Responses from P102 Draft Report Consultation

Consultation issued 19 February 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	SEEBOARD	P102_DR_001	1	
2.	Powergen	P102_DR_002	15	
3.	LE Group	P102_DR_003	7	
4.	NGC	P102_DR_004	1	
5.	Aquila Networks	P102_DR_005	1	
6.	Scottish and Southern	P102_DR_006	4	
7.	Scottish Power	P102_DR_007	6	
8.	British Gas Trading	P102_DR_008	1	
9.	Slough Energy Supplies	P102_DR_009	2	2
10.	British Energy (late response)	P102_DR_010	3	

P102_DR_001 – SEEBOARD

Respondent:	Dave Morton
Responding on Behalf of	SEEBOARD Energy Limited
Role of Respondent	BSC Party

		Response	Rationale
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	This is a low cost solution but risks associated with it are high. These risks could lead to problems with BSC administration. Therefore, this original proposal does not better facilitate BSC objectives.
	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**Yes**	Enables access to data to assist in competition without leading to problems with BSC administration. Although this approach is more costly than that of original proposed modification this solution has built in safeguards, due to licence approach. These mean that BSC objectives will be better facilitated.
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?	**Yes**	
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**Yes**	For alternate only, as original does not better facilitate BSC objectives we cannot support its implementation date.
Q4	Do you have any other comments on the draft Modification Report for		

	P102?		

P102_DR_002 – Powergen

Respondent:	Powergen		
Responding on Behalf of	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		
Role of Respondent	BSC Party		
		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	We do not believe that creating a special class of membership is appropriate to facilitate the purpose of this modification which is the wider provision of data. This could throw up further legal issues. A far cleaner solution would be to follow the licence agreement route, which would allow the legal issues to be confined to the provision of data and confidentiality. It would also allow the correct recovery of the costs of providing the service, through the levying of a licence fee.

	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**No**	Although this option utilises the licensing approach it is discriminatory, in that it provides for special status for Licence Exempt Generators. Additionally, we believe that Elexon would have difficulty policing whether or not applicants for information are Licence Exempt Generators. It would not appear to be the most productive use of its resources.
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?	**Yes**	
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**Yes**	A separate release for the Alternative Modification would be costly and unjustified.
Q4	Do you have any other comments on the draft Modification Report for P102?	**No**	P114 is a far more equitable solution and should be adopted.

P102_DR_003 – LE Group

Respondent:	Tony Dicicco
Responding on Behalf of	LE Group (EPN Distribution Ltd, London Electricity plc, London Electricity Group plc, Jade Power Generation Ltd, London Power Networks plc, Sutton Bridge Power, West Burton Ltd)
Role of Respondent	BSC Party

		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	Although symmetrical provision of data to market participants is desirable and promotes competition, thereby better facilitating Objective C, the proposed modification offers the potential for non-trading parties to submit modification proposals even though they would not share in the cost of processing modification proposals. This clearly does not better facilitate Objective D.
	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**Yes**	The alternative both promotes competition through symmetrical provision of data to market participants and provides a clear, targeted mechanism for recovering the costs incurred in producing and distributing this data to LEGs.
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?	**Yes**	

Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**Yes**	
Q4	Do you have any other comments on the draft Modification Report for P102?	**No**	

P102_DR_004 – NGC

Respondent:	*Name* ***National Grid***
Responding on Behalf of	*Please list all Parties responding on behalf of (including the respondent company if relevant).* ***National Grid***
Role of Respondent	*(BSC Party / Other (Please specify)* **BSC Party**

		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	Overall, we believe that the Proposed modification may promote objective (c) but is outweighed by not facilitating objective (d). In addition, we agree with the Panel that there are issues surrounding the use of BSC Party status as a means of accessing information.
	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**Yes**	We agree that the Alternative does better meet the BSC Objectives as it avoids the issues surrounding the use of BSC Party status, as mentioned above.
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?	**Yes**	We agree that the legal text will provide LEGs access to the information they require once the Licence Agreement is signed.
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**Yes**	The implementation date is consistent with the standard release strategy for non-urgent modifications.
Q4	Do you have any other comments on the draft Modification Report for P102?	**Yes**	We note and support the draft recommendation that should P114 be made then P102 Alternative would

			become superfluous.

