Proposal	4
1.2 Proposed Modification	4
1.3 Issues raised	5
2 Rationale for Modification Group's recommendations to the Panel.....	5
3 Summary of consultations.....	5
3.1 Modification Group's summary of the consultation responses.....	6
3.2 Comments and views of the Modification Group	7
3.2.1 Code amendment	7
3.2.2 Guidelines vs Obligations	7
3.2.3 Objective vs Subjective	7
3.2.4 'Good Practice' vs Correct Settlement.....	8
3.2.5 Timeliness.....	8
3.2.6 Trigger.....	9
3.2.7 Materiality	9
3.2.8 Criteria.....	10
3.2.9 BSCCo's Role	11
3.2.10 Panel / arbitration.....	12
3.2.11 Exceptional Circumstances	12
3.2.12 P107	12
3.2.13 Contract Law – right to restrict ability to correct Settlement errors	13
3.2.14 BSC Objectives	13
3.2.15 P114 Legal Problem	13
3.2.16 Rectification and Resolution of Disputes	13
3.2.17 Dispute Status and Process	14
3.2.18 Modification Group Membership.....	14
4 Summary of Transmission Company analysis	14
5 Summary of BSC Agent impact assessments	14
6 Summary of external advice.....	14
7 Process, timetable and costs for progressing the Modification Proposal	14
8 Document control	15
8.1 Authorities	15
8.2 References.....	15
Annex 1 Modification Group details	16
Annex 2 Consultation responses	16
Annex 3 P131 Timetable.....	16
Annex 4 Graphs	17

SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as BSCCo has been able to assess the following parties/documents have been identified as being potentially impacted by Modification Proposal P131.

Parties		Sections of the BSC		Code Subsidiary Documents	
Suppliers	<input checked="" type="checkbox"/>	A	<input type="checkbox"/>	BSC Procedures	<input checked="" type="checkbox"/>
Generators	<input checked="" type="checkbox"/>	B	<input type="checkbox"/>	Codes of Practice	<input type="checkbox"/>
Licence Exemptable Generators	<input checked="" type="checkbox"/>	C	<input type="checkbox"/>	BSC Service Descriptions	<input type="checkbox"/>
Transmission Company	<input checked="" type="checkbox"/>	D	<input type="checkbox"/>	Service Lines	<input type="checkbox"/>
Interconnector	<input checked="" type="checkbox"/>	E	<input type="checkbox"/>	Data Catalogues	<input type="checkbox"/>
Distribution System Operators	<input checked="" type="checkbox"/>	F	<input type="checkbox"/>	Communication Requirements Documents	<input type="checkbox"/>
Party Agents		G	<input type="checkbox"/>	Reporting Catalogue	<input type="checkbox"/>
Data Aggregators	<input type="checkbox"/>	H	<input type="checkbox"/>	MIDS	<input type="checkbox"/>
Data Collectors	<input type="checkbox"/>	J	<input type="checkbox"/>	Core Industry Documents	
Meter Operator Agents	<input type="checkbox"/>	K	<input type="checkbox"/>	Grid Code	<input type="checkbox"/>
ECVNA	<input type="checkbox"/>	L	<input type="checkbox"/>	Supplemental Agreements	<input type="checkbox"/>
MVRNA	<input type="checkbox"/>	M	<input type="checkbox"/>	Ancillary Services Agreements	<input type="checkbox"/>
BSC Agents		N	<input type="checkbox"/>	Master Registration Agreement	<input type="checkbox"/>
SAA	<input type="checkbox"/>	O	<input type="checkbox"/>	Data Transfer Services Agreement	<input type="checkbox"/>
FAA	<input type="checkbox"/>	P	<input type="checkbox"/>	British Grid Systems Agreement	<input type="checkbox"/>
BMRA	<input type="checkbox"/>	Q	<input type="checkbox"/>	Use of Interconnector Agreement	<input type="checkbox"/>
ECVAA	<input type="checkbox"/>	R	<input type="checkbox"/>	Settlement Agreement for Scotland	<input type="checkbox"/>
CDCA	<input type="checkbox"/>	S	<input type="checkbox"/>	Distribution Codes	<input type="checkbox"/>
TAA	<input type="checkbox"/>	T	<input type="checkbox"/>	Distribution Use of System Agreements	<input type="checkbox"/>
CRA	<input type="checkbox"/>	U	<input type="checkbox"/>	Distribution Connection Agreements	<input type="checkbox"/>
Teleswitch Agent	<input type="checkbox"/>	V	<input type="checkbox"/>	BSCCo	
SVAA	<input type="checkbox"/>	W	<input checked="" type="checkbox"/>	Internal Working Procedures	<input checked="" type="checkbox"/>
BSC Auditor	<input type="checkbox"/>	X	<input type="checkbox"/>	Other Documents	
Profile Administrator	<input type="checkbox"/>			Transmission Licence	<input type="checkbox"/>
Certification Agent	<input type="checkbox"/>			X = Identified in Report for last Procedure	
MIDP	<input type="checkbox"/>			N = Newly identified in this Report	
TFLA	<input type="checkbox"/>				
Other Agents					
SMRA	<input type="checkbox"/>				
Data Transmission Provider	<input type="checkbox"/>				

