

## Responses from P128 Draft Report Consultation

Consultation issued 20 May 2003

Representations were received from the following parties:

<b>No</b>	<b>Company</b>	<b>File Number</b>	<b>No. BSC Parties Represented</b>	<b>No. Non-Parties Represented</b>
<b>1.</b>	Edison Mission Energy	P128_UC_001	1	0
<b>2.</b>	Powergen	P128_UC_002	15	0
<b>3.</b>	British Gas Trading	P128_UC_003	1	0
<b>4.</b>	Gaz de France Marketing	P128_UC_004	1	0
<b>5.</b>	Aquila Networks	P128_UC_005	1	0
<b>6.</b>	British Energy	P128_UC_006	3	0
<b>7.</b>	Scottish and Southern	P128_UC_007	4	0
<b>8.</b>	EDF Trading Ltd and EDF (Generation)	P128_UC_008	2	0
<b>9.</b>	Scottish Power	P128_UC_009	6	0
<b>10.</b>	Innogy (late response)	P128_UC_010	9	0

## **P128\_UC\_001 – Edison Mission Energy**

This response is submitted on behalf of First Hydro Company

Edison Mission Energy does not support this modification. Gaz de France has purchased the skills and resources of an existing company in order to participate in the trading arrangements and should not be able to receive special treatment because an error has occurred the first time a contract is notified. There is also sufficient information on 'how not to do it' arising from the PNE process that could have been applied to ensure a right first time approach to contract notifications. This modification does not encourage such an approach.

The existing PNE process has highlighted the potential pitfalls related to notifications between a Party's P and C accounts. Given this background, an error that continued for 26 days could not satisfy the 'prudent systems and processes in the light of the circumstances then prevailing' test. GdF would have had around 100 7day-reports, 25 notification reports, 15 settlement reports on which to see the error. P6 should therefore not allow it to be corrected anyway.

The proposed modification is highly tuned to GdF's circumstances - (single party, P/C accounts, 28 days..). Approval of this modification will open the way to special pleading for the many other unique circumstances where contract notifications have gone awry, This is unfair - any such modification should be more general in the errors that it attempts to correct, but still have stringent tests to pass before correction. Irrespective of this, NETA has now been in place for more than two years, allowing further retrospective or prospective claims will reduce confidence in the market.

Libby Glazebrook  
Edison Mission Energy

**P128\_DR\_002 – Powergen**

<b>Respondent:</b>	Powergen UK plc - Peter Bolitho
<b>No. of BSC Parties Represented</b>	15
<b>BSC Parties Represented</b>	Powergen UK plc, Powergen Retail Limited, Diamond Power Generation Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy.
<b>No. of Non BSC Parties Represented</b>	0
<b>Non BSC Parties represented</b>	0
<b>Role of Respondent</b>	Supplier, generator, trader and exemptable generator.

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
	<p>Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ?</p> <p>Please give rationale and state objective(s).</p>	No	<p>Not in its current form. This proposal suggests new entrants will potentially be excused from making errors for up to 28 days from first transacting. Given that it should be possible for any prudent party to discover an error had been made within matter of a couple of hours by simply using the feedback reports from the central systems, this proposal cannot seriously be considered to be viable proposal.</p> <p>Lowering barriers to entry might normally be expected to facilitate competition, but not where this is achieved at the expense of existing players that face identical risks to the new entrants (objective c).</p> <p>Limiting claims (particularly retrospectively) to new entrants (or new transactors) is discriminatory. It is also difficult to understand why claims have been restricted to internal intra-company transactions (i.e. those</p>

Q	Question	Response	Rationale
			<p>controlled and managed by one party) – it would have been better to extend it to trades between counter-parties as well. In addition we fail to understand why new entrants need special treatment especially as they will have had the opportunity to learn from the experiences and mistakes of the established parties that had <u>no choice</u> but to be part of the market at Go-live.</p> <p>We can sympathise with any party that has made a notification error and we agree an ex post notification regime is intrinsically more risky than a regime requiring ex ante submission of notifications. We also believe the requirement to carry out internal transactions between production and consumption accounts is an 'artificial' risk that ideally should not exist.</p> <p>Nevertheless, all parties, whether new entrants or established players have to live with the current rules however illogical they might be. Although we believe it is impossible to eliminate notification errors completely parties can minimise the risk of errors happening in the first place and mitigate their effects if they occur. That is why Powergen proposed that errors could be corrected in exceptional circumstances under P44. Such a proposal acknowledged certain risks were 'unmanageable' and in those circumstances errors should be corrected, whilst others that were totally under the control of the notifying party should not.</p> <p>We believe there is merit in pursuing a modification that allowed for all parties to make claims for all types of ECVN errors both prospectively and retrospectively back to the P37 claims end date. The tests for allowing such claims should be restricted to very exceptional circumstances along the lines of the tests originally defined under P44.</p>

Q	Question	Response	Rationale
			<p><b>For avoidance of doubt answering yes to any of the following questions does not imply any support for P125.</b></p>
	Do you believe the draft Legal Text addresses the defect identified in P128?	Yes	We agree that the legal drafting addresses the <u>alleged</u> defect/issue articulated by the proposer
	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Yes	As stated above there are intrinsic 'unmanageable' risks affecting all players whether they are new or established players. These risks will always be present as long as we have an ex ante notification regime and in our view haven't changed since Go-live. Without a regime that allows parties to claim for Past Notification Errors in very exception circumstances that residual 'unmanageable' risk will remain a cost to all BSC parties whether small or large, new or established players.
	Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.	Yes	New transactors can plan their entry to the market, established players at Go-live had no choice but to enter the market at that time. The errors made by existing players under the P37 claims have been well documented. The information is in the public domain, therefore new entrants have more than enough opportunity to learn from the mistakes of others, especially where this results from those parties failing to have prudent systems and processes in place.
	Do you consider that there is a barrier to enter the market without P128?	No	It clearly didn't stop the proposer entering the market! As stated new entrants have had plenty of opportunity to learn from the mistakes of established players. This already puts them in a better position than established players.
	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	Yes	It would be inequitable to allow a claims for a period under P37 and then prospectively under P125, leaving a gap in between during which claims could not be made.

