

28 May 2002

URGENT MODIFICATION REPORT

MODIFICATION PROPOSAL P84

**Amendment To Process For Past Notification
Errors (2)**

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

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I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
0.1	27/05/02	ELEXON		Report for Panel Review
1.0	27/05/02	ELEXON		Incorporating Panel Comments
2.0	28/05/02	ELEXON		Incorporating revised formulation of recommendation.

Version	Date	Reviewer	Signature	Responsibility
0.1	27/05/02	ELEXON		
1.0	27/05/02	ELEXON		
2.0	28/05/02	ELEXON		

b Distribution

Name	Organisation
BSC Parties	
BSC Panel Members	
The Authority	
BSC Agents	
Core Industry Document Holders	
energywatch	

c Intellectual Property Rights and Copyright

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1 SUMMARY

1.1 Recommendations

On the basis of the analysis, consultation, and assessment carried out in relation to this Modification Proposal, and the resultant findings of this report, the BSC Panel recommends that:

The Proposed Modification should not be made; and

The Alternative Modification, as set out in Annex 4 of this report be made and implemented immediately following the Authority's decision.

The effect of immediate implementation would be to confer a new right (to link claims with a single cause for the purposes of determination of fees) on all parties submitting claims under paragraph 6 of section P of the BSC. This right would be equally applicable to all claims, whether submitted before or after the implementation date. This achieves the effect sought by the Modification Group and Panel, without the necessity for legal retrospection.

1.2 Background

Modification Proposal P84 was submitted by Innogy on 22 May 2002, with a request that the proposal be treated as an urgent modification proposal pursuant to F2.9 of the BSC. Modification Proposal P84 asserted that there were some difficulties with the current drafting of paragraph 6 of section P of the BSC, relating to the fee payable for claims of Past Notification Error. In particular, the proposal suggested that, in clause 6.2.2, the basis for the fee for the claims was unclear and potentially discriminatory.

At present, the BSC specifies that a fee of £5,000 is levied against a single claim or a series of claims treated as a single claim (as provided for by paragraph P6.2.2 of the BSC) relating to a single Volume Notification.

The proposal sought to remedy the perceived defect by amending the text in the relevant clauses such that where the claimed error in notification of a single energy volume contract ('Transaction' in the Grid Trade Master Agreement, GTMA) affected a number of Volume Notifications and/or a number of contiguous Settlement Periods, all the relevant Past Notification Errors (as currently defined) should be covered by a single claim and/or a single fee of £5,000. The proposal described three possible approaches for achieving the above intent.

The Modification Group considered that any change to address the perceived defect should apply retrospectively, such that BSC Parties who had already notified claims were not unfairly impacted. The Group therefore considered an Alternative Modification that left the structure of claims intact, but enabled a claimant to associate a number of claims which resulted from the same underlying cause. If the Panel determined that this were the case, only one fee of £5,000 would be levied against this group of claims.

1.3 Rationale For Recommendations

The Modification Group agreed that, as suggested by the balance of arguments put by respondents to consultation, the Alternative Modification better achieved Applicable BSC Objective 3 (c):

“(c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity”

both relative to the current drafting of the BSC, and to Modification Proposal P84.

Again, as suggested by the balance of responses to consultation, the Modification Group considered that the better achievement of the Applicable Objectives would only be realised if the Alternative Modification were to be applied retrospectively (from the beginning of the period of applicability of the arrangements in P6 of the BSC), such that all claimants could avail themselves of this feature.

The Panel acknowledged the views of respondents and of the Modification Group that the adoption of different notification strategies could lead to Parties being charged different fees for the rectification of similar Past Notification Errors. The Panel concluded that this may have a discriminatory effect on certain Parties seeking rectification, who might be discouraged from submitting claims. The Panel agreed with the Modification Group in concluding that, in some cases, this might unduly impair the position of some participants relative to others and, therefore, some mitigation of this defect would enable Applicable BSC Objective 3 (c) to be better facilitated.

2 INTRODUCTION

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

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

If you have any queries about the issues raised in this report, please contact either David Warner, or Cathy Woods, at ELEXON (tel. (0207)-380-4100).

3 PURPOSE AND SCOPE OF THE REPORT

BSC Section F sets out the procedures for progressing proposals to amend the BSC (known as ‘Modification Proposals’). These include procedures for proposing, consulting on, developing, evaluating and reporting to the Authority on potential modifications.

The BSC Panel is charged with supervising and implementing the modification procedures. ELEXON provides the secretariat and other advice, support and resource required by the Panel for this purpose. In addition, if a modification to the Code is approved or directed by the Authority, ELEXON is responsible for overseeing the implementation of that amendment (including any consequential changes to systems, procedures and documentation).

The modification procedures culminate in a modification report to the Authority, which normally contains the Panel's recommendation on whether or not a proposed modification should be approved and a proposed date for its implementation, together with a detailed assessment of the proposal in question. The report forms the basis upon which the Authority will decide whether to approve, direct or reject a modification proposal.

The Transmission Company or ELEXON may recommend that a Modification Proposal be treated as urgent, subject to approval by the Authority. The procedure for progressing an Urgent Modification Proposal is set out in Sections F2.9 and B4.6 of the Code. These urgent procedures allow the normal modification procedures to be circumvented as necessary to fit with the urgency of the matter. In such cases, the Authority will confirm the timetable and procedure that should apply. The timetable and procedure directed by the Authority must be adhered to, along with any other special instructions. A statement containing the reasons why the Panel (or Panel Chairman) considers the Proposal should be treated as urgent must be included in the Urgent Modification Report, together with a description of the extent to which the procedure followed deviated from the normal modification procedure. Depending on the urgency of the matter, it may not be possible to establish a Modification Group or undertake detailed assessment of the modification proposal. The level of detail and analysis presented in this Urgent Modification Report therefore represents the full extent of relevant information regarding the modification proposal that could be collated within the time available.

4 **DESCRIPTION OF PROPOSED MODIFICATION**

Modification Proposal P84 was submitted by Innogy plc on 22 May 2002, with a request that the proposal be treated as an Urgent Modification Proposal pursuant to F2.9 of the BSC. Modification Proposal P84 asserted that there were some difficulties with the current drafting of paragraph 6 of section P of the BSC, relating to the fee payable for claims of Past Notification Error. In particular, the proposal suggested that, in clause 6.2.2, the basis for the fee for the claims was unclear and potentially discriminatory.

At present, the BSC specifies a fee of £5,000 is levied against a single claim or a series of claims treated as a single claim (as provided for by paragraph P6.2.2 of the BSC) relating to a single Volume Notification. The proposal, therefore, sought to remedy this perceived defect by amending the text in the relevant clauses such that where the claimed error in notification of a single energy volume contract ('Transaction' in the Grid Trade Master Agreement; GTMA) affected a number of Volume Notifications and/or a number of contiguous Settlement Periods, all the relevant Past Notification Errors (as currently defined) should be

covered by a single claim and/or a single fee of £5,000. The proposal described three possible approaches for achieving the above intent.