**Estimated cost for
progressing P131 through
Modification Procedures**

**£ 3,000 + 92
ELEXON man
days**

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

1.1 Modification Proposal

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.

P131 was raised following the suspension by the Panel of the criteria used by the TDC to judge Trading Disputes. These criteria, stipulated in BSCP11, were held to be legally invalid as the "hook" tying them to the Code was inadequate.

P131 seeks to modify the Code to incorporate provisions relating to the timely detection and prompt rectification of Trading Disputes, for example the setting of baseline dates for the detection of Settlement errors.

The TDC is of the view that the BSC should place obligations on Parties with regard to the detection and rectification 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).

The Panel, at their meeting on 10 July 2003 agreed with BSCCo's recommendation to progress P131 to the Definition Procedure. The Panel felt that P131 required further definition to provide the Modification Group with sufficient time to create a clear statement of the P131 requirements prior to entering the Assessment Procedure and thus identify the issues for assessment. A Modification Group was established and met three times during the process. A consultation document was sent out to industry on 7 August 2003 with responses returned on 21 August 2003.

1.2 Proposed Modification

The Modification Group have defined P131 in the following way:

The Group agreed the need to introduce criteria into the Code that will place obligations on Parties to detect Settlement errors and hence raise Trading Queries/Disputes in a timely manner. The criteria will be objective in nature and split by a category that is still to be decided (for example, market registration class/process/type of data). The Group agreed that the form of the criteria would be finalised during the assessment of P131.

To raise a Trading Dispute, Parties will be required to prove that they have noticed/detected the error within the prescribed timescales. There will also be a final criterion that allows the TDC to use its judgement in Trading Disputes regarding data types not covered by the criteria as well as perhaps one that caters for exceptional circumstances. The same criteria will apply to BSCCo raised Disputes. The TDC will then consider whether a Settlement error actually exists by using data provided by Parties, Party Agents and BSC Agents. If a Settlement error is identified then it will be rectified promptly provided that the materiality passes an objective threshold. [The materiality threshold that a Trading Dispute has to exceed will depend on the stage at which the Settlement error is detected. If the Settlement error is detected at a stage where it can be rectified in a timetabled Reconciliation Run then the materiality threshold will be lower than if the Settlement error is detected at a stage where it must be rectified in a Post Final Settlement Run or Extra Settlement Determination.] Failure at any stage in the process of raising a dispute will cause the Party's query to be rejected. Where a Party is dissatisfied with how the process has been followed they shall have the entitlement to appeal to the Panel. The Panel in this case will consider the matter via the same rules as the TDC. If, however, the

Party is displeased with the result for reasons other than due process not being followed they have the option of taking the case to arbitration.

1.3 Issues raised

The following issues will be considered during the Assessment of P131:

- Assessment against the Applicable BSC Objectives
- Exact form of the timeliness criteria
- Exact nature of the materiality criteria
 - How to set the level(s)
 - How to treat a batch of errors
- Definition of the Trigger
- Inclusion of exception clause(s)
- Legal text drafting

These issues were discussed initially during the Definition Procedure (Section 3). However the detail and exact nature of the issues remains for the Assessment Procedure.