Q	Question	Response	Rationale
	<p>Do you agree that P128 should be limited</p> <p>a) retrospectively</p> <p>b) prospectively</p> <p>to new internal transactors?</p>	No	<p>We believe there is merit in pursuing a modification that allowed for all parties to make claims for all types of ECVN errors both prospectively and retrospectively back to the P37 claims end date. However, the tests for allowing such claims should be restricted to very exceptional circumstances along the lines of the tests originally defined under P44.</p>
	<p>Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?</p>	Yes	<p>Provided such claims are restricted to very exceptional circumstances along the lines of the tests originally defined under P44.</p>
	<p>The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?</p>	Yes	<p>It is a reasonable way of defining a 'new transactor' but it can hardly be a definition of a new entrant, as a parties could have entered the market quite some time ago without carrying out the transactions as described.</p> <p>If this is proposal is genuinely about giving support for new entrants who are learning the ropes I think we need to bolster the legal drafting to prevent parties simply reinventing themselves to gain new transactor status. The Panel should only allow claims from genuine new transactors and not organisations whose employees or predecessor organisation have been involved in such transactions in the past.</p>
	<p>Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?</p>	No	<p>It is perverse that the proposal gives special treatment for internal intra-company transactions. These are transactions but they are entirely controlled and managed internally – hardly grounds for special treatment.</p>

Q	Question	Response	Rationale
	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	No	All errors can now be picked up from feedback reports and acknowledgements from central systems within a couple of hours (and that is being generous). That includes errors that result from getting the sign the wrong way around.
	Do you agree that a Party should be given 5 Business Days to make a claim a) retrospectively b) In relation to the first 28 days of transactions?	Yes	Both. It is a reasonable amount of time to put the particulars of any claim together.
	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	Yes	Although longer wouldn't matter if the proposal is both prospective and retrospective.
	Do you believe that implementation of P128 will promote ex-post trading?	No	No party would willingly wish to participate in a costly and time consuming claims process, simply to trade on an ex post basis.
	Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why: a. Development and testing of systems and processes b. Operation of systems and processes c. Trading and notification strategies d. Other	Don't know	Any prudent player, entering a new market would surely wish to establish robust processes and systems and appropriate notification strategies from day 1. Do we really want to encourage a regime where new entrants or dormant transactors are allowed to carry out notifications on a 'trial and error' basis for the first 28 days? P125 certainly allows such behaviour.

Q	Question	Response	Rationale
	Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?	Yes	Establishing an ex ante notification regime was one of the fundamental elements of NETA as Ofgem wanted to ensure that trading took place in the forwards markets and the power exchanges rather than relying on transactions within any centralised arrangements. One might however, question whether an ex ante notification regime is still required now such markets have been established.
	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.	Yes	We believe there is merit in pursuing a alternative that allowed for all parties to make claims for all types of ECVN errors both prospectively and retrospectively back to the P37 claims end date. The tests for allowing such claims should be restricted to very exceptional circumstances along the lines of the tests originally defined under P44.
	Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale	No	
	Are there any further comments on P128 that you wish to make?	No	



**P128\_UC\_003 – British Gas Trading**

<b>Respondent:</b>	Mark Manley
<b>No. of BSC Parties Represented</b>	1
<b>BSC Parties Represented</b>	British Gas Trading
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1	Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s).	No	BGT do not believe that retrospective correction of erroneous contract notifications will better facilitate Applicable BSC Objective (c). Retrospective changes increase market uncertainty and increase regulatory risks faced by market participants. Introducing a provision into the BSC baseline that allows for errors to be corrected that do not constitute 'Settlement Errors' (faults occurring within BSC Agents' systems) does not encourage competition in the generation and supply of electricity. BGT would argue that such a provision be it retrospective or prospective actually undermines confidence in the market. This could act as a disincentive to new entrants to enter the market and could adversely effect competition between incumbents in the generation and supply markets.

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
2	Do you believe the draft Legal Text addresses the defect identified in P128?	No	BGT do not believe the draft legal text addresses the defect. BGT recommends the legal text is re-drafted to avoid confusion. The draft legal text for P128 is incorporated within the legal text provided by P37. BGT recommends re-drafting the legal text to provide a clearer distinction between P37 and P128. BGT believe that the draft legal text should make clear that P128 is a subset of Past Notification Errors and the window for raising P37 claims has now ceased. BGT has noticed a potential incorrect cross reference in P6.2.6 which should reference P6 .4.3 not 6.4.5. Also 6.2.7 should have a semicolon rather than comma.

Q	Question	Response	Rationale
3	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Yes	<p>BGT believe there would be a number of disadvantages in implementing another PNE process and this would adversely affect competition and confidence in the market. The approval of this Modification Proposal would send a message to potential new entrants discouraging them from having robust contract notification systems, as they will get a 'second chance'. This increases the risk for all BSC Parties and could in turn undermine the efficient operation of the BSC.</p> <p>If this Modification is approved it will undermine one of the key fundamental processes of NETA, the obligation on BSC Parties to balance and notify their contract positions correctly. This proposal dilutes the incentives on Parties to accurately submit volume notifications as they can take risks in the knowledge that the error can be disputed and fixed after the event.</p> <p>Subject to the Modification being endorsed, the solution will, by nature, be expensive and inefficient, as has been demonstrated by the current PNE process. The Panel should not hear the claims because arguably it does not have the required level of knowledge. We also believe that Panel Members, particularly those representing Trading Parties could face serious conflict of interests if required to judge claims such as those envisaged under this process. The process also raises questions about how claimants would prove their intended contract position was their actual position.</p> <p>BGT also believe the Modification could have a detrimental effect on competition and confidence in the market place. If this Modification were approved there could be a raft of subsequent proposals to address errors made by Parties in other areas of the market. Approval of this proposal would reinforce the precedent set by P37 and make it difficult for the Authority to reject subsequent Modification Proposals seeking to correct</p> <p>1.1</p>

