

MODIFICATION REPORT
MODIFICATION PROPOSAL P35 -
'Qualified ECVNAs'

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

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II CONTENTS TABLE

I	Document Control.....	2
a	Authorities.....	2
b	Distribution.....	2
c	Intellectual Property Rights and Copyright.....	2
II	Contents Table	3
1	Summary and Recommendations	4
1.1	Recommendation.....	4
1.2	Background.....	4
1.3	Rationale for Recommendations.....	5
2	Introduction	7
3	History of Proposed Modification.....	7
4	Description of Proposed Modification.....	7
5	Legal Text to Give Effect to the Proposed Modification.....	8
5.1	Conformed Version – Modification Proposal P35 ‘Qualified ECVNA’s’.....	10
5.2	Clean Version – Modification Proposal P35 ‘Qualified ECVNA’s’.....	17
6	Assessment	24
7	Summary of Representations.....	25
ANNEX 1	– Consultation Representations.....	27

1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Assessment Phase, and the resultant findings of this report, the BSC Panel recommends that:

The Modification as set out in Section 5 of this Modification Report be approved with an Implementation Date of twenty business days from any Authority determination to approve Modification Proposal P35.

1.2 Background

1.2.1 Definition Procedure

Modification Proposal P35 'Qualified ECVNAs' was raised by Automated Power Exchange (APX) on 5 September 2001. The intent of the Modification Proposal is to introduce Privileged Energy Contract Volume Notification Agents (ECVNAs), who, in the event of a failure of their systems and / or processes, will be able to submit notifications received by them ex ante, to the Energy Contract Volume Aggregation Agent (ECVAA) after Gate Closure (i.e. ex post).

The Initial Written Assessment of Modification Proposal P35 'Qualified ECVNAs', was submitted for consideration at the Panel meeting of 20 September 2001, where the Panel agreed to submit the Modification Proposal to the Definition phase.

ELEXON met with the Proposer to further define the Modification Proposal and with the Contract Notification Modification Group (CNMG) on the 15 October 2001 to finalise the definition. The CNMG agreed such definition and provided this for industry consultation with a set of consultation questions. The responses from the consultation were received on 2 November 2001, and are included in the Definition Report for Modification Proposal P35.

On 5 November 2001 the Contract Notification Modification Group met to review and discuss the consultation responses and to finalise the Definition Report for Modification Proposal P35. The Definition Report was presented to the Panel for consideration at their meeting of 15 November 2001. The Panel agreed to submit Modification Proposal P35 to a two month Assessment phase, with the submission of the resultant Assessment Report to the Panel for consideration at their meeting of 17 January 2002. The Panel also agreed to the extension of the Modification Group to encompass both the Contract Notification Modification Group (CNMG) and the Error Processing Modification Group (EPMG) for the purposes of assessing Modification Proposal P35. This Modification Group is referred to throughout the remainder of this document as the P35 Modification Group (P35MG).

1.2.2 Assessment Procedure

The P35 Modification Group met on 26 November 2001, 5 December 2001 and 19 December 2001 to undertake the final definition and assessment of Modification Proposal P35.

The P35MG completed the definition of the process and drafted and agreed a Requirements Specification for the Modification Proposal, which was finalised and provided to the BSC Central Services Agent, ELEXON and the Transmission Company for impact assessment and analysis on 21 December 2001.

The P35MG also agreed that, as the interpretation / elaboration of the Modification Proposal had been amended in some significant ways since the initial consultation, there should be a subsequent (assessment) consultation to ensure that parties are 'signed up' to the changes. Therefore the P35MG drafted a set of consultation questions and these were put out for industry wide consultation on 03 January 2002.

The P35MG, whilst assessing the Modification Proposal and in making the final recommendations with respect to Modification Proposal P35, took account of the Authority's determination on Modification Proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' (see the Assessment Report for Modification Proposal P35, Section 1.5), and was aware of the work done on Modification Proposal P037 'The remedy of past errors in ECVNs and MVRNs'.

The P35MG was also aware of the work underway (at that time) on Modification Proposal P44 'Correction of Notification Errors where Parties are able to satisfy a Reasonable and Prudent Operator test' (see the Assessment Report for Modification proposal p35, Section 1.4), but noted that the triggering events, scope, tests and implementation approach envisaged for P35 were sufficiently different from those for Modification Proposal P44 for Modification Proposal P35 and Modification Proposal P44 to be pursued independently.

The P35MG met on 9 January 2002 to finalise the (draft) recommendations for Modification Proposal P35 (pending receipt of consultation responses). The P35MG reviewed the consultation responses and agreed the final recommendations, and therefore the final version of the Assessment Report by e-mail.

The Assessment Report forms Attachment 1 to this Modification Report.

1.2.3 Modification Report Phase

The Panel considered the Assessment Report at their meeting of 17 January 2002, and agreed that Modification Proposal P35 be submitted to the Report Phase, with the Modification Report containing a provisional recommendation to the Authority to approve the Proposed Modification. Therefore a draft Modification Report was prepared on this basis and submitted for industry consultation on 29 January 2002.

The Draft Modification Report, containing the consultation responses made against the draft Modification Report, was submitted to the Panel for consideration at their meeting of 14 February 2002. The Panel considered the consultation responses, and noted that all but one respondent supported proposed Modification P35. Therefore the Panel agreed to confirm their original recommendation to the Authority to approve the Proposed Modification.

The Panel also agreed an implementation date for the proposed Modification of twenty Business Days from any Authority decision to approve Modification Proposal P35.

1.3 Rationale for Recommendations

The Panel supported the views of the P35 Modification Group and concluded that Modification Proposal P35 would better facilitate achievement of the Applicable Code Objectives 3(c) and 3(d), as set out in paragraph 3 of Condition C3 of the Transmission Licence.

The Panel believe that the proposed Modification better facilitates achievement of the Applicable BSC Objectives 3(c) promotion of competition in the supply and generation of electricity, and 3(d) promotion of efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel noted the following points in making this assertion:

1. The Proposed Modification includes an Administration Charge, the intent of which is to recover the development and implementation costs of this Modification, and cover, in full, the ELEXON, Performance Assurance Board, and BSC Central Service costs of processing and administering any claims;
2. On this basis, the efficiency of implementing and administering the balancing and settlement arrangements is not affected detrimentally by the Modification Proposal;
3. The proposed Modification maintains the commercial incentive on parties to make ex ante notifications, by restricting claims to errors / failures within the notification agent, and requiring verification of ex ante receipt of affected notifications;
4. The proposed Modification incentivises system robustness and data accuracy within notification agent systems by limiting the scope of claims to a level consistent with reasonable system reliability (the claim limit equates to 99.5% system reliability); and
5. The proposed Modification limits the potential for abuse by the implementation of a verification and audit procedure initiated at the discretion of the Performance Assurance Board.