2 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

The Modification Group recommend that P131 is progressed to Assessment Procedure. The Group have considered the definitional issues for P131 and have defined the Proposed Modification to such an extent that they feel able to progress P131 through to Assessment (see Section 1.2).

3 SUMMARY OF CONSULTATIONS

7 responses representing 23 BSC Parties were received.

Consultation question	Respondent agrees	Respondent disagrees	No opinion expressed
Do you support the principle of P131 that the BSC should place obligations on Parties with regard to the detection and rectification of Trading Disputes? Please give rationale	6	0	1
Do you agree that types of criteria should be based on timeliness and materiality? Please give rationale and any additional or alternative types of criteria	6	0	1
Do you think the same criteria that apply to all Parties should apply to ELEXON? Please give rationale	5	1	1
Do you think that an initial materiality criterion should be set? If so should it be a) subjective e.g. TDC opinion b) objective e.g. £500 threshold?	5 and objective	1	1

Consultation question	Respondent agrees	Respondent disagrees	No opinion expressed
Do you think a materiality criterion should be present at the rectification stage? If so should it be a) subjective e.g. TDC opinion b) objective e.g. £500 threshold?	5 4 obj, 1 subj	0	2
At what point do you believe a Party can claim to have detected a Settlement error (see Consultation Document) a) internal emails highlighting error b) making a help desk call c) sending off Trading Query form d) other?	Opinions cover all these options b) 2 c) 2 all 2 ² b,c,d 1		1
Do you believe that Parties should have to fulfil the criteria before TDC consider the existence of a Settlement error? Please give rationale	5 ³	0	2
Do you believe that there should be a clause in the criteria that caters for exceptional circumstances? Please give rationale	4	2	1
Do you believe that Table 1 below contains an appropriate form for the criteria? Please give rationale and suggested alternative methods	3	2	2
Are there any issues not identified in this report that you believe should be considered during the Assessment Procedure, should the Panel agree to submit P131 to the Assessment Procedure? Please give issues and rationale	2	3	2

3.1 Modification Group's summary of the consultation responses

There was unanimous support by the respondents for the BSC placing obligations, via criteria based on timeliness and materiality, on Parties with respect to the detection and rectification of Trading Disputes. These would encourage the timely raising of Trading Disputes and hence early accuracy of Settlement by speedy identification of errors.

A majority of respondents believed that the same rules that apply to Parties as regards raising Trading Disputes, should apply to BSCCo. Reasons given stated that it was necessary to ensure the integrity of Settlement and if the same criteria did not apply the intent of P131 would be undermined – it would give Parties the ability to 'tip off' BSCCo or BSC Agents of an error to get around the criteria. One respondent felt that BSCCo should have different rules as it has a view of the whole market and is in a position to raise disputes that disadvantaged Parties are not in a position to detect.

A majority of respondents felt that there ought to be an objective initial materiality criterion. Subjective criteria could be vulnerable to decisions which could be argued to be arbitrary and discriminatory and therefore subject to challenge. One respondent felt that there should not be an initial materiality criterion as it could preclude Disputes being raised and precedents agreed when the issue causing the problem could lead to a Dispute with a much larger materiality being raised in future.

The inclusion of a final pre-rectification materiality criterion was unanimously supported with a majority favouring an objective threshold, since subjective decisions may be open to interpretation and challenge. Different options were suggested one being a single objective amount and another being different amounts depending on whether it is rectified as part of a timetabled Settlement Run or not.

² One respondent clarified that by saying a) in the response they meant to include all the 'more stringent' options.

³ One respondent answered 'no' to this question. Clarification indicated the actual answer meant 'yes'

There was no majority opinion regarding the matter of what could be used as a trigger, although the majority view was to have some formal arrangement that could readily be provided as proof.

All respondents felt that the TDC should consider whether the Trading Dispute passed the criteria before considering the existence of a Settlement error for efficiency reasons.

A majority of respondents felt that for reasons of fairness and reasonableness a criterion catering for exceptional circumstances should be included. Two respondents disagreed as they felt that judging exceptional circumstances is subjective and is likely to be time-consuming and expensive.

