

INITIAL WRITTEN ASSESSMENT for Modification Proposal P129

Changes to Panel Determination Process and Panel Election Procedures

Prepared by: ELEXON Limited¹

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This document has been distributed in accordance with Section F2.1.10² of the Balancing and Settlement Code.

RECOMMENDATIONS

On the basis of the initial assessment BSCCo recommends that the Panel should:

- **DETERMINE that Modification Proposal P129 be submitted to the Assessment Procedure in accordance with Section F2.6 of the Code;**
- **AGREE the Assessment Procedure timetable such that the Assessment Report be submitted to the Panel for consideration at its meeting on 11 September 2003;**
- **DETERMINE that the Assessment Procedure should be undertaken by the Governance Standing Modification Group; and**
- **AGREE any refinement to the Modification Group Terms of Reference.**

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¹ ELEXON Ltd currently fulfils the role of the Balancing and Settlement Code Company ('BSCCo'), pursuant to Annex X-1 of the Balancing and Settlement Code.

² The current version of the Balancing and Settlement Code can be found at www.elexon.co.uk/ta/bscrel_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as BSCCo has been able to assess, the following parties/documents have been initially identified as being potentially impacted by Modification Proposal P129³, and are shown as shaded boxes.

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

Estimated cost for progressing P129 through the Modification Procedures	£8,500 66 ELEXON man days
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1 DESCRIPTION OF PROPOSED MODIFICATION

1.1 Modification Proposal

Modification Proposal P129 "Changes to Panel determination process and Panel election procedures" ("P129") was raised on 7 May 2003 by Powergen UK.

P129 seeks to revise the Panel election procedures and introduce powers to the Panel to make determinations on Modification Proposals.

The Proposer believes that the duration of the current Modification Procedure decision-making process is too long and as a result the implementation of Modification Proposals is often unnecessarily delayed. Hence P129 seeks to transfer authority for determinations from the Authority to the Panel where there is a "substantial majority" decision.

The Panel election procedures that P129 seeks to address are those for the election of Panel Members by Trading Parties ('industry Panel Members'), pursuant to Section B2.2 of the Balancing and Settlement Code (the 'Code'). The Proposer believes that the current process for electing industry Panel Members results in the Panel being unrepresentative of the cross section of the industry.

Presently, the Balancing and Settlement Code Panel (the 'Panel') makes *recommendations* on each Modification Proposal in a Modification Report, which is sent to the Authority for determination. Modification Proposal P129 seeks to transfer the decision-making powers, regarding whether or not Modification Proposals should be approved, from the Authority to the Panel. The Proposer adds the caveat that Modification Proposals should be referred to the Authority for decision in the event that a "substantial majority" of the Panel cannot agree.

The Proposer qualifies "substantial majority" as 7 votes out of 9 voting Panel Members (or 7 votes out of 10 if the Panel Chairman has appointed an additional industry Panel Member pursuant to Section B2.6.1).

The Proposer believes that enabling the Panel to make determinations on Modification Proposals, where there is "substantial majority" agreement will streamline the Modification Procedures, and hence better facilitate the Applicable BSC Objective (d) by promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

The Proposer recognises that the Panel has no jurisdiction over other industry documents, such as the Grid Code, for example and that some Modification Proposals would require amendments to other industry documents. Modification P129 proposes that in such cases, the Panel would "conditionally approve" a Modification Proposal. This is discussed further in section 1.2 of this initial assessment report.

The Proposer believes that Panel recommendations do not always reflect the views of a cross section of the industry, and that they should do so. If the Panel were to make determinations instead of recommendations, as proposed in P129, then the constitution of the Panel is of primary concern. In light of this, the Proposer has proposed revisions to the Panel election procedures for Panel Members appointed by Trading Parties, pursuant to Section B2.2, specifically a constituency-based annual election process that employs a 'first past the post' approach. The Proposer believes these revisions to the Panel election procedures would result in a more transparent, easier to understand process that would enhance the legitimacy of the Panel, accelerate determinations and result in the prompt rejection of non-viable Modification Proposals. The Proposer believes that if P129 were made, the Authority would be able to refocus its resources on more complicated or controversial Modification Proposals that would be passed to it due to a lack of a majority decision by the Panel.

The Proposer does not intend to alter the requirement of impartiality on Panel Members, pursuant to Section B2.8.1(a), but to ensure that the Panel represents as diverse and broad a base of experience as possible. The Proposer believes that the constituency-based election process is the best way to achieve this.

P129 does not seek to change the process, pursuant to Section F2.11.9, whereby the Panel apply to the Authority to change the Implementation Date of Approved Modification Proposals.