Therefore the Panel believe that the Modification Proposal would better facilitate achievement of the Applicable BSC Objective 3(c) by:

- Reducing notification risk to parties by enabling their notification agents to submit ex post notifications, where they were made by the parties ex ante, in the event of a notification agent error / failure;
- Reducing the costs of notifying, which benefits all, but specifically those parties who cannot / choose not to notify themselves;
- Increasing confidence in notifying trades within day;
- Increasing the incentive on notification agents to develop and market services as a consequence of the increased confidence and reduced risk; and
- Enabling parties to trade closer to Gate Closure as a consequence of the increased confidence and reduced risk.

All of these factors could increase trading, especially within day, which may have the effect of increasing liquidity and transparency in the trading market. The majority (all but one response) of the assessment consultation responses support the assertion that Modification Proposal P35 better facilitates achievement of the Applicable BSC Objectives, for the reasons stated above.

The Panel also believe that Modification Proposal P35 could better facilitate achievement of the Applicable BSC Objective 3(d) by enabling notification agents to offer services whereby the number of interfaces into the BSC Central Systems are reduced, for example aggregation of notifications.

The Panel reviewed the timescales for the development and implementation of Modification Proposal P35. The Panel noted that Performance Assurance measures and procedures are required to be developed and implemented prior to any application for Privileged status by Energy Contract Volume Notification Agents (ECVNAs). However, the Panel noted that these Performance Assurance preparations are the only real dependency for any implementation: The remainder of the work streams required to fully implement Modification Proposal P35 (such as the development of the BSC Website functionality) can be undertaken over a longer period.

Therefore the Panel agreed that that they would recommend an implementation date linked to the Authority decision, which allows time for the implementation of the Performance Assurance work stream required for the initial implementation of this Modification, namely four weeks (twenty Business Days – to ensure the implementation date falls on a Business Day) from any Authority's decision to approve Modification Proposal P35.

2 INTRODUCTION

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

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

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

3 HISTORY OF PROPOSED MODIFICATION

Section 1.2 of this Modification Report provides the high level history of Modification Proposal P35.

The full history of Modification Proposal P35 is provided in Section 1 of the attached Assessment Report.

4 DESCRIPTION OF PROPOSED MODIFICATION

The changes to the Balancing and Settlement Code, required in order to give effect to this Modification Proposal, are included in Section 5 of this Modification Report (the detailed description is provided in Section 4 of the attached Assessment Report).

Modification Proposal P35 seeks to introduce Privileged Energy Contract Volume Notification Agents (ECVNAs), who, in the event of a failure of their systems and / or processes, will be able to submit notifications received by them ex ante, to the Energy Contract Volume Aggregation Agent (ECVAA) after Gate Closure (i.e. ex post).

The following is a summary of the process required to support Modification Proposal P35:

The ECVNA wishing to be granted Privileged Status requests such status from the Performance Assurance Board (PAB) (via ELEXON), utilising a request form which includes all company details and an undertaking that the notification agent systems accord with the Performance Assurance requirements of the balancing and Settlement Code. Where the requesting ECVNA is granted Privileged Status, this is logged on a dedicated part of the BSC Website, with the Effective From Date of the Privileged Status.

Once granted Privileged Status the ECVNA is allowed to submit claims for ex post correction of notifications received by the ECVNA on an ex ante basis, where such notification was received by the Privileged ECVNA with sufficient time to have provided the notification to the ECVAA by the associated Gate Closure. It should be noted that:

- Individual claims are limited to four hour periods, but can encompass any number of affected notifications;
- Claims must be submitted to ELEXON by the beginning (09:00) of the second business day following the affected Settlement Day (with the affected Settlement Day deemed to be the Settlement Day within which the first Settlement Period of the claim falls);
- The Privileged ECVNA raises a claim on behalf of the affected trading parties and is authorised to do so by the 'normal' ECVNA Authorisation (BSCP71) submitted by those trading parties;
- A non refundable Administration Charge of [£5000]¹ is payable for each claim by the Privileged ECVNA;
- The Privileged ECVNA is limited to 12 claims in a rolling period of a year², with the rejection of claims in excess of this allowance;
- All data amendments resulting from accepted claims will have the amended data provided to the next Settlement Run (it is expected that for the vast majority of cases that this will be the Initial Settlement (SF) Run);
- Failures / errors submitted as claims under Modification Proposal P35 cannot be additionally submitted under any other process (for example, the ECVA System Failure recovery process).

Claims submitted to ELEXON will be checked to ensure that they meet the (relevant) criteria listed above, and where this is the case, a site visit for the purposes of verifying the notification agent system(s) with regard to the initial undertaking and the raised claim, and for the purpose of auditing the claim, may be initiated as follows:

- On the first claim raised after application for, and granting of, Privileged Status;
- On the first claim raised after a previous rejection of a claim; and
- Otherwise at the discretion of the Performance Assurance Board.

Where the claims allowance has not been exceeded, a site visit is performed and is successful, or where a site visit is not invoked, then the claim is logged on the BSC Website (against the appropriate Privileged ECVNA), and the information is provided to the ECVA for correction and submission to the next Settlement Run.

Where a site visit is performed and is not successful, or where the Privileged ECVNA has exceeded its claim allowance (i.e. this claim is >12 claims in a rolling year), then the claim is rejected and is logged on the BSC Website.

5 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

In transcribing the various elements of the Proposed Modification into legal drafting, four facets of the proposal were borne in mind and may be of note:

- The granting of Privileged status has been treated, in a number of respects, as analogous to the process of Accreditation. For example, the Panel may direct the PAB, in relation to the granting of Privileged status. In the P35 process, compliance with requirements is not checked on application, but is validated at the time of an initial claim;

¹ Set by the Panel and approved by the Authority, and intended to reflect the costs of administering the claim.

² Although this allowance can be amended by the Panel with the agreement of the Authority.

- The validity of a claim under the proposal is bounded by the concepts of ‘notification systems’ and ‘nomination data’. Any activity by an ECVNA, or any other person, outside of these boundaries is considered to have no bearing on a claim;
- The criteria associated with ‘notification systems’ are established as principles in legal drafting. However, PAB will need to develop specific requirements; and
- PAB will be required to make decisions, based on their judgement as necessary, regarding both data verification and system assessment tests. As highlighted in the Modification Assessment Report, it is intended that PAB will agree guidelines to support this process.

5.1 Conformed Version – Modification Proposal P35 ‘Qualified ECVNA’s’

Section J

3A PRIVILEGED ECVNAS

3A.1 General

3A.1.1 This paragraph 3A sets out the basis on which a person acting or intending to act as Energy Contract Volume Notification Agent may become a Privileged ECVNA.

3A.1.2 The Performance Assurance Board shall be responsible, subject to and in accordance with this paragraph 3A, for the processes of receiving and verifying applications to become a Privileged ECVNA and of approving or rejecting submissions made by a Privileged ECVNA pursuant to Section P6.

3A.1.3 BSCCo as Performance Assurance Administrator shall have such functions in connection with the matters referred to in paragraph 3A.1.2 as may be delegated to it by the Performance Assurance Board.

3A.1.4 BSCCo shall maintain a list of those persons which are for the time being Privileged ECVNAs and shall make such list available to any Party upon request.

3A.1.5 In this paragraph 3A references to a Privileged ECVNA shall where the context admits include a person applying to be a Privileged ECVNA.