Q	Question	Response	Rationale
			<p>errors. This proposal would introduce uncertainty in the market place, as parties would not be able to rely on the output from the FAA believing it could be subject to constant significant changes. This will also undermine confidence in the market place.</p> <p>BGT see no advantages of implementing this Modification Proposal.</p>
4	<p>Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.</p>	Yes	<p>BGT believe there are a significant number of differences, these are in the form of improvements made to the market since Go-Live. The first major difference is choice, new entrants to the market have the ability to choose when they wish to commence trading. At Go-Live there was no such ability to decide on a date to enter the market, instead there was a rush to market in readiness for Go-Live on the 27 March 2001. The market has evolved since Go-Live and there is history and knowledge available to new entrants that was not available at Go-Live. Problems with contract notifications is not a new area as it has been widely publicised by a number of Modification Proposals including P37. Improvements have been made and are available to new entrants in the form of additional reporting provisions and improved testing facilities that have been made available.</p> <p>Another issue to consider is the position of the Modification Proposer. Whilst being a new BSC Party it is staffed by employees who have experience of the market as they were previously employed by Yorkshire Electricity and RWE.</p>

Q	Question	Response	Rationale
5	Do you consider that there is a barrier to enter the market without P128?	No	At present there are 158 signatories to the BSC, including the proposer, who all acceded to the BSC without a provision to correct erroneous notifications. There are provisions within the BSC to correct errors that are introduced into Settlements by BSC Agents' processes. This provides the necessary assurance to BSC Parties that they will not be disadvantaged by actions outside their sphere of control. This is a prudent provision to have within the BSC as Parties will not be held responsible for actions taken by BSC Agents for which they cannot mitigate.
6	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	No	BGT do not support this Modification being applied either retrospectively or prospectively.
7	Do you agree that P128 should be limited c) retrospectively d) prospectively to new internal transactors?	No	BGT do not believe this Modification Proposal should be approved for any class of Party for any period of time.
8	Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	No	BGT do not support the implementation of a provision that allows for manifest errors made by Parties to be corrected. The obligation to act prudently and in accordance with the current baseline must rest with individual BSC Parties. The BSC contains a section which allows for Settlement Errors to be corrected i.e. those errors that Parties cannot mitigate. To implement provisions that can correct manifest errors places unjust financial obligations on other BSC Parties who must fund the adjudication process to consider claims.

Q	Question	Response	Rationale
9	The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?	No	BGT believe the definition of a new market entrant needs to be more tightly defined than a party carrying out a trade between their production and consumption accounts for the first time. BGT do not support the Modification Proposal, however if the Modification were approved BGT would expect the provision to cover a very constrained set of circumstances. The definition is also discriminatory against companies with different company structures. For example a company could transact with an affiliate within the same trading group. In this instance the net electricity flow would be zero but there would still be financial implications.
10	Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	No	There isn't any reasonable justification to limit this remedy to transactions between the Production and Consumption accounts of a single BSC Party. The argument put forward by the proposer is that these trades do not affect the level of electricity on the system and therefore no additional balancing actions are required by the System Operator. The trades do however have a commercial impact on the rest of the industry through the RCRC payment.

Q	Question	Response	Rationale
11	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	No	BGT do not support this Modification Proposal. Notwithstanding, we do not agree with that the proposed timescale of 28 days is an appropriate period. The 28 day window would allow a BSC Party to make a number of errors within the window and have the right to raise claims and have the error corrected. There are a number of reports that are produced by BSC Agents on a daily basis that could be used to identify any error much sooner than 28 days. The 28-day window has been proposed to coincide with the receipt of the FAA statement that identifies money owed or payable to a BSC Party. A Party awaiting the FAA statement without checking their other prior Settlement flows cannot claim to be a prudent operator. Therefore BGT would propose a much shorter timescale of 1 working day.
12	Do you agree that a Party should be given 5 Business Days to maker a claim c) retrospectively d) In relation to the first 28 days of transactions?	Yes	BGT do not support this Modification Proposal being implemented retrospectively or prospectively and do not agree with the 28-day window. All new transactors should be familiar and compliant with the BSC. Despite these reservations 5 business days seems reasonable and is consistent with P37.
13	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	Yes	
14	Do you believe that implementation of P128 will promote ex-post trading?	Yes/No	BGT believe that it will make ex-post trading possible and may act to encourage it.

Q	Question	Response	Rationale
15	<p>Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why:</p> <ul style="list-style-type: none"> <li>a. Development and testing of systems and processes</li> <li>b. Operation of systems and processes</li> <li>c. Trading and notification strategies</li> <li>d. Other</li> </ul>	Yes	<p>BGT believe new participants could spend less time on testing their systems and processes because of the in built safety net that approval of this Modification would introduce. Approval of this modification would send a message to new entrants saying they could afford to take risks knowing any consequential losses could be challenged via a dispute process.</p> <p>BGT also believe that operation of systems and processes may be impacted. New entrants will place less emphasis on checking settlement output be that manually or electronically. Parties will be encouraged to await receipt of the FAA flow rather than build systems and processes to validate other Settlement flows.</p>
16	<p>Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?</p>	Yes	<p>This Modification will provide an opportunity for BSC Parties to claim for losses that have resulted from them making erroneous contract notifications. Implementing any process that allows Parties to make claims against errors they made will act as disincentive to Parties to submit correct notifications.</p>
17	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.</p>	No	
18	<p>Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale</p>	No	



