

## Responses from P115 Assessment Consultation

Consultation issued 5 March 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	IMServ	P115_ASS_001	0	1
2.	Aquila Networks	P115_ASS_002	1	0
3.	British Gas Trading	P115_ASS_003	1	0
4.	LE Group	P115_ASS_004	9	0
5.	NGC	P115_ASS_005	1	0
6.	Scottish Power	P115_ASS_006	6	0
7.	Innogy	P115_ASS_007	9	0
8.	Scottish and Southern	P115_ASS_008	4	0
9.	Powergen	P115_ASS_009	15	0

P115\_ASS\_001

<b>Respondent:</b>	<i>Name Tom Cook</i>
<b>No. of BSC Parties Represented</b>	<i>Nil</i>
<b>BSC Parties Represented</b>	<i>Nil</i>
<b>No. of Non BSC Parties Represented</b>	<i>1</i>
<b>Non BSC Parties represented</b>	<i>IMServ Ltd</i>
<b>Role of Respondent</b>	<i>Party Agent</i>

<b>Q</b>	<b>Question</b>	<b>Response</b> <small>Error! Bookmark not defined.</small>	<b>Rationale</b>
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	Suppliers should be held liable for those matters which they can directly affect. If they are held liable for matters outside their control the System itself is brought into disrepute.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	Yes	
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	Fair application of a Rule engenders respect for the Process.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes	
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	Yes	
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	No	The measures and requirements are fair.
3	Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support? Are there any mechanisms you would propose?	n/a	Measured is perceived as fairest method.  None identified.

Q	Question	Response Error! Bookmark not defined.	Rationale
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	All shown in Appendix B <i>except</i> Ref 4 & 11. Reason: they are within ultimate control of Supplier.
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	Yes	It is inequitable at present so any retrospective application that is economically viable to implement would be welcome.
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	No	
7	Are there any further comments on P115 that you wish to make?	No	

**P115\_ASS\_002 – Aquila Networks**

Please find that Aquila Networks Plc response to P115 Assessment Consultation is 'No Comment'.

regards

Rachael Gardener

Deregulation Control Group &  
Distribution Support Office  
AQUILA NETWORKS

P115\_ASS\_003 – British Gas Trading

<b>Respondent:</b>	Andrew Latham
<b>No. of BSC Parties Represented</b>	One
<b>BSC Parties Represented</b>	British Gas
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	Supplier

Q	Question	Response	Rationale
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	During the VASMG there was support for this modification and British Gas also support the principle. However with current software and the inability to track route causes of the problem across the Change of Supplier (CoS) and more so the Change of Agent (CoA) process, it will be difficult to disapply Supplier Charges. The work that Elexon carried out on CoS & CoA would have helped to identify route causes and this will be further helped by the adoption of the universal record.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	Yes	As detailed in 1a
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	This would enable poorly performing Suppliers with poor Agent controls to be penalised whilst it would clearly identify better performing Suppliers.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	No	Not in the current situation as it is difficult to clearly identify the causes. Currently BGT track and monitor all our Serials however having had the first Supplier Charges from Elexon it is difficult to have visibility of the charges being received from other Suppliers.
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	No	As in 2a however there may be a possibility to track some of the charges through Group Correction Factor in the Half Hourly market.
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes	Although not all Serials have been included in this modification if a tracking facility was to be made available in the future it should be applied to all Serials.

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
3	Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support? Are there any mechanisms you would propose?	n/a	All 3 have merits although the justified approach would be the most logical to enable the flexibility of applying such charges. However it needs to be stressed that as with the acceptance of P99 these would change and a more robust process would be required.
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	All items should be addressed. The industry has been looking at minor tweaks to problems for many years. The CoS & CoA paper by Elexon highlighted many of these problems.
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	Yes	
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	No	
7	Are there any further comments on P115 that you wish to make?	Yes	The modification is sound in its application unfortunately BGT believe that many of the problems associated with CoS & CoA result from the inability of the industry to track the process from start to end. This would make it difficult to apply the intent of the proposal Hopefully the work Ofgem and Energywatch have taken on from Elexon will lead to improvements in the process.