3A.2 Application

3A.2.1 A person may apply to become a Privileged ECVNA at any time after such person has completed and satisfied the qualification requirements referred to in paragraph 5.3 (as applicable to Energy Contract Volume Notification Agents), irrespective of whether such person is then appointed by any Contract Trading Party(ies) as Energy Contract Volume Notification Agent.

3A.2.2 An application to become a Privileged ECVNA shall be made by submitting to the Performance Assurance Board:

(a) an application form (in the form required by the Performance Assurance Board):

(i) setting out the identity and such other details of the applicant as the Performance Assurance Board may require;

(ii) specifying whether the applicant has previously been a Privileged ECVNA, and if so the period(s) for which it was such;

(iii) containing a statement to the effect that the applicant has a notification system which satisfies the requirements referred to in Section P6.1.2;

(iv) containing an undertaking to afford to the Performance Assurance Board or its nominee such information and such access to the premises, systems, records and personnel of the applicant as it may require for the purposes of carrying out a system assessment pursuant to Section P6.4.4;

(v) containing an undertaking to notify the Performance Assurance Board if at any time the notification system ceases to satisfy the requirements referred to in Section P6.1.2;

(vi) specifying a period as required by Section P6.1.4;

(b) a letter agreement as referred to in paragraph 3.8.1 (as applicable pursuant to paragraph 3A.2.7).

3A.2.3 Upon receiving an application to become a Privileged ECVNA, the Performance Assurance Board shall:

(a) verify that the condition (as to qualification requirements) in paragraph 3A.2.1 is satisfied and that the application is properly completed; and

(b) subject thereto, accept the application and instruct BSCCo to notify the applicant that his application has been accepted, to record the same on the BSC Website and to enter the applicant's details in the list maintained under paragraph 3A.1.4;

and for the avoidance of doubt there shall be no requirement for the Performance Assurance Board to make any further enquiry or investigation of the applicant or its systems before accepting an application.

3A.2.4 If the requirements referred to in paragraph 3A.2.3(a) are not satisfied, the Performance Assurance Board shall reject the application and shall instruct BSCCo to notify the applicant that his application has been rejected.

3A.2.5 The applicant shall be a Privileged ECVNA with effect from the time at which his details are entered in the list maintained under paragraph 3A.1.4.

3A.2.6 If a person which is for the time being a Privileged ECVNA notifies the Performance Assurance Board (pursuant to the undertaking referred to in paragraph 3A.2.2(a)(v)) that its notification system has ceased or will from any date cease to satisfy the requirements referred to in Section P6.1.2, such person shall cease to be a Privileged ECVNA with immediate effect or (if later) with effect from the date so notified by it.

3A.2.7 For the purposes of this paragraph 3A, paragraphs 2.3.1, [3.3.3], 3.3.4, 3.3.8 and 3.8 shall apply on the following basis:

(a) references to an Applicant or Accredited Person shall be construed as references to a Privileged ECVNA;

(b) references to the Certification Process and to the Accreditation Process shall be construed as references to the processes specified in paragraph 3A.1.2, and references to Certification and to Accreditation shall be construed as references to becoming a Privileged ECVNA;

(c) references to this Section J and/or to BSCP 531 shall be construed as references to this paragraph 3A, [BSCP] and Section P6;

(d) references to the Certification Agent shall be disregarded.

Section P

6. PRIVILEGED ECVNAS

6.1 Interpretation

6.1.1 For the purposes of this paragraph 6 and Section J3A:

(a) "nomination data" is data, whether created by the Privileged ECVNA or received by him directly from Contract Trading Parties by whom he is authorised (under an ECVNA Authorisation), which is to be contained in Energy Contract Volume Notifications (to be submitted by him) as the data referred to in paragraph 2.3.2(a) and (c) or from which such data can uniquely, unambiguously and without further data be derived;

(b) references to nomination data in paragraphs 6.1.2(c) and (d) include the time of receipt referred to in paragraph 6.1.2(b);

(c) "notification system" means systems and processes of a Privileged ECVNA (whether or not forming part of his other systems and processes) for receiving, recording and storing nomination

data and submitting (to the ECVAA) Energy Contract Volume Notifications containing or derived from such data;

(d) references to nomination data contained in an Energy Contract Volume Notification include data derived (as described in paragraph (a) above) from such nomination data.

6.1.2 A Privileged ECVNA must have a notification system which must satisfy such requirements as the Performance Assurance Board may from time to time establish or revise for the purposes of determining whether notification systems comply with following principles:

(a) all nomination data received or created by the Privileged ECVNA is received, whether or not from another system of his, recorded and stored in the notification system;

(b) the time of receipt (by the notification system) of particular nomination data is recorded by the notification system;

(c) nomination data (as received, recorded and stored in the notification system) can be reproduced and sent (in a format specified by BSCCo) to BSCCo for the purposes of paragraph 6.4.3(a);

(d) once nomination data has been received in the notification system it cannot (as recorded and stored in the system) be altered by any person (but without prejudice to the effect of the receipt in the notification system of any further nomination data);

(e) Energy Contract Volume Notifications are (in the absence of any failure of the notification system) submitted to the ECVAA containing the nomination data;

(f) the notification system's compliance with the requirements in paragraphs (a) to (e) can be assessed and verified.

6.1.3 BSCCo shall make available to any person on request the requirements from time to time established or revised by the Performance Assurance Board pursuant to paragraph 6.1.2.

6.1.4 A Privileged ECVNA must (when submitting its application under Section J3A.2) specify a period in minutes for the purposes of paragraph 6.1.5(c), and may from time to time (by notice to BSCCo) revise the period so specified with effect in relation to Settlement Periods on and after the Business Day after such notice is given.

6.1.5 For the purposes of this paragraph 6:

(a) a "Late Notification Submission" is the submission by a Privileged ECVNA pursuant to paragraph 6.2 of one or more Energy Contract Volume Notifications after Gate Closure for any Settlement Period to which such notification(s) relate;

(b) in relation to a Late Notification Submission:

(i) "late submission period" means a period (specified by the Privileged ECVNA) of not more than 8 consecutive Settlement Periods to which the Late Notification Submission relates;

(ii) "late submission day" is the Settlement Day in which the last Settlement Period in the late submission period falls;

(c) "advance nomination time" means:

(i) the period in minutes for the time being notified by a Privileged ECVNA pursuant to paragraph 6.1.4; and

(ii) in the context of a particular Settlement Period, the time which falls before Gate Closure (for that Settlement Period) by the period referred to in paragraph (i).

6.2 Late Notification Submissions

6.2.1 Paragraph 6.2.2 applies where for any reason nomination data recorded in the notification system of a Privileged ECVNA was not contained in Energy Contract Volume Notification(s) submitted before Gate Closure for any Settlement Period to which such data relates.

6.2.2 Where this paragraph 6.2.2 applies, subject to the further provisions of this paragraph 6.2, an Energy Contract Volume Notification may be submitted by a Privileged ECVNA, after Gate Closure for any Settlement Period to which it relates, by way of a Late Notification Submission, and such notification shall be taken into account in Settlement.