Q	Question	Response	Rationale
19	Are there any further comments on P128 that you wish to make?	Yes	<p>Parties have acceded to the BSC without the provision for correcting errors, thereby making a commercial decision to operate within the guidelines specified by the BSC. Introducing the ability to amend contract notifications retrospectively sends the wrong message to the industry. It introduces uncertainty into the market, which can only have an adverse effect on the confidence of participants. Implementing a solution that is prospective also sends the wrong message to potential new entrants. This could encourage less prudent operators to 'sign up to' the BSC. This could be to the financial detriment of all BSC Parties who will need to fund the process to appeal any losses.</p> <p>BGT have concerns that if approved, the solution for processing any claims raised would be implemented at a significant cost to the industry. Similarly to P37 the cost base would be allocated across the industry whilst only benefiting a small number of Parties.</p>

## **P128\_UC\_004 – Gaz de France Marketing**

FAO Mr Nicholas Durlacher  
Chairman  
Elexon Limited

Dear Mr Durlacher

### **Gaz de France Marketing consultation response for the Urgent Modification Proposal P128 'Correction of Erroneous Energy Contract Volume Notification Errors in specifically defined limited circumstances'**

Please find attached Gaz de France Marketing's (GdFM) response to the P128 Modification Consultation. GdFM appreciates the opportunity to provide further detailed rationale behind our belief that if accepted Proposed Modification P128 would better facilitate the Balancing and Settlement Code (BSC) objectives. GdFM believe there to be a range of issues for the Panel, and subsequently the Authority, to consider in the lead up to their final determination on our Proposed Modification and would like to take this opportunity to reiterate briefly what we believe to be the most salient points.

Our Proposed Modification builds on the principle of modification P37 and on the intent of BSC Section P6, in extending similar rights and opportunities to those afforded to Parties under P37 to "new internal transactors" to retrospectively amend erroneous notifications. Additionally Proposed Modification P128 seeks to provide an enduring framework to manage such occurrences in the future.

As such we strongly believe failure to determine in favour of the Proposed Modification would mean that NGC are, and would continue to be, in breach of their Licence condition C3 (2)(b)(ii) requiring the settlement of imbalance obligations to be conducted in relation to a parties true contract position rather than to the position that occurred due to erroneous notifications.

We fully accept and support the principle that parties should be incentivised to submit accurate notifications. However we agree with Ofgem statements made during previous determinations, that notification errors may be rectified in specific circumstances, as detailed in our Proposed Modification, namely:

- The notification error was directly attributable to BSC systems, or

- The notification error or loss suffered as a result of the error arose from a combination of circumstances that could not have been reasonable foreseen, or
- The magnitude of the loss suffered was wholly disproportionate to the fault or error committed.

In such cases Licence Condition C3 (3)(d) promoting the efficient implementation and administration of the Balancing and Settlement Arrangements should apply. It is not the purpose of the BSC to be implemented in a manner that imposes, and neither it should be possible for any mistake to result in, a penal charge on a BSC Trading Party where there has been no physical imbalance on the Transmission System and no costs or losses have been incurred by other parties. The problem arises, and will continue to arise, because of the requirements of the Code and not through normal commercial interaction. In a way these requirements give rise to complexity, which can be disproportionately burdensome for small players. It is for Ofgem to consider whether the costs that give rise to, both in terms of new business processes, practices and systems for new entrants and small players, constitutes a barrier to entry.

We wholly accept that the integrity of the market is of paramount importance and this is why we have taken into account comments made by the Authority in responses to previous Modification Proposals of this type and have in response strictly limited the scope of the Proposed Modification. Our rationale behind limiting the Proposed Modification to internal transactions is based on our belief that if any new entrant contracted with an existing market participant and subsequently errors occurred, then contractually they could issue a claim against the other Party via existing commercial arrangements. This is not the case however for transactions between the internal consumption and production accounts of a single BSC Party.

Additionally, by limiting both the claim window and the period to which a claim can be applied, we believe that market integrity is afforded further protection and the direct effect on other BSC Parties is minimised. In fact one could argue that the direct impact is zero, if you consider that any erroneous windfall gains under Residual Cashflow Reallocation Cashflow (RCRC) would be neutralised prior to Final Settlement Run. Any implied gains that Trading Parties might receive through RCRC, would not outweigh the better facilitation arising from our Modification Proposal of effective competition. We support an enduring claims process, which is efficient, timely and cost effective, to deliver these objectives.

It is our belief that we are a prudent operator and that we did indeed have prudent systems and processes in place but concur with the Authorities view ‘..that even prudent operators may make material errors as a consequence of operating new systems and processes’. The Proposed Modification would promote effective competition in the generation and supply of electricity by allowing new entrants, and those expanding into new operational areas in particular, to place reliance on the effectiveness of the BSC in addressing unfairness, Licence Condition C3 (3)(c), to the extent that those Parties identified are more likely to make notification errors. The Proposed Modification may further serve to promote competition from them by protecting them from the disproportionate consequences of such errors. Equally it seems unfair that only Trading Parties and no other market participant is exposed to such liability. In

as much that Elexon is exempted from any financial liabilities and that NGC is similarly exempted from error through their cost pass through entitlements and are further protected by the provision for Manifest Error claims, surely this inconsistency needs to be addressed.

In respect of the issue that this Proposed Modification has the potential to promote ex post trading, we do not believe this to be true. The limitations of the proposal to transactions between a single Party's production and consumption accounts and the associated costs of any appeal will ensure that this is not the case.

Additionally one must consider it to be a fact that no new entrant would intentionally undertake actions that could expose them to huge financial losses.

In summary we believe that Proposed Modification P128, if approved, would better facilitate the BSC objectives detailed above and look forward to an early resolution of the Proposed Modification.

If you require any further information regarding our Proposed Modification, this consultation response, or issues raised within this covering letter, please do not hesitate in contacting me.