P102_DR_005 – Aquila Networks

Please find that Aquila Networks Plc response to P102 Consultation on draft Modification Report is 'No Comment'.

regards
Rachael Gardener

Deregulation Control Group &
Distribution Support Office
AQUILA NETWORKS

P102_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.

In relation to the four questions listed in the Consultation Paper, contained within your note of 19th February 2003 concerning Modification Proposals P102, we have the following comments to make:-

Q1 Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should not be made?

Yes. We do not agree for the reasons indicated below. As we have indicated previously, we have concerns that Modification Proposal P102 would create a precedent which would allow subsets of trading arrangements to be created and applied to categories of Parties, excluding them from certain obligations and allowing them to be treated differently. This would introduce discrimination in favour of some Parties at the 'expense' of other Parties. This would generally dilute the effectiveness of the Code. We note that NETA was designed to ensure equal treatment and transparency for all Parties. Modification Proposal P102 runs counter to this and can not, therefore, be described as better facilitating the achievement of any BSC Objective.

Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?

No. We do not agree for the reasons indicated below. Please note our following comments should not be construed to lend support whatsoever to this Modification. However if P102 is to proceed further, of the two options, we would prefer this Alternative Modification P102 as long as the Licence Agreement arrangements were put in place, that the charging levels are of the same order as the minimum for Parties and that the ongoing maintenance of central systems, along with the BSSCo costs for managing Licensees, is recovered from non-trading parties only.

In respect of both Modification Proposal P102 and Alternative Modification P102 we do not agree with the premise behind them, namely that there is a defect that requires rectification. No explanation or sound justification has been made by the Proposer as to why such information is required or how it would better facilitate the achievement of the BSC Objectives or promote competition.

We strongly agree with the comments in Section 6.1.1 of the 7th January 2003 Assessment Report (Version 0.3) concerning the suggested ability of non parties to raise Modifications. There is a considerable cost involved in the actual handling of Modifications involving work by Elexon, the Panel and market participants. In addition to this there is the potentially significant costs associated with implementing the change itself. We note, for example, the costs identified in the recent P98 consultation of between £1.4M and £1.75M. We therefore agree that (a) "there are existing methods whereby non-Parties can submit Modification Proposals"; (b) that there are very serious issues around allowing non-trading Parties "to submit proposals that affect a market in which they are not directly involved"; and, (c) that "costs of the Modification process are mainly recovered from trading parties"; and for these reasons non-trading Parties should NOT be permitted any additional rights (beyond the existing rights) to raise Modification Proposal.

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

Q2 Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?

Yes.

Q3 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?

If the Proposed or the Alternative Modification Proposal P102 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 Modification Report.

Q4 Do you have any other comments on the draft Modification Report for P102?

Yes. As indicated in Q1 above, we do not agree with Modification Proposal P102 or Alternative Modification P102 and see no reason why any of the information listed in this Modification should be made available to non trading persons. We maintain our view that Party Information should not be made available to persons not involved in trading activities.

We are very mindful that NETA stands for the New Electricity TRADING Arrangements. As such it is designed to meet the requirements of Trading. There are numerous potential non-trading parties. The arrangements are not designed for them, they are designed for those who freely choose to join up to the

Code. Non-trading parties are not compelled to join. However, where they freely choose to join then they do so in the knowledge that rights, obligations and costs flow from their decision (to join). This approach avoids frivolous participation.

Regards

Garth Graham
Scottish and Southern Energy plc

P102_DR_007 – Scottish Power

Respondent:	*Name* John W Russell (SAIC Ltd)
Responding on Behalf of	*Please list all Parties responding on behalf of (including the respondent company if relevant).* Scottish Power UK plc; ScottishPower Energy Trading Ltd.; Scottish Power Generation plc; ScottishPower Energy Retail Ltd.; SP Transmission plc; SP Manweb plc.
Role of Respondent	*(BSC Party / Other (Please specify)* Supplier / Generator/ Trader / Consolidator / Exemptable Generator / Party Agent

		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	*In keeping with our previous responses in respect of P102, we agree with the BSC Panel that it is appropriate that the Original Modification should not be made. It is discriminatory and, therefore, does not promote efficiency in the trading arrangements, for only certain non-Trading Parties such as LEGs to obtain access to the relevant BSC Agent Reports*