6.2.3 A Late Notification Submission may comprise any number of Energy Contract Volume Notifications, provided that each such notification shall relate only to one or more Settlement Periods falling within the late submission period.

6.2.4 The data in each Energy Contract Volume Notification contained in a Late Notification Submission shall be the applicable nomination data received in the Privileged ECVNA's notification system not later than the advance nomination time in relation to each Settlement Period to which such notification relates; and the Late Notification Submission must include Energy Contract Volume Notifications containing all such nomination data.

6.2.5 Subject to paragraphs 6.2.1 and 6.2.4, a Late Notification Submission may include an Energy Contract Volume Notification relating to a Settlement Period notwithstanding that any other Energy Contract Volume Notification (for the same Settlement Period, Energy (To) Account and Energy (From) Account) may have been submitted by the Privileged ECVNA before Gate Closure for that Settlement Period.

6.2.6 A Late Notification Submission may not be made in any month if the Privileged ECVNA has already made 12 Late Notification Submissions (whether approved or rejected) during the immediately preceding period of 12 months (and any purported such submission shall be disregarded).

6.2.7 For the avoidance of doubt, subject to paragraph 6.6, an Energy Contract Volume Notification included in a Late Notification Submission shall be an Energy Contract Volume Notification for all purposes of the Code including paragraph 1.2.2(b) but not paragraph 1.2.4; and no Contract Trading Party may for the purposes of the Code challenge or object to any Energy Contract Volume Notification Agent appointed by it being or becoming a Privileged ECVNA, or any Late Notification Submission made by such a Privileged ECVNA.

6.3 Making Late Notification Submissions

6.3.1 A Late Notification Submission:

(a) shall be made in writing to BSCCo not later than the start of the second Business Day following the late submission day;

(b) shall contain:

(i) a statement from the Privileged ECVNA to the effect that it is a Late Notification Submission and specifying the late submission period;

(ii) Energy Contract Volume Notifications in accordance with paragraph 6.2.4;

(iii) an estimate of materiality (that is, the maximum quantity in MWh for any one Energy Account by which the sum (for all Settlement Periods in the late submission period) of

the magnitudes of the Account Energy Imbalance Volume would differ according to whether the Energy Contract Volume Notifications in the Late Notification Submission are taken into account in Settlement).

6.3.2 A Late Notification Submission shall not be valid (and shall lapse) unless a fee is paid by the Privileged ECVNA to BSCCo not later than the fifth Business Day after the late submission day:

(a) the amount of which shall be £5,000 (plus applicable VAT) or such other amount (to take effect upon not less than 30 days notice to Parties and Privileged ECVNAs) as the Panel may determine after consultation with Parties [and with the approval of the Authority];

(b) which shall not be reimbursed in any circumstances.

6.4 Approval and verification

6.4.1 Where a Late Notification Submission is made, the Performance Assurance Board may (as provided in paragraph 6.4.2) carry out:

(a) an analysis ("data verification") of the submission in accordance with paragraph 6.4.3 to verify that the requirement in paragraph 6.2.4 has been satisfied;

(b) an assessment ("system assessment") of the notification system in accordance with paragraph 6.4.4 to verify that the system satisfies or continues to satisfy the requirements referred to in paragraph 6.1.2, and including a determination of whether the requirement in paragraph 6.4.5(a) is satisfied.

6.4.2 For the purposes of paragraph 6.4.1:

(a) where the Privileged ECVNA has not previously made a Late Notification Submission, both a data verification and a system assessment shall be carried out;

(b) where the preceding Late Notification Submission made by the Privileged ECVNA was rejected, both a data verification and a system assessment shall be carried out;

(c) in any other case the Performance Assurance Board shall determine in its discretion whether to carry out a data verification and/or a system assessment.

6.4.3 Where a data verification is to be carried out:

(a) BSCCo will request the Privileged ECVNA to send the nomination data referred to in paragraph 6.2.4;

(b) such nomination data must be sent by the Privileged ECVNA to BSCCo within [2 Business Days] after BSCCo's request;

(c) the Performance Assurance Board (or a person nominated by it) will analyse such data in comparison with the ECVNs contained in the Late Notification Submission and determine whether the requirement in paragraph 6.2.4 is fully satisfied;

(d) if the Performance Assurance Board determines that the requirement in paragraph 6.2.4 was not fully satisfied, the Late Notification Submission shall be rejected in its entirety.

6.4.4 Where a systems assessment is to be carried out:

(a) the Performance Assurance Board (or a person nominated by it) will visit the premises of the Privileged ECVNA at which the notification system is located and/or obtain from the Privileged ECVNA such information and explanation concerning the notification system as it may require.

and will carry out such investigations of the notification system as it considers appropriate in order to determine whether the system satisfies the requirements referred to in paragraph 6.1.2;

(b) the Performance Assurance Board (or a person nominated by it) will determine, having regard to such factors as it considers relevant (including the past submission by the Privileged ECVNA of Energy Contract Volume Notifications, the terms where relevant on which the Privileged ECVNA states its willingness to act, and the investigation under paragraph (a) of the notification system) whether the requirement in paragraph 6.4.5(a) is satisfied;

(c) if the Performance Assurance Board determines that the notification system does not satisfy the requirements referred to in paragraph 6.1.2 or that the requirement in paragraph 6.4.5(a) is not satisfied, the Late Notification Submission shall be rejected in its entirety (but the status of the Privileged ECVNA as such shall not be affected).

6.4.5 For the purposes of paragraph 6.4.4(b):

(a) the requirement referred to in that paragraph is that the Privileged ECVNA is capable under all normal circumstances of submitting, so as to be received not later than Gate Closure (for a given Settlement Period), Energy Contract Volume Notifications containing all nomination data which was received in the notification system by the advance nomination time in relation to that Settlement Period;

(b) the Performance Assurance Board may establish and from time to time revise guidance as to the basis on which (and/or the factors having regard to which) it will determine whether such requirement is satisfied.

6.4.6 The decision of the Performance Assurance Board as to whether the requirement in paragraph 6.2.4 was fully satisfied, or as to whether the notification system satisfies the requirements referred to in paragraph 6.1.2, or as to whether the requirement in paragraph 6.4.5(a) is satisfied, shall be final and binding; and BSCCo shall notify such decision, and the reasons given by the Performance Assurance Board for its decision, to the Privileged ECVNA.

6.5 Implementation of Late Notification Submission

6.5.1 If either:

(a) no data verification or system assessment is to be carried out pursuant to paragraph 6.4.1, or

(b) the Late Notification Submission is not rejected pursuant to such a verification or assessment then the Late Notification Submission shall be approved.

6.5.2 Where a Late Notification Submission is approved:

(a) the Energy Contract Volume Notifications contained in such submission shall be taken into account in Settlement in the next Settlement Run(s) for the relevant Settlement Periods;

(b) BSCCo shall give such instructions to the ECVA as are necessary to give effect to paragraph (a).

6.6 Credit Arrangements

6.6.1 Where Energy Contract Volume Notifications pursuant to a Late Notification Submission are approved, such notifications shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time at which the ECVA enters into its BSC Agent System the relevant Energy Contract Volume Notifications).

