

20 June 2001

URGENT MODIFICATION CONSULTATION

MODIFICATION PROPOSAL P19

**To provide for the remedy of errors in Energy
Contract Volume Notifications and in Metered
Volume Reallocation Notifications**

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

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b Distribution

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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	4
1.1	Purpose of The Report	4
1.2	The Proposed Modification	4
1.3	The Modifications Process	4
1.4	Modifications Group Discussions and Report	5
1.5	Responses.....	6
2	INTRODUCTION	7
3	PURPOSE AND SCOPE OF THE REPORT	8
4	DESCRIPTION OF PROPOSED MODIFICATION	9
5	EXTENT TO WHICH THE PROPOSED MODIFICATION WOULD BETTER FACILITATE THE APPLICABLE BSC OBJECTIVES	10
6	STATEMENT OF URGENCY	11
7	THE PROCESS FOLLOWED	12
8	MODIFICATION GROUP DISCUSSIONS AND REPORT	14
8.1	Approach	14
8.2	Key Features	14
8.2.1	Intent to Facilitate balancing	15
8.2.2	Ability to adjust notified positions ex-post and ex-ante notification	15
8.2.3	Retrospection	16
8.3	Impact.....	17
8.4	Enduring Process	18
8.5	Initial Process.....	19
8.6	BSC Drafting	20
ANNEX 1	MODIFICATION P19	21
ANNEX 2	APPLICABLE BSC OBJECTIVES	32
ANNEX 3	MODIFICATION GROUP MEMBERSHIP	33
ANNEX 4	PROPOSED LEGAL DRAFTING	34

1 SUMMARY

1.1 Purpose of The Report

This report summarises the deliberations of the Modifications Group in respect of Modification Proposal P19, a copy of which is given in Annex 1. This report is issued for consultation.

Views are invited on the Proposal itself, on the matters raised in this report and in particular on the questions raised in Section 8. Responses should be submitted to ELEXON (modifications@elexon.co.uk) by 08.00hrs on Tuesday 26th June 2001

1.2 The Proposed Modification

The proposed modification seeks to amend the BSC to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis. Parties would be able to submit a claim for such a correction to be made where notifications failed to reflect the true trading positions of one or more Parties.

The proposal specifies that such claims would need to be submitted within a time limit of 72 hours from the relevant Trading Period, and there would be a fee of £5000 for each claim.

The proposed modification would apply retrospectively, that is to say claims would be allowed in respect of notification errors which occurred before the adoption of the Modification.

The proposal states that it would be for Parties to prove to the satisfaction of the Panel that there had, in fact, been a notification error. Were the Panel so satisfied, it would be required to determine the appropriate adjustments to be made to the erroneous notification. The adjusted notifications would then be used for the purposes of settlement.

1.3 The Modifications Process

Panel Members supported the recommendation that this modification proposal should be treated as an Urgent Modification: this was approved by the Authority.

A Modifications Group was established and met on 18th June 2001. The deliberations of the Group are reported in this document.

Responses to the consultation on this report will be considered at a further meeting of the Modifications Group on Wednesday 27th June 2001. The recommendations of the Modifications Group will be sent to the Panel on 29th June 2001.

The Panel will consider the Modifications proposal and the report from the Modifications Group at their meeting on 2nd July 2001.

An Urgent Modifications report containing the recommendation of the Panel will be issued to the Authority on Wednesday 4th July 2001.

1.4 Modifications Group Discussions and Report

The Modifications Group considered a number of matters arising from the proposed modification and identified a series of matters on which consultation should be sought (see Section 8). These matters were cast in the form of specific questions, as below.