Yours sincerely

David Reed  
Electricity Operations Manager

<b>Respondent:</b>	<i>David Reed, Gaz de France Marketing Limited</i>
<b>No. of BSC Parties Represented</b>	<i>1</i>
<b>BSC Parties Represented</b>	<i>Gaz de France Marketing Limited</i>
<b>No. of Non BSC Parties Represented</b>	<i>0</i>
<b>Role of Respondent</b>	<i>Supplier</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1	<p>Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ?</p> <p>Please give rationale and state objective(s).</p>	Yes	<p>It would ensure that, as regards the period prior to the adoption of the Modification Proposal, settlement of imbalance obligations will be conducted by reference to Parties' true contract positions as required by Condition C3(2)(b)(ii) of NGC's Transmission Licence rather than by reference to erroneously notified positions. The Proposed Modification would therefore promote the attainment of the objectives specified in Condition C3(3)(a) of that licence (the efficient discharge by NGC of its licence obligations).</p> <p>In addition the Proposed Modification is made pursuant to Transmission Licence Condition C3(3)(d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements. It is not the purpose of the Code to be implemented in a manner that imposes, and neither it should be possible for any mistake to result in, a penal charge on a BSC Trading Party where there has been no physical imbalance on the Transmission System and no costs or losses have been incurred by other Parties.</p> <p>The retrospective effect of the Proposed Modification can be expected to promote effective competition in the generation and supply of electricity, by allowing BSC Parties, new entrants and</p>

Q	Question	Response	Rationale
			<p>those expanding into new operational areas in particular, referred to within this modification proposal as a 'new internal transactor', to place reliance on the effectiveness of the Code in addressing unfairness (Condition C3(3)( c)). To the extent that those Parties identified above are more likely to make notification errors, then the Proposed Modification may further serve to promote competition from them, by protecting them from the disproportionate consequences of such errors and as stated above (Condition C3(3)(d)) reducing the risk to Parties of participating in the market and thereby reducing the risk related costs of balancing and settlement activity</p>
2	Do you believe the draft Legal Text addresses the defect identified in P128?	Yes	
3	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Yes	<p>We believe this to be not only advantageous to the market but a necessary provision in order for NGC to fulfil its licence obligations. See our response to question 1 above.</p>

Q	Question	Response	Rationale
4	Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.	Yes	<p>During the development of NETA there were a number of industry fora at which prospective entrants to the market were able to attend and discuss with the central NETA Programme and other prospective market participants a variety of developmental and design issues. In addition there was a centrally controlled process through which a number of market participants were able to participate looking specifically at market start up end-to-end processes. This industry wide support is not available to new entrants.</p> <p>Although Elexon have the ability to assist new entrants during their progression into the market and have sophisticated market-monitoring capability at their disposal, their involvement with the day to day operations of participants is strictly limited. Given this there is a risk that a variety of errors, particularly those that are likely to occur during the early days as a consequence of their inexperience in the operation of new systems and processes, may remain undetected by the participant for some time. As such even a prudent operator may unwittingly make a material error.</p> <p>Taking this into account, the need to balance on a half-hourly basis under NETA, and the consequent requirement of substantial systems to manage and support the process, new entrants have a considerable number of barriers to climb before, during and after their participation in the market.</p>
5	Do you consider that there is a barrier to enter the market without P128?	Yes	See our response to question 4 above.

Q	Question	Response	Rationale
6	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	Yes	However we would suggest that the submission timescales for retrospective claims, following the approval of this modification proposal, be limited to a short period, five working days for example in line with previous Ofgem decisions in this area.
7	Do you agree that P128 should be limited e) retrospectively f) prospectively to new internal transactors?	Yes	<p>Retrospective claims should be limited to the period commencing 20<sup>th</sup> May 2002 (P37 implementation), through to the five days following the implementation of this modification proposal.</p> <p>Prospective claims would then be limited to the period agreed by the modification group, that is five business days following the 28-day period during which an 'new internal transactor error' may have occurred.</p>



Q	Question	Response	Rationale
8	Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	Yes	<p>Ofgem stated within their P19 determination letter ‘.that a modification to allow contract notification errors to be corrected would not necessarily be incompatible with the BSC objectives or [their] statutory duties if it, in the interests of preserving incentives, included an appropriate and material charge for any party seeking to correct a notification error, limits on the recovery of losses incurred as a result of an error, a short claim period and a requirement for the claimant to establish the nature of the error’. Ofgem went on to describe particular circumstances that could give rise to retrospective rule change. Modification P37 was then submitted and approved based around Ofgem’s view, however the subsequent code change applied solely to errors made in the early stages of market start up and made no provision for new internal transactor.</p> <p>This modification proposal seeks to make code provision, post P37, for both new market entrants and ‘new internal transactors’ who are yet to gain, in a live market environment, experience in the operation of new systems and processes and who suffer material loss as a result.</p>
9	The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as ‘a single Party who carried out transactions between their production and consumption accounts for the first time’?	Yes	We believe the interpretation of the modification group of a “new internal transactor” in this context, to mean a single Party who carried out trades between their production and consumption accounts for the first time to be in line with our intention within P128

Q	Question	Response	Rationale
10	Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	Yes	During development of this modification we noted Ofgem's concerns, as outlined in their determination letters for P09, P19 and P37. Our intention is to limit the circumstances under which subsequent notification error corrections may be applied.
11	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	Yes	<p>We believe that the 28 day period should ensure that this is the final point at which an error of this magnitude could be detected and would refer you to our observations included within the modification proposal:</p> <p>Note: at the point of submission of this modification proposal GdFM is of the view that clarification and/or simplification of the content of the I022 report could go some way towards ensuring that new Trading Parties, or those who invoke usage of new consumption or production accounts for the first time, avoid causing such errors to occur in future.</p>
12	Do you agree that a Party should be given 5 Business Days to make a claim e) retrospectively f) In relation to the first 28 days of transactions?	Yes	This follows the precedent set by P37
13	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	Yes	This follows the precedent set by P37
14	Do you believe that implementation of P128 will promote ex-post trading?	No	The limitations built in to this modification proposal are intended to ensure that this is not the case. By limiting the application of the modification proposal to transactions solely carried out between the consumption and production accounts of a single Trading Party.

