

## Draft MODIFICATION REPORT for Modification Proposal P127 Optional De-registration by Insolvent Party

Prepared by: **Balancing and Settlement Code Panel**

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### RECOMMENDATIONS

The Balancing and Settlement Code Panel recommends that:

- **the Alternative Modification P127 should be made;**
- **the Proposed Modification P127 should not be made;**
- **the Implementation Date for the Alternative Modification of 13 weeks after the Authority's decision; and**
- **in the event the Authority determines that the Proposed Modification should be made, that the Implementation Date for the Proposed Modification of 13 weeks after the Authority's decision.**

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<sup>1</sup> The current version of the Balancing and Settlement Code (the 'Code') can be found at [www.elexon.co.uk/ta/bscresl\\_docs/bsc\\_code.html](http://www.elexon.co.uk/ta/bscresl_docs/bsc_code.html)

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### SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

The following parties/documents have been identified as being potentially impacted by Modification Proposal P127.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input checked="" type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Transmission Company <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Service Lines <input type="checkbox"/>
Interconnector <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Distribution System Operators <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
<b>Party Agents</b>		
Data Aggregators <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	J <input type="checkbox"/>	<b>Core Industry Documents</b>
ECVNA <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
MVRNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
<b>BSC Agents</b>		
SAA <input type="checkbox"/>	M <input checked="" type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
FAA <input type="checkbox"/>	N <input checked="" type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	P <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
CDCA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
TAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CRA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
SVAA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	V <input type="checkbox"/>	<b>BSCCo</b>
Profile Administrator <input type="checkbox"/>	W <input type="checkbox"/>	Internal Working Procedures <input type="checkbox"/>
Certification Agent <input type="checkbox"/>	X <input type="checkbox"/>	<b>Other Documents</b>
MIDP <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
TFLA <input type="checkbox"/>		
<b>Other Agents</b>		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

X = Identified in Report for last Procedure  
 N = Newly identified in this Report

<b>Cost of implementing Proposed Modification:</b>	
Change specific	£0
Operational/maintenance	£0
<b>Total:</b>	<b>£0 + 21 ELEXON man days</b>

# 1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

## 1.1 Modification Proposal

Modification Proposal P127 'Optional De-registration by Insolvent Party' ("P127") was raised on 28 April 2003 by Enron Capital & Trade Resources Limited (in administration). P127 seeks to allow insolvent Parties to "de-register", or withdraw, from the Balancing and Settlement Code (the "Code") and to allow those responsible for managing the insolvency process to cease incurring any further liabilities to those accrued prior to its insolvency.

When a Party enters a process of formal insolvency, it is in Default of the Code (Section H3.1.1(g)(ii)). Since this Default is capable of remedy, the insolvent Party in Default is unable to withdraw from the Code, even if it fulfils all other criteria required for a Party to withdraw (Section A5.1.3).

The Defaulting Party must therefore continue to pay the Base Monthly Charge<sup>2</sup> (one of the BSCCo Charges), as they remain a party to the Code. The Base Monthly Charge is currently set at £250 per month.

Administrators responsible for managing the insolvency process for such Parties are not able to limit further loss of value to creditors in pursuance of their duty of care, due to the increasing debt to BSCCo resulting from these unavoidable monthly liabilities.

Presently, the only way for a Defaulting Party to cease to be liable for the Base Monthly Charge is for the Panel to expel them from the Code (Section H3.2.1(e)). It is not the intention of the Proposer to remove the right of the Panel to expel Parties from the Code. The Proposer believes the withdrawal should be voluntary (i.e it is not proposed to make it mandatory that an insolvent Party withdraws), as there may be grounds for an insolvent Party to retain the status of signatory to the Code; for example, in circumstances where not being a party to the Code would result in loss of value to that Party's creditors.

The Proposer's objective in raising P127 is to bring an end to escalating liabilities in the form of the Base Monthly Charge<sup>3</sup>. The Proposer believes that P127 would better facilitate the achievement of Applicable BSC Objective (d), as he believes it would promote efficiency in the implementation and administration of the Balancing and Settlement arrangements. The Proposer believes this increase in efficiency is due to a reduction of BSCCo administrative costs associated with invoicing a Party for the Base Monthly Charge, when the Party may not be in a position to settle this liability. The Proposer also states that he believes that P127 would better facilitate the achievement of Applicable BSC Objective (b) - the efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System. However, the Governance Standing Modification Group (GSMG) was unable to find any justification for this statement.

### Key Features of the current mechanism include:

- Parties are liable for £250 per month as long as they are a party to the Code
- Insolvency is a reason for being in Default of the Code
- Insolvency is deemed remediable
- A remediable Default is a reason for dis-allowing a Party to withdraw from the Code

<sup>2</sup> As included in the Code Annex D-3 paragraph 3.1(a)

<sup>3</sup> Clarified by the Proposer, subsequent to the submission of the Modification Proposal.

- Once a party is in Default of the Code its Credit Cover is frozen
- There is currently no mechanism for an insolvent Party to regain its Credit Cover
- Credit Cover does not cover BSCCo Charges

The Initial Written Assessment (IWA) was presented to the Panel at its meeting on 12 June 2003. The Panel recommended that P127 be submitted to a 3-month Assessment Procedure, undertaken by the GSMG. At its meeting on the 11 September 2003, the Panel recommended that P127 be submitted to the Report Phase with a recommendation that the Alternative Modification should be made.

## **1.2 Proposed Modification**

The Proposed Modification would allow an insolvent Party to be able to withdraw from the Code (pursuant to Section A.5) "at any time" as stated in the Modification Proposal.

## **1.3 Assessment of whether or not the Proposed Modification would better facilitate the Applicable BSC Objectives**

It is the Panel's view that the Proposed Modification would not better facilitate the achievement of the Applicable BSC Objectives.