(a) By modifying the definition of Past Notification Error to cover all settlement periods related to a particular Transaction Notification Error, provided that these Settlement Periods were contiguous. Transaction Notification Error would be a new defined term in the BSC (similar to that used in the GTMA).

(b) By stating that Past Notification Errors relating to a Single Transaction Notification Error should be included in a single claim. Again, Transaction Notification Error would be a new defined term in the BSC.

(c) By stating that only a single fee of £5,000 should be payable in respect of all claims relating to the same Transaction Notification Error (again to be defined within the BSC).

The proposer asserted that the following Applicable BSC Objectives were better achieved by the proposal:

(a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;

(c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity"

(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

The Modification Proposal itself is in Annex 1 of this report.

5 DETAIL OF PROCEDURE AND TIMETABLE FOLLOWED

Statement Of Urgency

Section F2.9 of the Balancing and Settlement Code makes provision for proposals to be treated as Urgent Modification Proposals upon the recommendation of the Transmission Company and BSCCo (ELEXON). Following representations from Innogy plc, ELEXON recommended to the Panel Chairman that Modification Proposal P84 should be treated as an urgent modification proposal. The BSC Panel Chairman sought the views of Panel Members. The Panel supported the recommendation that the Modification Proposal be treated as urgent. The Authority granted the modification urgent status for the purposes of Section F2.9 of the BSC on 23 May 2002. It was agreed that the Proposal should be considered by the Error Processing Modification Group.

Procedure and Timetable

In granting urgent status, the Authority also agreed to the following timetable for progressing the proposal:

- Proposal issued for initial general consultation 22/5, 17:00
- Initial consultation responses due back 24/5, 09:00
- Modification Group Meeting 24/5, 10:00
- Draft Legal Text issued for consultation 24/5, 17:00
- Legal Text consultation responses due back 27/5, 12:00
- Draft Urgent Modification Report to Panel 27/5, 14:00
- Panel consideration of the draft Urgent Modification Report 27/5, 16:00
- Final Urgent Modification Report to the Authority 27/5, 18:00

At the meeting on the 24 May 2002, the Modification Group agreed to define an Alternative Modification. At a request put on behalf of the Chairman of the Panel, the Authority then agreed that legal drafting for the original Proposal need not be presented in the Modification Report.

At the meeting of the Panel on 27 May 2002, the Authority agreed to a request from the Panel Chairman to extend the timetable for delivery of the Final Urgent Modification Report by one further hour to enable inclusion of the Panel discussions.

6 INITIAL CONSULTATION

In accordance with the above timetable and plan, a consultation was issued which sought comments on the proposal. In addition to general comments, the consultation also sought views on a number of particular points relating to the proposal. The full set of responses is provided in Annex 2. 11 responses (32 Parties) were received to the Initial Consultation, which may be summarised as follows:

QUESTION	RESPONSES FOR/'YES'	RESPONSES AGAINST /'NO'	COMMENTS
General views	4 (16 Parties)	4 (7 Parties)	Of those who expressed general support, one view was that the intent of the fee should be to reflect, in some way the cost of investigating claims. Another suggested an alternative approach to determining the fee. One respondent suggested that the Modification Group should first consider whether the legal drafting was indeed ambiguous.
Do you believe that, in regard to the Administration Fee, BSC P6 is unclear?	3 (11 Parties)	6 (19 Parties)	
Do you agree that the Administration Fee defined in BSC P6 should be changed?	3 (7 Parties)	6 (20 Parties)	
Do you agree that the fee, as currently defined discriminates against users of the overwrite notification strategy and might be considered penal?	5 (20 Parties)	4 (10 Parties)	One respondent suggested that any users of multiple notifications are discriminated against under current drafting. Two responses suggested that the Panel should determine how the fee should be applied. One of these two offered a suggestion that claims could be 'linked' for the purposes of the fee and that the Panel would determine if such linkages were valid.
If you support adjusting the basis of the fee then, considering the possible approaches identified, do	1 (9 Parties)	6 (16 Parties)	One response that did not support this approach suggested that the fee should be related to the number of investigations that the Panel would

you support the definition in the BSC of a Transaction Notification Error?			need to carry out.
If you support adjusting the basis of the fee then, considering the possible approaches identified, do you support redefining Past Notification Error to include all contiguous Settlement Periods related to a Transaction Notification Error?	1 (9 Parties)	6 (16 Parties)	
If you support adjusting the basis of the fee then, considering the possible approaches identified, do you support stating that all Past Notification Errors related to a single Transaction Notification Error should be included in a single claim?	2 (13 Parties)	4(11 Parties)	One response supported this approach, subject to it being feasible.
If you support adjusting the basis of the fee then, considering the possible approaches identified, do you support stating that only a single fee of £5k + VAT should be payable in respect of all claims related to a single Transaction Notification Error?	2 (2 Parties)	3 (18 Parties)	

7 MODIFICATION GROUP DELIBERATIONS

The Modification Group first reviewed the Consultation responses; the Proposer then presented the Proposal to the Group. Details of the attendees at the Modification Group can be found in Annex 4.

The Modification Group addressed next whether the principal issue to be considered was any lack of clarity in the current BSC or the equity of the current arrangements.

The Modification Group considered whether the current drafting of clause P6 of the BSC was ambiguous in respect of the Fee. The Modification Group noted that the implication that multiple fees would be payable by a single claimant (one for each Volume Notification) had been explicitly discussed when P6 had been drafted: however, overwrite and other notification strategies had not been explicitly considered at that time. The Group also noted that there had been no formal challenge to the current drafting since it had been recommended to the Authority, and that the majority of consultation respondents viewed the basis of the fee as clear.

The Group therefore took the view that the effect of the current arrangements, rather than their clarity, was the more important issue to be addressed.

In so far as this issue was concerned, the Modification Group acknowledged the views of respondents that the adoption of different notification strategies could lead to Parties being charged different fees for the rectification of similar Past Notification Errors. Possible consequences of this might be that some Parties might be faced with substantial fees when seeking rectification, and might be discouraged from submitting claims. The Group concluded that, in some cases, this might unduly impair the position of some participants relative to others and, therefore, some mitigation of this defect would enable Applicable BSC Objective 3 (C) to be better facilitated.

However, the Group recognised that, since claims had already been submitted under P6 of the BSC, any change to the way in which the fee was levied would have to be applied retrospectively (otherwise, the change would leave those who had already claimed at a disadvantage). Further, it would be undesirable for any changes to precipitate a complete resubmission of claims already submitted.