- Q1. *Do you support Modification Proposal P19?*
- Q2. *Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?*
- Q3. *Do you agree that such a Modification to the BSC should apply retrospectively to Go-live?*
- Q4. *Do you agree that the appropriate fee for raising each notification error claim should be:*
- a. *No charge?*
 - b. *A fixed fee of £5000?*
 - c. *Some other fixed fee?*
 - d. *A fee determined on some other basis (please specify)?*
- Q5. *The adoption of this proposal might have implications for other contractual arrangements outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?*
- Q6: *Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:*
- a. *The time at which the erroneous notification was made?*
 - b. *The first gate closure relating to the erroneous notification?*
 - c. *The end of the last settlement period relating to the erroneous notification (as per P19)?*
 - d. *Some other reference time (please specify)?*
- Q7. *Do you agree that the appropriate time limit for application to correct an erroneous notification should be:*
- a. *3.5 hours?*
 - b. *24 hours?*
 - c. *72 hours?*
 - d. *Some other period (please specify)?*
- Q8. *Do you agree that the evidence required to support an application should*
- a. *Be entirely at the discretion of the Panel?*
 - b. *Always include supporting declarations from Party and Counterparty?*
 - c. *Include other prescribed components?*
- Q9. *Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in question 3 & 7)?*
- Q10 *What assurance, if any, should be provided to support the evidence for a notification error claim?*
- Q11. *Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?*

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

1.5 Responses

Responses are invited to these specific questions. Views are also invited on any other matter relating to Modification Proposal P19. Respondents are particularly asked to give their views and rationale as to whether the Proposed Modification would better facilitate achievement of the Applicable BSC Objectives.

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 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

On 11th June 2001 London Electricity submitted a proposed modification to the BSC to provide for the remedy of errors in Energy Contract and Metered Volume Reallocation Notifications.

A copy of the Modification proposal, is available on the ELEXON website (www.ELEXON.co.uk), and is appended in Annex 1.

The proposer proposes a modification to amend Section P of the Code to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis.

It suggested that where such a notification failed to reflect the true trading positions of one or more Parties, the Party/Parties concerned would be entitled, once it/they had recognised the error, to submit a claim for the Notification Error to be rectified, with a longstop for the claim of 72 hours. The Proposed Modification would, however, also allow Parties to claim rectification of Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of the Modification, even where the 72 hour limit has been passed.

To ensure that Notification Error claims are restricted to errors of genuine significance, it is proposed that a fee of £5,000 would be payable in respect of each claim. It would be for the parties to prove to the satisfaction of the Panel that there had, in fact, been a Notification Error. Where the Panel was so satisfied, it would be required to determine that appropriate adjustments be made to the erroneous notification, in order to bring it into line with the true trading position.

The adjusted notifications would then be used for the purposes of settlement.

5 EXTENT TO WHICH THE PROPOSED MODIFICATION WOULD BETTER FACILITATE THE APPLICABLE BSC OBJECTIVES

The Applicable BSC Objectives are set out in Annex 2.

The Proposer states that the Proposed Modification would:

- (a) provide for settlement of imbalance obligations to be undertaken by reference to Parties' true contract positions, as required by Condition 7A.2(b)(ii) of NGC's transmission licence. It would therefore promote the attainment of the objective specified in Condition 7A.3(a) of that licence (the efficient discharge by NGC of its licence obligations); and
- (b) promote efficiency in the implementation and administration of the balancing and settlement arrangements (Condition 7A.3(d))

In addition the Proposer states that the retrospective application of the proposed modification would also:

- (a) provide for Parties' imbalances in respect of past Settlement Periods to be settled by reference to their true contract positions, as required by Condition 7A.2(b)(ii). This will contribute to the efficient discharge by NGC of the obligations imposed on it by its licence (Condition 7A.3(a));
- (b) promote effective competition in the generation and supply of electricity, by allowing Parties, and new entrants in particular, to place reliance on the effectiveness of the BSC in addressing unfairness (Condition 7A.3(c)). To the extent that new entrants to the market may be more likely to make Notification Errors, then the Proposed Modification may further serve to promote competition from new entrants, by protecting them from the disproportionate consequences of such Errors; and
- (c) promote efficiency in the implementation of the balancing and settlement arrangements (Condition 7A.3(d)), by reducing the risk to Parties of participating in the BSC, and thereby reducing the risk-related costs of balancing and settlement activity

Views are sought from respondents on whether the proposal would better facilitate achievement of the Applicable BSC Objective(s) as compared to the current version of the Code.