1.2 Issues raised by the Modification Proposal

Legal advice has been sought on a number of issues that have arisen in relation to the element of Modification Proposal P129 that proposes the Panel be granted the power, where there is a substantial majority agreement of the Panel, to make decisions to approve or reject Modification Proposals. A summary of the legal advice is contained in section 1.2.1.

An initial assessment of Modification Proposal P129 has identified the following potential areas of impact and issues, which will need to be considered and addressed in progressing the Modification Proposal.

- Revised election procedures
- Transmission Company role in Code Modifications
- Process for establishing 'constituency' class
- Panel power to make determinations on Modification Proposals
- Entitlement to raise a Modification Proposal
- Appeals process
- Substantial majority
- Quorum

These issues will need consideration and assessment by the Modification Group and are further outlined in the following sections 1.2.1 to 1.2.12.

1.2.1 Legal advice on the validity of the Modification Proposal

Legal opinion was sought on the validity of this Modification Proposal, due to the need to address the following concerns:

- Whether Modification Proposal P129 should be submitted directly to the Report Phase on the basis that it:
 - is not a "legitimate" Modification Proposal as it proposes something that is subject to a change to the Electricity Transmission Standard Licence Conditions (the "Transmission Licence"); and
 - it proposes something that is contrary to the Transmission Licence, and manifestly cannot therefore better facilitate Applicable BSC Objective (a).
- Modification Proposal P129 involves issues in relation to the Authority's duty under the Electricity Act 1989 (as amended) ("the Act"), and should such regulatory issues be more appropriately dealt with by the Department of Trade and Industry (the "DTI") as opposed to a Modification Group.
- Modification Proposal P129 could be viewed as contrary to the duties of the Authority under the Act and therefore the Authority may not be able to determine upon the proposal owing to a conflict of interest.

Legal advice has stated that it would be inappropriate to submit Modification Proposal P129, at this stage, directly to the Report Phase. The Panel may only submit Modification Proposals to the Report

Phase at this stage, if the proposal is of a minor or inconsequential nature and/or the Panel's recommendation would be self-evident. It is clear that Modification Proposal P129 is not of a minor or inconsequential nature, therefore an analysis has been undertaken as to whether any Panel decision could be "self-evident".

There is nothing inherent in the Code, that of itself, justifies depriving a Party of the opportunity for Modification Proposal P129 to undergo the Assessment Procedure and the accompanying industry consultation process. As a matter of policy, consideration should be given to the fact that there have been previous Modification Proposals that were dependent on a change to the Transmission Licence, and which were afforded the opportunity to undergo the Modification Procedure, for example, P28.

On the matter of whether or not Modification Proposal P129 cannot manifestly better facilitate Applicable BSC Objective (a), this still does not preclude the possibility (if this argument is accepted), that it may better facilitate the other Applicable BSC Objectives. In addition, it is not appropriate at this stage to undertake an evaluation of Modification Proposal P129, in the context of Applicable BSC Objective (a). Secondly, if the argument is accepted that any Modification Proposal that is subject to a consequent change to the Transmission Licence, manifestly does not better facilitate Applicable BSC Objective (a), this would mean that a Party could never propose a change reliant on a change to the Transmission Licence.

It should also be noted that an element of Modification Proposal P129 is to revise the Panel election procedures. Therefore, on this basis, and bearing in mind the foregoing viewpoints, it is not appropriate, in the present case, that Modification Proposal P129 should be directly submitted to the Report Phase.

The Modification Group under Section F of the Code, as part of its evaluation of and report on Modification Proposal P129 must consider the "statutory, regulatory and contractual framework within which the Code sits (taking account of relevant utilities, competition and financial services legislation)" in reaching a decision on whether a Modification Proposal (or a particular alternative), better facilitates the Applicable BSC Objectives.

It may be that the Authority could take the view that Modification Proposal P129 is contrary to a particular objective under statute, however this does not prevent Modification Proposal P129 being afforded the opportunity to undergo the Assessment Procedure.

1.2.2 Revised Election Procedures

The Proposer suggests that the Panel elections be carried out on an annual basis in August, as opposed to every two years as is currently the case, pursuant to Section B2.7.3. Modification Proposal P129 contains specific suggestions for the Modification Group to consider when assessing the benefits and drawbacks of a constituency-based election process. The Proposer suggests that each trading party group would be permitted to cast two votes in its designated constituencies, and the criteria by which Parties are categorised are as follows:

Small Supplier constituency

One vote would be allocated if the annual metered energy offtake by a trading party group is "greater than zero TWh and less than [25] TWh" [sic], except where the trading party group is allocated a vote since its annual energy metered offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group.

