



January 2003

**DRAFT MODIFICATION REPORT**  
**MODIFICATION PROPOSAL P113 –**  
**E-mail Communications under the**  
**Code**

Prepared by ELEXON on behalf of the Balancing  
and Settlement Code Panel

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1	BSC Panel Paper 52/021	ELEXON	14 November 2002	FINAL
2	P113 – Initial Assessment	ELEXON	12 December 2002	1.0

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## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Recommendation

On the basis of the analysis undertaken in respect of this Modification Proposal during the Initial Assessment Phase, and the resultant findings of this report, the Balancing and Settlement Code Panel ('the Panel') recommends that:

- a) The Proposed Modification P113 should be made with an Implementation Date of 13 weeks after the date of the Authority's decision.**

### 1.2 Background

Modification Proposal P113 'E-mail Communications under the Code' (P113) proposes to clarify within the Balancing and Settlement Code ('the Code') that where a general communication is to be given by BSCCo, the Panel, a Panel Committee, a Modification Group, or their respective secretaries, to all Parties (or class of Parties) simultaneously the communication may be given by e-mail. Existing provisions within the Code provide for particular communications to a Party to be given by postal mail or facsimile, and these provisions are not sufficiently clear that they exclude general communications to all Parties. The Code is currently silent on the provision of correspondence by e-mail.

P113 was raised on 27 November 2002 on behalf of the Panel, following BSCCo's recommendation to the Panel at its meeting of 14 November 2002 that a Modification Proposal be raised (Paper 52/021, Reference 1). An Initial Written Assessment (IWA) was submitted to the Panel on 12 December 2002 (P113 – Initial Assessment, Reference 2), where the Panel agreed with BSCCo's recommendation that P113 should proceed directly to the Report Phase since the changes proposed by the Modification are of a minor and inconsequential nature. After consultation with interested parties, the Panel considered the draft Modification Report at its meeting of 16 January 2003 and determined to make the recommendations set out above.

### 1.3 Rationale for Recommendations

BSCCo's current practice is that communications to be given simultaneously to all Parties are sent by e-mail, and examples of such correspondence include ELEXON Circulars and communications to all interested parties regarding Modification Proposals. BSCCo believes that e-mail represents the most efficient form of communication in such cases since it enables fast dissemination of information to large numbers of recipients (typically several hundred per communication). If such correspondence was to be sent by means other than e-mail this would add considerably to the cost to BSCCo of making such communications (both financially and in terms of time spent) and would potentially lengthen the time between information becoming available and its communication to interested parties.

P113 is not intended to alter the provisions by which specific communications are given to individual Parties.

The Panel therefore believes that a modification to the Code, to confirm existing practice with respect to such communications, would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence – i.e. promoting efficiency in the implementation and

administration of the balancing and settlement arrangements. P113 has no impact on any of the other objectives, as set out in Condition C3(a) to (c).

The proposed changes have no impact on any Party or BSC Systems. The effect of the changes is to increase efficiency in the administration of BSC processes and, accordingly, the Modification Proposal has been raised under paragraph C 3.8.8 of the Code with a view to increasing efficiency and better achieving the objective in Condition C3(3)(d).

## **2 INTRODUCTION**

This Report has been prepared by ELEXON Ltd., on behalf of the Panel, in accordance with the terms of the Code. The Code is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the Code.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC Website, at [www.elexon.co.uk](http://www.elexon.co.uk).

## **3 HISTORY OF PROPOSED MODIFICATION**

At the meeting of the Panel held on 14 November 2002 BSCCo recommended that a Modification Proposal be raised in accordance with paragraph F 2.1.1(d)(iv) of the Code. These provisions provide the Panel with the authority to raise a Modification where to do so would better facilitate achievement of the objective of 'efficiency in the implementation and administration of the balancing and settlement arrangements' or would have the purpose 'to rectify manifest errors in or to correct minor inconsistencies (or make other inconsequential changes) to the Code'. The Panel agreed with BSCCo's recommendation to raise a Modification, and P113 was raised on behalf of the Panel on 27 November 2002.

An Initial Assessment of P113 was presented to the Panel at its meeting of 12 December 2002. The Panel determined that P113 should proceed directly to the Report Phase in accordance with paragraph F 2.7 of the Code. This decision was made in view of the guidance provided in paragraph F 2.2.4, which states:

*'For the avoidance of doubt, it is expected that the Panel would usually proceed directly to the Report Phase pursuant to paragraph 2.2.3(b)(iii) where the Modification Proposal is of a minor or inconsequential nature and/or where the recommendation which the Panel should make to the Authority in relation to such Modification Proposal would generally be considered to be self-evident.'*

Accordingly, a draft Modification Report was prepared and issued for consultation on 17 December 2002. A summary of the responses received can be found in Section 6 of this report and copies of all responses are attached as Annex 1.