6.6.2 In accordance with paragraph 6.6.1:

- (a) where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the Energy Contract Volume Notifications in the Late Notification Submission been submitted before Gate Closure for the relevant Settlement Period(s):
- (i) Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and
- (ii) to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the approval of the Late Notification Submission and Section M4 shall not apply in relation thereto;
- (b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the relevant Energy Contract Volume Notification(s) been submitted, and is or was not so treated, the approval of the Late Notification Submission shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.

Section D

- 4.1(a)(v) any amounts paid to BSCCo by way of fee pursuant to [Section P7.7.2], Section P6.3.2 or Section Q7.2.3.

Section M

[3.5.1] This paragraph 3 and paragraph 4 are subject to the provisions of Section [P6].

Annex X-1

"Late Notification Submission"

has the meaning given to that term in Section P6.1.3(a):

"Privileged ECVNA"

means a person who has applied to be a Privileged ECVNA and whose application has been accepted pursuant to Section J3A.2 and who has not ceased to be a Privileged ECVNA pursuant to Section J3A.2.6.

5.2 Clean Version – Modification Proposal P35 ‘Qualified ECVNA’s’

Section J

3A PRIVILEGED ECVNAS

3A.1 General

- 3A.1.1 This paragraph 3A sets out the basis on which a person acting or intending to act as Energy Contract Volume Notification Agent may become a Privileged ECVNA.
- 3A.1.2 The Performance Assurance Board shall be responsible, subject to and in accordance with this paragraph 3A, for the processes of receiving and verifying applications to become a Privileged ECVNA and of approving or rejecting submissions made by a Privileged ECVNA pursuant to Section P6.
- 3A.1.3 BSCCo as Performance Assurance Administrator shall have such functions in connection with the matters referred to in paragraph 3A.1.2 as may be delegated to it by the Performance Assurance Board.
- 3A.1.4 BSCCo shall maintain a list of those persons which are for the time being Privileged ECVNAs and shall make such list available to any Party upon request.
- 3A.1.5 In this paragraph 3A references to a Privileged ECVNA shall where the context admits include a person applying to be a Privileged ECVNA.

3A.2 Application

- 3A.2.1 A person may apply to become a Privileged ECVNA at any time after such person has completed and satisfied the qualification requirements referred to in paragraph 5.3 (as applicable to Energy Contract Volume Notification Agents), irrespective of whether such person is then appointed by any Contract Trading Party(ies) as Energy Contract Volume Notification Agent.
- 3A.2.2 An application to become a Privileged ECVNA shall be made by submitting to the Performance Assurance Board:
- (a) an application form (in the form required by the Performance Assurance Board):
 - (i) setting out the identity and such other details of the applicant as the Performance Assurance Board may require;
 - (ii) specifying whether the applicant has previously been a Privileged ECVNA, and if so the period(s) for which it was such;
 - (iii) containing a statement to the effect that the applicant has a notification system which satisfies the requirements referred to in Section P6.1.2;
 - (iv) containing an undertaking to afford to the Performance Assurance Board or its nominee such information and such access to the premises, systems, records and personnel of the applicant as it may require for the purposes of carrying out a system assessment pursuant to Section P6.4.4;
 - (v) containing an undertaking to notify the Performance Assurance Board if at any time the notification system ceases to satisfy the requirements referred to in Section P6.1.2;
 - (vi) specifying a period as required by Section P6.1.4;
 - (b) a letter agreement as referred to in paragraph 3.8.1 (as applicable pursuant to paragraph 3A.2.7).
- 3A.2.3 Upon receiving an application to become a Privileged ECVNA, the Performance Assurance Board shall:

- (a) verify that the condition (as to qualification requirements) in paragraph 3A.2.1 is satisfied and that the application is properly completed; and
- (b) subject thereto, accept the application and instruct BSCCo to notify the applicant that his application has been accepted, to record the same on the BSC Website and to enter the applicant's details in the list maintained under paragraph 3A.1.4;

and for the avoidance of doubt there shall be no requirement for the Performance Assurance Board to make any further enquiry or investigation of the applicant or its systems before accepting an application.

- 3A.2.4 If the requirements referred to in paragraph 3A.2.3(a) are not satisfied, the Performance Assurance Board shall reject the application and shall instruct BSCCo to notify the applicant that his application has been rejected.
- 3A.2.5 The applicant shall be a Privileged ECVNA with effect from the time at which his details are entered in the list maintained under paragraph 3A.1.4.
- 3A.2.6 If a person which is for the time being a Privileged ECVNA notifies the Performance Assurance Board (pursuant to the undertaking referred to in paragraph 3A.2.2(a)(v)) that its notification system has ceased or will from any date cease to satisfy the requirements referred to in Section P6.1.2, such person shall cease to be a Privileged ECVNA with immediate effect or (if later) with effect from the date so notified by it.
- 3A.2.7 For the purposes of this paragraph 3A, paragraphs 2.3.1, [3.3.3], 3.3.4, 3.3.8 and 3.8 shall apply on the following basis:
- (a) references to an Applicant or Accredited Person shall be construed as references to a Privileged ECVNA;
 - (b) references to the Certification Process and to the Accreditation Process shall be construed as references to the processes specified in paragraph 3A.1.2, and references to Certification and to Accreditation shall be construed as references to becoming a Privileged ECVNA;
 - (c) references to this Section J and/or to BSCP 531 shall be construed as references to this paragraph 3A, [BSCP ___] and Section P6;
 - (d) references to the Certification Agent shall be disregarded.

Section P

6. PRIVILEGED ECVNAS

6.1 Interpretation

6.1.1 For the purposes of this paragraph 6 and Section J3A:

- (a) "**nomination data**" is data, whether created by the Privileged ECVNA or received by him directly from Contract Trading Parties by whom he is authorised (under an ECVNA Authorisation), which is to be contained in Energy Contract Volume Notifications (to be submitted by him) as the data referred to in paragraph 2.3.2(a) and (c) or from which such data can uniquely, unambiguously and without further data be derived;
- (b) references to nomination data in paragraphs 6.1.2(c) and (d) include the time of receipt referred to in paragraph 6.1.2(b);
- (c) "**notification system**" means systems and processes of a Privileged ECVNA (whether or not forming part of his other systems and processes) for receiving, recording and storing nomination data and submitting (to the ECVAA) Energy Contract Volume Notifications containing or derived from such data;
- (d) references to nomination data contained in an Energy Contract Volume Notification include data derived (as described in paragraph (a) above) from such nomination data.

6.1.2 A Privileged ECVNA must have a notification system which must satisfy such requirements as the Performance Assurance Board may from time to time establish or revise for the purposes of determining whether notification systems comply with following principles:

- (a) all nomination data received or created by the Privileged ECVNA is received, whether or not from another system of his, recorded and stored in the notification system;
- (b) the time of receipt (by the notification system) of particular nomination data is recorded by the notification system;
- (c) nomination data (as received, recorded and stored in the notification system) can be reproduced and sent (in a format specified by BSCCo) to BSCCo for the purposes of paragraph 6.4.3(a);
- (d) once nomination data has been received in the notification system it cannot (as recorded and stored in the system) be altered by any person (but without prejudice to the effect of the receipt in the notification system of any further nomination data);
- (e) Energy Contract Volume Notifications are (in the absence of any failure of the notification system) submitted to the ECVAA containing the nomination data;
- (f) the notification system's compliance with the requirements in paragraphs (a) to (e) can be assessed and verified.