Hence, any solution should preferably comply with two requirements: firstly, that the structure of a claim should be left unchanged, so claims already submitted could stand unchanged; and, secondly and more generally, that the application of any modified charging arrangements should not adversely affect any claimants who had already submitted their claims (i.e. should not lead to an increase in fees for claims already submitted).

In view of the above considerations and in recognition of the arguments presented by respondents to the consultation, the Group considered that the various approaches suggested by the Modification Proposal would not best correct the defect that the proposal was trying to correct.

The Group considered the underlying principles behind the options presented in the proposal and more generally, the basis on which a fee could be levied.

Firstly, the Group recognised that the BSC as drafted included relationships between 'settled commitment', 'mistake', 'claim', and 'fee'. In principle, the perceived defect might be addressed by an adjustment at any point in this logical chain.

The Group concluded that the concepts of 'settled commitment and 'mistake' should be left as they were, since they were fundamental to the structure of and approach for claims. Furthermore, for the same reason, and because of the desirability of not interfering with existing claims, as described earlier, the Group considered that it would be preferable to address the fee itself, rather than the claim, to deal with the perceived defect.

The basic approach that the Group considered appropriate was for claims to be linked in some way (for the purposes of the fee only), such that only one charge of £5,000 would be levied for the 'linked' claims. The Group accepted that the decision about whether claims should be linked should ultimately be the Panel's, and that such a decision should be final and binding. There was then the consideration as to whether the Panel should exercise unfettered discretion (at one extreme), or whether the decision could be based on some set of mechanistic rules (at the other extreme). The Group concluded that neither extreme was feasible. However, the Group were clear that participants needed some degree of certainty as to their ultimate liability for fees before notifying claims under P6.2.1.

The Group decided that it would be best for the BSC to clearly indicate the basis on which claims would be linked, while allowing the Panel the discretion necessary to decide individual cases.

The Group considered that the linkage between claims should be judged on the extent to which there was a common set of circumstances underpinning a set of claims and the extent of investigations associated with such a group of claims. Furthermore, the Group was of the view that such linkages should be limited to those associated with a single claimant: it would be for the claimant to make the case for linkage to the satisfaction of the Panel. Evidence for linkage would be requested from claimants at the appropriate point in the procedure for the progression of claims. This arrangement should be applied retrospectively, such that all claimants (past, present and future) could avail themselves of this feature, with there being no impact on existing claimants, other than a new potential for reduced fees for claims.

The Group also considered the position of potential claimants who had not yet submitted claims, but might desire to do so given the proposed revised basis for fees. The Group noted that such Parties would have been aware that the Modification had been proposed on 22nd May, and therefore that a change to the BSC was possible. Further, it was envisaged that the urgent Modification Report would be sent to the Authority on 27th May, four days before the deadline for the submission of claims. The Group considered that, given they could not anticipate the Implementation Date of the Modification, if it were approved, they would not propose an extension to the deadline.

It was recognised that this approach constituted an Alternative Modification to P84 and the Group concluded that this Alternative would better facilitate the

Applicable BSC Objectives, relative to both the current drafting of the BSC, and Modification Proposal P84.

8 ALTERNATIVE PROPOSAL

In contemplating how the views of the Modification Group could best be reflected in legal drafting for the BSC, consideration was given to how the concepts of common circumstances and extent of investigation could be described, in order to enable the Panel to arrive at a decision as to how to apply the fee structure, whilst at the same time allowing claimants to make a reasonable judgement of the fees that they might face.

The conclusion reached was that the most important and simplest way to encapsulate the concept of 'common circumstances' was that of a 'same cause'. The existence or otherwise of the 'same cause' would also be a major factor in determining the extent to which a series of claims would need to be investigated separately or together.

This expression of the requirement was tested with the Modifications Group (concurrently with the second consultation). There were no dissenters from the principles proposed, and some group members suggested further clarifications to the legal drafting.

The drafting for the Alternative Modification therefore provides that where, in relation to two or more claims, the Panel is satisfied that for each Past Notification Error the relevant mistake arose from the same cause, only a single fee of £5,000 (+VAT) will be payable.

Parties notifying claims under P6.2.1 would also notify BSCCo if they wished the Panel to consider whether the claims should be treated as a single claim under the new paragraph P6.2.6 (that is, for the assessment of fees) because the relevant mistake relating to the claims arose from the same cause. The Panel's decision on whether the relevant mistake arose from the same cause would be without prejudice to the outcome of the claims for Past Notification Error themselves.

The legal text to give effect to this approach is in Annex 4.

9 FURTHER CONSULTATION

A second consultation was issued on 24 May 2002. This consultation sought views on the Alternative Modification and its legal drafting, comments were requested by 12 noon on 27 May 2002. 8 responses (25 Parties) were received to the Second Consultation. (See Annex 3)

Respondents were asked whether they believed that the applicable BSC Objectives were better facilitated by the introduction of the Alternative Modification Proposal. Four Respondents (9 Parties) believed that the Alternative Modification better facilitated the Applicable BSC Objectives, whilst two Respondents (5 Parties) did not support the Alternative Modification.

Three respondents suggested that further clarification was required to the legal text, these responses were examined by ELEXON and some of the suggestions have been incorporated. In general the proposed amendments do not impact the principles of the Alternative Modification.

10 PANEL DELIBERATIONS

The Panel noted that both the Modification Group and the majority of respondents to the consultation saw the BSC as currently drafted to be clear. The Panel also noted that the size and nature of the fee had been discussed during the P37 Modification Process.

The Panel noted that it would be necessary for this Modification, if approved, to be retrospective. The Panel believed that this would be justified since retrospective application was necessary to ensure fairness to those Parties who had already submitted claims under the current arrangements.

The Panel discussed the issues of surrounding cost reflectivity of the Fee.

The Panel recognised that, under the present arrangements, the adoption of different notification strategies could lead to Parties being charged different fees for the rectification of similar Past Notification Errors. The Panel concluded that this may have a discriminatory effect on certain Parties seeking rectification, who might be discouraged from submitting claims. The Panel agreed with the Modification Group in concluding that, in some cases, this might unduly impair the position of some participants relative to others and, therefore, some mitigation of this defect would enable Applicable BSC Objective 3 (c) to be better facilitated.

On balance, the Panel found this argument that the effect of the current arrangements might be discriminatory had to be given most weight. This was despite concerns about the implications of amending a previously considered and approved process (the P37 Modification).

11 RECOMMENDATIONS

On the basis of the analysis, consultation, and assessment carried out in relation to this Modification Proposal, and the resultant findings of this report, the BSC Panel recommends that:

The Proposed Modification should not be made; and

The Alternative Modification, as set out in Annex 4 of this report be made and implemented immediately following the Authority's decision.

