

December 2002

**INITIAL ASSESSMENT OF MODIFICATION
PROPOSAL P111 - Procedure to allow the
BSC Panel to refuse to accept Contingent
Modification Proposals**

Prepared by ELEXON Limited

Document Reference	P111IR
Version no.	1.0
Issue	FINAL
Date of Issue	6 December 2002
Reason for Issue	For Panel Decision
Author	ELEXON

I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
0.1	2/12/02	Richard Clarke		For Peer Review
0.2	3/12/02	Richard Clarke		For Internal Review
1.0	6/12/02	Richard Clarke		For Panel Decision

Version	Date	Reviewer	Signature	Responsibility
0.1	2/12/02	Change Delivery		
0.2	3/12/02	Change Delivery		

b Distribution

Name	Organisation
Each BSC Party	Various
Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
energywatch	energywatch
Core Industry Document Owners	Various

c Intellectual Property Rights and Copyright

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

II CONTENTS TABLE

I	Document Control.....	2
a	Authorities.....	2
b	Distribution.....	2
c	Intellectual Property Rights and Copyright.....	2
II	Contents Table	3
1	Summary.....	4
2	Introduction	5
3	Description of the Modification Proposal.....	5
4	Impact on BSC Systems and Processes.....	6
5	Impact on Other Systems and Processes Used by Parties	6
6	Impact on Documentation.....	6
6.1	Impact on Balancing and Settlement Code.....	6
6.2	Impact on Code Subsidiary Documents.....	6
6.3	Impact on Core Industry Documents	6
7	Impact on Other Configurable Items	6
8	Impact on ELEXON.....	6
9	Impact on Financial Arrangements and Budget	6
10	Impact on BSC Agent Contractual Arrangements.....	6
11	Process and Timetable for Progressing the Proposal.....	6
12	Issues.....	7
	Annex 1 – Modification Proposal.....	8

1 SUMMARY

Modification Proposal P111 'Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals' (P111), included in Annex 1, was submitted on 27 November 2002 by Powergen UK plc, in accordance with Section F 2.1.1 of the Balancing and Settlement Code ('the Code').

Paragraph F2.1.4 of the Code describes the circumstances whereby the Balancing and Settlement Code Panel ('the Panel') is permitted to "refuse to accept the submission" of a Modification Proposal. The circumstances described within F2.1.4 are that the Modification Proposal has, in the opinion of the Panel, substantially the same effect as:

- a Pending Modification Proposal; or
- a Rejected Modification Proposal, where such Modification Proposal is made within 2 months of the decision of the Authority not to direct the Transmission Company to modify the Code in the manner set out in the Modification Proposal.

P111 seeks to extend the circumstances whereby a Modification Proposal can be refused to be accepted, to cover the circumstances where that Modification Proposal is contingent on the acceptance, by the Authority, of any other Pending Modification Proposal or a "yet to be developed" Modification Proposal.

An initial assessment of P111 has identified the following potential areas that need to be considered:

- **the definition an appropriate contingency test;**
- **the issues relating to retrospection in the implementation of this Modification Proposal; and**
- **an assessment against Applicable BSC Objectives of whether it is appropriate to "refuse to accept" contingent Modification Proposals (to include assessment against Condition C3(4) of the Transmission Licence)**

A commentary in relation to each of these points is provided in Section 12 of this report.

On the basis of this Initial Written Assessment, it is recommended that the Panel be invited to:

- a) NOTE the results of the Initial Written Assessment;**
- b) DETERMINE that Modification Proposal P111 should be submitted to the Assessment Procedure in accordance with section F2.6 of the Code;**
- c) AGREE the Assessment Procedure timetable such that an Assessment Report should be completed and submitted to the Panel for consideration at their meeting of 13 February 2003;**
- d) DETERMINE that the Assessment Procedure should be undertaken by the same Modification Group as that assessing Modification Proposal P109; and**
- e) AGREE any refinement to the Modification Group Terms of Reference.**

2 INTRODUCTION

This Report has been prepared by ELEXON Ltd. on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC 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 BSC.

An electronic copy of this document can be found on the BSC website, at www.elexon.co.uk

3 DESCRIPTION OF THE MODIFICATION PROPOSAL

Paragraph F2.1.4 of the Code describes the circumstances whereby the Balancing and Settlement Code Panel ('the Panel') "may refuse to accept the submission" of a Modification Proposal. The circumstances described within F2.1.4 are that the Modification Proposal has, in the opinion of the Panel, substantially the same effect as:

- a Pending Modification Proposal; or
- a Rejected Modification Proposal, where such Modification Proposal is made within 2 months of the decision of the Authority not to direct the Transmission Company to modify the Code in the manner set out in the Modification Proposal.