If the Proposed Modification were to be implemented, then it would result in Parties being able to withdraw from the Code with outstanding liabilities, as the term "at any time" in the Modification Proposal implies.

The Panel agreed that enabling an insolvent Party to withdraw from the Code "at any time" would not improve the efficiency of the implementation and administration of the balancing and settlement arrangements (Applicable BSC Objective (d)). It would compromise BSCCo's ability to recoup, on behalf of Parties, insolvent Parties' outstanding liabilities in respect of Trading Charges and BSCCo Charges.

The Panel was also of the view that competition in the generation and supply of electricity was not promoted by the Proposed Modification. Other Parties would be required to pay between them the unpaid Trading Charges and BSCCo Charges of any insolvent Parties who do not settle their debts, and therefore the achievement of the Applicable BSC Objective (c) would not be better facilitated by Proposed Modification P127.

## **1.4 Modification Group's cost benefit analysis of Proposed Modification**

The GSMG believed that the cost saving resulting from the reduced administrative burden on BSCCo would be outweighed by the cost for BSCCo to pursue outstanding debts of Parties released from the Code before they have paid them, via legal routes.

## **1.5 Alternative Modification**

During the Assessment Procedure, the GSMG developed an Alternative Modification that it believed, when compared with the Proposed Modification, better facilitated the achievement of the Applicable BSC Objectives.

Figure 1 outlines the Alternative Modification. An insolvent Party, which is in Default by virtue of being insolvent (pursuant to Section H3.3.1(g)), is provided with a mechanism by which, in certain circumstances, it is able to withdraw from the Code.

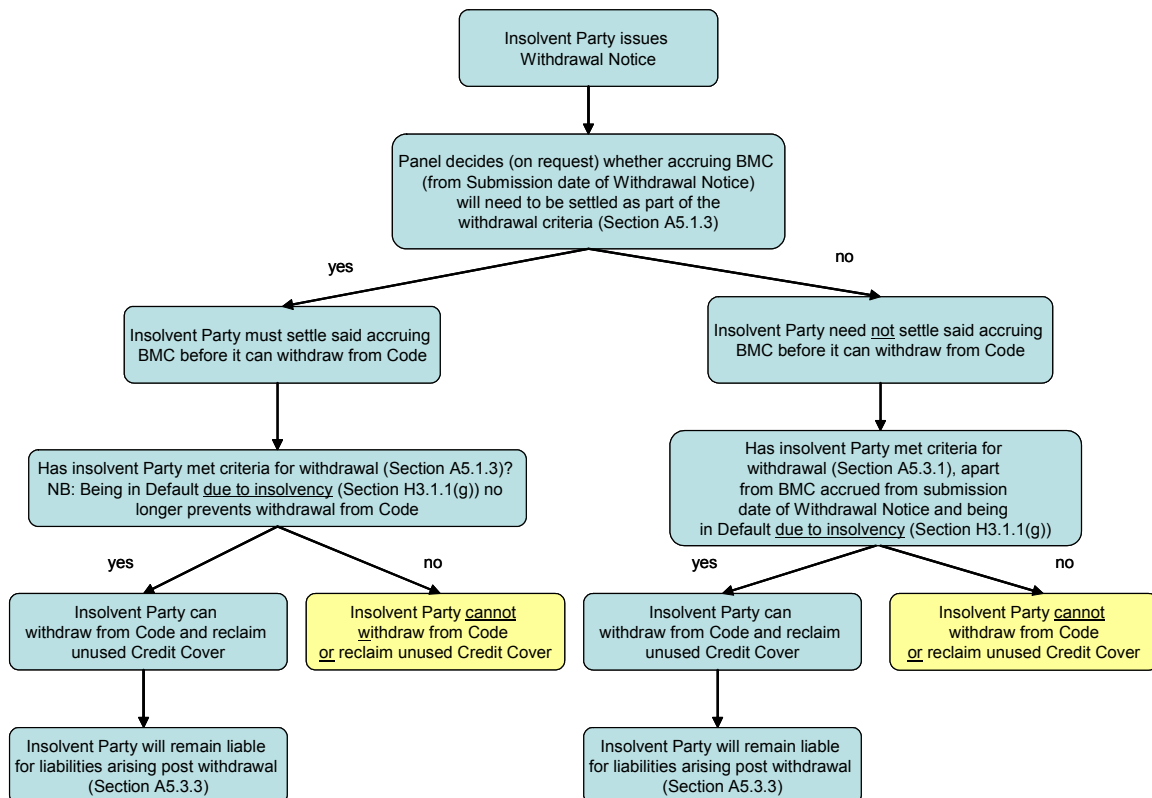
Once the insolvent Party has submitted a Withdrawal Notice (pursuant to Section A5.1.1), the Panel may decide that the balance of the Base Monthly Charge (BMC), which accrues from that point onward, need not be settled before it can withdraw from the Code.

However, even under these new circumstances the insolvent Party would not be able to withdraw without a further change to the Code. The Party would still be in Default of the Code by virtue of being insolvent (Section H3.1.1(g)). For this reason the Alternative Modification also discounts the Party’s Default due to Section H3.1.1(g) from the conditions the Party is required to meet before it can withdraw from the Code.

With these changes included in the solution, the insolvent Party would then be able to withdraw from the Code after the Final Reconciliation Settlement Run (RF) had taken place for the Party’s last day of trading, provided it had paid all outstanding Trading Charges and BSCCo Charges (except for the BMC accrued between the submission date of its Withdrawal Notice and the date of withdrawal).