#### **4 DESCRIPTION OF PROPOSED MODIFICATION**

P113 seeks to clarify within the Code that where a general communication is to be given by BSCCo, the Panel, a Panel Committee, a Modification Group, or their respective secretaries, to all Parties (or class of Parties) simultaneously the communication may be given by e-mail.

The existing provisions within the Code provide for particular communications to be given to a Party, and require these communications to be given by conventional means such as postal mail or facsimile. These provisions do not make it sufficiently clear that they exclude general communications to all Parties.

It is BSCCo's current practice that general communications, requiring correspondence with large numbers of recipients (typically several hundred per communication), are sent by e-mail. Examples of such communications include:

- a) ELEXON Circulars issued by BSCCo to all interested parties;
- b) Distribution of information to all BSC Parties and other interested parties (as defined in F 1.1.2(b) of the Code) by BSCCo in respect of Modification Proposals; and
- c) Distribution of information to all BSC Change Administrators and Party Agent Change Administrators from BSCCo in accordance with BSCP40 in respect of Change Proposals and Modification Proposals.

It is also BSCCo's practice that, with the exception of confidential ELEXON Circulars sent to all BSC Signatories, such communications are simultaneously published on the relevant areas of the BSC Website – including either a copy of the original circular and its attachments or other documentation as relevant.

BSCCo believes that, in the case of such general communications, e-mail represents the most efficient means of correspondence – enabling fast dissemination of information to large numbers of interested parties. P113 therefore proposes to clarify the Code to reflect current practice with regard to such communications. The Proposed Modification is not intended to alter the provisions by which particular communications are given to individual Parties.

#### **5 ASSESSMENT**

The proposed changes are of a minor and inconsequential nature, and have no impact on any BSC systems or Party systems and processes. No impact on any of BSCCo's systems or processes has been identified, since the proposed changes would confirm existing practice.

No major issues relating to P113 were identified by the IWA. However, 3 minor issues were identified during the drafting of legal text at the Initial Assessment stage, and these were discussed at the Panel meeting of 12 December 2002:

- a) Contingency provisions in the event of e-mail failure.
  - i) Should a prolonged period of e-mail outage occur, BSCCo's Business Continuity Plan provides for the use of alternative forms of communication including (but not limited to) the temporary use of internet-based e-mail accounts and communication by fax. These provisions are continuously assessed for their robustness and to ensure that, should they be invoked, any disruption to normal communication is minimised.

Whilst recognising the need for such contingency provisions, this issue is not felt to detract from the efficiency of e-mail as a form of communication or to be material to the progression of P113.

b) When an e-mail should be deemed by BSCCo to have been received by Parties.

i) BSCCo considers that e-mail delivery receipts are not a reliable means of deeming receipt by Parties since they rely on the particular configuration and operation of recipients' e-mail systems. BSCCo therefore believes that an e-mail should be deemed to have been received one hour after it has been successfully transmitted past BSCCo's e-mail firewall. If the conclusion of this hour falls after 5pm on the day of transmission, the e-mail shall be deemed to have been received at 9am on the following day. Communications sent by e-mail in respect of Urgent Modification Proposals would form an exception to the above, with such communications deemed to have been received one hour after successful transmission. BSCCo's current working practice regarding Urgent Modification communications to be sent outside of working hours is to provide advance notice (where possible) of its intent to issue such communications.

ii) Where a communication may not be received by a Party within this time due to problems with that Party's e-mail system – resulting in an undeliverable receipt being received by BSCCo – BSCCo's working practice is to endeavour to contact the Party concerned in order to issue the communication to that Party by alternative means. A Panel member noted that undeliverable receipts might be received after the time of deemed receipt had passed and BSCCo confirmed that, where such receipts were received, attempts would still be made to contact the Party concerned. However, BSCCo advised that the responsibility to maintain a fully functional system would necessarily lie with that Party. Whilst BSCCo acknowledges a distinction between the receiving and reading of an e-mail, it is considered that this is consistent with communication by fax or post where successful issue of correspondence, rather than its reading by the intended recipient, is ascertained.

iii) A Panel member expressed concern that the proposed legal text regarding receipt of e-mail did not make a distinction between a Working Day and non-Working Day. BSCCo advised that the text had been drafted to be consistent with the existing provisions within the Code concerning communication by fax (paragraph A 9.2.2 (c) of the Code), which do not currently make such a distinction.

c) How e-mail addresses are notified to BSCCo by Parties for such communications.