6.1.3 BSCCo shall make available to any person on request the requirements from time to time established or revised by the Performance Assurance Board pursuant to paragraph 6.1.2.

6.1.4 A Privileged ECVNA must (when submitting its application under Section J3A.2) specify a period in minutes for the purposes of paragraph 6.1.5(c), and may from time to time (by notice to BSCCo) revise the period so specified with effect in relation to Settlement Periods on and after the Business Day after such notice is given.

6.1.5 For the purposes of this paragraph 6:

- (a) a "**Late Notification Submission**" is the submission by a Privileged ECVNA pursuant to paragraph 6.2 of one or more Energy Contract Volume Notifications after Gate Closure for any Settlement Period to which such notification(s) relate;
- (b) in relation to a Late Notification Submission:
 - (i) "**late submission period**" means a period (specified by the Privileged ECVNA) of not more than 8 consecutive Settlement Periods to which the Late Notification Submission relates;
 - (ii) "**late submission day**" is the Settlement Day in which the last Settlement Period in the late submission period falls;
- (c) "**advance nomination time**" means:
 - (i) the period in minutes for the time being notified by a Privileged ECVNA pursuant to paragraph 6.1.4; and
 - (ii) in the context of a particular Settlement Period, the time which falls before Gate Closure (for that Settlement Period) by the period referred to in paragraph (i).

6.2 Late Notification Submissions

- 6.2.1 Paragraph 6.2.2 applies where for any reason nomination data recorded in the notification system of a Privileged ECVNA was not contained in Energy Contract Volume Notification(s) submitted before Gate Closure for any Settlement Period to which such data relates.
- 6.2.2 Where this paragraph 6.2.2 applies, subject to the further provisions of this paragraph 6.2, an Energy Contract Volume Notification may be submitted by a Privileged ECVNA, after Gate Closure for any Settlement Period to which it relates, by way of a Late Notification Submission, and such notification shall be taken into account in Settlement.
- 6.2.3 A Late Notification Submission may comprise any number of Energy Contract Volume Notifications, provided that each such notification shall relate only to one or more Settlement Periods falling within the late submission period.
- 6.2.4 The data in each Energy Contract Volume Notification contained in a Late Notification Submission shall be the applicable nomination data received in the Privileged ECVNA's notification system not later than the advance nomination time in relation to each Settlement Period to which such notification relates; and the Late Notification Submission must include Energy Contract Volume Notifications containing all such nomination data.
- 6.2.5 Subject to paragraphs 6.2.1 and 6.2.4, a Late Notification Submission may include an Energy Contract Volume Notification relating to a Settlement Period notwithstanding that any other Energy Contract Volume Notification (for the same Settlement Period, Energy (To) Account and Energy (From) Account) may have been submitted by the Privileged ECVNA before Gate Closure for that Settlement Period.
- 6.2.6 A Late Notification Submission may not be made in any month if the Privileged ECVNA has already made 12 Late Notification Submissions (whether approved or rejected) during the immediately preceding period of 12 months (and any purported such submission shall be disregarded).
- 6.2.7 For the avoidance of doubt, subject to paragraph 6.6, an Energy Contract Volume Notification included in a Late Notification Submission shall be an Energy Contract Volume Notification for all purposes of the Code including paragraph 1.2.2(b) but not paragraph 1.2.4; and no Contract Trading Party may for the

purposes of the Code challenge or object to any Energy Contract Volume Notification Agent appointed by it being or becoming a Privileged ECVNA, or any Late Notification Submission made by such a Privileged ECVNA.

6.3 Making Late Notification Submissions

6.3.1 A Late Notification Submission:

- (a) shall be made in writing to BSCCo not later than the start of the second Business Day following the late submission day;
- (b) shall contain:
 - (i) a statement from the Privileged ECVNA to the effect that it is a Late Notification Submission and specifying the late submission period;
 - (ii) Energy Contract Volume Notifications in accordance with paragraph 6.2.4;
 - (iii) an estimate of materiality (that is, the maximum quantity in MWh for any one Energy Account by which the sum (for all Settlement Periods in the late submission period) of the magnitudes of the Account Energy Imbalance Volume would differ according to whether the Energy Contract Volume Notifications in the Late Notification Submission are taken into account in Settlement).

6.3.2 A Late Notification Submission shall not be valid (and shall lapse) unless a fee is paid by the Privileged ECVNA to BSCCo not later than the fifth Business Day after the late submission day:

- (a) the amount of which shall be £5,000 (plus applicable VAT) or such other amount (to take effect upon not less than 30 days notice to Parties and Privileged ECVNAs) as the Panel may determine after consultation with Parties [and with the approval of the Authority];
- (b) which shall not be reimbursed in any circumstances.

6.4 Approval and verification

6.4.1 Where a Late Notification Submission is made, the Performance Assurance Board may (as provided in paragraph 6.4.2) carry out:

- (a) an analysis ("**data verification**") of the submission in accordance with paragraph 6.4.3 to verify that the requirement in paragraph 6.2.4 has been satisfied;
- (b) an assessment ("**system assessment**") of the notification system in accordance with paragraph 6.4.4 to verify that the system satisfies or continues to satisfy the requirements referred to in paragraph 6.1.2, and including a determination of whether the requirement in paragraph 6.4.5(a) is satisfied.

6.4.2 For the purposes of paragraph 6.4.1:

- (a) where the Privileged ECVNA has not previously made a Late Notification Submission, both a data verification and a system assessment shall be carried out;
- (b) where the preceding Late Notification Submission made by the Privileged ECVNA was rejected, both a data verification and a system assessment shall be carried out;
- (c) in any other case the Performance Assurance Board shall determine in its discretion whether to carry out a data verification and/or a system assessment.

6.4.3 Where a data verification is to be carried out:

- (a) BSCCo will request the Privileged ECVNA to send the nomination data referred to in paragraph 6.2.4;
- (b) such nomination data must be sent by the Privileged ECVNA to BSCCo within [2 Business Days] after BSCCo's request;
- (c) the Performance Assurance Board (or a person nominated by it) will analyse such data in comparison with the ECVNs contained in the Late Notification Submission and determine whether the requirement in paragraph 6.2.4 is fully satisfied;
- (d) if the Performance Assurance Board determines that the requirement in paragraph 6.2.4 was not fully satisfied, the Late Notification Submission shall be rejected in its entirety.