As a Defaulting Party cannot currently withdraw from the Code, there are no provisions in the Code for the Party to reclaim its Credit Cover. As soon as the Party had become a Defaulting Party (pursuant to Section H3.1), the Party’s Credit Cover is frozen (Section M2.3.1(c)). Since the Alternative Modification provides a mechanism by which an insolvent Party may withdraw from the Code, it also includes a mechanism by which an insolvent Withdrawing Party can reclaim its unused Credit Cover<sup>4</sup>, once it has complied with the circumstances for withdrawal (Section A5.1.3).

**Figure 1: Alternative Modification**



<sup>4</sup> Credit Cover can not be used to settle BSCCo Charges.

## **1.6 Issues raised by the Alternative Modification**

The GSMG acknowledged that there was a risk, which remaining Trading Parties would have to bear, in respect of contingent liabilities which arose after the insolvent Party had withdrawn from the Code, as BSCCo would no longer hold any collateral for such liabilities. The GSMG believed that the prospects of recovery of such liabilities from an insolvent ex-Party would be lower, but the GSMG felt the risk was acceptable.

One Panel member was concerned about the level of risk that the Alternative Modification would introduce, in respect of the recovery of contingent liabilities. The Panel noted that there was already a risk of the non-recovery of contingent liabilities for Parties who withdraw from the Code, cease trading in England and Wales and move their operations abroad, and that this risk has been accepted as part of the current baseline of the Code.

## **1.7 Assessment of whether or not the Alternative Modification would better facilitate the Applicable BSC Objectives**

The majority of GSMG Members were of the opinion that the Alternative Modification would better facilitate the achievement of the Applicable BSC Objective (d), as it would increase the efficiency of the implementation and administration of the balancing and settlement arrangements by improving the efficiency of BSCCo's internal working processes. BSCCo would be able to, when so instructed by the Panel, to cease invoicing insolvent Parties for £500 every 2 months. (The Base Monthly Charge is invoiced every 2 months).

The Panel noted that one member of the GSMG had raised the concern that the Alternative Modification would not completely solve the defect raised by the Proposer in the Modification Proposal. This GSMG member believed that in practice insolvent Parties would never be able to withdraw from the Code. Even should Alternative Modification P127 be made, as they are unlikely to be able to pay their outstanding Trading Charges and BSCCo Charges.

## **1.8 Modification Group's cost benefit analysis of Alternative Modification**

The Panel noted that the GSMG was unable to quantify the cost saving to the industry with the implementation of the Alternative Modification. However, the group believed that the implementation of the Alternative Modification would cut the administrative burden on BSCCo to invoice a Party in the often certain knowledge that the amount would not be forthcoming. The GSMG also noted that BSCCo would be saved the unquantifiable cost of pursuing the liability for any outstanding Trading Charges and BSCCo Charges through the legal process.

## **1.9 Governance and regulatory framework assessment**

During the assessment of the Proposed Modification and the Alternative Modification, the GSMG also considered the wider implications of P127 in the context of the statutory, regulatory and contractual framework within which the Code sits, as is required by the Code (Annex F-1, paragraph 1(g)). The GSMG was of the opinion that, were P127 to be implemented, there would be no such wider implications.

## **2 RATIONALE FOR PANEL'S RECOMMENDATIONS**

The P127 Assessment Report was presented to the Panel at its meeting on the 11 September 2003.

The Panel supported the rationale for the recommendations made by the GSMG with regard to Modification Proposal P127 and on the basis of this rationale, the Panel recommended that Alternative Modification P127 should be made.

The Panel was in agreement with the view of the majority of the GSMG, that implementing Alternative Modification P127 would reduce the administrative burden on BSCCo in invoicing, and managing on BSCCo systems, insolvent Parties who wish to, but are unable to, withdraw from the Code. Therefore, Alternative Modification P127 would better facilitate achievement of Applicable BSC Objective (d), in that it would promote efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel recommends that the Alternative Modification be made and that it be implemented 13 weeks after the Authority's decision. This implementation timescale takes into account the necessary lead time to develop and gain approval of the necessary changes to BSCP65 (Registration of Parties and Exit Procedures), as outlined in Section 4.2 of this Modification Report.

The Authority has agreed that it does not require legal text to be included in the Modification Report for the Proposed Modification P127. The Panel agreed with the GSMG that the Proposed Modification would seriously compromise BSCCo's ability to recoup outstanding liabilities from insolvent Parties and that the cost of developing the draft legal text could not be justified in these circumstances. Therefore, the Panel agreed that the Proposed Modification should not be made.

## **3 IMPACT ON BSC SYSTEMS AND PARTIES**

An assessment has been undertaken in respect of BSC Systems and Parties, and the following have been identified as potentially being impacted by the Alternative Modification.

### **3.1 BSCCo**

The process whereby BSCCo invoice insolvent Parties will be impacted, as well as the Finance Department's Credit Control processes. If the Alternative Modification were to be made, the GSMG believe that administrative savings would result for BSCCo, the level of which is currently unquantifiable, as it will depend on the number of insolvent Parties applying to the Panel to Withdraw from the Code. BSCCo will be required to be involved in a support and information role to the Panel, when a Party undertakes the application.

Local Working Instructions for the Market Entry team in the Service Delivery Department would need to be amended. Legal advice would have to be taken by the team to ascertain a Party's insolvent status. The process of amendment and review of the process will take 10 ELEXON man days.

The Business Process Model will require amendment, which will take 5 ELEXON man days.

The Obligations Register will require amendment, which will take 1 ELEXON man day.

### **3.2 BSC Systems**

No impacts on any BSC Systems have been identified.

### **3.3 Parties and Party Agents**

Three respondents replied to the request for a High Level Impact Assessment. All three respondents believed that there would be no impact on their systems or processes.

However, one respondent acting in the role of Party Agent highlighted an issue, in that there could be a problem for Party Agents if the Proposed Modification were to be implemented. The Party Agent is obliged to carry out its role for the Party as long as the Party is a party to the Code. If a Party becomes insolvent and is allowed to withdraw, Data Collectors and Data Aggregators would no longer be obliged to carry out their role and the data from the point of withdrawal to the Final Reconciliation Settlement Run may be lost.