The example/suggested table of criteria was considered to be suitable in nature by a majority of respondents. Those who disagreed with it, did so regarding certain data types and the proposed timescales contained within the table.

Additional comments were provided by two respondents. One respondent raised the issue of promptness in the resolution and rectification of Trading Disputes. This was discussed in the Modification Group meetings see Section 1.3.15. The issue of P107 'Data Retention Requirements for Post-Final Trading Disputes' (P107) was also brought up by this respondent and a potential Alternative Modification suggested. The subject of P107 was discussed in the Modification Group meetings see Section 1.3.11 and any potential Alternative Modifications will be considered in the Assessment Phase. Another respondent suggested a review of the audit threshold and of Supplier Charges – the latter is currently under review and the former has been set satisfactorily and with industry approval. In addition the respondent expressed an interest in seeing itemisation of the costs of correcting errors using Extra Settlement Determination and Post-Final Settlement methods. These costs may need to be considered when setting materiality thresholds for correction of Settlement errors requiring such methods. This issue will be considered during the Assessment Procedure.

Full copies of representations are attached below in Annex 2.

3.2 Comments and views of the Modification Group

3.2.1 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 agreed that a Code amendment was required.

3.2.2 Guidelines vs Obligations

The Group expressed the desire to have a mechanistic process that enforced good practice. Parties are already encouraged to act in a timely fashion and in addition Trading Disputes can have a large effect on Settlement – it is important for them to be raised early.

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

3.2.3 Objective vs Subjective

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

One member of the Group pointed out that the TDC consisted of different members and the makeup of the group has a potential to change on a meeting by meeting basis, which could give inconsistent subjective determination.

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

3.2.4 'Good Practice'⁴ 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. This is because 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.

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

Another Group member expressed the view 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'.

3.2.5 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. (See Annex 4 below)

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

⁴ It was decided that the phrase 'good practice' was not one that should be used in any legal drafting as it is difficult to define. The Group viewed good practice as timeliness in the identification of potential errors.

- 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.

3.2.6 Trigger

The Group considered what the trigger for timescales to be measured against should be. 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.

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 could not come to a majority decision about what should constitute the trigger for detection of a Settlement error by a Party i.e. how a Party can demonstrate that they have noticed a problem within the correct time frame. The Group were divided between those (a minority) who believed that informal proof of detection would be adequate and those (a majority) who felt that formal proof of detection ought to be required. The majority however, were split as to what constitutes formal proof of detection, a help desk call to a BSC Agent or Party Agent or submission of a Trading Query form. This issue will have to be resolved during the Assessment Procedure.

The Group could not agree as to what form the trigger should take

The exact form of the trigger will be considered during the Assessment of P131

3.2.7 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.

The Group discussed the initial materiality criterion. A majority of the Group agreed with a majority of the consultation respondents, that there should be an initial materiality criterion. To support this they claimed that this would act to filter out vexatious and frivolous disputes. One member of the Group disagreed and considered that an initial materiality criterion was undesirable. Parties may submit a simple initial test case Trading Dispute of low materiality to see what the TDC judgement would be and have a large more complex case of significant materiality that they will only raise as a Dispute if the original judgement was positive. Thus there could be an efficiency gained by having no initial materiality threshold, only a final one, for rectification. Parties may also want to raise a Dispute for an error of low materiality as a matter of principle. In addition, there are already guidelines that should deter Parties from submitting frivolous disputes by Parties in Section W3.3.2 of the Code. 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 – this was not considered a suitable way of dealing with the issue and may be considered bad practice. The Group discussed these opinion and in view of the benefits gained by not having an initial materiality criterion, and the existence of a final materiality criterion, a majority of the Group agreed that an initial materiality criterion was unnecessary.