The effect of immediate implementation would be to confer a new right (to link claims with a single cause for the purposes of determination of fees) on all parties submitting claims under paragraph 6 of section P of the BSC. This right would be equally applicable to all claims, whether submitted before or after the implementation date. This achieves the effect sought by the Modification Group and Panel, without the necessity for legal retrospection.

ANNEX 1 MODIFICATION P84

Modification Proposal	MP No: 84 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Amendment To Process For Past Notification Errors (2)	
Submission Date <i>(mandatory by proposer):</i> 22 May 2002	
<p>Description of Proposed Modification <i>(mandatory by proposer):</i></p> <p>Modify paragraph P6.2 to clarify that, where the error in notification of a single energy volume contract ("Transaction" as defined in the Grid Trade Master Agreement) affects a number of Volume Notifications and/or a number of contiguous Settlement Periods, all the relevant Past Notification Errors (as currently defined) should be covered by a single claim and/or a single fee of £5000. This could be done:</p> <p>either (a) by modifying the definition of a "Past Notification Error" to cover all the Settlement Periods related to a particular transaction notification error (new defined term, possibly using wording similar to that in the GTMA definition of "Transaction"?), provided that these Settlement Periods were contiguous</p> <p>or (b) by stating in paragraph 6.2.4 or a new paragraph that Past Notification Errors related to a single transaction notification error should be included in a single claim</p> <p>or (c) by stating that only a single fee of £5000 should be payable in respect of all claims relating to the same transaction notification error (Not preferred, since this does not reduce the number of claims that would need to be submitted).</p>	
<p>Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i></p> <p>It is currently unclear under paragraph P6 of the Code that a single error spanning a number of contiguous Settlement Periods is to be covered by a single claim and therefore a single fee of £5000, although we believe this to have been the intent.</p> <p>This means that the application of paragraph P6 (and in particular paragraph P 6.2.2) as currently drafted discriminates unduly against Parties using a 'multiple notification over-write' approach for Energy Contract Volume Notifications as opposed to an 'additive' approach. This is because, under the over-write approach (which is arguably more robust and therefore desirable generally), a single error in translating a valid energy contract into notification systems may extend through a series of Volume Notifications, since the Volume Notification which determines the Imbalance Settlement position for each Settlement Period is the last one submitted before the relevant Gate Closure. The result of this is that the £5000 fee would appear to be payable for each of a number of Volume Notifications all relating to the same error (while essentially only a single set of costs would be incurred in dealing with a single error). This would make the fee effectively "Penal" for some errors covering a number of Settlement Periods. Conversely, a Party using the 'additive' approach would only be liable for a single fee for an error covering the same duration.</p>	
Impact on Code <i>(optional by proposer):</i>	
Impact on Core Industry Documents <i>(optional by proposer):</i>	

Modification Proposal	MP No: 84 <i>(mandatory by BSCCo)</i>
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i>	
Impact on other Configurable Items <i>(optional by proposer):</i>	
Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by proposer):</i> <p>This Modification Proposal will further the following BSC Objectives:</p> <p>(a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence - By ensuring that the imbalance settlement process is effected properly taking account of "quantities of electricity contracted for sale and purchase between BSC Parties";</p> <p>(c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity - By avoiding undue discrimination between Parties due to the different nature of their processes;</p> <p>(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements - By reducing the number of claims having to be submitted and processed by Elexon in respect of errors by some Parties.</p>	
Details of Proposer: <p style="text-align: center;">Name: David Tolley Organisation: Innogy plc Telephone Number: 01793-892650 Email Address: david.tolley@innogy.com</p>	
Details of Proposer's Representative: <p style="text-align: center;">Name: Richard Harrison Organisation: Npower Limited Telephone Number: 07989-494374 Email Address: richard.harrison@npower.com</p>	
Details of Representative's Alternate: <p style="text-align: center;">Name: Bill Reed Organisation: Innogy plc Telephone Number: 01793-893835 Email Address: bill.reed@innogy.com</p>	

Modification Proposal	MP No: 84 <i>(mandatory by BSCCo)</i>
Attachments: NO If Yes, Title and No. of Pages of Each Attachment:	

ANNEX 2 RESPONSES FROM INITIAL CONSULTATION

Responses P84 Assessment Consultation

Consultation issued 22 May 2002

Representations were received from the following parties:

No	Company	File Number	No. Parties Represented
1.	Scottish Power	P84_ASS_001	5
2.	London Electricity	P84_ASS_002	1
3.	Aquila Europe	P84_ASS_003	1
4.	SEEBOARD Energy	P84_ASS_004	1
5.	Powergen UK	P84_ASS_005	4
6.	British Gas Trading	P84_ASS_006	1
7.	Edison Mission Energy	P84_ASS_007	4
8.	AEP Energy Services	P84_ASS_008	1
9.	Innogy	P84_ASS_009	9
10.	BP Gas Marketing Ltd	P84_ASS_010	1
11.	Scottish and Southern Energy	P84_ASS_011	4

P84_ASS_001 – Scottish Power

Response to P84

This response is submitted on behalf of Scottish Power UK Plc, Scottish Power Generation Limited, ScottishPower Energy Trading Limited, ScottishPower Energy Retail Limited and Emerald Power Generation Ltd.

ScottishPower fully supports P84 for Amendment to the Process for Past Notification Errors (2). The text in the BSC relating to Past Notification Errors, Section P6, is based on the concept that a Past Notification Error occurs in relation to a single Settlement Period. Recognising that Volume Notifications tend to be for multiple Settlement Periods, the Code then implicitly acknowledges that the investigation of individual Past Notification Errors is likely to revolve round the investigation of the Volume Notification by which these individual volumes were notified by charging the claim fee on the basis of the Volume Notification. However, the Volume Notification is not necessarily the level of aggregation at which the investigation of the Past Notification Error will take place. In the event that, as suggested by the Proposer of P84, a single transaction is incorrectly transcribed into a number of Volume Notifications the investigation will take place mainly at the level of the transaction.

ScottishPower believes that the purpose of the £5000 claim fee is to recover, or at least defray, the cost of carrying out the investigation (and also to deter frivolous claims). The claim fee is not in any way intended to form part of the penalty for incorrect notification; that is provided by the deduction of the Error Correction Payment from successful claims. We therefore believe that the claim fee should be applied at the level of aggregation at which the investigation of the claim takes place, i.e., at the level of the cause of the Past Notification Errors, rather than at the Volume Notification or, necessarily, the transaction level. However, whilst supporting the aggregation of the Past Notification Errors for investigation purposes, we believe that the essence of the Past Notification Error lies at the level of the Settlement Period and we do not therefore agree that the claim should be made at the aggregated level of the transaction. We believe that the extent of any change to P6 at this stage should be minimised given the level of consultation which took place in relation to P37. We further believe that to change the basis of charge for the claim fee will better achieve BSC objective B1.2.1 (b) (iii) of promoting competition in the generation and supply of electricity but that to change the basis of the claim at this stage would reduce the efficiency with which the balancing and settlement arrangements are operated, especially as those parties who have already submitted claims would be required to re-work and re-submit their claims.