The GSMG noted that this would only be an issue if the Proposed Modification were to be made and if the Alternative Modification were to be made, it would not since the solution obliges the insolvent Party to remain a party to the Code until after the Final Reconciliation Settlement Run has been carried out for its last day of trading, i.e. until its Data Collector has collected all the data for the last day of trading.

## **4 IMPACT ON CODE AND DOCUMENTATION**

As a result of the Alternative Modification there will be impacts on the following:

### **4.1 Balancing and Settlement Code**

The Alternative Modification requires changes to Section A (Parties and Participation), Section M (Credit Cover and Credit Default) and Section N (Clearing, Invoicing and Payment).

Section A5.1 describes the criteria by which a Party can withdraw from the Code. The change to the legal text is to introduce a clause Section A5.1.5 which allows the Panel, in its discretion to preclude the balance of the Base Monthly Charge, accrued from the date of submission of the Withdrawal Notice, from the sums to be settled before an insolvent Party can withdraw from the Code.

Section A5.1.3, which defines the criteria for withdrawal, has been amended to take into account the existence of the new clause Section A5.1.5.

Section M has an additional clause (Section M2.3.1A) to enable the Withdrawing Party (which is in Default only by virtue of being insolvent) to regain possession of its Credit Cover, which had been frozen when it went into Default.

Section M2.3.1, which stipulates the time Credit Cover can be returned by the BSC Clearer to Trading Parties that request it, has also been amended to reflect the changes introduced to the Code by Section M2.3.1A.

Section N has an additional clause (Section N2.5.4), which ensure that if insolvent Parties (only in Default for being insolvent) have paid all outstanding liabilities to date (and can fulfil withdrawal criteria in Section A) then they can have their Credit Cover returned by the BSC Clearer.

Section N2.5.2, which prevents Defaulting Party from getting its Credit Cover back if they have potential contingent liabilities has been amended to take into account Section N2.5.4.

A redlined version of the draft legal text for Alternative Modification P127 is given in annex 1.

## 4.2 Code Subsidiary Documents

BSCP65 'Registration of Parties and Exit Procedures' will need to be amended if the Alternative Modification were to be made. The requirement for a Withdrawing Party to submit BSCP65 in order to cease to be a Trading Party is stipulated in Section A4.4.1. Currently, the Withdrawal Notice Form (BSCP65/03), asks:

*Is there any outstanding breach by your company of the provisions of the Code that is capable of remedy and has not been remedied?*

This question needs to be answered positively in order for the Party to be able to withdraw. Such a remediable breach of the Code is to be in Default (even by virtue of insolvency) and, therefore, an amendment to this text will be required, since this is inconsistent with the proposed P127 legal text.

BSCP65 will also require further changes in order that the process whereby insolvent Parties apply to the Panel to have their liability to the Base Monthly Charge reduced to zero is defined.

It is estimated that the change required to BSCP65 will take 5 ELEXON man days to complete.

## 4.3 BSCCo Memorandum and Articles of Association

No amendments would be required to the BSCCo Memorandum and Articles of Association as a consequence of the Proposed or Alternative Modification.

## 4.4 Impact on Core Industry Documents and supporting arrangements

No changes would be required to any Core Industry Documents or supporting arrangements if either the Proposed or Alternative Modification were to be made.

# 5 SUMMARY OF CONSULTATIONS

## 5.1 Summary of the Report Phase consultation responses

A consultation document and questionnaire was issued during the Report Phase to the industry on 18 September 2003, with 25 September 2003 as the deadline for responses. 8 responses (26 Parties and 3 non-Parties) were received and are attached as annex 3 of this Modification Report.

The following questions were asked of the respondents and the arguments are summarised below each question.

**Do you agree with the Panel's provisional views on P127 and its recommendation to the Authority contained in the draft Modification Report that Alternative Modification P127 should be made?**

<b>Yes</b>	5 (25 Parties)
<b>No</b>	1 (1 non Party)
<b>No opinion expressed</b>	2 (1 Party and 2 non Parties)

The majority of respondents agreed with the panel's provisional views and its recommendation to the Authority that the Alternative Modification P127 should be made.

One respondent believed that the Alternative Modification would better facilitate the achievement of Applicable BSC Objective (d). This respondent believed that the Alternative Modification would limit the insolvent Party's liability, whilst not hindering BSCCo's ability to recoup outstanding liabilities.

One respondent was concerned that the Alternative Modification did not better facilitate the achievement of Applicable BSC Objectives (d), in promoting "*efficiency in the implementation and administration of the balancing and settlement arrangements*". The respondent believed that in practical terms, the Alternative Modification would only allow a small proportion of insolvent Parties to withdraw from the Code. The respondent believed that given that insolvent Parties may not be able or willing to pay their outstanding liabilities, BSCCo would be forced to continue to invoice them for the Base Monthly Charge until such time as the liquidator 'declares claims final' and applies to the courts to have any retained monies paid over.<sup>5</sup>

**Do you agree with the Panel's provisional view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?**

<b>Yes</b>	1 (2 Parties)
<b>No</b>	0
<b>No opinion expressed</b>	7 (24 Parties and 3 non Parties)

The majority of respondents expressed no concerns regarding the legal text for Alternative Modification P127. However, one respondent stated that he did not feel that he could give a careful review of the legal text.

**Do you agree with the Panel's provisional recommendation concerning the Implementation Date for Alternative Modification P127?**

<b>Yes</b>	5 (25 Parties)
<b>No</b>	0
<b>No opinion expressed</b>	3 (1 Party and 3 non Parties)

The majority of respondents supported the Implementation Date provisionally recommended by the Panel.