P115\_ASS\_004 – LE Group

<b>Respondent:</b>	Paul Chesterman
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	LE Group plc, London Electricity plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd,
<b>No. of Non BSC Parties Represented</b>	None that we consider applicable
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	Supplier / Generator / Party Agent / Distribution Business

Q	Question	Response Error! Bookmark not defined.	Rationale
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?		We have some sympathy with the principle of disapplying Supplier Charges. However, we consider that Supplier Charges are an important aspect of the Performance Assurance Framework. A challenge, such as P115, to the Charges being appropriate would be better addressed through the PAF Review.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	No	We consider that the calculation of Supplier Charges is still in its infancy and so good estimates of materiality will be hard to achieve. We doubt that the materiality in question warrants consideration of the complex issues raised by this Mod.
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	We would agree that if disapplying certain charges had the effect of sharpening incentives on Suppliers to improve their performance, then this could be considered to better facilitate the achievement of the Applicable BSC Objectives.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes	Yes, it would seem feasible
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	Yes	Yes, it would seem feasible
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes / No	We have no strong views on this

Q	Question	Response Error! Bookmark not defined.	Rationale
3	<p>Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support?</p> <p>Are there any mechanisms you would propose?</p>	n/a	
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	Yes	As the calculation of Supplier Charges has only recently commenced, then if the basis upon which they are to be calculated were to be changed, it would seem sensible to re-cut the calculations from the beginning.
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	Yes / No	
7	Are there any further comments on P115 that you wish to make?	Yes	On the whole we have some sympathy with the issues raised by P115. However, we do not believe that progressing P115 is the correct way forward. This is because P99 has only recently achieved Authority decision to implement Phase 1 of the PAF Review. We believe that the PAF Review route would be the best way to address the issues raised in this Modification.

P115\_ASS\_005 – NGC

<b>Respondent:</b>	<i>Name</i> <b>Clare Talbot</b>
<b>No. of BSC Parties Represented</b>	<b>One</b>
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> <b>National Grid</b>
<b>No. of Non BSC Parties Represented</b>	<b>One</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>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i> <b>BSC Party</b>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	We would in principle support the option for the disapplication of Supplier Charges in certain circumstances, as a number of market problems have been identified. However, we recognise the difficulties identified by the Mod Group in defining a robust and cost effective mechanism to deliver the intent of the Modification Proposal.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	Neutral	We have no specific view at this time. The responses received to question 4b) should assist the decision making process of the Mod Group going forward.
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	Assuming a viable solution could be provided, we believe that the proposal meets applicable objectives c) and d). Addressing the identified defects could lead to a strengthening of the potential incentives delivered by the relevant Serials adding to the efficiency, effectiveness and also the perception of fairness of the process.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes / No	No specific view.
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	Yes / No	No specific view.
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes / No	No specific view.

Q	Question	Response	Rationale
3	<p>Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support?</p> <p>Are there any mechanisms you would propose?</p>	n/a	We would generally support a justified approach to provide for more flexible arrangements in dealing with any potential new issues which may arise.
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	No	As outlined in the Assessment Consultation, we would support an implementation approach as adopted for P68, providing a limited ability to include Settlement Days prior to the implementation date if required.
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	No	
7	Are there any further comments on P115 that you wish to make?	No	

P115\_ASS\_006 – Scottish Power

<b>Respondent:</b>	Name 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.; Scottish Power Generation plc; ScottishPower Energy Retail Ltd.; SP Transmission plc; 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>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i> Supplier / Generator / Trader / Consolidator / Exemptable Generator / Party Agent

Q	Question	Response	Rationale
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	ScottishPower supports a Supplier Charges framework that provides appropriate incentives for poorly performing Suppliers to improve, and compensates Suppliers for any potential losses they might incur. We agree that the current framework does not necessarily deliver this, considering the current market performance. If a suitable mechanism could be identified to disapply appropriate Supplier Charges, ScottishPower believes this would improve the efficiency of the current arrangements.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	No	At this point in time, ScottishPower has insufficient evidence to support a Code modification. Section 4.2.3 of the Assessment consultation states that the current framework does maintain the positive incentive for improvement in performance, and that the question of materiality has not been proven (also stated in section 5.4). ScottishPower requires further guidance from ELEXON in order to answer the question of materiality.
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	It seems clear that some form of amendment to Supplier Charges is required in order for them to fulfil the role they are designed for. If the current mechanisms do not penalise poor performers, or provide appropriate compensation for impacted Suppliers, then a change is required. The problem P115 appears to be addressing is not related to a fundamental flaw in the Supplier Charges framework, but arises due to the current level of under-performance of most Suppliers. ScottishPower believes that a change is therefore required in order to enable Supplier Charges to meet the BSC Applicable Objectives.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes	ScottishPower believes that Serial 1 should be considered for the disapplication of Supplier Charges, but we would wish to see further evidence of materiality in order to justify the approach taken.