	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**No**	*In keeping with our previous responses in respect of P102, we disagree with the BSC Panel that it is appropriate that the Alternative Modification, providing for a Licensing Agreement between Licence Exempt Generators or their nominees and BSCCo in order to access the relevant BSC Agent Reports, should be approved. The Alternative remains discriminatory because it is restricted to LEGs. In view of the fact that there is another Modification proposal P114 which allows for even greater access to these Reports, i.e. to all interested non-Trading Parties, we do not approve of P102 Alternative. P114 Original is our preferred solution.*
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?	**Yes**	*Should either of these solutions eventually be accepted by the Authority, the legal text appears to be appropriate.*
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**Yes**	*Should either of these solutions eventually be accepted by the Authority, the implementation timescales appear to be appropriate.*
Q4	Do you have any other comments on the draft Modification Report for P102?		*No further comments*

P102_DR_008 – British Gas Trading

Re: Modification Proposal P102 – Entitlement of Licence Exemptable Generators ("LEGs") to BSC Membership without Evidence of Trading

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P102. British Gas Trading (BGT) agrees with the Panel's provisional recommendation supporting the Alternative Modification Proposal. BGT believes that increasing the visibility of data could be seen to better facilitate Applicable BSC Objective (c).

BGT support the Alternative Proposal as the licence approach delivers the intended objective of the Modification Proposal without obligating parties to become signatories to the BSC. The BSC was constructed for use by BSC Parties and the Alternative does not dilute the BSC by introducing a subset of class of BSC Party who have no intention of trading. The licence route also addresses two of BGT's main concerns as it introduces a robust cost recovery mechanism with confidentiality obligations that mirror those in the BSC.

Yours faithfully

Mark Manley
Contract Manager

P102_DR_009 – Slough Energy Supplies

Respondent:	*Name* **Slough Energy Supplies Limited**
Responding on Behalf of	*Please list all Parties responding on behalf of (including the respondent company if relevant).* **Slough Energy Supplies Limited (Supplier); Fibrepower Slough Limited (generator); Slough Energy Contracts Limited (exemptable generator); Slough Utility Services Limited (exemptable generator)**
Role of Respondent	*(BSC Party / Other (Please specify)* **BSC Party**

		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**No**	There is no contractual right to provide the data set out in the modification, nor for the LEGs to receive the data. This cannot be changed other than through the modification process which would make the provision of data transparent to both parties and LEGs and subject to Ofgem's determination. The issues set out with regard to the alternative modification also apply to the original modification.

	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**Yes**	On the basis that the original modification is not made we would support the implementation of the alternative modification. Under the current arrangements, some market data is publicly available by means of the Balancing Market Reporting System (BMRS). This includes final physical notifications and imbalance for each half hour. The BMRS provides information in advance of and shortly after real time. However, out-turn information (such as actual system imbalance and actual generation) is not published. Other market data of commercial relevance to LEGs, including the half hourly transmission loss and "beer fund" values, and the net metered and imbalance position of market participants, is restricted to BSC parties. The reason for this cannot be commercial confidentiality, as information relating to each BSC party is available to every other BSC party in the form of the SO142 Report. This unequal access to market data is in contrast with the situation under the Pool, where ESIS provided a similar set of data for all paying subscribers.
			The commercial relevance of this market data to LEGs arises from the fact that LEGs will normally be negotiating to sell their output to a licensed supplier under Supplier Volume Allocation ("SVA"), rather than trading within the NETA markets as BSC parties. The