After some discussion the Group agreed that there should not be an initial materiality criterion

The Group was unanimous in support of the existence of a final materiality criterion that is objective and in some way cost reflective. One member of the Group thought that there should be a single threshold set at an amount that would reflect the cost of a Post-Final Reconciliation Run or an Extra Settlement Determination as well as potentially TDC and BSCCo costs. Several members of the Group supported the introduction of a dual threshold that would depend on whether the error is rectified as part of a timetabled Settlement Run or as part of a Post-Final Reconciliation Run or an Extra Settlement Determination. The former would have a low (hence cost reflective) materiality threshold and the latter a threshold reflective of the cost of undertaking such runs. Discussion ensued as to how to decide which materiality threshold a Dispute would pertain to and how the amount of the higher materiality threshold would be decided. It was thought that if a Party raised the Dispute at RF – [xD] they would only have to pass the lower threshold and if they raised it after that date they would have to pass the higher materiality threshold. The higher threshold could reflect BSC Agent costs/charges and/or the cost to Parties. One member of the Group commented that it would still be dependent on when the TDC could resolve the Trading Dispute as to whether it could be rectified at RF. Therefore the timescales for the thresholds would require careful consideration. A majority of the Group supported an objective dual threshold final materiality criterion. The exact form of this will be decided during the Assessment Procedure.

The Group agreed that there should be a final materiality criterion

The exact form of the final materiality criterion will be discussed as part of the Assessment of P131

3.2.8 Criteria

The Group considered whether having criteria would affect any other tools that the industry has to ensure compliance. For example, they considered 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 the Party need to raise a Trading Query.

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

All numbers indicated 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 for Pre-Final Trading Disputes is RF -40.

2) Only allowed to rectify a Settlement error, e.g. an ECVAA 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).

Several members of the Group were dissatisfied with the exact form of the criteria for example the length of time allowed for Suppliers to raise certain types of Trading Disputes. It was pointed out that the criteria as they appeared in the consultation document were provisional in nature and their exact form is an issue for the Assessment Procedure.

A majority of the Group agreed with the way the timeliness criteria would be drafted.

The exact form of the timeliness criteria will be discussed as part of the Assessment of P131

3.2.9 BSCCo's Role

The Group considered whether there should be different criteria applicable to BSCCo or whether the same criteria should apply to all Parties. A member of the group felt that since BSCCo 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 contacting the ELEXON Helpdesk or notifying their BSC Agent who would notify BSCCo of a Settlement error and BSCCo would be obliged to raise it. After some discussion the Group unanimously agreed that BSCCo should have to fulfil the same criteria as other Parties, since although BSCCo could help a disadvantaged Party by noticing an

error in Settlement that the advantaged Party has not raised, the potential consequences – that Parties may use BSCCo to side-step the criteria – were considered to be unacceptable.

The Group agreed that criteria should apply to all Parties alike (i.e. including BSCCo)

3.2.10 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 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 agreed that the Panel and arbitration processes should remain in principle.

3.2.11 Exceptional Circumstances

The inclusion of a clause catering for exceptional circumstances was discussed. The Group divided these into two categories, technical and situational. The technical one would cater for the situation in which a Trading Dispute was raised regarding a data type or process not included in the list of criteria. The situational one would cater for the case where, although the Trading Dispute was raised about a data type or process included in the criteria, there are extenuating and unforeseen states of affairs, for example sudden departure of a staff member or a lightning strike. There was majority support for the inclusion of a technical exceptional circumstance type clause and some interest in exploring the situational exceptional circumstance clause especially as regards their legal implications.

One member of the Group suggested that for exceptional circumstances a precedent register could be kept and potentially published without confidential details on the website so the industry would be aware of precedents set.

The Group decided a technical exceptional circumstance clause should be included but could not agree as to the inclusion of a situational exceptional circumstance clause.

The exact form of the clause(s) will be discussed as part of the Assessment of P131

3.2.12 P107

P107 aims to reduce the limit for raising a Trading Dispute from 36 to 20 months. P107 is due for implementation in November 2003 and was noted by the P131 Modification Group.

3.2.13 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.

3.2.14 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).

3.2.15 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).

3.2.16 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 questioned whether encouraging prompt rectification was within the scope of P131. The member stressed the importance of this and pointed out that if rectification takes a long time affected Parties 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.

3.2.17 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

3.2.18 Modification Group Membership

The Group requested that additional non-TDC members were included for the P131 Assessment Procedure. Invitations to potential additional members of the P131 Modification Group are being sent out.