Currently, the means by which BSC Parties, Party Agents and other interested parties notify BSCCo of the e-mail addresses to which they wish to receive particular types of general communications are documented within relevant Balancing and Settlement Code Procedures (BSCPs) or BSCCo's working practices. Should P113 be approved by the Authority, BSCCo shall undertake a review of this documentation to ensure that existing provisions within BSCPs are robust and that any notifications of e-mail addresses currently documented in BSCCo's working practices are incorporated into existing relevant BSCPs. The proposed implementation timescale for P113 therefore allows for any resulting changes to BSCPs to be drafted by BSCCo and agreed by the relevant Panel Sub-Committee(s).

The Panel were satisfied with the responses provided to address these issues and confirmed their recommendation that the Proposed Modification should be made.

## 6 SUMMARY OF REPRESENTATIONS

8 responses (36 Parties) were received to the consultation on the draft Modification Report. Copies of the individual responses are attached as Annex 1 to this report, and are summarised below:

- a) 1 'no comment' response was returned representing 1 Party;
- b) 3 respondents (25 Parties) expressed unqualified support for the recommendations of the draft Modification Report and for the draft legal text;
- c) 4 respondents (10 Parties) expressed support for the intent of the Proposed Modification, with some reservations. These reservations concerned issues already discussed in depth during the drafting of legal text, and which are outlined as follows:
  - i) Whilst agreeing the recommendations of the draft Modification Report, 1 Party expressed concern that Parties could be deemed to have received e-mail communications from BSCCo which had failed to be successfully delivered due to e-mail difficulties – and therefore requested that some form of acknowledgement of delivery should be received by BSCCo prior to a deemed receipt being noted.

Subsequent to the consultation, BSCCo contacted the respondent to discuss this issue and its view that delivery notices represent an unreliable means of deeming receipt (as outlined in Section 5 b) i) of this report). However, BSCCo reassured the respondent that outgoing general e-mail communications which fail to successfully pass BSCCo's e-mail firewall as a result of problems with BSCCo's e-mail system would be considered not to have been successfully transmitted, and therefore not to have been sent under paragraph H 9.2.5 of the proposed legal text. Where e-mail communications have failed to be sent successfully in this way, they would not be deemed to have been received by Parties – and this definition of successful transmission will be added to the relevant BSCPs should P113 be approved. As outlined in Section 5 b) ii) of this report, Parties would have a responsibility to maintain the functionality of their own e-mail systems, but BSCCo will endeavour to contact Parties where undeliverable receipts are received from them. The respondent accepted these clarifications, but retained concerns regarding failure of Party e-mail systems – suggesting that Parties may wish to investigate the efficiency of their systems with respect to providing delivery receipts or undelivered receipts to e-mail.

- ii) 1 Party agreed that P113 would better facilitate Applicable BSC Objective C3 (3)(d), but requested that paragraph H 9.2.6 of the proposed legal text be expanded to place an obligation on BSCCo to send all documentation within normal working hours except in exceptional circumstances. Where this may not be possible regarding Urgent Modification Proposals, the Party requested that BSCCo undertake best endeavours to provide advance notification of its intent to issue communications outside of working hours. The same Party also requested that the legal text be expanded to capture BSCCo's best endeavours to contact Parties where undeliverable receipts are received.

BSCCo contacted the respondent in order to discuss the above issues. BSCCo provided reassurance that the legal text as drafted stipulates that, where the period of deemed receipt of e-mail communications would fall after 5pm, such communications would not be deemed to have been received until 9am the following day. Whilst communications concerning Urgent Modification Proposals would form an exception, BSCCo's current working practice is to notify all interested Parties (between 9am and 5pm where possible) of the timetable for progression of each Urgent Modification – including the timetable for issuing of communications. Although this working practice will be documented within the relevant BSCPs should P113 be approved, BSCCo considers



that a Code obligation on BSCCo to provide such notifications between 9am and 5pm should not be introduced since the timetable and process to be applied to each Urgent Proposal may 'deviate from all or part of the Modification Procedures or follow any other procedure or timetable approved by the Authority' under paragraph F 2.9.5 of the Code and may therefore result in this option being unavailable. This explanation was considered by the respondent; however the Party asked that its view be noted that, in particular, consultation requests issued outside of normal working hours would undermine the value associated with the consultation process.