Q	Question	Response	Rationale
15	<p>Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why:</p> <ul style="list-style-type: none"> <li>a. Development and testing of systems and processes</li> <li>b. Operation of systems and processes</li> <li>c. Trading and notification strategies</li> <li>d. Other</li> </ul>	No	<p>No new entrant would intentionally undertake actions that would expose them to huge financial losses. This error occurred because of an accumulation of unforeseen circumstances however the consequential financial losses were wholly disproportionate considering the fact that no balancing actions were required. New entrants will seek to mitigate against any loss and will therefore ensure that they have developed and tested their systems and processes, have appropriate local working procedures to operate those systems and processes and have agreed internal trading and notification strategies that reflect their internally agreed risk management procedures.</p>
16	<p>Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?</p>	No	<p>No new entrant would intentionally undertake actions that would expose them to huge financial losses. The incentives are still strong. We believe that the modification proposal will enhance competition opportunities as it will encourage new entrants who might otherwise, under the current version of the code, perceive the complex and high risk market rules to be a barrier to entry</p>
17	<p>Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.</p>	No	<p>As the modification proposer, and taking into account observations made by Ofgem in their responses to other modifications of this nature, we wished to be specific in nature and intent regarding the code defect we wished to rectify.</p>
18	<p>Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale</p>	Yes	<p>At this stage we are aware that the supporting appeals process has not to date been agreed. We would support as simple and speedy a system as can be devised should be the modification be adopted</p>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
19	Are there any further comments on P128 that you wish to make?	Yes	See covering letter

**P128\_UC\_005 – Aquila Networks**

Please find that Aquila Networks Plc response to P128 URGENT CONSULTATION is 'No Comment'.

regards  
Rachael Gardener

Deregulation Control Group &  
Distribution Support Office  
AQUILA NETWORKS

**P128\_UC\_006 – British Energy**

To: Modification Secretary  
From: Rachel Lockley  
Date: 30 May 2003

British Energy does not support Urgent Modification P128 - Correction of erroneous Energy Contract Notifications in specifically defined limited circumstances.

BE does not believe that this modification promotes increased competition, but rather that it will lead to disincentives on BSC Parties to make correct notifications. During the build up to the introduction of NETA great importance was placed on having the correct systems and procedures in place ready for Go-Live. P37 and P128 act to penalise those Parties who invested time and money to reduce the known risks associated with the trading process under NETA.

The recent coverage of the P37 Modification should highlight to new Parties the importance of having robust systems and prudent processes in place for contract notification. New Parties have no time constraints for entering the market and therefore BE do not believe they should have a "get out" clause for not being ready.

BE only support retrospective modification in exceptional unforeseen circumstances, or where the modification is for practicality or efficiency of settlement and has minimal commercial impact. BE do not support this modification.

BE would consider on its merits any modification with prospective application concerned with post-event correction of notifications, with particular attention given to the incentives on parties to provide accurate notifications.

Regards

Rachel Lockley

On Behalf of

British Energy Generation  
British Energy Power and Energy Trading  
Eggborough Power

## **P128\_UC\_007 – Scottish and Southern**

Dear Sirs,

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.

In relation to the 20 questions listed in the Urgent Consultation Paper, contained within your note of 20th May 2003 concerning Modification Proposals P128, we have the following comments to make:-

### **Q1 Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s).**

No. It is not clear what actual defect P128 is seeking to rectify. Since P17 and P37 Elexon have developed and now provide a test site for participants. This enables new entrants to test their systems prior to their choosing to 'go-live' (on a date of their choosing). Methods of testing using the Live systems could also be used by, for example, inputting "0" contract figures and awaiting the seven day report to see if these have been recorded. From this the participants can choose (as part of a testing programme that a reasonable and prudent operator might undertake) to input "-1" and "+1" contract figures, again to see if this is reflected in the subsequent reports.

In addition new entrants also have the added benefit of being able to purchase fully tested and proven trading systems from a variety of providers. These systems, installed and operating in other market parities, are clearly robust and trustworthy.

Please note our response to any of the following questions should not be construed to lend support whatsoever to this Modification.

### **Q2 Do you believe the draft Legal Text addresses the defect identified in P128?**

No. As we do not believe (for the reasons outlined in our answer to Q1 above) that there is a defect we do not see how the draft Legal Text can address it.

### **Q3 Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?**

We believe that there is a significant disadvantage in implementing another PNE process. This introduces a risk to all market participants who have acted upon the erroneous information provided by the new entrant. New entrants need to be incentivised to ensure that when they choose to participate that their

systems are proven and robust (as all parties who started at NETA Go-Live had to do). Allowing them a 'get out of jail free card' if they make mistakes could lead them to not implement tested, robust and proven systems when they go-live. This means that other participants' confidence in the market is undermined as it leads existing participants to ask "Can we trust contract notifications we receive from new entrants?".

**Q4 Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.**

Yes. As noted in our answer to Q1 above new entrants have access to the Elexon test site and also have the benefits of being able to purchase proven, reliable, tested ('in action') and trustworthy systems; all of which NETA Go-Live participants did not have.

**Q5 Do you consider that there is a barrier to enter the market without P128?**

No.

**Q6 Do you believe this Modification Proposal should apply both retrospectively and prospectively?**

No.

**Q7 Do you agree that P128 should be limited (a) retrospectively; (b) prospectively to new internal transactors?**

P128 should not be applied.

**Q8 Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?**

No.



**Q9 The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?**

If P128 is to be applied then it should apply to all "new entrants" defined as any new BSC Party when they first trade, either 'internally' or with any other market participant.

**Q10 Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?**

We don't believe it should be applied to any.