Q	Question	Response	Rationale
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	No	We would prefer to see additional analysis before determining whether the disapplication of Supplier Charges for the HH Serials would better facilitate the BSC Applicable Objectives.
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes	We consider that Serials 9 and 10 should be included for consideration at this stage. Without further research into the materiality of the full set of Supplier Charges, we cannot see the justification for excluding these Serials at this time.
3	Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support?  Are there any mechanisms you would propose?	n/a	<p>ScottishPower would like to see further analysis of the options being considered for P115 before committing to a particular approach. With that caveat, of the approaches outlined in section 3.1/5.2, our preference would be towards the measured approach, as this provides the best compromise between purely statistical / arbitrary and overly complex / subjective. However, we would also like to see analysis undertaken of the option to reduce the Serial 1 targets (in particular). If there are genuine problems in the market preventing suppliers meeting the targets, it may be better to lower the target, perhaps just temporarily until the problem can be addressed. It may also be worthwhile looking at the feasibility of allowing individual suppliers to have a lower target for a particular serial than other suppliers, if there is a justifiable reason for which a corrective plan of action is in place.</p> <p>We would also like consideration to be given to the applicability of the Supplier Force Majeure provisions to allow for appropriate relaxation in Supplier Charges. Whilst we accept that this might not apply to the examples provided in Annex B, there may be scenarios where the existing Supplier Force Majeure provisions do apply which would address the material defects in the current arrangements.</p>
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	We do not believe it is appropriate to consider specific problems at this stage.
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	Yes	Retrospection would result in a level playing field for all Suppliers from the introduction of the new Serials.

Q	Question	Response	Rationale
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	<i>No</i>	
7	Are there any further comments on P115 that you wish to make?	Yes	<p>We believe the timescales allowed for consultation on P115 have not been adequate. Given the complexity of the issues raised in this consultation, we would wish to see further supporting evidence provided by ELEXON and further time for Parties to consider their responses. We would not support the approach being considered in section 3.2.2 of the Assessment consultation to raise the Supplier Caps. These intended to represent the maximum pre-estimate of losses that could be incurred and to increase them might be to invalidate the status of the Supplier Charges as liquidated damages.</p> <p>Any disapplication off Supplier Charges resulting from Supplier Force Majeure should be clarified explicitly in the Code, and not as part of a separate "guidance note" (interpretation) from ELEXON which would have undetermined governance (section 5.6).</p>

P115\_ASS\_007 – Innogy

<b>Respondent:</b>	<i>Richard Harrison, Npower Limited</i>
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	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>	
<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>Supplier / Generator/ Trader / Consolidator / Exemptable Generator / Party Agent</i>

Q	Question	Response Error! Bookmark not defined.	Rationale
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	Yes	
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes	
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	Yes	
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes	In principle there is no reason why the Modification should not apply to these other Serials as well. The impact of Mod P99 also needs to be taken into account. E.g. There are potential issues with penalising Suppliers for non-delivery of Performance Reports for segments of the market in which they are not active.

Q	Question	Response Error! Bookmark not defined.	Rationale
3	<p>Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support?</p> <p>Are there any mechanisms you would propose?</p>	n/a	<p>Either the measured or justified approach is potentially workable. The statistical approach will inevitably fail to reflect differences between Suppliers' performance and portfolios.</p>
4a	<p>Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?</p>	n/a	<p>Annex B is a good 'starter' list of problems that may apply to individual Suppliers to a greater or lesser extent. It will be interesting to see what information the responses to question 4b will provide on this. If the 'measured' approach is adopted, decisions will be needed on the cost/benefit of developing mechanisms for particular problems. A standing list of 'recognised problems' (and precedent as to how these have been dealt with) would be helpful if the 'justified' approach is used.</p>
5	<p>Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?</p>	Yes	<p>Since a large part of non-performance seems to relate to historic problems, of which the causes have only recently come to light, and the difficulty/impossibility of getting retrospective amendments, it would seem that an element of retrospection is essential if the impact is to be mitigated.</p>
6	<p>Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?</p>	No	
7	<p>Are there any further comments on P115 that you wish to make?</p>	Yes	<p>We cannot see that raising the level of Caps, as suggested in 3.2.2, can be appropriate or equitable as an 'alternative', since it potentially increases the 'liquidated damages' charged to a Supplier rather than reducing them to take account of factors outside his responsibility and control.</p>

## **P115\_ASS\_008 – Scottish and Southern**

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 questions listed in the Consultation Paper, contained within your note of 5th March 2003 concerning Modification Proposals P115, we have the following comments to make:-

### **Q1a Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?**

No. We are not persuaded of the need to disapply Supplier Charges in certain circumstances.

Please note our following comments should not be construed to lend support whatsoever to this Modification.

### **Q1b Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?**

No. We fully agree with the comments in the Initial Written Assessment that:- "Supplier Charges seek to incentives Suppliers to improve performance and are an important aspect of the Performance Assurance Framework. Any change to the way these charges are applied would need to ensure the incentive is adequately maintained and also consider the wider aspects of the PAF."

We are not persuaded that the materiality of the reported defect is sufficient to support this Modification proposal, particular in light of these IWA comments and the need to ensure that incentives, in regard to performance, are maintained on Suppliers.

In addition we also note the comments in section 4.2 of the report concerning the ongoing CoS and CoA initiative and believe this casts further doubts on the materiality of the reported defect.