Our answers to the specific questions are therefore:

Q1: Do you believe that, in regard to the Administration Fee, BSC P6 is unclear?

We believe that in this respect P6 is open to interpretation.

Q2: Do you agree that the Administration Fee defined in BSC P6 should be changed?

Yes, for the reasons set out above.

Q3: Do you agree that the Fee as currently defined discriminates against users of the overwrite notification strategy, and might be considered penal?

The levying of the administration fee on any basis other than on the number of investigations which have to be carried out to validate a claim could be considered penal. In this respect users of the overwrite strategy are no worse off than any other party who incurs multiple notification errors from a single underlying cause.

Q4: If you support adjusting the basis of the fee then, considering the possible approaches identified do you support:

(i) the definition in the BSC of a Transaction Notification Error?

Not necessarily. We believe that the charging of the administration fee should relate back to the underlying cause of the Past Notification Errors, which may or may not relate to a 'transaction'.

(ii) (Option a) redefining 'Past Notification Error' to include all contiguous Settlement Periods related to a Transaction Notification Error?

No.

(iii) (option b) stating that all Past Notification Errors related to a single transaction Notification Error should be included in a single claim?

No.

(iv) (Option c) stating that only a single fee of £5000 + VAT should be payable in respect of all claims related to a single Transaction Notification Error?

We believe that the number of fees payable should relate to the number of investigations which are carried out, which will relate to the underlying causes of the Past Notification Errors. We do not believe that it is desirable to define in the Code a specific underlying cause to the exclusion of any other type.

P84_ASS_002 – London Electricity

URGENT CONSULTATION ON P83/84

I refer to modification proposal P83, which was posted on Elexon's website last night.

The issues appearing to be covered by this proposal were discussed at length in the P37 modification process last year. We do not believe that the drafting of Section P6 of the BSC means, or is capable of meaning, what Innogy says it "seems" to mean.

We also believe that the matter has been clarified in Elexon's recent advice circulars on claims under Section P6.

We therefore consider that both this modification and the associated modification, P84, are unnecessary.

Roger Barnard
Regulatory Law Manager
LEG plc

P84_ASS_003 – Aquila Europe

With regard to Innogy's modification I have listed below Aquila's responses.

Question 1.

We believe the question is unclear. Several members of our staff came to different conclusions as to your interpretation. We asked for Elexon to clarify same. We understand that a circular has been sent in an effort to clarify this.

Question 2.

We agree that the fee should be changed. We cannot believe that if a case is unsuccessful a party should pay a large amount of money, when no extra administration is involved. If an applicant is successful however, they are penalised twice. They not only incur £5000 per notification, their claim is reduced by 20 percent. This seems to be an arbitrary figure, what is the cost justification of this???

Question 3

We agree that the over-write method of notification, would be penalised under the paragraph 6.2.2. This would be treated as a number of notifications rather than a single transaction.

Question 4.

We would be in favour of option C.

Bill Bruce

Energy Operations Manager,
Aquila Europe.

P84_ASS_004 – SEEBOARD Energy

With respect to above mentioned urgent modification assessment. Prior to responding to specific questions we would like to stress that this modification covers a part of BSC code that we do not feel has better facilitated BSC objectives. We have always made this clear in response to modification proposal 37 from which these rules have arisen. As such we would generally be of a view that given all BSC Parties had ample opportunity to raise these issues during P37 modification assessment that this new modification should be rejected. Specific answers to questions for P84 are:

Q1 - No we feel definition is clear.

Q2 - No.

Q3 - Depending upon type of notification strategy a Party uses this could be argued either way. Given this is supposed to be an administration fee it could be considered discriminatory if two different Parties were charged different amounts for problems covering an identical number of contiguous settlement periods. It would suggest that BSC Panel would need to assess all claims made and determine a fair administration fee for each BSC Party.

Q4 - Possibly a way forward is to say a minimum administration fee of £5,000+VAT is payable by a BSC Party but actual costs will be determined by BSC Panel and agreed with Authority such as not to disadvantage Parties using different notification strategies. A fee will be payable for each contiguous series of settlement periods claimed under this process.

Dave Morton
SEEBOARD Energy Limited

P84_ASS_005 – Powergen UK

P84 – Amendment To Process For Past Notification Errors

Thank you for giving us the opportunity to comment on the above proposal. Our response is also made on behalf of the following BSC Parties; Powergen Energy Limited, Diamond Power Generation Limited and Cottam Development Centre Limited.

We are surprised that this modification has been raised at this late stage, especially given the time available for the industry to prepare for possible implementation of P37. The P37 Urgent Modification Report was submitted to Ofgem with final legal drafting last November.

Nevertheless we have some sympathy with the points raised by the proposer, particularly where arguably a more prudent 'overwrite' approach to ECVNs has been adopted which under the current definition of P37 Past Notification Error seems to result in the need for multiple claims. In our view, however, it would be impractical (even with the proposed revised definitions) for Elexon to determine 'up-front' what constituted a single transaction and hence apply a single £5,000 claim fee. Determining what constitutes a single claim will be particularly difficult with intra company transactions but even with inter company transactions it would require documentary evidence to show that a series of Volume Notifications were 'linked' in some way.

In reality it is only when the decision-making body has considered a claim or series of claims that it is possible to determine the overall administration fee. We therefore suggest an alternative that would both address the concerns of the proposer and also the practicalities of applying an 'up-front' administration fee. This is as follows:

- The claim would be submitted as per the current P37 drafting although the claimant would identify which Volume Notifications it wished to be considered together as a 'linked claim';
- Administration fees for each claim would continue to be applied for each Volume Notification as per P37;
- The decision making body considering each 'linked claim' would determine whether in its view the claims originated from a single transaction constituted a single claim;
- Administration fees would be refunded, in full or part (reflecting any additional Elexon administration costs), for those Volume Notifications that were determined by the decision making body to be 'linked' in a single claim to other Volume Notifications.

We would like this alternative to be proposed at tomorrow's Modification Group meeting. Unfortunately, I am unable to attend at such short notice, but can be contacted on either 0276 42 5441 or 07785 305000.

Yours sincerely,

Peter Bolitho
Trading Arrangements Manager

Attachment – consultation pro-forma.

Question 1 Do you believe that, in regard to the Administration Fee BSC P6 is unclear

No - this would seem to be the only practical basis by which Elexon could realistically apply an up-front fee without having to determine whether a claim was in fact a 'single transaction'.