Small generator constituency

One vote would be allocated if annual metered energy delivered by a trading party group is "greater than zero TWh and less than [10] TWh" [sic], except where the annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group.

Large Supplier constituency

One vote would be allocated if annual metered energy offtake by a trading party group is “more than [25] TWh⁴”, except where the trading party group’s annual metered energy offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group.

Large generator constituency

One vote would be allocated if annual metered energy delivered by a trading party group is “more than [10] TWh⁵” except where the trading party group’s annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group.

Trading constituency (Representing ‘pure’ traders (two votes) and net purchasers or sellers of electricity (one vote))

- One vote allocated if a trading party group’s annual metered energy offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group (the ‘Electricity Seller Vote’).
- One vote allocated if a trading party group’s annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group (the ‘Electricity Buyer vote’).

The term “trading party group” is defined in Annex B-2 paragraph 3.1.5 of the Code to mean a Trading Party and every Affiliate of that Trading Party.

The constituency voting system would allow a larger Party with diverse interests to vote in several constituencies, whereas the smaller Parties with less broad interests would have fewer voting rights in the different voting constituencies. It should be noted, however, that having a vote within a smaller constituency will give that Party a greater weighting to their vote. The Modification Group will need to consider the implications of this when assessing P129.

The current voting system for electing Panel Members by Trading Parties, such that voting Parties should indicate first, second and third preferences, would be replaced by a system where Trading Parties only give one preference. Elected Panel Members are, therefore, the first preference for the highest number of constituency voters that they will represent. Allowing each constituency to elect a Panel Member will, the Proposer believes, ensure that a wider cross section of the industry will be represented by the Panel, the body which is making the determination on whether or not Modification Proposals are approved. It is assumed that the constituency-based election process will have a direct, as yet undefined, impact on the nominations process. This will need to be fully assessed during the progression of P129.

The Modification Group will need to consider the implications of changing the voting system for the industry Panel Members. Preference voting is designed to ensure that the most acceptable representation within the 5 industry Panel Member places is achieved. The constituency-based Panel election system, advocated by the Proposer, would mean that Parties must in effect chose only one person to represent them in each of the constituencies to which they belong. This system would increase the probability that Parties succeed in electing one member they would most like to be an industry Panel Member, but would decrease the Parties’ involvement in electing a wider range of Panel Members.

The Modification Group will need to consider the implications of this and whether this revised election process better facilitates the Applicable BSC Objectives. The Modification Group will also need to

⁴ The Proposer has, subsequently to submitting the Modification Proposal, clarified the definition of a Large Supplier constituency to be as written in this section.

⁵ The Proposer has, subsequently to submitting the Modification Proposal, clarified the definition of a Large Generator constituency to be as written in this section.

consider the process should two constituencies elect the same candidate. P129 does not directly seek to amend the process for appointment of the 2 Panel Members by energywatch, pursuant to Section B2.3, or the process by which the Panel Chairman may appoint further Panel Members, pursuant to Section B2.5 and B2.6. The Proposer, however, suggests that the Modification Group also consider how changes to the way the remaining Panel members are appointed by energywatch/the Panel Chairman might better improve the industry representation by the Panel. The Modification Group addressing P129 will need to consider these two conflicting points.

In addition, the Proposer requests that the Modification Group consider whether or not the Proposed Modification should seek to increase the number of industry Panel Members.

Although the Proposer states that he does not seek to bring an end to the impartiality of the Panel members, pursuant to Section B2.8.1(a), BSCCo believe that the implications of constituency-based election procedures on the issue of Panel Member impartiality, should be examined by the Modification Group. Section B2.8.1(b) stipulates that Panel Members shall not be representative of, and shall act without undue regard to the particular interest of the body, person or persons by whom they were appointed. It could be argued that the constituency-based election process suggested by the Proposer, particularly where votes are published, is not in accordance with this clause. The Modification Group will need to consider this during the Assessment Procedure.

1.2.3 Transmission Company Role in Code Modifications

Currently, the Authority directs the Transmission Company to make modifications to the Code. Consequently, the Transmission Company notifies BSCCo, pursuant to Section F1.1.2, that a change to the Code has been approved and BSCCo will complete and publish the necessary changes to the Code. If P129 were approved, Section F1.1.2 in the Code, as well as Condition C3.5(b) of the Transmission Licence would need to be amended. Modifications to licences are progressed by the Authority in accordance with its statutory duties. In place of Section F1.1.2, the legal text would need to stipulate a process by which the Panel would notify BSCCo to make the complete change to the Code and to publish such notice to the Parties listed in Section F1.1.2(b).