6.4.4 Where a systems assessment is to be carried out:

- (a) the Performance Assurance Board (or a person nominated by it) will visit the premises of the Privileged ECVNA at which the notification system is located and/or obtain from the Privileged ECVNA such information and explanation concerning the notification system as it may require, and will carry out such investigations of the notification system as it considers appropriate in order to determine whether the system satisfies the requirements referred to in paragraph 6.1.2;
- (b) the Performance Assurance Board (or a person nominated by it) will determine, having regard to such factors as it considers relevant (including the past submission by the Privileged ECVNA of Energy Contract Volume Notifications, the terms where relevant on which the Privileged ECVNA states its willingness to act, and the investigation under paragraph (a) of the notification system) whether the requirement in paragraph 6.4.5(a) is satisfied;
- (c) if the Performance Assurance Board determines that the notification system does not satisfy the requirements referred to in paragraph 6.1.2 or that the requirement in paragraph 6.4.5(a) is not satisfied, the Late Notification Submission shall be rejected in its entirety (but the status of the Privileged ECVNA as such shall not be affected).

6.4.5 For the purposes of paragraph 6.4.4(b):

- (a) the requirement referred to in that paragraph is that the Privileged ECVNA is capable under all normal circumstances of submitting, so as to be received not later than Gate Closure (for a given Settlement Period), Energy Contract Volume Notifications containing all nomination data which was received in the notification system by the advance nomination time in relation to that Settlement Period;
- (b) the Performance Assurance Board may establish and from time to time revise guidance as to the basis on which (and/or the factors having regard to which) it will determine whether such requirement is satisfied.

6.4.6 The decision of the Performance Assurance Board as to whether the requirement in paragraph 6.2.4 was fully satisfied, or as to whether the notification system satisfies the requirements referred to in paragraph 6.1.2, or as to whether the requirement in paragraph 6.4.5(a) is satisfied, shall be final and binding; and BSCCo shall notify such decision, and the reasons given by the Performance Assurance Board for its decision, to the Privileged ECVNA.

6.5 Implementation of Late Notification Submission

6.5.1 If either:

- (a) no data verification or system assessment is to be carried out pursuant to paragraph 6.4.1, or
 - (b) the Late Notification Submission is not rejected pursuant to such a verification or assessment
- then the Late Notification Submission shall be approved.

6.5.2 Where a Late Notification Submission is approved:

- (a) the Energy Contract Volume Notifications contained in such submission shall be taken into account in Settlement in the next Settlement Run(s) for the relevant Settlement Periods;
- (b) BSCCo shall give such instructions to the ECVAA as are necessary to give effect to paragraph (a).

6.6 Credit Arrangements

6.6.1 Where Energy Contract Volume Notifications pursuant to a Late Notification Submission are approved, such notifications shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time at which the ECVAA enters into its BSC Agent System the relevant Energy Contract Volume Notifications).

6.6.2 In accordance with paragraph 6.6.1:

- (a) where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the Energy Contract Volume Notifications in the Late Notification Submission been submitted before Gate Closure for the relevant Settlement Period(s):
 - (i) Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and
 - (ii) to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the approval of the Late Notification Submission and Section M4 shall not apply in relation thereto;
- (b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the relevant Energy Contract Volume Notification(s) been submitted, and is or was not so treated, the approval of the Late Notification Submission shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.

Section D

4.1.(a)(v) any amounts paid to BSCCo by way of fee pursuant to [Section P7.7.2], Section P6.3.2 or Section Q7.2.3.

Section M

[3.5.1] This paragraph 3 and paragraph 4 are subject to the provisions of Section [P6].

Annex X-1

"Late Notification Submission"	has the meaning given to that term in Section P6.1.2;
"Privileged ECVNA"	means a person who has applied to be a Privileged ECVNA and whose application has been accepted pursuant to Section J3A.2 and who has not ceased to be a Privileged ECVNA pursuant to Section J3A.2.6.

6 ASSESSMENT

The following is a summary of the impacts identified in the Assessment Report produced by the P35 Modification Group:

- The following sections of the Balancing and Settlement Code are impacted:
 - Section D 'BSC Cost Recovery and Participation Charges' requires amendment to reference the Administration Charge;
 - Section J 'Party Agents' requires amendment to reflect the process and obligations surrounding request for, and granting of, Privileged Status;
 - Section M 'Credit Cover and Credit Default' requires amendment to cover the implications of ECVA data recovery on the Credit Checking and Credit Default process;
 - Section P 'Energy Contract Volumes and Metered Volume Reallocations' requires amendment to include the process and obligations surrounding 'late submission' (i.e. claims) of notifications under Modification Proposal P35; and
 - Section X 'Definitions and Interpretations' ANNEX X-1 'General Glossary' requires amendment to include the new definitions required to support this Modification.
- The BSC Procedures are impacted as follows:
 - BSCP 71 'ECVNA and MVRNA Registration, Authorisation and Termination' requires amendment to reflect the process and obligations surrounding request for, and granting of, Privileged Status, including the additional request forms; and
 - A new BSCP is required to support the process and obligations surrounding 'late submission' (i.e. claims) of notifications under Modification Proposal P35.
- ELEXON is impacted in the following ways:
 - Development and implementation of the internal ELEXON documentation (Local Working Instructions) required to support the process and obligations surrounding request for, and granting of, Privileged Status, as well as ongoing operational support;
 - Development and implementation of the Performance Assurance Framework documentation required to support the process and obligations surrounding request for, and granting of, Privileged Status, as well as ongoing operational support;
 - Development and implementation of the amendments to the BSC Website and the operational aspects of loading and displaying information;
 - Development and implementation of the financial structure to support the levying of the Administration Charge;

- Increased resource burden in order to support the (above mentioned) ongoing operational process for Modification Proposal P35 (i.e. handling of requests for Privileged status, maintaining the information on the BSC Website, processing claims and administering / making site visits for the purposes of audit and verification); and
 - Increase in payments under the BSC Central Service Agent contracts to support the time and materials charging for data recovery / input (into ECVAA).
- Parties should not be impacted in terms of development and implementation of the Modification Proposal. However, it should be noted that there may be an operational impact if amendments to data in ECVAA are made after the Initial Settlement (SF) Run (all attempts have been made to ensure that this does not happen, however, it may occur on rare occasions); and
- Party Agents (namely ECVNAs) are impacted only if they wish to operate as a Privileged ECVA, in which case, they will have to put procedures in place to support the functionality of this Modification Proposal.

7 SUMMARY OF REPRESENTATIONS

Six representations were received in response to the consultation on the draft Modification Report (representing the views of thirty-two Parties).

Refer to the attachment (Consultation Responses on draft Modification Report) for the full responses.

The summary of the responses received for this consultation is as follows:

Five of the six responses (representing twenty-eight parties) support the recommendations made in the Draft Modification Report. A number of these responses made comments regarding the Modification, as follows:

- The level of the Administration charge – one response queries the level of the Administration Charge and the associated ELEXON costs, believing that the costs should be reduced, thus reducing the Administration Charge;
- The scope of the Modification – another response believes that the proposal should be limited to system failures only, rather than errors in notifications, as currently allowed for in the proposal;
- The robustness of the performance assurance aspects of the site visit – a response indicates that a site visit for the purposes of granting Privileged status would be preferred;

It should be noted that it is believed that this point is addressed by the requirement for the first claim made to be the subject of a site visit, under all circumstances.

- A minor error in the legal text – an incorrect cross reference (Section D 4.1(a)(v) cross refers to Section P 6.3.1(c), but should in fact refer to Section P 6.3.2).