Question 2 Do you agree that the Administration Fee defined in BSC P6 should be changed?

No. This was extensively considered during the P37 Modification discussions. Nevertheless we believe it might be appropriate to consider a refund of administration fees (as appropriate) should the decision making body determine that Volume Notifications merit being considered as a single claim. Please see our proposed alternative outlined above.

Question 3 Do you agree that the fee as currently defined discriminates against users of the Overwrite Notification strategy, and might be considered as penal?

Probably yes but this would have to be determined by the decision-making body. Our suggested solution to this problem is to refund administration fees where this is considered appropriate by the decision-making body (see our alternative proposal).

Question 4 If you support adjusting the basis of the fee, then considering the possible approaches identified in the proposal, do you support:

- (i) The definition in the BSC of a 'Transaction Notification Error'?
- (ii) (Option a) redefining 'Past Notification Error' to include all contiguous settlement periods related to a 'Transaction Notification Error'?
- (iii) (Option b) stating that all Past Notification Errors relating to a single Transaction Notification Error should be included in a single claim?
- (iv) (Option c) stating that only a single fee of £5,000 + VAT should be payable in respect of all claims related to a single Transaction Notification error?

We do not believe it is possible for Elexon to determine 'up-front' whether a single claim fee is applicable. We therefore suggest fees are paid according to the current P37 drafting, with the decision making body determining whether it is appropriate to refund fees in full or part when a clear linkage between Volume Notifications has been established.

P84_ASS_006 – British Gas Trading

Urgent Modification Proposal 84: Amendment to Process for Past Notification Errors (2)

Thank you for the opportunity of responding to this consultation on the above Urgent Modification Proposal. This response is on behalf of British Gas Trading Ltd (BGT).

BGT agree that the legal drafting in Section P, paragraph 6 of the BSC could be open to misinterpretation with regards to how the Administration Fee is applied to claims for Past Notification Errors. Our understanding of the intention behind this aspect of the original modification proposal was that the Administration Fee was intended to cover the costs that would be incurred during the investigation of the error that led to the claim. It would be inappropriate therefore, and indeed could be construed as penal, to oblige Parties to pay the Fee for every 'overwrite' notification subsequent to the notification in which the error occurred.

We are uncertain as to the true extent of the problem that this modification seeks to address and believe the Modification Group should consider what the correct legal interpretation of this clause is before recommending any further changes to the BSC. However, in consideration of Options presented under Option 4 of the consultation BGT believe that option c) to be the most appropriate. We are concerned that should a 'Transaction Notification Error'

be defined too narrowly at this stage it may prejudice any claims that are brought under these provisions. Also we note that such definitions would be difficult to agree with a consensus considering the very short timescales that are involved.

I hope that these comments are useful in the further development of this modification. Should you wish to discuss any of these issues further please do not hesitate to contact me, in the first instance, on the above number.

Yours faithfully

Danielle Lane
Transportation Analyst

P84_ASS_007 – Edison Mission Energy

Thank you for the opportunity to respond to the urgent Modification Proposal P84. I am responding on behalf of Edison Mission Energy, representing BSC Parties First Hydro Company, Edison First Power and Lakeland Power

Question 1

Do you believe that, in regard to the Administration Fee, BSC P6 is unclear?

No. Paragraph 6.2.2 and Paragraph 6.2.4 make it clear that a single claim can cover multiple settlement periods within a single Volume Notification. Where a error relates to more than one Volume Notification, a separate claim must be submitted for each Volume Notification. This was clear from the original P37 drafting and an amendment to the P37 drafting was not proposed although during the P37 discussions, there was sufficient opportunity to propose an amendment.

Question 2

Do you agree that the Administration Fee defined in BSC P6 should be changed?

The £5000 fee was considered suitable during the P37 discussions. However, if a single occurrence of a single error caused multiple volume notifications to be wrong for the same settlement day, then a single fee is appropriate. Where the same error has occurred repeatedly, each claim should attract a separate fee since there is ample opportunity to spot the error and rectify it. Providing the seven day report was available, it is unclear why an error should have continued beyond the first day of occurrence of the error.

Furthermore, to recognise BSC Parties that have prudently have made timely claims within the 5 Working Day window specified under the original version of BSC P6, it might be appropriate to say double the £5000 fee for those that make claims for days 6-10.

Question 3

Do you agree that the Fee as currently defined discriminates against users of the Overwrite Notification strategy, and might be considered as penal?

No. The opposite is true. This is because users of the overwrite notification strategy normally make a single Volume Notification covering all trades between two energy accounts. This means that there can only ever be one claim made for a particular day and pair of energy accounts since only the last submitted Volume Notification is relevant and used in settlements. Users of the additive notification strategy will make multiple notifications covering each separate trade and therefore may need to make multiple claims.

Question 4

If you support adjusting the basis of the fee, then, considering the possible approaches identified in the proposal, do you support:

(i) The definition in the BSC of a 'Transaction Notification Error'?

GTMA's may vary in their definition of a Transaction and some notifications are not made under a GTMA for example trades between IPPs and offtakers. Such a definition will not therefore be a catch all. It is better to retain the Volume Notification definition as it is a BSC term which will mean the same to all BSC Parties.

(ii) (Option a) redefining 'Past Notification Error' to include all contiguous Settlement Periods related to a Transaction Notification Error?

No - The present drafting is sufficient to cover contiguous settlement periods with erroneous volumes contained in the same Volume Notification.

(iii) (Option b) stating that all Past Notification Errors related to a single Transaction Notification Error should be included in a single claim?

This is most appropriate providing the BSC Volume Notification definition is applied. However, this should only apply where there is a single occurrence of a single error causing multiple volume notifications to be wrong for the same settlement day.

(iv) (Option c) stating that only a single fee of £5000 + VAT should be payable in respect of all claims related to a single Transaction Notification Error?

Please note that none of the above options have yet been tested for feasibility. Such issues will be assessed by the Modification Group when it meets on Friday.

Mark Edwards
Edison Mission Energy

P84_ASS_008 – AEP Energy Services

AEP supports Innogy's proposal P84

Megan Goss
AEP Energy Services Limited

P84_ASS_009 – Innogy

Response on behalf of Innogy Group (Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern Supply Limited, Npower Yorkshire Limited and Npower Yorkshire Supply Limited)

Question 1

Do you believe that, in regard to the Administration Fee, BSC P6 is unclear?

Yes - The definition of "Past Notification Error" talks about this occurring "in relation to ... Data for a Settlement Period". 6.2.2 talks about "claims of past Notification Error in respect of the same Volume Notification" being "treated as a single claim". This statement leaves some ambiguity as to whether there is a one-to-one relationship between a "claim" and a Volume Notification, and hence the number of claim forms which may have to be submitted for some errors, notwithstanding the discussion referred to in the P37 Urgent Modification Report. Removing doubt about this would further BSC objective (d).