**Q11 Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?**

**Q12 Do you agree that a Party should be given 5 Business Days to make a claim (a) retrospectively; (b) in relation to the first 28 days of transactions?**

**Q13 Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?**

**Q14 Do you believe that implementation of P128 will promote ex-post trading?**

**Q15 Do you believe that the actions and behaviour of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why: a. Development and testing of systems and processes**

Yes. They will not be incentivised to purchase/develop and test systems and processes.

b. Operation of systems and processes

Yes. They will not be incentivised to purchase/develop proven and trustworthy systems and processes.

c. Trading and notification strategies

Yes. They will not be incentivised to operate proven, robust and trustworthy trading and notification strategies knowing they have a 'get out of jail free card'.

d. Other

**Q16 Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?**

Yes. They will not be incentivised to submit accurate notifications.

**Q17 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues.**

**Q18 Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128?**

Yes. As noted in our answer to Q1 above new entrants have access to the Elexon test site and also have the benefits of being able to purchase proven, reliable, tested ('in action') and trustworthy systems; all of which NETA Go-Live participants did not have.

**Q19 Are there any further comments on P128 that you wish to make?**

Not at this time.

Regards

Garth Graham  
Scottish and Southern Energy plc

**P128\_UC\_008 – EDF Trading Ltd and EDF (Generation)**

<b>Respondent:</b>	<i>Name Steve Drummond</i>
<b>No. of BSC Parties Represented</b>	<i>2</i>
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). EdF Trading Ltd and EdF (Generation)</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>Generator / Trader</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1	Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s).	Yes	The proposal gives new parties opportunity to correct any unfortunate errors under limited circumstances. This not felt unreasonable given the protection previously given to existing parties who faced NETA and its processes for the first time. This will give encouragement to new entrants and hence will promote further competition.
2	Do you believe the draft Legal Text addresses the defect identified in P128?	Yes	Including the subsequent changes to the legal text as notified.
3	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Yes	Mistakes do happen, especially when operating new systems, and it should be possible to rectify them without having to face penal charges. This proposal has the advantage of allowing in limited circumstances for a mistake to be corrected and stops other parties from benefiting from such an unfortunate error. Knowledge that there is a safety net, albeit limited, must improve confidence for new entrants and help towards greater competition.

Q	Question	Response	Rationale
4	Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.	Yes	The market has become increasingly complex, with many processes for the party to be aware of.
5	Do you consider that there is a barrier to enter the market without P128?	Yes	Potentially, although unquantifiable and maybe very limited.
6	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	Yes	All new parties should have the safety net, within limited boundaries, and hence we can see no reason why it shouldn't apply retrospectively (back to 20 <sup>th</sup> May 2002) and prospectively.
7	Do you agree that P128 should be limited g) retrospectively h) prospectively to new internal transactors?	No	It should be (a) and (b), see above.
8	Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	Yes	For limited circumstances and it does not seem unreasonable that new parties should be given 28 days to bed their systems in.
9	The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?	Yes	This seems reasonable, especially as this transaction represents the biggest risk to the party. Maybe it could benefit from further clarification that it is not when the party signs the BSC.
10	Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	Yes	As this is the biggest risk.

Q	Question	Response	Rationale
11	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	Yes	This too seems reasonable, bearing in mind the time now gone by since the introduction of NETA.
12	Do you agree that a Party should be given 5 Business Days to make a claim g) retrospectively h) In relation to the first 28 days of transactions?	Yes	Both seem reasonable, 10 days would be better to allow sufficient checking and gathering of evidence.
13	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	Yes	Reasonable
14	Do you believe that implementation of P128 will promote ex-post trading?	No	It merely allows the correction of an error, and being time limited will not in any way encourage ex-post trading.
15	Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why: a. Development and testing of systems and processes b. Operation of systems and processes c. Trading and notification strategies d. Other	No	It will only provide additional confidence for the new entrant.
16	Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?	No	As previously stated, this proposal is very limited in scope and will not change incentives.

Q	Question	Response	Rationale
17	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.	No	
18	Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale	No	
19	Are there any further comments on P128 that you wish to make?	No	

**P128\_UC\_009 – Scottish Power**

<b>Respondent:</b>	<i>Name</i> John W Russell (SAIC Ltd)
<b>No. of BSC Parties Represented</b>	6
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> Scottish Power UK plc; ScottishPower Energy Trading Ltd.; ScottishPower Generation Ltd; ScottishPower Energy Retail Ltd.; SP Transmission Ltd; SP Manweb plc.
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	Supplier / Generator / Trader / Consolidator / Exemptable Generator / Party Agent

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1	Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s).	<b>No</b>	<i>While we support the principle of allowing correction of notification errors under certain circumstances (see Q8), we believe that the Proposed Modification P128, through its restriction to internal transactions by new internal transactors, unduly discriminates in favour of vertically integrated participants. An Alternative should be developed which widens its scope to other participants and other types of transactions, to allow all types of new entrants the same "soft landing".</i>
2	Do you believe the draft Legal Text addresses the defect identified in P128?		<i>We have not reviewed the legal text.</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
3	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	<b>Yes</b>	<i>We believe that there would be advantages in implementing another past notification error process if it is accompanied by an enduring process for future new entrants/new transactors. The existence of this modification demonstrates a continuing need for such arrangements. Their presence would reduce barriers to entry and increase confidence that parties will not incur disproportionate imbalance charges in the event of a notification error.</i>
4	Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.	<b>Yes</b>	<i>There are now better testing facilities. However, the risk remains that a party will be settled on an incorrectly notified contract position instead of on the actual underlying contract position.</i>
5	Do you consider that there is a barrier to enter the market without P128?	<b>Yes</b>	<i>The lack of an error correction mechanism for new entrants encourages them to over-invest in systems and processes in order to ensure that the risk of making an erroneous notification is vanishingly small. This creates a barrier to entry, which will remain under P128, given its restricted scope.</i>
6	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	<b>Yes</b>	<i>Yes, provided its scope is widened, see Q9/10.</i>
7	Do you agree that P128 should be limited i) retrospectively j) prospectively to new internal transactors?	<b>No</b>	<i>P128 should not be limited to internal transactors. Any error correction mechanism introduced under P128 should be available both retrospectively and prospectively, to all types of new entrants, subject to stringent conditions, see Q8.</i>
8	Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	<b>Yes</b>	<i>The Code should reflect the principle of providing a "soft landing" to participants interfacing with the BSC systems either for the first time or under changed circumstances.</i>