P111 seeks to ensure that the submission of a Modification Proposal will not be accepted by the Panel, in the circumstances where that Modification Proposal is contingent on the acceptance, by the Authority, of any other Pending Modification Proposal or a "yet to be developed" future Modification Proposal.

P111 places a new obligation on the Panel to perform a "contingency test" prior to accepting the submission of a Modification Proposal. The contingency test, would prevent the Panel accepting the submission of a Modification Proposal where the Proposer has failed to demonstrate "beyond reasonable doubt", in the opinion of the Panel, that such a Modification Proposal is not contingent on the outcome of any Pending Modification Proposal, or a "yet to be developed", Modification Proposal.

P111 also places a further obligation on the Panel to assess all Pending Modification Proposals that are currently subject to either a Definition Procedure or Assessment¹ Procedure, against this "contingency test". Where the Panel determines that any such Pending Modification Proposals fail the "contingency test" the Panel would be required to submit that Pending Modification to the Report Phase with a recommendation that the Proposed Modification should not be made.

It is the view of the Proposer that the perceived defect that P111 is attempting to resolve has arisen, due to the submission of Modification Proposal P109 'A Hedging Scheme for changes to TLF in Section T of the code' (P109). Although P109 is intended to be stand alone, the Proposer of P111 argues that an additional Modification Proposal would be required to be raised in order to effect the substance of P109. The Proposer also argues that similar Modification Proposals of an anticipatory nature could be raised in the future which would "waste the BSC Panel's, ELEXON's and BSC Parties' time". However, in seeking to prevent the acceptance of the submission of future anticipatory Modification Proposals, P111 is by necessity itself anticipatory.

A copy of the Modification Proposal, as submitted by its proposer, can be found at Annex 1 to this report.

¹The Proposer has drafted P111 against the current baseline of the Code. For the avoidance of doubt the Proposer has confirmed that this element of P111 should refer to any Pending Modification Proposals, that have had their Initial Written Assessments already presented to the Panel, but have not yet entered the Report Phase.

4 IMPACT ON BSC SYSTEMS AND PROCESSES

No impacts on BSC Systems and processes have been identified at this stage.

5 IMPACT ON OTHER SYSTEMS AND PROCESSES USED BY PARTIES

There will be a burden of proof on Parties raising a Modification Proposal to demonstrate that such proposals are not contingent on any Pending or future Modification Proposal.

6 IMPACT ON DOCUMENTATION

6.1 Impact on Balancing and Settlement Code

A new section will be required in Section F of the Code to require a contingency test to be carried out for all new Modification Proposals, and for existing Pending Modification Proposals, that have not reached the Report Phase.

6.2 Impact on Code Subsidiary Documents

Possible change to Balancing and Settlement Code Procedure BSCP76 'Submission of Modification Proposals' if the form used for the submission of Modification Proposals needed to be changed.

6.3 Impact on Core Industry Documents

None identified at this stage.

7 IMPACT ON OTHER CONFIGURABLE ITEMS

None identified at this stage.

8 IMPACT ON ELEXON

An amendment will be required to the ELEXON procedures relating to the production of Initial Written Assessments as this document will now need to make a recommendation to the Panel as to whether each new Modification Proposal is "contingent" on any Pending Modification Proposals or ones that may be submitted in the future.

9 IMPACT ON FINANCIAL ARRANGEMENTS AND BUDGET

None identified at this stage.

10 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

None identified at this stage.

11 PROCESS AND TIMETABLE FOR PROGRESSING THE PROPOSAL

ELEXON recommends that this Modification Proposal be submitted to the Assessment Procedure to be undertaken by the **P109** Modification Group. The **P109** Modification

Group should be requested to provide its report to the Panel by 13 February 2003. It should be noted that this period spans the 2002 Christmas and New Year holiday period and should allow sufficient time for adequate consultation on the Modification Proposal.

12 ISSUES

The following issues will need to be considered and addressed in the progression of this Modification Proposal:

- **An assessment of an appropriate contingency test** - The nature of the contingency test will need to be identified and defined within the Code.
- **Whether there exist any issues relating to retrospection in the implementation of this Modification Proposal** – Whether the application of the contingency tests to existing Pending Modification Proposals could be considered to be retrospective and whether this would better facilitate the achievement of the Applicable BSC Objectives.
- **An assessment against Applicable BSC Objectives of whether it is appropriate to “refuse to accept” contingent Modification Proposals** - An assessment against the applicable BSC Objectives of whether it is appropriate to remove the ability to accept Modification Proposals that are contingent on other Pending or future Modification Proposals. This will include an Assessment against Condition C3(4) of the Transmission Licence.