**Do you believe that there are any impacts that have not been highlighted?**

<b>Yes</b>	0
<b>No</b>	6 (22 Parties and 1 non Party)
<b>No opinion expressed</b>	2 (4 Parties and 2 non Parties)

<sup>5</sup> This party was contacted by Elexon with regards to its consultation response and confirmed that it did not support the Panel's recommendation that the Alternative Modification should be made.

The majority of respondents did not believe there were any impacts that have not been highlighted. However, in addition, one respondent noted that there were no impacts on its systems and processes due to P127.

## 5.2 Summary of the Assessment Procedure consultation responses

The following questions were asked during the Assessment Procedure. The responses and the arguments are summarised below each question. Details of options 1 and 2 (not chosen by the GSMG to be the Alternative Modification) can be found in the P127 Assessment Report on the BSC Website ([www.elexon.co.uk](http://www.elexon.co.uk)).

### Q.1. Do you believe Proposed Modification P127 better facilitates the achievement of the Applicable BSC Objectives?

Yes	2 (3 Parties)
No	4 (14 Parties)
No Comment	1 (9 Parties)

The principle argument put forward against the Proposed Modification was that it would hinder BSCCo from recouping outstanding Trading Charges from the insolvent Party. One respondent pointed out that once a Party ceased to be a party to the Code then BSCCo would cease to be a secured creditor in respect of any outstanding liabilities. The respondent believed that due to the company's insolvency the status of secured creditor would make a significant difference in BSCCo's ability to recoup any outstanding debts.

Two Parties were in support of P127 in principle.

### Q.2. Do you believe either potential Alternative Modification option 1<sup>6</sup> or option 2 better facilitate the achievement of the Applicable BSC Objectives when compared with the Proposed Modification?

Yes	<b>Option 1:</b> 1 (1 Party) <b>Option 2:</b> 2 (3 Parties)
No	<b>Option 1:</b> 4 (15 Parties) <b>Option 2:</b> 3 (13 Parties)
No Comment	<b>Option 1:</b> 2 (10 Parties) <b>Option 2:</b> 2 (10 Parties)

The argument put forward by one respondent in support of option 1 was that the solution would allow BSCCo to recoup outstanding liabilities. However, the GSMG noted that this is not the case, as the option proposed that the Party would be able to withdraw if it had paid all its Trading Charges to date, but it would be under no obligation to remain as a party to the Code until the Final Reconciliation

<sup>6</sup> Details of option 1 and option 2 can be found in the P127 Assessment Report which is located on the BSC Website ([www.elexon.co.uk](http://www.elexon.co.uk))

Settlement Run (RF) and therefore BSCCo would be required to attempt to recoup liabilities in respect of Reconciliation Runs and would become an unsecured creditor.

Two respondents were against option 1 as they felt that any outstanding liabilities that insolvent Parties were unable to pay would have to be recouped from the other Parties. Both respondents felt that option 1 was unfair and that BSCCo should not be put in a position where the insolvent Party would be able to avoid paying their debts.

One respondent was concerned that option 1 did not allow accrued and contingent liabilities to be factored into the decision about whether or not the Party should withdraw. However, this respondent believed that option 2 allowed these to be factored into the decision, as the insolvent Party would be compelled to remain as a party to the Code until after the Final Reconciliation Settlement Run for its last day of trading had taken place.

Arguments against option 2 were predominantly based on the fact that if the Panel were to make a determination on whether or not the Party were able to pay their outstanding Trading Charge liabilities and then determined that they could not allow them to withdraw, BSCCo would find it more challenging to recoup the outstanding liabilities.

**Q.3. Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?**

Yes	1 (9 Parties)
No	3 (6 Parties)
No Comment	3 (11 Parties)

One respondent stated that a possible solution, not outlined in the consultation document, is to introduce a mechanism whereby the Panel are able to reduce the Base Monthly Charge to zero when a Party becomes insolvent, but that the Party are unable to withdraw from the Code until the Party has paid all outstanding liabilities.

Another Party outlined a similar solution whereby the insolvent Party could have its liability to BSCCo Charges set to zero but be obliged to remain a party to the code until the reconciliation process has been completed.

**Q.4. Do you believe that it is appropriate for an insolvent Party to have its liability for BSCCo Charges terminated?**

Yes	4 (13 Parties)
No	2 (4 Parties)
No Comment	-

One respondent believed that the Code currently prevents insolvency practitioners from being able to discharge their statutory obligations. Another respondent believed that it would be more efficient for BSCCo not to invoice insolvent Parties in the knowledge that the liabilities are unlikely to be met. This respondent believed that treating the BSCCo Charges and Trading Charges differently makes sense since Credit Cover posted by Parties is a Code obligation and does not cover BSCCo Charges. Therefore, zeroing the balance for BSCCo Charges would be an acceptable part of the solution to address the defect identified by the Proposer.

**Q.5. Do you believe that an insolvent Party should be allowed to withdraw from the Code?**

Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	1 (9 Parties)

The main argument given by respondents who replied that they were not happy for insolvent Parties to withdraw from the Code, was that it would make the recovery of outstanding liabilities more difficult. Three respondents thought that insolvent Parties should only be allowed to withdraw if they had paid all their outstanding liabilities.

Two respondents were in favour of the principle that insolvent Parties should be allowed to withdraw from the Code. One respondent thought that it would reduce the administrative burden on BSCCo, which would outweigh the benefit of recovering the money, and the second respondent believed that if the Party were allowed to withdraw before they were expelled then money that they would not have to have incurred could be saved.

**Q.6. Do you believe that it is appropriate for an insolvent Party to have the balance of its BSCCo Charges set to zero so that it can withdraw from the Code?**

Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	1 (9 Parties)

One respondent felt that other Parties should not be left to pay a share of the BSCCo Charges that the insolvent party has been exempted from paying. Another Party stated that reducing the BSCCo Charges to zero would be a pragmatic solution so that the Party could withdraw, however, the respondent implied that the Trading Charges would already have been paid. The GSMG noted that this would not necessarily be the case.