Q	Question	Response	Rationale
9	The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?		<i>This would indeed be a suitable definition for the term "new internal transactor". However, a more suitable term for "new entrant" could be "new transactor", being "a single Party who carried out transactions on an account for the first time", which would widen the scope beyond vertically integrated participants. A further definition would be required to deal with more general changes of circumstances.</i>
10	Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	<b>No</b>	<i>No, this unduly favours vertically integrated participants. Please see Q9 for alternative scope.</i>
11	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	<b>No</b>	<i>We would suggest a period of three months</i>
12	Do you agree that a Party should be given 5 Business Days to make a claim i) retrospectively j) In relation to the first 28 days of transactions?	<b>No</b>	<i>The claim period should be consistent with the claim period introduced by Modification P37, as subsequently modified by P83, i.e. 10 business days.</i>
13	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	<b>Yes</b>	
14	Do you believe that implementation of P128 will promote ex-post trading?	<b>No</b>	<i>No, provided the error correction mechanism includes a requirement to demonstrate a 'settled commitment to notify'.</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
15	Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why: a. Development and testing of systems and processes b. Operation of systems and processes c. Trading and notification strategies d. Other	<b>No</b>	<i>No. All parties will still be incentivised to develop robust systems and processes for participation in the NETA market</i>
16	Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?	<b>No</b>	
17	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.	<b>Yes</b>	<i>Yes, please see Q8/9/10. We would support an enduring process for all new transactors and general changes of circumstances.</i>
18	Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale	<b>Yes</b>	<i>Please refer to our responses to the other questions.</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
19	Are there any further comments on P128 that you wish to make?	<b>Yes</b>	<i>Similar issues are likely to arise for BETTA (which, like NETA, will be a highly complex systems change programme for many participants), and may be avoided if P128 takes the opportunity to introduce an enduring, and suitably generic, error correction mechanism consistent with the principles noted under Q8.</i>

**P128\_UC\_010 (late response) – Innogy**

<b>Respondent:</b>	Mark Thomas
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	Innogy Group (Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern Supply Limited, Npower Yorkshire Limited and Npower Yorkshire Supply Limited)
<b>No. of Non BSC Parties Represented</b>	0
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	BSC Party

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1	Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s).	Yes / No	Objective c) – Yes Objective d) – No. This modification proposes to put in place another administrative process which if the current PNE process is anything to go by could spiral out of control.
2	Do you believe the draft Legal Text addresses the defect identified in P128?	Yes	If P128 were to be implemented then the Legal Text supports the mod.
3	Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Yes	Implementation of another PNE process is not necessarily ensuring participants have in place robust systems and prudent processes.  It should be noted that Ofgem are of the opinion that it is essential that there should be strong incentives on participants to deliver correct notifications.

Q	Question	Response	Rationale
4	Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are.	Yes	<p>At NETA Go-Live parties either had to 'Go-Live' else they would be precluded from the market ie they could not trade and would be subject to imbalance.</p> <p>During the early stages of NETA when participants were still getting to grips with the new arrangements it was possible that even prudent operators may have made material errors as a consequence of their inexperience in dealing with the new systems. The volatility in imbalance prices also coincided with the period during which participants were becoming accustomed to the operation of NETA.</p> <p>Now however Elexon know and able to advise new participants of many of the problems.</p>
5	Do you consider that there is a barrier to enter the market without P128?	No	Not seen as a barrier to entry.
6	Do you believe this Modification Proposal should apply both retrospectively and prospectively?	No	Do not support proposal but if the mod was to go ahead it should only be prospective as retrospective undermines market confidence and the efficient operation of NETA.
7	Do you agree that P128 should be limited k) retrospectively l) prospectively to new internal transactors?	No	Do not support proposal but if the mod was to go ahead it should only be prospective as retrospective undermines market confidence and the efficient operation of NETA.
8	Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	No	There should be strong incentives on participants to deliver correct notifications.

Q	Question	Response	Rationale
9	The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?	No	This would allow a Party who has been a signatory to the Code for a long period time and gained experience and knowledge of the NETA market who carries out a transaction between production and consumption account for the first time to be classed as a new entrant to the market.
10	Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	No	We do not support the proposal but if it was to be implemented it should limited to accounts of a Single BSC Party.
11	Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	No	There are numerous settlements reports available that would enable the identification of errors within this timescale.
12	Do you agree that a Party should be given 5 Business Days to make a claim k) retrospectively l) In relation to the first 28 days of transactions?	No	We do not support the proposal but if it was to be implemented 5 Business Days is reasonable.
13	Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	Yes	We do not support the proposal but if it was to be implemented 5 Business Days is in keeping with a number of previous modifications.
14	Do you believe that implementation of P128 will promote ex-post trading?	No	This modification is not designed to support ex-post trading. We would be concerned if the modification facilitated ex-post trading.

Q	Question	Response	Rationale
15	<p>Do you believe that the actions and behavior of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why:</p> <ul style="list-style-type: none"> <li>a. Development and testing of systems and processes</li> <li>b. Operation of systems and processes</li> <li>c. Trading and notification strategies</li> <li>d. Other</li> </ul>	Yes / No	
16	Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?	Yes	P128 proposes to put in place a fall back process rather than placing emphasis on market risk and the operation of robust systems and prudent processes.
17	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.	No	
18	Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale	No	
19	Are there any further comments on P128 that you wish to make?	Yes	We remain of the view that there is the potential for market abuse under this modification. The modification is proposing to remove certainty and absolutes and replacing with possible litigation.