1.2.4 Process for establishing 'constituency' class

The Proposer suggests that each trading party group would declare which constituencies it believed it belonged to. This information would be circulated by BSCCo and could be challenged by other Parties should they disagree with the categorisation. The Proposer suggests that BSCCo would act as an arbiter for any alleged discrepancies or erroneous declarations. This introduces a new level of validation of the Trading Party constituencies, which does not exist in the current process. Consideration will also be required as to whether such validation should be referable to the Authority.

The Proposer believes that publishing the number of votes cast for each candidate would be in line with an open and transparent process. Currently, the Code does not permit BSCCo to disclose the preference votes cast by Trading Parties or received by candidates (pursuant to Section B3.2.5). The Modification Group will need to consider whether or not publishing this information would compromise the Panel Members impartiality. It would also need to determine whether or not disclosing this information better facilitates the Applicable BSC Objectives.

1.2.5 Panel power to make determinations on Modification Proposals

A central feature of P129 is that the Panel would be empowered to make decisions on Modification Proposals. This power is currently reserved for the Authority, and the Modification Group will therefore be required to assess whether this significant change in industry governance better facilitates the Applicable BSC Objectives. In addition, there are a number of detailed implications of such a change to be considered, and which are listed in the following sections:

Wider Statutory Obligations

Currently, the Authority is able to consider the implications of Modification Proposals in the context of the regulatory and statutory frameworks within which it operates, as well as between competing Modification Proposals. The Authority is able to manage and oversee any changes through the timing of its decisions. If the responsibility for determining whether or not Modification Proposals are made were to fall to the Panel, it would not, as compared with the Authority, be able to fully consider the wider context of its determinations (for example, utilities regulation in general), since the Panel is currently confined to considering whether a Modification Proposal would better facilitate the achievement of the Applicable BSC Objectives (which can be found in the Transmission Licence in section C3).

Conditional Approval

It should be noted that the Panel is not entitled to direct changes to other industry documents, though it can and does draw attention to the dependence of a particular Modification Proposal on consequential changes elsewhere. If a modification to the Code was dependent on a change to terms set out in a non-BSC document, the Proposer suggests that the Panel should be entitled to "conditionally approve" the Modification Proposal if a "substantial majority" agrees. Such conditional approval would include an Implementation Date linked to such a change (e.g. decision date 'X' plus 'Y' months). However, it is not clear that if "conditional approval" with a dependency is given, when and how the relevant processes to change the other documents would be delivered.

All Code-related documents are referenced to the current baseline of the Code. If conditional approval of Modification Proposals were to happen there would be several – perhaps many - versions of the Code to which the Code Modifications would need to be referenced. When further developing the solution for P129, the Modification Group will need to assess the best process to facilitate "conditional approval" suggested by the Proposer.

Competing Modification Proposals

Currently, Modification Proposals which address the same defect but propose different solutions must be assessed by the Panel independently of each other as to whether or not they better facilitate the Applicable BSC Objectives. A situation has previously arisen in the Report Phase where the Panel believed that each of the Modification Proposals under consideration better facilitated the Applicable BSC Objectives. This meant that even where the Panel had a preference for one solution over the other, it was obliged to recommend to the Authority that both were made leaving the Authority to determine which (if any) modification to the Code should be made.

If the Panel, rather than the Authority, is to make determinations on whether or not Modification Proposals are made, the Proposer suggests that any competing proposals presented to the Panel for determination at the same Panel meeting, should be assessed by the Panel as to which *best* facilitates the Applicable BSC Objectives. In such circumstances, only the proposal that best meets the Applicable BSC Objectives could be approved by the Panel under the "substantial majority" rule.

1.2.6 Entitlement to raise a Modification Proposal

Section F2.1 stipulates who may raise a Modification Proposal. One of the parties who are entitled to, pursuant to 2.1.1(d), is the Panel. If P129 were to be approved the Panel would be entitled to raise a Modification Proposal, and also have the power to determine whether or not it should be made. The implications of this on the role of the Panel will need to be assessed by the Modification Group.

1.2.7 Appeals process

The process by which an Approved Modification is currently appealed is by way of an application for Judicial Review. The Modification Group would need to consider the process, if any, by which Parties

could appeal a decision regarding a Modification Proposal when the decision has been made by the Panel as opposed to the Authority.

Whether or not the Panel should seek the views of the Authority, prior to making its decision, will need to be assessed, as well as whether or not the Authority would have the power to overturn a decision by the Panel in respect of Code Modifications. If the latter were true, the grounds on which this could happen, and the implications thereof, would need to be considered.