**Q.7. Do you believe that the Panel should be given the discretion to decide whether or not Parties with unpaid liabilities should be allowed to withdraw from the Code?**

Yes	3 (4 Parties)
No	3 (13 Parties)
No Comment	-

One respondent believed that each situation in respect of insolvent Parties wishing to withdraw from the Code would require individual consideration and that the Panel is the body that should use its discretion to determine the best course of action. Another respondent felt that the fact that a Party is not paying its BSCCo Charges would have a negative impact on all Parties and also believe that the Panel should have the discretion to allow a Party with unpaid liabilities to withdraw from the Code. A further respondent stated that it believed that BSCCo should always pursue outstanding liabilities.

Another Party was against the Panel being allowed to use its discretion in respect of this question and supported a more mechanistic approach. Another Party took the opposite stance and stated that

allowing the Panel the discretion to make these decisions would negate the need for stringent rules stipulating the process and disallow each case to be considered on its own merits.

**Q.8. Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by the Proposed Modification?**

Yes	4 (14 Parties)
No	1 (2 Parties)
No Comment	2 (10 Parties)

Four respondents were of the opinion that the Proposed Modification would compromise BSCCo's ability to recoup outstanding and contingent liabilities as, once the insolvent Party was allowed to withdraw from the Code, BSCCo would become an unsecured creditor.

**Q.9. Do you believe that BSCCo's ability to recoup outstanding and contingent liabilities from insolvent Parties would be prejudiced by either potential Alternative Modification option 1 or option 2?**

Yes	Option 1 – 3 (14 Parties) Option 2 – 2 (12 Parties)
No	Option 1 – 1 (1 Party) Option 2 – 1 (2 Parties)
No Comment	Option 1 – 3 (11 Parties) Option 2 – 3 (11 Parties)

One respondent believed that consideration should be given to the actual processes regarding the registered Metering Point Administration Numbers (MPANs), taking note of the impact this may have upon the revenue of the Party's agents.

One respondent, making no reference to the individual consultation questions made a general comment in respect of P127. The respondent stated that while relatively indifferent to P127, he would prefer to see a solution where the Base Monthly Charge were waived for insolvent Parties, but that they were not bound by all other conditions of the Code. This respondent believed that this would provide a more satisfactory means of addressing the recovery of any potential Trading Charge liabilities (accrued and contingent liabilities and including Reconciliation Run Charges as well as Past Notification Error Claims).

### 5.3 Comments and views of the Panel

To be completed after the P127 draft Modification Report is considered by the Panel at its meeting on the 9 October 2003.

## 6 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

### 6.1 Analysis

The Transmission Company did not believe that the implementation of P127 (either Options 1<sup>7</sup>, 2 or Alternative Modification) would have any impact on the ability of the Transmission Company to discharge its obligations under the Transmission Licence. It did not believe that any of its systems or processes would be impacted and would not require a lead-time to implement P127.

The Transmission Company did not believe that the Proposed Modification would better facilitate the Applicable BSC Objectives, as it could hinder BSCCo from recouping outstanding liabilities from insolvent Parties. However, the Transmission Company feel that the Options 1, 2 and the Alternative Modification may better facilitate Applicable BSC Objective (d) as they would reduce the administrative burden on BSCCo whilst allowing outstanding charges to be recouped.

A copy of Transmission Company analysis in full can be found in annex 4 of this report.

### 6.2 Comments and views of the Panel

The Panel noted the Transmission Company analysis, which was undertaken during the Assessment Procedure, and were satisfied that the Alternative Modification P127 would not hinder the Transmission Company's ability to discharge its obligations under the Transmission License.

## 7 SUMMARY OF EXTERNAL ADVICE

External legal advice was sought on the legal text for the Alternative Modification and no concerns were raised.

## 8 IMPLEMENTATION APPROACH

The changes required as a result of P127 do not impact BSC Agents. The changes impact BSCCo systems and processes and the changes required to Balancing and Settlement Code Procedures (BSCPs), BSCCo systems and processes will be managed by BSCCo. The estimated financial cost for implementation of the Alternative Modification is small, with 21 ELEXON man day effort being required to carry out changes to documents etc.

## 9 DOCUMENT CONTROL

### 9.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	17 September 2003	Change Delivery	Richard Clarke, Gareth Forrester, David Ahmad	Peer & technical review
0.2	18 September 2003	Change Delivery	n/a	For consultation
0.3	30 September 2003	Change Delivery	Change Delivery	Formal review following consultation
0.4	3 October 2003	Change Delivery	The Panel	For panel decision

<sup>7</sup> Details of options 1 and 2 can be found in the P127 Assessment Report, which is located on the BSC Website ([www.elexon.co.uk](http://www.elexon.co.uk))

## ANNEX 1 DRAFT LEGAL TEXT

- No text for Proposed Modification.
- Text for Alternative Modification contained in separate Attachment .

## ANNEX 2 MODIFICATION GROUP DETAILS

Three Assessment Procedure Modification Group meetings took place on 18 June, 9 July and 5 August 2003. The following people have been involved in the Modification Group assessment of Modification Proposal P127.