With regard to contacting Parties where undeliverable receipts are received, BSCCo advised that the legal text had been drafted to be consistent with the existing provisions regarding communications by post and fax which do not describe a process to be followed should these communications not be successfully delivered. However, BSCCo agreed that current working practice with regard to undeliverable e-mail receipts would be documented within the relevant BSCPs should P113 be approved. The respondent confirmed that this would be satisfactory should its preferred option of a Code obligation not be adopted.

iii) 1 respondent (7 Parties) supported P113 whilst highlighting the need to ensure that Parties are not disadvantaged through failure to receive an e-mail communication or exposed to risks over which they have no control. The respondent suggested that there may be some categories of communication that would benefit from a 'letter post' back-up.

BSCCo contacted the respondent to discuss this issue and again provided reassurance that any general e-mail communications which fail to be successfully transmitted from BSCCo's e-mail server would not be deemed to have been sent, whilst BSCCo would endeavour to contact Parties where undeliverable receipts were received. BSCCo considered that the simultaneous use of post as a back-up would serve to increase the burden of paperwork upon Parties and BSCCo, and noted that use of post also provides no guarantee of delivery to the intended recipient. The respondent confirmed that they were satisfied with these clarifications, and that BSCCo's proposed solution represents a pragmatic approach.

iv) 1 Party agreed e-mail as an appropriate medium for the general distribution of information to Parties, but expressed concern that Parties would be expected to have read such e-mail communications within one hour of sending. The respondent suggested that organisations choosing to use a service provider to deliver e-mails rather than hosting their own server, and who may select a service that would deliver e-mails less frequently, could be disadvantaged since messages may not be delivered to the intended mail box by the time of deemed receipt. In addition, the Party raised concerns that a message would be deemed to have been received without proof of delivery and that receipt of delivery itself would not ensure that a communication had been read by the intended recipient. The respondent also queried the lack of a distinction between a Working and non-Working day within the legal text. Finally, the Party considered that delivery of an e-mail would not be as obvious to other members of an organisation as a fax or letter and that this would place a burden on Parties to check their e-mail frequently. The respondent therefore proposed that the legal text be changed to deem receipt of e-mail communications to have occurred after a longer period, such as 4-5 hours after transmission.

Following the consultation, BSCCo contacted the respondent in order to discuss these issues. BSCCo provided reassurance that the legal text as drafted is concerned with deemed receipt of e-mail communications rather than their actual reading by the intended recipient. This is consistent with existing provisions regarding communications by post and fax where BSCCo deems or determines receipt of the communication without means of knowing whether it has been read. BSCCo noted the respondent's concern regarding use of a service provider and clarified that the

legal text does not stipulate receipt to mean delivery to a mailbox (due to differences in the configuration of Parties' e-mail systems) but would be applied to mean deemed receipt by a Party's e-mail server or service provider as appropriate. BSCCo recognises that, as with post and fax, there may be a delay between an e-mail communication being received and being read by the intended recipient – and that frequent checking of a server mailbox or polling from a service provider would therefore be required in the same way as daily opening of post or frequent checking of a fax machine. BSCCo therefore welcomes use of shared designated mailboxes by Parties for different types of communication (as these have the advantage of several individuals being able to check for mail and provide cover during leave periods) and many Parties currently use such mailboxes. Parties may also wish to have more than one individual receive certain e-mail communications – currently, for example, many Parties have several representatives receiving information concerning Modification Proposals. BSCCo reiterated its view that delivery receipts do not provide a reliable means of determining receipt of e-mail communications, and outlined its concerns over widening the period of deemed receipt since this would potentially impact the timescales for consultations and impact assessments of Modification Proposals which are often required to meet a tight timetable. BSCCo considers that any applied point of deemed receipt will ultimately be arbitrary to some extent, and again provided reassurance that BSCCo would endeavour to contact Parties where undeliverable receipts are received. BSCCo advised that these issues had been given substantial consideration during the drafting of legal text – with legal advice sought by BSCCo, and confirmation provided that the solutions proposed in the drafting were practicable. The respondent considered these clarifications, but requested that its suggestion to widen the period of deemed receipt be noted.

BSCCo also reiterated that the P113 legal text had been drafted to be consistent with existing provisions regarding communication by post and fax, which do not make a distinction between a Working and non-Working day. The respondent noted this intention of consistency, but outlined their concern that there is currently no such distinction within the Code. However, the respondent recognised that changes to introduce this for all forms of communication would lie outside of the scope of P113.