1.2.8 Substantial Majority

In P129 the Proposer stipulates that by “substantial majority” he means 7 out of 9 voting Panel Members (or 7 out of 10 if the Panel Chairman has appointed an additional Panel Member pursuant to Section B2.6). However, in relation to Modification Proposals relating to Section F, the Panel Member appointed by the Transmission Company is not entitled to cast a vote, pursuant to Section B4.4.5. Therefore, the Modification Group will need to add a caveat in respect of this in any legal text in which a “substantial majority” is defined.

1.2.9 Quorum

Section B4.3.1 states that no business shall be transacted at any Panel meeting unless a “quorum” is present. Section B4.3.2 states that a “quorum” shall be more than 50% of all Panel Members (or their Alternates). The Panel constitutes 10 or 11 Panel members (not including the Panel Chairman). The quorum therefore constitutes 6 people. This figure is lower⁶ than the substantial majority, as defined by the Proposer, that is required to make a determination on a Modification Proposal. The Modification Group will need to consider the implications of this issue when assessing P129. There would also be implications for Section B4.6 and B5.7.

2 INITIAL ASSESSMENT OF IMPACTS OF MODIFICATION PROPOSAL

2.1 Impact on BSC Systems and processes

No impacts have been identified.

2.2 Impact on other systems and processes used by Parties

No impacts have been identified.

2.3 Impact on documentation

2.3.1 Impact on Balancing and Settlement Code

An initial assessment has been undertaken in respect of all Sections of the Code and the following Sections have been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
Section F	There may be significant changes to Section F. This Section deals with the process for modifying the Code and P129 seeks to change to the process for approving/rejecting Modification Proposals. Paragraphs that have been initially identified as being

⁶ Notwithstanding the possibility that Panel Members not in attendance may have appointed an Alternate from those Panel Members present, it is possible that there will be a sufficient number of Panel Members to transact business, but an insufficient number (including votes by Alternates) to reach a substantial majority as set out in P129.

	<p>potentially impacted are:</p> <table> <tr> <td>1.1.2</td> <td>1.1.4</td> <td>1.2.2(b)</td> </tr> <tr> <td>1.3.3(c)</td> <td>1.3.5 (a)</td> <td>1.4.1</td> </tr> <tr> <td>1.4.3</td> <td>1.6.2</td> <td>1.7.1</td> </tr> <tr> <td>1.7.2</td> <td>2.1.1</td> <td>2.1.5</td> </tr> <tr> <td>2.2.3</td> <td>2.2.4</td> <td>2.2.8</td> </tr> <tr> <td>2.2.9</td> <td>2.6.10</td> <td>2.7.6</td> </tr> <tr> <td>2.7.6A</td> <td>2.9.4</td> <td>2.9.5</td> </tr> <tr> <td>2.11.7</td> <td>2.11.8</td> <td>2.11.9</td> </tr> </table>	1.1.2	1.1.4	1.2.2(b)	1.3.3(c)	1.3.5 (a)	1.4.1	1.4.3	1.6.2	1.7.1	1.7.2	2.1.1	2.1.5	2.2.3	2.2.4	2.2.8	2.2.9	2.6.10	2.7.6	2.7.6A	2.9.4	2.9.5	2.11.7	2.11.8	2.11.9
1.1.2	1.1.4	1.2.2(b)																							
1.3.3(c)	1.3.5 (a)	1.4.1																							
1.4.3	1.6.2	1.7.1																							
1.7.2	2.1.1	2.1.5																							
2.2.3	2.2.4	2.2.8																							
2.2.9	2.6.10	2.7.6																							
2.7.6A	2.9.4	2.9.5																							
2.11.7	2.11.8	2.11.9																							
Section B	<p>There may be considerable modification needed to this Section as it stipulates the processes by which the Panel is appointed. Paragraphs that have been initially identified as being potentially impacted are:</p> <table> <tr> <td>1.1.2</td> <td>2.7.3</td> <td>2.8.1</td> </tr> <tr> <td>3.1.2</td> <td>4.4</td> <td></td> </tr> </table>	1.1.2	2.7.3	2.8.1	3.1.2	4.4																			
1.1.2	2.7.3	2.8.1																							
3.1.2	4.4																								
Annex B-2	<p>"Election of Industry Panel Members" will require significant amendment.</p>																								

2.3.2 Impact on Code Subsidiary Documents

An initial assessment has been undertaken in respect of all Code Subsidiary Documents and the following document has been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
BSCP76 "Submission of Modification Proposals"	May need to be amended.

2.4 Impact on Core Industry Documents

No impacts have been identified.

2.5 Impact on other configurable items

No impacts have been identified.