Question 2

Do you agree that the Administration Fee defined in BSC P6 should be changed?

Maybe - It may not be necessary to change the fee if the basis of application is changed as suggested in this Modification Proposal. Again, BSC objective (d) is relevant. In addition, the current basis of the fee could be argued to be detrimental to competition in generation and supply (BSC objective (c)), because of its relatively greater impact on certain types of Parties with certain types of systems.

Question 3

Do you agree that the Fee as currently defined discriminates against users of the Overwrite Notification strategy, and might be considered as penal?

Yes (see response to Q2 above)

Question 4

If you support adjusting the basis of the fee, then, considering the possible approaches identified in the proposal, do you support:

(i) The definition in the BSC of a 'Transaction Notification Error'?

Yes. It needs to be recognised that it is contracts that notifications (and notification errors) fundamentally refer to, and that claims based on a subdivision of these are likely to lead to serious problems if not decided 'as one'. Therefore BSC Objective (d) is clearly relevant.

(ii) (Option a) redefining 'Past Notification Error' to include all contiguous Settlement Periods related to a Transaction Notification Error?

If the revised definition of a Past Notification Error effectively makes this the same a "Transaction Notification Error" (as described) we would support this in principle. However, there may be a question whether all the Settlement Periods to which a "Transaction" relates are always contiguous - this restriction may be inappropriate.

(iii) (Option b) stating that all Past Notification Errors related to a single Transaction Notification Error should be included in a single claim?

Yes, we believe this to be the best approach, since it requires less paperwork associated with claims.

(iv) (Option c) stating that only a single fee of £5000 + VAT should be payable in respect of all claims related to a single Transaction Notification Error?

The problem with this option (as referred to in the Modification Proposal) is that it still means that a large number of separate claim forms may have to be submitted and processed for all the Volume Notifications affected by an error. It may

therefore be detrimental to BSC Objective (d).

P84_ASS_010 – BP Gas Marketing

BP Gas Marketing Ltd. does not support Modification Proposal P84, and requests the BSC Panel to recommend that the Authority move to reject it.

Best regards,

Ian M. Mullins
Regulatory Advisor

BP Gas, Power & Renewables

P84_ASS_011 – Scottish and Southern Energy

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

In relation to the Urgent Modification Consultation on Modification Proposal P84, contained in your note of 13:08 on 22nd May 2002 and the questions posed in your note of 17:09 on 22nd May 2002, and in view of the linkage with P37, our comments on the questions are as follows:-

Q1 We believe that, in regard to the Administration Fee, BSC P6 is CLEAR.

Q2 We believe that the Administration Fee defined in BSC P6 should be NOT be changed.

Q3 We believe that the Fee, as currently defined, provides an incentive to BSC Parties to be Reasonable and Prudent Operators irrespective of the notification strategy they freely choose to adopt, and therefore we do NOT consider the fee to be penal in nature.

Q4 We do NOT support adjusting the basis of the Fee. We note the comments in the "Background" part of your 17:09 note, that:-

"The size and nature of the Fee was discussed during the consideration of Modification Proposal P37 (which led to the modification of the BSC to include Paragraph 6, Section P). The size and nature of the Fee was addressed in a consultation question, consultation responses, Modification Group discussions and by the BSC Panel. These discussions are noted in the P37 Urgent Modification Report submitted to the Authority [which the Authority considered in coming to its decision on P37]."

We do have some sympathy with the circumstance being described in Modification Proposal P84. There is no doubt that the spirit of the discussions concerning Modification Proposal P37 was based around a single incident. If this affects more than one ECVN, then so be it, but it has to be a single occurrence. What we feel would go against the spirit of the P37 discussions is a situation where a party claims a whole series of ECVNs are affected by a single mistake (or even worse, a repeat of the same mistake), and seeks to get away with one administration fee; i.e. a faulty computer program, which resulted in all ECVNs of a certain type being affected.

To us this is a multiple incident and should be charged as such. A Reasonable

and Prudent Operator should have arrangements in place to identify such incidents and quickly deal with them. If there is a multiplicity of errors over a period of time which result from a single cause, (or a repeat of same) then the BSC Party is not demonstrating due care or adopting satisfactory working practices.

Regards

Garth Graham
Scottish & Southern Energy plc

ANNEX 3 FURTHER CONSULTATION RESPONSES

Responses P84 Second Assessment Consultation

Consultation issued 24 May 2002

Representations were received from the following parties:

No	Company	File Number	No. Parties Represented
1.	SEEBOARD Energy	P84_ASS2_001	1
2.	Scottish and Southern Energy	P84_ASS2_002	4
3.	Edison Mission Energy	P84_ASS2_003	1
4.	EdF Trading Ltd	P84_ASS2_004	2
5.	Innogy Group	P84_ASS2_005	9
6.	Scottish Power	P84_ASS2_006	5
7.	Dynergy	P84_ASS2_007	1
8.	BP Gas Marketing	P84_ASS2_008	1

P84_ASS2_001 – SEEBOARD Energy

With respect to final consultation on urgent modification P84. Although we have never considered that changes in this section of BSC do better facilitate BSC objectives now that it is within code we need to ensure that it does work efficiently. With that in mind we feel that changes to place decision making in hands of BSC Panel, as described within amended legal text, is best way of ensuring claims in this area are dealt with fairly and effectively. Magnitude of fee was set to discourage minor claims but its application should not be seen to cause problems for claims under this process.

Dave Morton
SEEBOARD Energy Limited

P84_ASS2_002 – Scottish and Southern Energy

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

In relation to the Urgent Modification Consultation on Modification Proposal P84, contained in your note of 13:08 on 22nd May 2002 and your note of 17:44 on 24th May 2002, and in view of the linkage with P37, we wish to make the following comment.

We believe, in regard to the Administration Fee, that Section 6.2 of the BSC is clear and that the Fee arrangements, as defined in Section 6.2, should not be changed by the inclusion of the proposed paragraphs 6.2.6 and 6.2.7. We believe that the Fee, as currently defined, provides an incentive to BSC Parties to be Reasonable and Prudent Operators irrespective of the notification strategy they freely chose to adopt, the systems they freely chose to specify and procure along with the internal procedures they freely develop and operate under. Furthermore, for the avoidance of doubt, we do not consider the Fee to be penal in nature.