			principal reason for this is the cost and administrative burdens involved with trading in the NETA markets which are impracticable for the majority of LEGs to bear. For example, the cost of establishing a fully fledged trading desk in the UKPX are estimated at £1 million, in addition to other incidental costs. Further details of these administrative barriers are contained in Ilex Consulting's report "Contractual and Administrative Barriers Facing Licence-Exempt Generation under NETA", which was attached to proposal P102. Therefore, LEGs will almost always be negotiating for the sale of their output with a licensed supplier, who by definition will be a BSC party and have access to the market data currently denied to non-parties. Any negotiation where one party is entitled to all the relevant information and the other is not, is bound to disadvantage the other party. The current position therefore creates an unjustifiable handicap for the negotiating position of LEGs as against licensed suppliers. As an example of how access to the relevant market data will improve the position for LEGs, knowing the metered quantities and imbalance positions of potential contracting counterparties would substantially assist LEGs in determining both who was in a position to contract with them and to better understand the trading position of that counterparty. It would also enable LEGs to verify independently the benefits of particular supplier contracts or consolidation benefits where the counterparty is a BSC Party and is therefore in possession of such information. The difficulty for LEGs is that contracting under SVA inevitably restricts them from accessing such vital market information. The dilemma which they face is that, currently, the only way of accessing this information is to become full trading BSC parties, a route to market which, as explained above, is uneconomic for the vast majority of them. The current arrangements therefore place LEGs in a position where they are either: (i) contracting under SVA with licensed suppliers as against whom they have a handicapped bargaining position due, amongst other reasons, to the asymmetry of market data available to LEGs and licensed suppliers; or

			(ii) obliged to overcome the cost and administrative barriers of becoming full trading BSC parties which are uneconomical for them. The current arrangements therefore impose an unjustified barrier on any LEG wishing to access this market data. The Proposer can see no objective reason why LEGs should not be entitled to receive the market data provided to BSC Parties given its importance with LEGs dealing with suppliers. The effect of the lack of market data available to LEGs who are not fully trading BSC parties is one of a range of market barriers faced by LEGs. It is an anti-competitive aspect of the current NETA market structure that this information, which is not confidential, should be available to one party to a contract, but not the other. The effect of this barrier has been to contribute to the disproportionally adverse impacts which NETA has had upon LEGs and which are well documented, for example they are referred to in 14 responses from the smaller generator market to the DTI's consultation on smaller generators and NETA of 1st November 2001. This has resulted in significant withdrawals from the LEG sector and threatens its continued participation in the generation market. It cannot be in the interest of competition that a sector providing some 8% of capacity in the UK should be placed in jeopardy. Making available crucial market information to LEGs from whom full trading BSC participation is not a practical option will assist in creating a fairer negotiating position for most LEGs and thereby better facilitate applicable BSC objective (c) (promoting effective competition in the generation and supply of electricity). For further details of the impacts of NETA on LEGs, please see the Ilex Reports "An Objective Assessment of the Impact of NETA on Smaller Generators" (available on the Ilex website) and "Contractual and Administrative Barriers Facing Licence Exempt Generators under NETA", referred to in the answer to question 1.
Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report	**No**	One of the defects that the modification seeks to address is that there is no obligation on Elexon to provide information to parties that require it. The draft modification report states

	addresses the defect identified within the Modification proposal?		that it is better to have any obligation within the licence rather than in the Code itself. We do not accept the reasoning behind this. In section 3.4 of the draft modification report reference is made to section H9.4 of the Code. This states that third parties are not intended to have any "rights, benefits, entitlements or privileges under the Code, the Framework Agreement and the Code Subsidiary Documents." However we do not accept that this is contradicted by the introduction of an obligation within the Code. No rights are given to third parties as a result of an additional obligation on BSCCo to make the licence available. The right relates to third parties but the obligation will only be enforceable by signatories to the Code rather than the third parties themselves. This obligation would not constitute a 'benefit' to third parties any more than other 'benefits' already set out in the Code e.g. third parties being able to access the BMRS. As such the introduction of an obligation in the Code does not oppose either the meaning or the spirit behind H9.4. The aim of H9.4. is presumably to ensure that third parties have no recourse to any type of action against Elexon or parties to the Code due to anything set out in the Code, and this would not be threatened by putting the obligation within the Code. The modification report also refers to the objectives in B1.2.1, in particular the need to promote transparency and openness in the conduct of BSCCo's business subject to express Code provisions and to any other duties of confidence owed to third parties. This is cited as a reason for not including an obligation to release information within the Code. This appears counter-intuitive. We do not accept that placing an obligation in the Code provides an obstacle to transparency. Indeed, it would appear to do the absolute opposite. Anything which increases the flow of information should not be considered an obstacle to transparency. Placing such an obligation within the Code makes it clear that the obligation exists. Another reason for placing an obligation within the Code is that one of the reasons behind

			the modification was to introduce a recognised requirement on BSCCo and to introduce a measure of certainty into the provision of information. If there is no obligation in the Code on BSCCo to do this then this will not be achieved.
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?	**No**	This is a measure which is directed towards improving market competition and in our view there should be a sufficiently high priority for implementation for it to be achieved earlier than the planned date.
Q4	Do you have any other comments on the draft Modification Report for P102?	**YES**	In the event that P102 were approved then P103 would become even more significant as a means of implementing the access to data set out in P102.