3 IMPACT ON BSCCO

An initial assessment has been undertaken in respect of BSCCo and the following have been identified as potentially being impacted by the Modification Proposal.

Area of Business	Potential Impact of Proposed Modification
BSCCo Systems	<ul style="list-style-type: none"> ▪ The Guidelines for the Panel Election Process and the Guidelines for the Panel Process, the local working instructions for the Voting Database will be impacted. ▪ Probable impact on the election voting database, which is currently configured to reflect 2 votes per Trading Party/trading party group and will have to be

Area of Business	Potential Impact of Proposed Modification
	<p>amended/replaced to reflect the sub-divisions of voting constituencies and revised vote allocations.</p> <ul style="list-style-type: none"> ▪ There may be an impact on the Finance Department, depending on the solution, in that it may be used as a source of information for the consumption or production data that BSCCo would use if a Party challenged the "Constituency" status of another. ▪ Annual Panel elections, new Panel election processes and different processes to challenge appointment of Parties to constituencies will require significantly more administrative work for BSCCo. ▪ There may be additional work required to publish the guideline for, and results of, the Challenge process. ▪ New internal processes for submitting Modification Reports to the Panel for decision, and of notifying Parties of decisions would need to be implemented. ▪ The Modifications Register, Status Report and Change Report would need to be amended to reflect new decision-making processes. ▪ Local Work Instructions (LWIs) and Key Performance Indicators (KPIs) would need to be revised. ▪ The current process for notifying Parties of Authority decisions would need to be amended to reflect the new decision-making process. The new process would need to be communicated to industry, and BSCCo may have to respond to a high number of enquiries. ▪ It is anticipated that new responsibilities on the Panel with regard to the Modification Process may prolong discussions and increase the requirement for BSCCo Panel support resources. ▪ The Modification area of the BSC Website may need to be amended to reflect the new Governance arrangements. ▪ The obligations register, used by the Assurance Department, may need to be updated. ▪ The ASSYST database, used by the Change Delivery to reflect action types for Panel, rather than Authority, determinations may need to be updated. ▪ There may be an impact on the ELEXON Business Process Model, depending on the solution chosen by the Modification Group.

4 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

No impacts have been identified.

5 RATIONALE FOR BSCCO'S RECOMMENDATIONS TO THE PANEL

BSCCo recommend that the Panel submit P129 to the Assessment Procedure. The Proposer has clearly identified in the Modification Proposal the perceived defect he wishes to address. He has made clear suggestions for the remedy of these defects. However, there are several issues that have been highlighted in this initial assessment, which will need to be assessed by the Modification Group during

the Assessment Procedure. Section F2.6.2 states that the Assessment Procedure should be used to evaluate whether the Proposed Modification identified in the Modification Proposal better facilitates the achievement of the Applicable BSC Objectives and to identify and evaluate against the Applicable BSC Objectives any Alternative Modification.

Due to the fact that the Modification Proposal will involve significant changes to the Modification Procedures, the Panel election process and the role of the Authority, BSCCo believe that 3 or possibly 4 Modification Group meetings will be required. Consideration has been given to the fact that consultation with the industry will take place during the holiday period and more time may be required to ensure sufficient time has been allowed for industry to respond. Therefore, BSCCo recommend that the P129 be submitted to a 3 month Assessment Procedure.

BSCCo also recommend that both P127 and P129 should be submitted to the Governance Standing Modification Group. In order to minimise the number of Modification Group meetings BSCCo recommend that P127 and P129 are progressed in parallel.

6 PROCESS, TIMETABLE AND COST FOR PROGRESSING THE MODIFICATION PROPOSAL

BSCCo recommends that P129 be submitted to the Governance Standing Modification Group for further assessment. The Governance Standing Modification Group should be actioned to provide its report to the Panel by 11 September 2003.

It is estimated that the progression of this Modification will require:

- Four Modification Group meetings
- One industry consultation (14 Working Days, since it will fall during August)
- One detailed level impact assessment (14 Working Days)
- One request for Transmission Company analysis (14 days)

The proposed timetable for progression of this Modification is given in annex 2.

The cost of progressing P129 through the Modification Process is estimated to be £8,500 and to take 66 ELEXON man days.

The cost of implementing any Proposed or Alternative Modification will be determined during the Assessment Procedure.

7 DOCUMENT CONTROL

7.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	29/05/03	Change Delivery	Stakeholder Services	Internal ELEXON review
0.1	29/05/03	Change Delivery	Legal	Internal ELEXON review
0.2	03/06/03	Change Delivery	Change Delivery	Internal ELEXON review
1.0	06/06/03	Change Delivery	The Panel	For Decision

7.2 References

None.