4 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

No Transmission Company analysis was sought.

5 SUMMARY OF BSC AGENT IMPACT ASSESSMENTS

No impact analysis undertaken

6 SUMMARY OF EXTERNAL ADVICE

No external advice was sought.

7 PROCESS, TIMETABLE AND COSTS FOR PROGRESSING THE MODIFICATION PROPOSAL

The Modification Group recommends that this Modification Proposal be submitted to the Modification Group for Assessment. The Modification Group should be actioned to provide its report to the Panel by 11/12/03.

The Definition Procedure is considered complete as it is now possible to write the Proposed Modification in plain English (Section 1.2). The issues identified as being crucial to the successful completion of the Definition Phase have been covered and concluded on. The outstanding issues will be discussed during the Assessment Procedure in addition to considering whether P131 better facilitates the Applicable BSc Objectives. A draft legal text will also be prepared.

The P131 Modification Group will need to meet 4 times over the next 3 months see Annex 3.

An estimated budget was established and included in the initial written assessment to encompass the cost of BSCCo man days and 3rd party costs. Following completion of the Definition Procedure there is a need for minor revisions to be made to the budget for progressing the Modification Proposal mainly due to a change of Lead Analyst.

8 DOCUMENT CONTROL

8.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	26/08/03	Dena Harris	Roger Salomone	
0.2	28/08/03	Dena Harris	Modification Group	

8.2 References

Ref	Document	Owner	Issue date	Version
1	P131 initial Written Assessment	ELEXON	04/07/03	1.0