Name	Organisation
Gareth Forrester (Chairman)	ELEXON
Rachel Lindstrom-Thomas (Lead Analyst)	ELEXON
Richard Clarke (Analyst Support)	ELEXON
Richard Humphreys (Finance)	ELEXON
Peter Bolitho	Powergen
Clare Talbot	National Grid
John Sykes	Scottish and Southern
Mark Manley	British Gas Trading
Terry Ballard	Innogy
Rachel Lockley	British Energy
Lisa Waters	Waters Wye
Phil Russell	TXU
Paul Mott	EDF Energy
Man Kwong Liu	Scottish Power

## ANNEX 3 CONSULTATION RESPONSES

### Responses from P127 Draft Report Consultation

Consultation issued 18 September 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	IMServ	P127_DR_001	0	2
2.	EDF Energy	P127_DR_002	9	0
3.	Philip Russell	P127_DR_003	0	1
4.	Innogy	P127_DR_004	9	0
5.	Scottish and Southern	P127_DR_005	4	0
6.	Aquila Networks	P127_DR_006	1	0
7.	British Gas Trading	P127_DR_007	1	0
8.	YEDL/NEDL	P127_DR_008	2	0

### P127\_DR\_001 – IMServ

<b>Respondent:</b>	<i>Name: Katie Sarl (on behalf Heather Galvin)</i>
<b>No. of BSC Parties Represented</b>	
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i> <b>IMServ Europe Ltd, IMServ Meterpoint Ltd.</b>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / <b>Party Agent</b> / other – please state)</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P127 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification <b>should</b> be made? Please give rationale.	Yes / No	N/A
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.	Yes / No	N/A
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P127? Please give rationale.	Yes / No	N/A
4.	Are there any further comments on P127 that you wish to make?	Yes / No	N/A

**P127\_DR\_002 – EDF Energy**

<b>Respondent:</b>	<i>Paul Chesterman</i>
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power) EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; London Energy plc; Seeboard Energy Limited
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	Supplier / Generator / Party Agent / Distribution Business

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P127 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification <b>should</b> be made? Please give rationale.	Yes	
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.	Yes / No	I am unable to resource a careful review of the legal text.
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P127? Please give rationale.	Yes	
4.	Are there any further comments on P127 that you wish to make?	No	

### **P127\_DR\_003 – Philip Russell**

#### **Response to Draft Mod Report on P127**

The Mod Proposal that has been recommended by the Mod Group to the Panel will, in practical terms, only allow a small proportion of insolvent Parties to withdraw from the Code. The reason being that as drafted it would be necessary for the entity operating the insolvency process to pay the BSCCo charges and Party Charges before being allowed to set its credit cover to zero (thereby releasing the Banks from the obligation to renew any LC) or having any net credits which have arisen during the 14 month reconciliation process released to it. Given that the insolvent party may not be able or willing to pay such amounts the practical effect is to leave Elexon continuing to invoice the Base Monthly Charge until such time as the liquidator declares claims final and applies to the courts to have any retained monies paid over.

The Mod Proposal as drafted can be summarised as being a wish to make it as difficult as possibly for any insolvent to have any monies arising from Trading Charges returned to them unless they pay in full for any BSCCo Charges and Party Charges. If this is what the industry wishes to recommend to the Authority that is fine, but it is not entirely obvious that this approach "would promote efficiency in the implementation and administration of the balancing and settlement arrangements".

Philip Russell  
25<sup>th</sup> September 2003

### **P127\_DR\_004 – Innogy**

<b>Respondent:</b>	<i>Innogy</i>
<b>No. of BSC Parties Represented</b>	
<b>BSC Parties Represented</b>	<i>Innogy plc; Innogy Cogen Ltd; Innogy Cogen Trading Ltd; npower Ltd; npower direct Ltd; npower Yorkshire Ltd; npower Yorkshire supply Ltd; npower northern Ltd; npower northern supply Ltd</i>
<b>No. of Non BSC Parties Represented</b>	9
<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>
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<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you agree with the Panel's views on P127 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification <b>should</b> be made? Please give rationale.	Yes	
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.	Yes	
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P127? Please give rationale.	Yes	
4.	Are there any further comments on P127 that you wish to make?	Yes	

### **P127\_DR\_005 – 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 18th September 2003, and the associated Modification Report for P127, we agree with the proposed BSC Panel recommendation to the Authority that Alternative Modification Proposal P127 should be made.

For the avoidance of doubt, we also agree with the proposed BSC Panel recommendation to the Authority that the original Modification Proposal P127 should not be made.

If the Alternative Modification Proposal P127 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in Section 2 of the Modification Report.

Regards

Garth Graham  
Scottish & Southern Energy plc

### **P127\_DR\_006 – Aquila Networks**

Please find that there is no impact to Aquila Networks Plc systems and/or processes.

regards  
Rachael Gardener

Deregulation Control Group &  
Distribution Support Office  
AQUILA NETWORKS

**P127\_DR\_007 – British Gas Trading****Re: Modification Proposal P127 – Optional De-registration by Insolvent Party**

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P127. British Gas Trading (BGT) agrees the Alternative Modification Proposal will better facilitate Applicable BSC Objective (d).

The alternative developed by the modification group appears to be a pragmatic solution. It allows the Base Monthly Charge to be set to zero thus capping the defaulting party's liability, as identified in the defect whilst not adversely impacting on the ability of ELEXON to recover the liabilities accrued by the defaulting party from Trading Charges.

BGT agree with the recommended implementation date of P127.