ANNEX 1 MODIFICATION PROPOSAL

Modification Proposal	MP No: 129 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Changes to Panel Determination Process and Panel Election Procedures	
Submission Date <i>(mandatory by proposer):</i> 7 May 2003	
<p>Description of Proposed Modification <i>(mandatory by proposer):</i> The time taken between submission of a proposal to a decision by the Authority varies significantly and can be unacceptably long. In addition Panel recommendations do not always appear to reflect the balance and breadth of views expressed by respondents to modification proposal consultations. This proposal would enable the Panel, where there was a substantial majority agreement, to make decisions to implement or reject modification proposals. At the same time revised procedures for election of Industry Panel Members would mean that a newly elected Panel would be in a better position to reflect the diversity of stakeholder views.</p> <p>Panel Determinations Currently the Panel makes recommendations on each proposal in a Modification Report, which is then sent to the Authority for a determination. Under this proposal, should a substantial majority of the Panel at the Modification Report stage (represented by [7] votes cast out of 9¹ voting members) be in favour or against a proposal, that proposal shall either be implemented or rejected. Only where the hurdle majority has not been reached would the proposal together with a Panel Recommendation be referred to the Authority for a decision.</p> <p>Revised Election Procedures The 'quality' of each of the Panel determinations is dependent on the expertise of Panel members and whether decisions properly reflect the views of industry participants and other key stakeholders. This proposal suggests ways in which the 'quality' of Panel determinations could be improved by ensuring elected Industry Members are drawn from a variety of backgrounds, through the establishment of voting constituencies.</p> <p>The Panel elections would be carried out on an annual basis in [August] each year. Each trading party group (made up of all affiliate companies within a company group) would be permitted to cast two votes in their designated constituency(ies) as specified below:</p> <ol style="list-style-type: none"> 1. <u>Small Supplier Constituency</u> One vote² allocated if annual metered energy offtaken by trading party group is greater than zero TWh and less than [25] TWh 2. <u>Small Generator Constituency</u> One vote³ allocated if annual metered energy delivered by trading party group is greater than zero TWh and less than [10] TWh 3. <u>Large Supplier Constituency</u> One vote² allocated if annual metered energy offtaken by trading party group is greater than zero TWh and more than [25] TWh 4. <u>Large Generator Constituency</u> One vote³ allocated if annual metered energy delivered by trading party group is greater than zero TWh and more than [10] TWh 5. <u>Trading Constituency</u> (Representing 'pure' traders (two votes) and net purchasers or sellers of electricity (one vote)) <ol style="list-style-type: none"> a) One vote allocated if annual metered energy offtaken by trading party group is less than or equal to 50% of the annual metered energy delivered by that trading party group (the 'Electricity Seller Vote'). b) One vote allocated if annual metered energy delivered by trading party group is less than or equal to 50% of the annual metered energy offtaken by that trading party group (the 'Electricity Buyer vote'). 	

¹ An extra additional Industry Member can be appointed by the Panel Chairman under clause B2.6.1.

² Except where criteria 5a applies instead, i.e. where trading party group is a larger wholesale seller than supplier of electricity.

³ Except where criteria 5b applies instead, i.e. where trading party group is a larger wholesale buyer than generator of electricity.