ANNEX 1 – MODIFICATION PROPOSAL

Modification Proposal	MP No: 111 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals	
Submission Date <i>(mandatory by proposer):</i> 27 November 2002	
<p>Description of Proposed Modification <i>(mandatory by proposer):</i></p> <p>As a matter of good practice all modification proposals submitted to the BSC Panel should be ‘stand-alone’ proposals that are not dependent on other pending or yet to be developed proposals. This proposal requires the BSC Panel to refuse to accept any new proposal where the Proposer (or his/her representative/alternate) has failed to demonstrate beyond reasonable doubt that such a proposal is not contingent on one or more future or pending modification proposals being approved by the Authority. For example, under this approach a phasing proposal would be allowed provided it was combined with a full description of the change it is seeking to phase in.</p> <p>This ‘contingency test’ shall be set against the legal text of the Balancing and Settlement Code (BSC) prevailing at the time the BSC Panel considers such test. No account would be taken of any contingency on arrangements outside the BSC, such as CUSC Amendment Proposals or changes to NGC’s transmission charges. Decisions as to whether to refuse to accept a proposal under these procedures would normally be made at the BSC Panel meeting when the proposal is first considered. The BSC Panel however, would on implementation of this proposal be required, as soon as is reasonably practicable, to apply the ‘contingency test’ to all existing proposals that are still subject to the Definition or Assessment Procedures. Should they determine that any of these ‘work-in-progress’ proposals are contingent in nature the BSC Panel shall refer such proposals to the Report Phase and recommend their rejection (including any alternatives that may have been developed).</p> <p>In theory it may be possible for a proposal that was initially ‘stand-alone’ in character to become contingent on other proposals, if the BSC ‘baseline’ changes. Under such circumstances the proposal would continue to follow the normal modification process.</p> <p>For avoidance of doubt nothing in this proposal would prevent the BSC Panel or Modification Groups considering the implications of the possible implementation of other pending modifications on a particular proposal.</p>	
<p>Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i></p> <p>A modification proposal (P109) is currently being considered that attempts to anticipate the possible implementation of another pending modification proposal. It is also possible that other BSC Parties may also seek to submit other ‘contingent’ modifications to attempt to insure against the risk of future changes to the code. Such proposals undermine the existing flexible BSC governance arrangements, which were designed to facilitate incremental reform of trading arrangement rules consistent with the Applicable BSC Objectives. Permitting ‘contingent’ modification proposals could potentially limit the beneficial effects of future modification proposals.</p> <p>Consideration of such proposals wastes the BSC Panel’s, Elexon’s, and BSC Parties’ time, and in the unlikely event that such proposals were to be implemented, could require expenditure on new systems and process that may never be used. At the very least expensive legal costs would be incurred in redrafting the BSC.</p> <p>Any rule changes that attempt to anticipate future changes are in any event futile as subsequent proposals that are impeded by such rules will simply seek to strike out the offending clauses in the BSC.</p> <p>To address the above issues/defects BSC Parties should be required to submit only stand-alone’ modifications. A procedure that allows the BSC Panel to refuse to accept any ‘contingent’ modification proposals will encourage</p>	

Modification Proposal	MP No: 111 <i>(mandatory by BSCCo)</i>
this.	
Impact on Code <i>(optional by proposer):</i> Changes to Section F.	
Impact on Core Industry Documents <i>(optional by proposer):</i> None	
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i> None	
Impact on other Configurable Items <i>(optional by proposer):</i> None	
Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by proposer):</i> By avoiding unnecessary costs in terms of the BSC Panel's, Elexon's, and BSC Parties' time and expenditure on processes and systems that may never be used, it promotes efficiency in the implementation of the balancing and settlement arrangements. It also will indirectly help promote Applicable BSC Objectives (a), (b) and (c) by preventing existing and possible future 'contingent' modifications hindering the path of future modifications that are subsequently approved by the Authority.	
Details of Proposer: <p style="text-align: center;">Name: Peter Bolitho</p> <p style="text-align: center;">Organisation: Powergen UK plc</p> <p>Telephone Number: 024 7642 5441</p> <p>Email Address: peter.bolitho@pgen.com</p>	
Details of Proposer's Representative: <p style="text-align: center;">Name: Peter Bolitho</p> <p style="text-align: center;">Organisation: Powergen UK plc</p> <p>Telephone Number: 024 7642 5441</p> <p>Email Address: peter.bolitho@pgen.com</p>	

Modification Proposal	MP No: 111 <i>(mandatory by BSCCo)</i>
Details of Representative's Alternate: Name: Paul Jones Organisation: Powergen UK plc Telephone Number: 024 7642 4829 Email Address: paul.jones@pgen.com	
Attachments: No	