6 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 London Electricity ELEXON recommended to the Panel Chairman that Modification Proposal P19 be treated as an Urgent Modification Proposal.

The BSC Panel Chairman sought the views of Panel Members, all of whom 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 12th June 2001

7 THE PROCESS FOLLOWED

The key steps that have been adopted in progressing this Urgent Modification Proposal are as follows:

- i) On 11th June 2001 London Electricity raised Modification Proposal P19 (to provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications) with ELEXON.
- ii) The BSC Panel Chairman sought the views of Panel Members all of whom supported the recommendation that the Modification Proposal be treated as urgent (in accordance with the procedures set out in F2.9 of the BSC).
- iii) The Panel recommendation to treat the Modification as Urgent was subsequently approved by the Authority. A Modification Group was established (based on the membership of group that considered Modification Proposal P9 – Error Processing Group) with the membership agreed by the Panel Chairman and the Group were subsequently notified of a meeting date the following week;
- iv) The Authority agreed the process and timescale as described below:
 - The issues raised were discussed with the Modifications Group on the 18th June 2001. The Group comprised the Proposer (London Electricity), Ofgem representatives, industry experts and ELEXON technical experts;
 - Following discussion at the Modification Group meeting, a draft of the consultation Report was produced and reviewed by the Modifications Group;
 - The report was issued for consultation on Wednesday 20th June 2001, requesting that responses be submitted to ELEXON by 08.00hrs on Tuesday 26th June 2001. These will be collated and then presented for discussion to the Modification Group on the Wednesday 27th June 2001;
 - The recommendations of the Modifications Group will then be sent to the Panel on the 29th June 2001. The Panel will consider the modification proposal at a special meeting on 2nd July 2001 ; and
 - The Urgent Modifications report containing the recommendation of the Panel will be issued to the Authority on Wednesday 4th July 2001.

Deviations from the normal Modification Procedures (as prescribed in Section F of the BSC) were as follows:

- Views on how the Modification Proposal should be progressed were sought directly from Panel Members by the BSC Panel Chairman. Given the urgency of the Proposal no Initial Written Assessment was undertaken;
- Panel Members recommended treating the proposal as an Urgent Modification;
- The BSC Panel delegated agreement to the membership of the Modification Group to the BSC Chairman;

- At the first Modification Group meeting, the group reviewed the proposal and identified a number of key topics for consultation. These formed the basis of this consultation report which has been issued to BSC Parties for consultation.
- Due to the agreed timescales and the changes required to the BSC, the legal drafting will be sent out separately for consultation.; and
- The results of this consultation, together with the Report from the Modification Group will be presented to the Panel.

8 MODIFICATION GROUP DISCUSSIONS AND REPORT

8.1 Approach

A Modifications Group was convened and met on Monday 18th June 2001 to consider the proposed modification.

The Modifications Group noted that the BSC Panel had obtained the agreement of the Authority that this Modification should be treated as urgent and that the associated timescales and processes allowed for two meetings of the Group. The first of these was to consider how the proposal should be progressed.

Two approaches were considered:

- i) Consider and develop alternative Modifications to address the perceived defect and consult on which might be preferred.
- ii) Present arguments pertaining largely to the proposal (P19) as it stands, seeking views on certain variations to particular elements of that proposal.

Given the urgent status of the Modification, the second of these approaches was taken. This approach was supported by the proposer. P19 is appended as annex 1.

In order to present the arguments for consultation, the key aspects of the Modification that were considered were as follows:

- Key features
- Impact
- Enduring process
- Initial process

Subsequently, ELEXON have obtained legal advice on the proposal and, in particular, on the suggested drafting. These views have also been included in this consultation document.