## **7 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION**

### **7.1 Conformed Version**

Attached as separate document (see Annex 2 to this report).

## ANNEX 1 – REPRESENTATIONS

### Responses from P113 Draft Report Consultation

Consultation issued 17 December 2002

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented
1.	SEEBOARD Energy	P113_DR_001	1
2.	Aquila Networks	P113_DR_002	1
3.	British Gas Trading	P113_DR_003	1
4.	LE Group	P113_DR_004	7
5.	Scottish Power	P113_DR_005	6
6.	Scottish and Southern	P113_DR_006	4
7.	Powergen	P113_DR_007	15
8.	Slough Energy Supplies	P113_DR_008	1

**P113\_DR\_001 – SEEBOARD Energy**

With respect to draft modification report for P113 (Email communications under the Code) dated 17th December 2002. We agree to recommendations within section 1.1 of this report and suggested implementation timescales. We do have one concern with regards to suggested legal text for section H9.2.5. This notes that a deemed received date for any email will be made. We have had a number of occurrences throughout this year where email communications sent from Elexon have not been received. However, with this new section H9.2.5 we would have been considered to have received these without any checks in place. We feel that this section should either be removed or strengthened such that some form of acknowledgement of delivery has to have been received by Elexon prior to a deemed receipt being noted on any notice.

Dave Morton  
SEEBOARD Energy Limited

**P113\_DR\_002 – Aquila Networks**

Please find that Aquila Networks Plc response to P113 Consultation on draft Modification Report is 'No Comment'.

regards  
Rachael Gardener

Deregulation Control Group &  
Distribution Support Office  
AQUILA NETWORKS

**P113\_DR\_003 – British Gas Trading****Re: Modification Proposal P113 E-mail Communications under the Code**

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P113. British Gas Trading (BGT) support this Modification Proposal as it mirrors Elexon's current working practices with regard to mass communication of information to the BSC community. We agree that this Modification Proposal will better facilitate applicable BSC Objective C3 (3)(d).

We have identified a couple of issues with regard to the legal text. Firstly, within the draft modification report the text specifies that Elexon will endeavour to contact the affected BSC Party(s) when a communication is not received. The legal text does not appear to provide for such 'best endeavours' to be undertaken by Elexon. Secondly, we would like to see Section H 9.2.6 expanded to place an obligation on Elexon to undertake best endeavours to send all documentation within normal working hours. Whilst we realise that this may not be possible in all circumstances we would like this obligation to be captured by the draft legal text.

We also have a more generic concern that within the draft modification report it states that regarding Urgent Modifications that are sent outside of working hours Elexon will 'where possible' provide advance notice of its intent to issue such communications. We believe Elexon should ensure that best endeavours are undertaken in all instances, to notify BSC Parties of the intention to circulate urgent communications outside of normal working hours that require immediate responses.

Yours faithfully

Mark Manley  
Contract Manager

### **P113\_DR\_004 – LE Group**

Dear Modifications

We have given considerable thought to the problem of parties being disadvantaged through failure to receive an e-mail communication. We would take this opportunity to highlight the problem and say that we think it's a difficult one to solve - but parties should not be exposed to risks over which they have no control. Perhaps there are some important categories of communication that would benefit from a back-up, i.e. 'letter post' routine.

However, we recognise that the proposal is a pragmatic solution to formalising what has become working practice. We therefore support P113.

This reply is sent on behalf of: LE Group Plc, London Electricity Plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Network Plc, and Eastern Power Network Distribution Ltd, ECS.

With kind regards, Paul Chesterman  
for Liz Anderson  
General Manager, Energy Strategy & Regulation

### **P113\_DR\_005 – Scottish Power**

#### **P113 Draft Modification Report Comments**

**For and on behalf of: - *Scottish Power UK plc; ScottishPower Energy Trading Ltd.; Scottish Power Generation plc; ScottishPower Energy Retail Ltd.; SP Transmission plc; SP Manweb plc***

With reference to the above, we agree with the Panel's recommendation that P113: Email communications under the Code represents the most efficient form of communication in such cases since it enables fast dissemination of information to large numbers of recipients and therefore would better facilitate the objective in Condition C3(3)(d) of the Transmission Licence – i.e. promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

We therefore support the implementation of P113.

We have also considered the legal drafting and have no further comments to make.

I trust that you will find these comments helpful. Nonetheless, should you require further clarification of any of the above, please do not hesitate to contact me.