One response (representing four parties) did not support the recommendations made in the Draft Modification Report. The response restated their concerns regarding the proposal, namely:

- The proposal will lead to a distortion in the market for notification services because it reduces the risks to a third party notification agent;
- The proposal moves ex post notification to a 'normal' situation, whereas other proposals have retained the abnormality of ex post corrections;

- The implementation of an ‘accreditation / certification’ framework will cost BSC Parties, individually and collectively a great deal of money, time and effort, which may not provide value for money;
- The mechanism proposed may allow manipulation by unscrupulous Parties / notification agents, by enabling them to submit ‘false’ notifications to the ECVNA to be activated in the event of extreme cash out prices; and
- BSC Parties may be encouraged to set up and use multiple Privileged ECVNAs to extend the number of claims allowed.

It should be noted that that the consultation responses on the Draft Modification Report did not contain any new or substantive arguments.

ANNEX 1 – CONSULTATION REPRESENTATIONS

Consultation issued 29 January 2002

Representations were received from the following parties:

No	Company	File Number	No. Parties Represented
1.	SEEBOARD	P35_MR_001	2
2.	APX	P35_MR_002	1
3.	TXU Europe Energy Trading Ltd	P35_MR_003	14
4.	ScottishPower UK plc	P35_MR_004	7
5.	British Gas Trading	P35_MR_005	4
6.	Scottish & Southern Energy plc	P35_MR_006	4

P35_MR_001 – SEEBOARD

We agree with the recommendations within draft modification report dated 29th January 2002.

P35_MR_002 – APX

APX is pleased that the Panel has supported modification P35 and is recommending to the Authority that the modification be approved.

At Panel meeting 39, Professor Brealey commented on cost recovery and noted that where systems and processes were already in place the efficient solution is to charge for the incremental costs associated with any modification.

The mechanisms and personnel for processing claims made under P35 already exists, as it utilises the same procedures as those followed after a ECVA system failure. We therefore believe that Elexon costs should not be charged at standard project rates of £500/day, but a more realistic cost of £200/day. The BSC Agent costs has stated their costs to be £780 per claim.

This would result in total costs for processing claims to be in the region of £1900 without a site visit, and £3400 with a site visit.

If the administration fee was reduced from £5000 to £3000 this would still allow for full cost recovery in processing claims and recovery of initial development costs, (noting that it is expected that the majority of claims will not require a site visit).

P35_MR_003 – TXU Europe Energy Trading Ltd

Thank you for the opportunity to comment on the P35 modification report, TXU Europe Energy Trading Ltd would like to make the following comments on behalf of 14 TXU Europe companies.

TXU supports the general principle of this modification proposal, however we believe that the scope of the proposal should be limited to instances of system failure only. Further we have some concerns about excluding any late submissions from credit checking. Should a power exchange experience a notification system failure the MWh volumes involved in late submissions could be large and as such we believe that it may be appropriate to introduce some level of materiality as to whether late submissions should be included in the subsequent determination of parties credit cover percentages.

P35_MR_004 – ScottishPower UK plc

P35: Qualified ECVNAs - Draft Modification Report Comments

With reference to the above, I would refer you to our previous comments on the proposal.

In this consultation response, we wish to reiterate the view, which we have previously provided in support of Mod P35 subject to satisfactory PAF process to monitor the agents.

We would, therefore, wish to reiterate our concern that there would have been additional robustness in the process if reliance was not placed purely on a written undertaking of the applicant wishing to attain Privileged ECVNA status about the adequacy of its systems but through an initial site visit.

The DMR suggested that Performance Assurance workstream will be created and process implemented prior to the implementation of this proposal. This presumably would satisfy our concern.

However, we believe the legal drafting has not gone far enough in the pre-conditions for being a Qualified ECVNA. In particular, from our previous suggestion, we believed an on site system assessment should be carried out (under P6.4.4) as a matter of course at time of qualification, rather than just the satisfaction of network access tests (under O.3.2.). Also, there is a minor drafting error re. the change to Sec. D 4.1(a)(v) (should refer to Section P 6.3.2(a)).

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

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

P35_MR_005 – British Gas Trading

Thank you for the opportunity of responding to this consultation. This response is on behalf of British Gas Trading Ltd, Accord Energy Ltd, Centrica King's Lynn and Centrica Peterborough.

We concur with the Panel's view that this modification will better facilitate applicable BSC objectives and as such we support the implementation of the modification. We believe this modification provides the potential to increase the liquidity and transparency in the market through the reduction in notification risk to Parties.

P35_MR_006 – Scottish & Southern Energy plc

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 29th January 2002, and the associated Modification Report and Assessment Report, concerning Modification Proposal P35; we have the following comments to make.

Our previous comments on this proposed Modification remain valid, that is:-

We think it is a dangerous precedent to have a two tier structure. It will lead to a distortion in the market for Notification Services because it will reduce the risks to a third party Notification Agent significantly, hence its proposal by a Power Exchange. It is an odd way to go about introducing ex-post trading - and moves such activity into a "normal" situation as opposed to the other methods (which we have supported) of error correction, which preserves the abnormality of such events but enables them under certain circumstances to be corrected.

The term privileged implies that there will always be unprivileged agents. Presumably there is nothing to stop every agent from becoming privileged, in which case the modification is not about two classes of agent, but all about allowing ex-post trading and error correction to reduce notification risk. No mention is made of the issue of certification/accreditation that "privileged" status would entail. The experience of the 1998 arrangements for certification and accreditation resulted in rejection of such a process for NETA, and the business processes were designed so that agent performance was a commercial risk between the counterparties.. You really only need certification/accreditation when the actions of one supplier's agent can impact on others with whom he has no contractual relationship.

Whilst this is true in Supplier Allocation, it is not the case in a bilateral (or trilateral) contractual framework. To be effective, an accreditation / certification framework will cost BSC Parties, individually and collectively a great deal of money, time and effort. The benefit of hindsight says this should not be under-estimated, and that it is dubious value for money. We do find it paradoxical that an Agent who claims Privileged Status through having quality systems and robust procedures, does so for the sole purpose of being able to correct a mistake with impunity !

Furthermore, if this proposed Modification allows BSC Parties to register their own 'internal' "qualified ECVNAs", we believe there is a risk that serious market distortion could occur. BSC Parties could potentially regularly send 'false' notifications to their internal ECVNA, who would not pass them on.

Thus, in the event that market conditions warranted it, the BSC Party could activate these 'false' notifications for those periods of extreme cashout etc., to gain a competitive advantage having had access to market information on prices, production and demand up to two business days after the four hour period.

In addition to this we are concerned that BSC Parties may be able to set up and use multiple "qualified ECVNAs"; allowing them to have an unlimited number of 'errors' in a year, rather than the limited number suggested / agreed by the Panel; i.e. once their limit of errors with one "qualified ECVNA" has been reached, they move their 'account' to another "qualified ECVNA", and start off again with 'zero' errors.

For these reasons we believe that "qualified ECVNAs" should be strictly limited to independent bodies, with the granting of the privileged status of a "qualified ECVNA" being subject to Panel approval, to avoid undue advantage being afforded to one BSC Party over another.