Yours faithfully

Mark Manley  
Contract Manager

**P127\_DR\_008 – YEDL/NEDL**

<b>Respondent:</b>	<i>Ann Penford</i>
<b>No. of BSC Parties Represented</b>	2
<b>BSC Parties Represented</b>	<i>YEDL and NEDL</i>
<b>No. of Non BSC Parties Represented</b>	<i>None</i>
<b>Non BSC Parties represented</b>	<i>None</i>
<b>Role of Respondent</b>	<i>BSC Party</i>

Q	Question	Response	Rationale
1.	Do you agree with the Panel's views on P127 and the provisional recommendation to the Authority contained in the draft Modification Report that the Alternative Modification <b>should</b> be made? Please give rationale.	Yes	
2.	Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal? Please give rationale.	Yes	
3.	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P127? Please give rationale.	Yes	
4.	Are there any further comments on P127 that you wish to make?	No	

## ANNEX 4 TRANSMISSION COMPANY ANALYSIS

In accordance with paragraph F 2.8 of the Code, please respond to the following questions concerning P127 (including the rationale for each response):

	Question	Response
1	Please outline any impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the ability of the Transmission Company to discharge its obligations efficiently under the Transmission Licence and on its ability to operate an efficient, economical and co-ordinated transmission system.	We believe that the implementation of P127 and possible alternatives (identified by Option 1 & 2 in the consultation) has no impact on the ability of the Transmission Company to discharge its obligations under the Transmission Licence.
2	Please outline the views and rationale of the Transmission Company as to whether the Proposed Modification (and, if applicable, any Alternative Modification) would better facilitate achievement of the Applicable BSC Objectives.	We believe that P127 as proposed would not better facilitate the BSC Objectives as it may hinder the BSCCo recouping any outstanding liabilities from an insolvent Party. However, we believe that the possible alternatives (option 1, 2 and 3 identified in the consultation) may better facilitate BSC Objective (d), as they propose to reduce the administrative burden on the BSCCo whilst still allowing the ability of recouping outstanding liabilities.
3	Please outline the impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the computer systems and processes of the Transmission Company, including details of any changes to such systems and processes that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification)	There is no direct impact on our systems and processes as a result of the proposed modification or possible alternatives. We do not believe that there is a specific lead-time required for us to implement P127.
4	Please provide an estimate of the development, capital and operating costs (broken down in reasonable detail) which the Transmission Company anticipates that it would incur in, and as a result of, implementing the Proposed Modification (and, if applicable, any Alternative Modification).	None identified.
5	Please provide details of any consequential changes to Core Industry Documents that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification).	None identified

6	Any other comments on the Proposed Modification (and Alternative Modification if applicable).	None.
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**ANNEX 5 BSC AGENT IMPACT ASSESSMENTS**

None.

**ANNEX 6 PARTY IMPACT ASSESSMENTS (ASSESSMENT PROCEDURE)**

Name: Ian Henderson  
 Organisation: Metering Services (Aquila)  
 Date: 4-7-03

1. What impact, if any, will the Proposed Modification have on your organisation?

This proposed modification will impact on us in several ways through commercial interests and through our obligations to settlements.

If a Supplier that is party to the code is made insolvent and continues to remain a party to the code, as NHHDC and NHHDA we are obliged to continue acting as the Suppliers agent. This is so even though there may be outstanding charges and the Supplier is unable to pay these or any further charges incurred, therefore accruing even more debt and increasing the liability to us (NB these charges may not be fully recovered).

If an insolvent Supplier, is allowed to withdraw from the code, further consideration to the impact on settlements should be given. It could be argued that as a Supplier is no longer a party to the Code, our contract to operate as NHHDC and NHHDA becomes void and there is no longer an obligation to carry out the tasks that go hand in hand with acting as the Suppliers Agent.

Further clarification is sought regarding these circumstances and the obligations Agents have to an insolvent Supplier and settlements. Consideration should be given to the commercial aspects of a business as well as the settlement aspect, as in a more 'normal' industry, a service provider could simply cease to provide the service to the defaulting debtor until accrued charges have been paid.

2. What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification?

As there are no known changes to NHHDC / NHHDA systems and procedures a minimum amount of notice is required.

3. If this Modification Proposal is not applicable to your organisation, please indicate why (e.g. proposed changes do not apply to Party Agents).

This Modification Proposal does not directly impact NHHDC /NHHDA but does have indirect consequences as discussed in previous answers. Defined procedures are required to clarify the obligations of Supplier Agents in all areas associated with Metering Systems (Registration, reading, processing incoming data flows etc)

4. Any other comments:

<b>Clare Talbot</b> National Grid	1. What impact, if any, will the Proposed Modification have on your organisation? <b>Limited impact identified.</b>
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	<p>2. What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification? <b>No specific implementation timetable required.</b></p> <p>3. If this Modification Proposal is not applicable to your organisation, please indicate why (e.g. proposed changes do not apply to Party Agents). <b>There is no direct impact on our systems and processes as a result of the proposed modification or possible alternatives.</b></p>
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## **ANNEX 7 COST BENEFIT ANALYSIS**

None undertaken.

## **ANNEX 8 CORE INDUSTRY DOCUMENT OWNER IMPACT ASSESSMENTS**

None undertaken.

## **ANNEX 9 PROPOSED TEXT TO MODIFY BSCCO MEMORANDUM AND ARTICLES OF ASSOCIATION**

None required.

## **ANNEX 10 TERMS OF REFERENCE AND REPORT/ANALYSIS OF EXTERNAL CONSULTANTS/ADVISORS**

### **Assessment Procedure (version 1.0)**

Modification Proposal P127 will be considered by the Governance Standing Modification Group (GSMG) in accordance with the GSMG Terms of Reference.

P127 – Optional De-Registration by Insolvent Party

- 1.1 The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P127 pursuant to section F2.6 of the BSC.
- 1.2 The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 11 September 2003.
- 1.3 The Modification Group shall consider and/or include in the Assessment Report as appropriate:
  - whether or not removing the Base Monthly Charge for insolvent Parties better facilitates the Applicable BSC Objectives;
  - whether alleviating the Default status of a BSC Party would be sufficient to enable them to withdraw from the Code;
  - the circumstances under which insolvent Parties could be allowed to withdraw from the Code;
  - whether the criteria for withdrawing from the Code for Parties not in Default should be different for insolvent Parties;

- the consequences of allowing an insolvent Party to withdraw from the Code; and
- any alternatives to withdrawal as a means to address the perceived defect in the Code.

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**END OF DOCUMENT**