Yours sincerely,

Man Kwong Liu  
Calanais Ltd.

For and on behalf of: - *Scottish Power UK plc; ScottishPower Energy Trading Ltd.; Scottish Power Generation plc; ScottishPower Energy Retail Ltd.; SP Transmission plc; SP Manweb plc*

### **P113\_DR\_006 – Scottish and Southern**

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

Further to your note of 17th December 2002, and the associated Draft Modification Report for P113, we agree with the proposed BSC Panel recommendation to the Authority that the Original Modification Proposal P113 should be made.

If the Modification Proposal P113 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in Section 1.1 of the Draft Modification Report.

Regards

Garth Graham  
Scottish & Southern Energy plc

### **P113\_DR\_007 – Powergen**

#### **Response to Modification Proposal P113 - E-mail Communications under the Code**

On behalf of Powergen UK plc\*, we are in favour of the above Modification Proposal. The arrangements currently in use should be reflected in the Code to confirm that 'general' communication is to be given by email. The proposal creates a more cost and time efficient process and so achieves the applicable BSC objective (d) by promoting 'efficiency in the implementation and administration of the balancing and settlement arrangements'.

As part of The BSCCo's Business Plan, the Corporate Priorities include improving the implementation of BSC arrangements, in particular, addressing the volume of paperwork produced. At present, there is an excess of paper and reading material produced by the BSCCo, attributing to significant costs to the BSC parties. Confirmation of the use of e-mails as the standard method for general communication moves the Code towards a more modern and efficient approach to the problem of paperwork volume.

The contingency provisions, the time an e-mail is deemed to have been received by Parties and how e-mail addresses are notified to Elexon by Parties, suggested in the Modification Report appear to be adequate in maintaining efficiency in the system.

We look forward to the implementation of the proposal.

Yours sincerely,

Christiane Sykes.

\* 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

### **P113\_DR\_008 – Slough Energy Supplies**

I am writing to express concern about Modification Proposal P113 as it is currently drafted although I do accept that email is an appropriate medium for the distribution of information to Parties in general.

As the draft modification report recognises, it is not easy to determine that an email has been received by the recipient, but merely that it has been allocated to a "mail box". However, the proposal does not even contemplate using this as a method for determining delivery. The assumption that will be made within the Code is that a recipient will have received a message even though that may not be the case. This is contrary to the existing provision, whereby a fax receipt is required showing that a successful copy has been produced in the recipient's office. Indeed, in certain cases when the internet is busy messages may not be delivered until after an hour has passed, and it is usual to take several hours for a message to be returned indicating that delivery was not successful. Thus messages are required to have been received in the correct "mail box", let alone read as the modification is drafted.

In addition to whether an email has reached the correct "mail box" being in doubt, there is an issue as to when it would be received at that "mail box". Firstly, in addition to delays in a message being transmitted across the internet, many smaller companies use a service provider to handle email for them. Such a provider holds email until the company polls a server to collect the emails. This may vary from a few times an hour to once or twice a day. In such a case, the email does not get to the recipient's "mail box" until the service provider's server has been polled. A Code obligation that deems emails to have been read within an hour would effectively require parties to ensure that they did not use a polling connection to a service provider but hosted their own email server. I do not believe that this is appropriate additional cost. In addition, email sent out by a party using such a service would first of all get polled from an individual PC to the company email system. It would then subsequently be sent to the service provider's server at the next polling time. It is quite easy for such time to exceed one hour, and so notices could also be deemed to have been served by such a user before they had been received by BSCCo for example.

Finally, I have not considered the issue of the delay between an email reaching a recipient's "mail box" and being read. Unlike a fax or letter, an email address is unique, and its delivery will not be obvious to anyone else within an organisation. I do not think that this is adequately covered, since it is recognised that there is no distinction between working and non-working days. This suggests that the email contact should be reading their "mail box" every day and very frequently. In such circumstances, this cannot be a single contact.

I would therefore propose that the modification be changed so that notices

are deemed to be delivered after a longer period - say 4 or 5 hours (this is typical of the time taken for a non-delivery message when there are no delays around the internet). In addition, email communication should only be used for information communications which do not require action by the receiving party (notice of panel meetings, circulars about previous system outages, for example). It would seem appropriate that notices which have a potential impact on a party should only be deemed served if a receipt has been obtained to that effect.

Regards  
Steve Garrett  
Slough Energy Supplies Ltd



## **ANNEX 2 – CONFORMED LEGAL TEXT**

Attached as separate document.