Accordingly we do NOT support the proposed Alternative Modification concerning adjusting the basis of the application of the Fee in the event of relevant mistakes resulting from the same cause. We believe that with the full Consultation that was undertaken in respect of P37, that there has been plenty of time for these concerns to have been raised and fully (and unhurriedly) debated. We note the comments in the "Background" part of the Elexon note of 16:54 on 22nd May 2002, that:-

"The size and nature of the Fee was discussed during the consideration of Modification Proposal P37 (which led to the modification of the BSC to include Paragraph 6, Section P). The size and nature of the Fee was addressed in a consultation question, consultation responses, Modification Group discussions and by the BSC Panel. These discussions are noted in the P37 Urgent Modification Report submitted to the Authority [which the Authority considered in coming to its decision on P37]."

For the Authority to now decide to alter its P37 decision (after the original implementation date), would have serious implications in respect of the regulatory uncertainty that this implies. Market participant need to know that the BSC consultation and decision making process is robust. Having allowed market participants, the Panel and the Authority plenty of time to raise, review and debate issues associated with P37 (including the Fee arrangements), for this to then be overwritten based on a hasty review and a truncated debate is unsettling for all concerned. What is required is certainty, and the process

being followed with regard to P84 (and P83) is in danger of discrediting the process and indeed the original decision on P37.

As we indicated in our response to the earlier Consultation on the original P84 Modification Proposal, whilst we do have some sympathy with the circumstance being described in Modification Proposal P84, it is clear that P37 was based around a single incident. If this affects more than one ECVN, then so be it, but it has to be a single occurrence. In this respect we believe that the Alternative Modification goes against the spirit of the P37 discussions as it seeks to permit a Party to claim a whole series of ECVNs as being affected by a single mistake (or even worse, a repeat of the same mistake), and seeks to permit them to pay one Administration Fee for their failure to specify and procure a robust system and / or operate within appropriate internal procedures.

Where such system or procedural deficiencies occur a Reasonable and Prudent Operator should have arrangements in place to identify such incidents and quickly deal with them. If there is a multiplicity of mistakes over a period of time which results from a single cause, (or a repeat of same) then the BSC Party is not demonstrating due care or adopting satisfactory working practices.

Regards

Garth Graham
Scottish & Southern Energy plc

P84_ASS2_003 – Edison Mission Energy

Under Para 6.2.7, it would be useful to have an avoidance of doubt statement to clarify that where claims of Past Notification Errors are approved to attract a single fee, they will still be assessed separately by the Panel and therefore may not all have the same outcome. This was discussed and agreed at the Mod meeting on Friday 24 May and should be reflected in the legal drafting.

Libby Glazebrook
Edison Mission Energy

P84_ASS2_004 – EdF Trading Ltd

On behalf of EdF Trading Ltd and EdF (Generation), I would like to confirm that we support the Alternative Amendment as proposed and the legal drafting as provided.

The Amendment furthers the BSC Objectives by avoiding undue discrimination in this instance and for some Parties will reduce the number of claims and so aid efficiency.

As a party who have made claims in accordance with the current procedures and in the timescales previously laid down, it is now unclear as to what is required to bring to the BSC Panel's attention that two or more of our claims should be treated as a single event. Could it please be made clear in the determination as to whether a letter, seeking consideration of claims at the same time, to Elexon would suffice or whether further work is required to combine the claims into a single claim?

Steve Drummond
Adviser to EdF Energy Merchants Ltd

P84_ASS2_005 – Innogy Group

The following comments are on behalf of Innogy Group (Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern Supply Limited, Npower Yorkshire Limited and Npower Yorkshire Supply Limited).

1) It may need to be clarified in 6.2.7(b) that the Panel/BSCCo should request Parties to say whether they consider that claims are related to the same error and that some prima facie evidence/statement of the way claims might be linked should be provided when Parties respond to this (but without precluding asking for further information to substantiate this, probably as part of the investigation). Could 6.2.7(b) be clarified to make it clear that this will be the process?

2) To minimise uncertainty for Parties seeking linkage of claims, the wording of 6.2.6(b) is key. Would it be worth adding at the end of this paragraph: "... and related to a common set of circumstances"?

Best regards,

Richard Harrison
Npower Finance - Commercial Services
NETA & BSC Issues Manager

P84_ASS2_006 – Scottish Power

Response to Urgent Final Consultation on P84

This response is submitted on behalf of Scottish Power UK Plc, Scottish Power Generation Limited, ScottishPower Energy Trading Limited, ScottishPower Energy Retail Limited and Emerald Power Generation Ltd.

ScottishPower fully supports the Alternative Modification Proposal P84 and believes that the proposed legal drafting goes a long way to removing any potential discriminatory treatment of claims of past notification errors under section P6 of the BSC. We do however believe that two improvements could be made.

First, paragraph 6.2.7(b) requires the relevant Contract Trading Party to notify BSCCo *by the time specified by BSCCo for the purposes of this paragraph*, but no time has been specified in the paragraph. We would prefer "by a time to be specified by BSCCo for the purposes of this paragraph", which also removes any implication that a party which has already lodged a claim might be disadvantaged relative to those which have yet to do so.

Second, paragraph 6.2.7(c) leaves open the time of consideration of whether the claims have a single underlying cause. The claim fees will be invoiced under paragraph 6.4.4(g) in the month following the Panel's determination of the claim of past notification error. It is important that the question of whether the claims relate to a single underlying cause is determined before these charges are invoiced, as they cannot be reimbursed. We would suggest that the following be added to the end of paragraph 6.2.7(c): "...but in any event no later than the charges are invoiced under 6.4.4(g)."

Mike Harrison
Commercial Manager, Trading Arrangements

P84_ASS2_007 – Dynergy

MODIFICATION PROPOSAL P84: Amendment to Process for Past Notification Errors (2)

Dynegy supports the implementation of the proposed alternative modification P84. The alternative modification proposal better facilitates the BSC objective (d) of "promoting efficiency in the implementation and administration of the balancing and settlement arrangements". This proposal will simplify the work involved in reviewing error claims by reducing the number of circumstances to be reviewed.

Yours sincerely

Sarah Maud
UK Regulatory Analyst

P84_ASS2_008 – BP Gas Marketing

BP Gas Marketing Ltd. does NOT support Alternative Modification Proposal P84 as it does NOT support the Applicable BSC Objectives under condition C3, Paragraph 3 (c) of the Licence "promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity"

Best regards,

Ian M. Mullins
Regulatory Advisor

BP Gas, Power & Renewables

ANNEX 4 – MODIFICATION GROUP DETAILS

The Modification Group was the Error Processing Modification Group all of whom were invited to attend the Modification Group meeting and who were sent the draft Modification Group Report. Details of the attendance at the Modification Group meeting is shown below.

Name	Company
David Warner	ELEXON (Chairman)
Richard Harrison	Innogy
Nikki Lea	TXU
Mike Harrison	Innogy (Proposer)
Mark Edwards	Edison Mission Energy
Neil Cohen	ELEXON
Cathy Woods	ELEXON
David Edward	Ofgem
Nick Simpson	Ofgem
James Atkin	DWS