Modification Proposal	MP No: 129 <i>(mandatory by BSCCo)</i>
<p>In the Trading Constituency a 'pure' trader would have two votes (having neither metered deliveries or metered offtakes), suppliers that generate less than 50% of their own consumption one vote and generators that supply to consumers less than 50% of their own production one vote.</p> <p>The current preference voting system would be replaced by a first past the post approach with the candidate with the highest number of votes cast in each constituency being elected. Each trading party group would declare in advance which constituencies it was affiliated to. These declarations would be circulated to the industry so that parties can if necessary challenge constituency electoral rolls. As with the current pre-election process for determining which parties form part of a trading party group ELEXON would investigate any discrepancies or erroneous declarations and if necessary refer to annual metered energy delivered or offtaken in the previous year April to March to establish appropriate constituency membership. Following each election Elexon would publish the number of votes cast for each candidate in each constituency.</p> <p>The proposal does not suggest changes to the process for appointment of the 4 or 5 Panel members by energywatch or the Panel Chairman set out in sections B2.3 and B2.5 respectively. The Modification Group may wish in addition to consider as an alternative whether an increase in the number of Industry Members and or changes to the way in which other Panel members are appointed by energywatch/the Panel Chairman might better address the defect/issue described below.</p> <p>Panel Determinations and their interaction with terms set out in other documents</p> <p>Currently the Authority is able to co-ordinate decisions across various codes and between competing and complimentary proposals, through its discretion in the timing of its decisions. Such flexibility is not available to the Panel, so new measures need to be established to deal with any inter-dependencies across trading arrangement terms set out in other documents.</p> <p>Where implementation of a change is dependent on a change to terms set out in other documents which sit outside the vires of the Panel, the Panel shall be entitled to conditionally approve such a proposal if the hurdle majority is reached. Such conditional approval will state the basis of conditionality e.g. "a change to ABCD methodology to establish XYZ" and an implementation date linked to such a change (e.g. decision date 'D' plus x months). Clearly such a proposal could not be implemented without agreement to implement changes to the relevant non-BSC document.</p> <p>On occasions, as is currently the case, the Panel will not be required to make determinations on competing modification proposals. Should competing proposals be presented to the Panel for determination at the same Panel meeting the Panel will be permitted to decide which of the proposals best facilitates the Applicable BSC Objectives. In such circumstances, only the proposal that best meets the Applicable BSC Objectives could be approved by the Panel under the substantial majority rule.</p> <p>For avoidance of doubt this proposal does not seek to change the impartiality obligations set out in section B 2.8 of the Code, as the constituency election model merely seeks to establish a Panel that is in the best position to reflect the full diversity of views in its determinations.</p> <p>Please also note implementation of this proposal is dependant on changes to Condition C4 clauses 4 and 5 of NGC's Transmission Licence, which specify the form of the BSC Modification process. If the Authority were minded to accept this proposal they would have to consult on changes to these clauses to facilitate implementation of this proposal. This would be a similar approach to that adopted for the establishment of Applicable Balancing Services Volume Data (ABSVD) under NGC's Transmission Licence necessary to facilitate</p>	

Modification Proposal	MP No: 129 <i>(mandatory by BSCCo)</i>
implementation of Modification P71.	
[] The values in square brackets are suggested figures.	
<p>Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i></p> <p>The current modification decision making process is at times unacceptably slow. This can delay implementation of proposals, even when there is clear majority support for reform. The confidence in the quality of Panel determinations and any subsequent Authority decisions is also in doubt if the Panel is not seen to reflect the balance and breadth of industry views. Allowing Panel to make decisions where there is substantial majority agreement will streamline the Modification Procedures and a simpler constituency based election process carried out at annually will ensure the Panel are responsive to prevailing stakeholder opinion.</p> <p>A more transparent and easier to understand election process where outcomes are perhaps less dependent on tactical use of the existing preference voting system will enhance the legitimacy of the Panel.</p>	
<p>Impact on Code <i>(optional by proposer):</i></p> <p>Section B and F.</p>	
<p>Impact on Core Industry Documents <i>(optional by proposer):</i></p> <p>None</p>	
<p>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i></p> <p>None</p>	
<p>Impact on other Configurable Items <i>(optional by proposer):</i></p> <p>None</p>	
<p>Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by proposer):</i></p> <p>By establishing a more 'representative' Panel capable of making quicker determinations on the more straight-forward modification proposals, this proposal <i>will promote efficiency in the implementation and administration of the balancing and settlement arrangements.</i></p> <p>It will provide a 'filter' process to ensure prompt rejection of non-viable proposals (perhaps dissuading parties from submitting frivolous proposals) and will facilitate earlier implementation of changes that have clear substantial majority support. The Authority will be able to refocus its scarce resources on perhaps the one fifth of proposals that continue to be sent to the authority for a determination.</p> <p>Parties will still be able to put forward proposals that challenge the status quo. The establishment of a Panel that genuinely represents a broad range of stakeholder will continue to ensure all proposals get a fair hearing. Indeed if a substantial majority of such a diverse Panel agree a particular change is or is not a good idea they are probably right.</p>	
<p>Details of Proposer:</p> <p style="padding-left: 40px;">Name: Peter Bolitho</p> <p style="padding-left: 40px;">Organisation: Powergen UK plc</p> <p style="padding-left: 40px;">Telephone Number: 02476 42 5441</p> <p style="padding-left: 40px;">Email Address: peter.bolitho@pgen.com</p>	

Modification Proposal	MP No: 129 <i>(mandatory by BSCCo)</i>
Details of Proposer's Representative: Name: Peter Bolitho Organisation: Powergen UK plc Telephone Number: 02476 42 5441 Email Address: peter.bolitho@pgen.com	
Details of Representative's Alternate: Name: Christiane Sykes Organisation: Powergen UK plc Telephone Number: 02476 42 4737 Email Address: christiane.sykes@pgen.com	
Attachments: NO If Yes, Title and No. of Pages of Each Attachment: No	

ANNEX 2 GANTT CHART