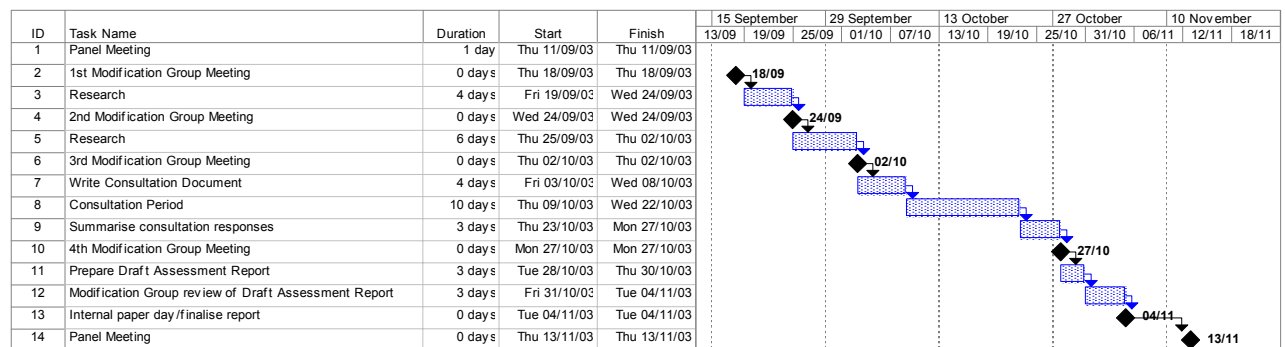
ANNEX 1 MODIFICATION GROUP DETAILS

Name	Position	Member	E-mail	17/07	23/07	22/08
Justin Andrews	Chairman	Y	Justin.Andrews@elexon.co.uk	Y	Y	N
Roger Salomone	Chairman	Y	Roger.Salomone@elexon.co.uk	N	N	Y
Dena Harris	Lead Analyst	Y	Dena.Harris@elexon.co.uk	Y	Y	Y
Claire Maxim	Powergen	Y	Claire.Maxim@pgen.com	Y	Y	N
Mark Thomas	Innogy	Y	Mark.THOMAS.3@INNOGY.COM	Y	Y	Y
Mark Manley	BGT	Y	Mark.Manley@centrica.co.uk	Y	Y	Y
Maurice Smith	Campbell Carr	Y	m_smith@campbellcarr.co.uk	N	N	N
Steve Dodd	Scottish Power	Y	Steve.dodd@dataserve-uk.com	N	Y	N
Marie Branch	International Power	Y	marie.branch@natpower.com	Y	Y	N
Andrew Colley	Scottish and Southern	Y	andrew.colley@scottish-southern.co.uk	N	Y	Y
Martin Mate	British Energy	Y	martin.mate@british-energy.com	Y	Y	Y
Dave Dunton	National Grid	Y	Dave.Dunton@uk.ngrid.com	Y	N	N
Bob Brown	Cornwall Consulting	Y	robert.brown13@tiscali.co.uk	N	Y	Y
Tim Roberts	Scottish Power	N	tim.roberts@manweb.co.uk	N	N	N
Man Kwong Lui	Scottish Power	N	MAN.KWONG.LIU@saic.com	Y	N	Y
Paul O'Donovan	Ofgem	N	Paul.ODonovan@ofgem.gov.uk	Y	Y	N
Jerome Williams	Ofgem	N	Jerome.Williams@ofgem.gov.uk	N	N	Y
Gwilym Rowlands	ELEXON	Y	Gwilym.Rowlands@elexon.co.uk	Y	Y	N
David Ahmad	ELEXON - Legal	Y	David.Ahmad@elexon.co.uk	N	Y	N
Dave Wilkerson	ELEXON - TDC	Y	Dave.Wilkerson@elexon.co.uk	Y	Y	Y

ANNEX 2 CONSULTATION RESPONSES

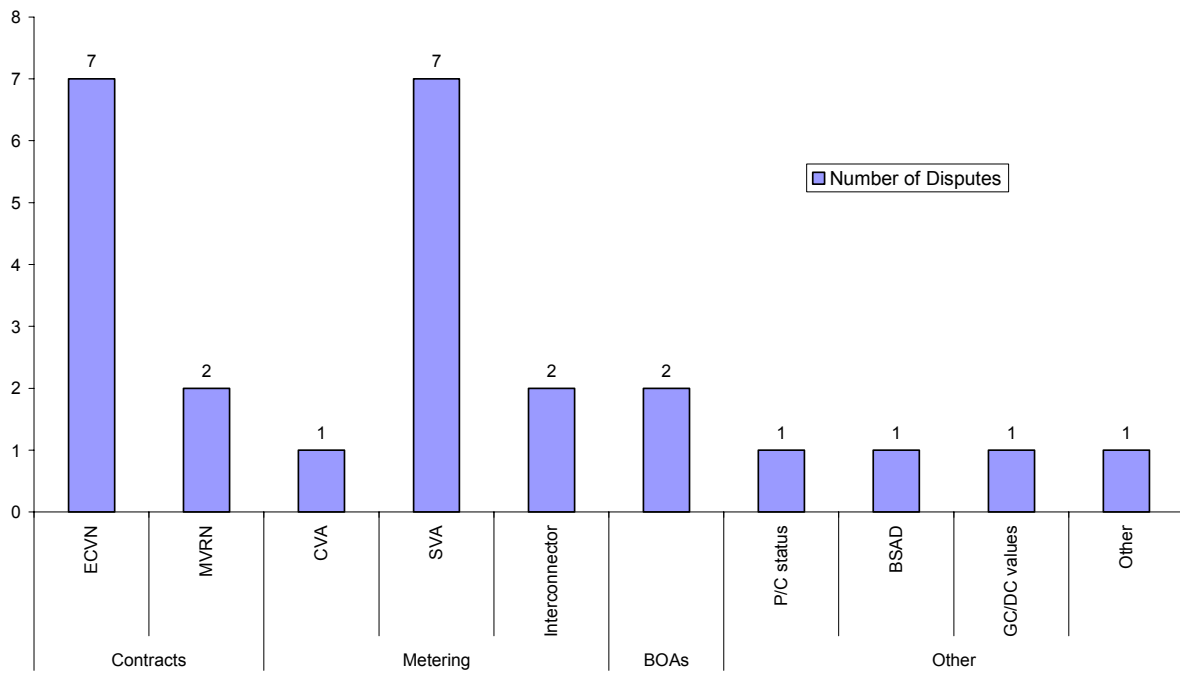
See attached document

ANNEX 3 P131 TIMETABLE



ANNEX 4 GRAPHS

Disputes heard by the TDC in the last 12 months



Queries raised in past 12 months