To:
Elexon Limited
4th Floor
350 Euston Road
London
NW1 3AW

28 February 2003

Our ref: BI/S2878/00023/HUK

Dear Sirs

Modification Proposals P102 and P114

On behalf of Slough Heat and Power we raise the following points concerning the legal advice that Elexon received in relation to an obligation to provide data to a Licensed Data Person. We refer to the draft modification report for P102 of 18 February 2003 ('the Report'). The relevant arguments are repeated in the draft modification report for P114 of 19 February 2003. Some of the issues set out in these reports are also referred to in an internal Elexon memorandum by Melanie Henry dated 5 February 2003.

Third party rights under the Code

In section 3.4 of the Report reference is made to Section H9.4 of the Code. This states that Parties do not intend that third parties shall have any "rights, benefits, entitlements or privileges under the Code, the Framework Agreement and the Code Subsidiary Documents". We believe that H9.4 is not affected by the proposed introduction of the modifications. No rights would be given to third parties as a result of an additional obligation on BSCCo to make the licence available being included in the legal text. The obligation would *relate* to third parties, but any such obligation would only be enforceable by signatories to the Code. As such H9.4. would stand along such an obligation - indeed it would help clarify this very point.

Whilst it could be argued that a benefit may be given to a third party by this obligation being introduced, this is true of the suggested legal text as it is set out now (albeit not a benefit that can be enforced if it is not given). In addition this should not be viewed as a contradiction to H9.4 any more than other benefits to third parties that arise from the Code e.g. the benefit that third parties get from being able to access the BMRS as they are currently able to do.

In short, the aim of H9.4 is surely to ensure that no third parties have recourse to any type of action against Elexon or Parties to the Code by reason of anything within the Code. An obligation within the Code would not contradict this for two reasons:

- The obligation can only be enforced by signatories to the Code in accordance with standard contractual law; and
- In any case H9.4 makes clear that third party rights cannot arise by way of anything within the Code – including the suggested obligation

Transparency

The legal advice as described in the Report also makes reference to the objectives in B1.2.1, which states that the Code must be given effect in a way that facilitates the achievements of the objectives, including the objective that "subject to express Code provisions and to any other duties of confidence owed to third parties there is transparency and openness in the conduct of BSCCo's business." Legal advice to Elexon on the basis of this objective was that licensees should be included within the licence and should not appear within the Code.

We do not understand the reasoning behind this advice. We cannot see how placing an obligation outside of the Code increases transparency. Surely placing such an obligation within the Code increases the level of transparency since the Code is the primary source of information on what the BSCCo can and cannot do?

Furthermore, we query how anything which is likely to increase the flow of information can be considered to constitute an obstacle to transparency in the conduct of BSCCo's business.

The above two points suggest that the legal advice on which Elexon's view on this matter appears to be based should be reconsidered. However, we also feel that if the modification group consider that the alternative modification should be implemented, then there is no reason why H9.4 should stand in the way. Quite apart from whether it would be contradicted by the modification (and as we have already stated we believe it would not be) it is not satisfactory to say that the Code as it currently stands would not allow such an obligation. If this were the case it must then be considered whether the Code as it currently stands better facilitates the achievement of the stated objectives. If it is thought that it does, then the Code should be changed rather than the modification, or part of it, rejected.

We also believe that this matter is of some importance. One of the strongest arguments for the introduction of these modifications, and one of the reasons for the original proposal, is that they would introduce a recognised requirement on BSCCo and introduce a measure of certainty into the provision of information. If no such obligation is placed on BSCCo (an obligation that would as set out above only be enforceable by parties to the Code) then the modification does not change the status quo in this respect.