We also refer you to our comments in the last paragraph of our answer to Q3 below.

### **Q1c Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?**

No. We believe that the incentive needs to be maintained on Suppliers to ensure performance and to reduce failures. We are also deeply concerned by the comments in section 2.3 of the report about the potential legal implications, of this proposed change, on Supplier Charges not being "consistent with the status of those charges as 'liquidated damages'".

### **Q2a Do you believe it is feasible to disapply Supplier Charges for Serial 1?**

None identified.

**Q2b Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?**

None identified.

**Q2c Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?**

No.

**Q3 Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support? Are there any mechanisms you would propose?**

We believe that only the "Justified" approach should be used. We note the problems attributed to the "Statistical" and "Measured" approaches in section 3.1 of the report. We are mindful that this Modification is centered around a situation that may have occurred called a "generic problem", which is not defined.

We believe it could be open to abuse where a number of Suppliers (but not all the Suppliers in a GSP) facing a problem sought to 'engineer' a "generic problem" in terms of a "Statistical" or "Measured" definition.

Given the fact that Supplier Charges, according to section 2.2 of the report, "are expected to represent a genuine pre-estimate of the loss likely to be suffered by other Parties as a result of a failure by a Supplier to meet the applicable Performance Level" we believe it would be wrong to allow these to be altered in some form of automatic way. In this respect we note the comments in section 5.2 in regard to "granularity", that the "Justified" approach is better able to target individual Suppliers whose "failure to meet the applicable Performance Level" has caused the problem for which they are being charged. To adopt either the "Statistical" or "Measured" approaches is likely to penalise disproportionately other Suppliers who have not failed "to meet the applicable Performance Level" and run counter to the BSC Objectives.

The "Justified" approach allows the Panel, and other BSC Parties, to exercise more discretion in considering each problem, avoid the process being arbitrary (and open to potential 'gaming') and allows flexibility in dealing with new problems. In addition to this we believe that there should be a £ figure introduced that quantifies the materiality on Suppliers. Only claims above this figure should be considered by the Panel. All claims below this should be ignored to avoid the Panel considering frivolous claims.

**Q4a Which of the specific problems identified in Annex B (or any others ? please identify) do you think the Modification Proposal should address?**

None. The objective should be to address the root causes instead.

**Q5 Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?**

No. We do not support retrospective changes to the Code. This gives rise to serious Regulatory Risk for BSC Parties. In the normal course of business we proceed on the basis of the Code (and other industry documents) as they are currently written. If retrospective changes are to be allowed then this opens up serious dangers for all BSC Parties that having proceeded to carry out their business in accordance with the rules and obligations of the BSC, they find their actions to have been wasted. This cannot be said to meet the BSC Objectives.

If we assume that the Authority approves this Modification, and the retrospective application where to be limited to that period from when the Authority gave its approval to the Implementation Date, then we would, reluctantly, agree with this very limited retrospective application.

**Q6 Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?**

Yes. We are concerned to ensure, if this Modification is implemented, that a very clear definition of "generic problem" is established.

**Q7 Are there any further comments on P115 that you wish to make?**

Given the lack of detail on many aspects of this Modification proposal we have no further comments to make on it at this time. If this Modification proposal proceeds further then we look forward to receiving more detailed information and providing comments in due course.

Regards

Garth Graham  
Scottish and Southern Energy plc

P115\_ASS\_009 – Powergen

<b>Respondent:</b>	Afroze Miah
<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 Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy Limited
<b>Role of Respondent</b>	Supplier

Q	Question	Response	Rationale
1a	Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?	Yes	The principle is sound.
1b	Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?	n/a	It is difficult, at this stage, to know the exact level of materiality. We need further details before we can comment further on this.
1c	Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?	Yes	The solution needs to be strict in defining under what circumstances supplier charges should be disappplied. Otherwise there would be room for abuse of any disapplication process.
2a	Do you believe it is feasible to disapply Supplier Charges for Serial 1?	Yes	
2b	Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?	Yes	
2c	Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?	Yes	

Q	Question	Response	Rationale
3	Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support?  Are there any mechanisms you would propose?	n/a	
4a	Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?	n/a	<u>Annex B REF 9</u> The Proposal should NOT attempt to address one of the alleged “Possible Causes” of Problem 9 in Annex B. The fact that D0023 is not sent to Suppliers is NOT a defect in our view. This is the subject of a CP at the moment and our response in the past has always been that this is not the problem. The supplier would not know how to deal with the D0023, has no capability to affect it and does not want to receive the flow.  Situations should also include where the charge is fundamentally wrong, e.g. where subsequent data shows it to be so.
5	Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?	Yes	
6	Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	Yes	Situations should also include where the charge is fundamentally wrong, e.g. where subsequent data shows it to be so.
7	Are there any further comments on P115 that you wish to make?	No	