We look forward to receiving your comments on this letter.

Yours sincerely

Hugh Kleinberg

NabarroNathanson

P102_DR_010 – British Energy (late response)

To: Modifications Secretary, BSCCo

P102: Entitlement of Licence Exemptable Generators (LEGs) to BSC Membership Without Evidence of Trading
Please find attached a completed report consultation proforma.

Also, we repeat comments made at the assessment stage, which still appear relevant:

Access to information by non-parties could improve competition and we have no objection to the principle of transparency. However, the costs should be borne by those requiring the service, and obligations on use of data so provided should be equivalent to those applying to parties, otherwise fair competition may be impaired.

Original proposal P102 suggests allowing a subset of non-trading parties to remain party to the BSC for the sole intent of obtaining information and data. It is difficult to demonstrate that overall or BSC-specific cost-benefit/efficiency objectives would be better met by allowing non-parties to incur costs which are then met by parties, or by allowing a subset of interested persons (exempt generators) to obtain data not available to others. Therefore we do not support this proposal.

The solution favoured by the modification group for modifications P102 & P114 is a licence service, combined with changes to BSC systems to facilitate the new role of a (non-party) Licensee. While not objecting to this approach in principle, it does not appear that the cost of the system and other changes will be wholly recovered from those requiring the service.
Unless this is demonstrated, or the financial benefits of the proposed changes can be demonstrated, we do not believe the proposal will better meet BSC objectives (c) relating to trading efficiency and competition or (d) relating to administrative efficiency.

The assessment for P102 included the statement that "Any solution, which registers non-Parties in Central Systems, with Party status, relying on BSCCo to ensure that this status was not abused, would be unmanageable." It is this assertion which leads to the requirement for expensive changes to central systems and processes to protect against potential abuse and errors.

We are surprised that Elexon and its agents consider it impractical to maintain a record of which parties registered in central systems are BSC Parties, and to limit their use of systems accordingly. We question whether the risks and benefits of this option, relative to expensive system changes, have been fully explored.

Martin Mate
for
British Energy Power & Energy Trading Ltd
British Energy Generation Ltd
Eggborough Power Ltd

Respondent:	*Martin Mate*		
Responding on Behalf of	*British Energy Power & Energy Trading Ltd, British Energy Generation Ltd, Eggborough Power Ltd*		
Role of Respondent	*BSC Party*		
		Response	**Rationale**
Q1.	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P102 should ***not*** be made?	**Yes**	We agree with the view of the Panel that the original proposal should not be made. Parties not contributing to the costs of providing services to them under the BSC should not be permitted to use those services for free on an ongoing basis.
	Do you agree with the Panel's views on P102 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification should be made?	**No**	We disagree with the view of the Panel that alternative Modification P102 would have negligible effect on Applicable BSC Objective (d). Whilst not opposed in principle to increased transparency, the costs appear considerable, and we are unconvinced that the intangible benefit of increased transparency to non-parties justifies this cost.

Q2	Do you agree with the Panel's view that the legal text provided in the draft Modification Report addresses the defect identified within the Modification proposal?		We agree that the proposed legal text will facilitate provision of BSC Party data to non-parties.
Q3	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for both the Proposed and Alternative Modification P102?		Any modification in this area has limited ability to better meet the BSC Objectives, and should be implemented at minimum cost. See comment below.
Q4	Do you have any other comments on the draft Modification Report for P102?		1. The costs to implement the alternative proposal seem very high. It is disappointing that Elexon and central agents are unable to manually manage the handling of non-parties registered in central systems solely for the purposes of receiving data, since this would avoid expensive central system changes. 2. There appear to be two options for the costs of the alternative proposal, depending on whether it is implemented as part of a timetabled release or not. We hope that the lowest cost option is embodied in the suggested implementation dates. 3. It is suggested that under the alternative proposal a data processing agent of a non-party would be required to hold a licence as well as the non-party itself. While this can achieve a "pass-through" of confidentiality obligations, it does not seem appropriate to charge twice. The "pass-through" could also be achieved by placing obligations on the data licence holder to have an equivalent agreement with any person to which

			it provides the data, a copy of which should be lodged with Elexon.