The Modifications Group accepted the presumption that the proposal was to apply equally to both Energy Contract Volume Notifications and Meter Volume Reallocation Notifications.

So as to assist the consultation, a number of specific questions have been drafted to reflect matters discussed by the Modifications Group. Responses are invited to these specific questions.

Views on any matter related to Modification Proposal P19 are also invited. Respondents are asked to give their views and rationale as to whether the Proposed Modification would better facilitate achievement of the Applicable BSC Objectives.

8.2 Key Features

Four key features were identified as being of significance in the context of the Modification:

- Intent to facilitate balancing
- Ability to adjust notified position ex-post

- Ex-ante notification
- Retrospection

8.2.1 Intent to Facilitate balancing

The view of the Modifications Group was that the Modification had no impact on the ability, or otherwise, of Parties to balance their position, and with suitable controls would not dilute incentives on Parties to balance.

8.2.2 Ability to adjust notified positions ex-post and ex-ante notification

The proposal itself, in presenting a case for enabling adjustments to notified positions to be made after Gate Closure, acknowledges that certain limiting factors should be considered in order to maintain the integrity of the ex-ante notification arrangements under the BSC:

- Ex-post adjustments should be made sufficiently soon to avoid undue uncertainty for settlement, on an ongoing basis.
- Incentives to make accurate notifications should be maintained
- The ability to make ex-post adjustments should be used for its proper purpose, namely to reflect a true (ex-ante) trading position

The Modifications Group recognised that the proposal sought to combine existing ex-ante notifications, with an exceptional ex-post element which would exist only as a means of correction of genuine errors.

Condition 7A.2(b) (ii) of NGC's Transmission Licence states that "NGC should provide arrangements for the settlement of obligations arising by reference to the physical quantities of electricity allocated to BSC Parties, including the imbalances ... between such quantities and the quantities of electricity contracted for sale and purchase between BSC Parties". It was suggested in the proposal that, in order to give effect to this objective (rather than allowing settlement to take place on the basis of some notifications being erroneous and, therefore, not related to contracted sales and purchases of electricity), either some ex-post adjustment should be enabled, or a disproportionate amount of investment would be required to ensure avoidance of errors.

The proposal further asserted that, by enabling true trading positions to be reflected, the proposal also leads to the better achievement of NGC's licence condition 7A.3(a); the efficient discharge by NGC of its licence obligations.

Subsequent legal advice, obtained by ELEXON, has suggested that NGC's licence condition 7A.2 defines the scope, or boundary, of the BSC and does not establish the objectives of the BSC (which are set out in 7A.3).

A view was also expressed at the Modifications Group that this risk of error was potentially stifling trades close to Gate Closure. Notwithstanding the above statements relating to NGC's licence condition 7A.2, such ex-post adjustments could also, therefore, be argued to enable better achievement of NGC Licence condition 7A.3 by allowing greater efficiency and increased liquidity (close to Gate Closure) and thus promoting competition in the sale and purchase of electricity.

Finally, it was argued in the proposal that all of the foregoing would also lead to the better achievement of the NGC licence conditions 7A.3 (d) (promoting efficiency in the implementation and administration of the balancing and settlement arrangements) and

also lead to better achievement of the NGC licence condition 7A.3 (a) (the efficient discharge by NGC of its licence obligations).

Underlying all of this was the presumption that the contracted volumes in question remain truly ex-ante and that the current basis of settlement was not undermined. In deliberating on this question, the Modifications Group considered whether certain justifications should be a pre-requisite of any notification error claims, recognising that certain limitations had been proposed in P19. The following limitations were considered:

- Time limits for submission of notification error claim
- Payment of fees to cover any notification error claim
- Provision of evidence to support a notification error claim
- Exclusion of certain circumstances from being treated as a notification error

It was noted that all but the last of these are utilised in P19; these matters, along with some variations are considered below.

On the basis of the foregoing discussion, a number of key questions may be helpful, in addition to any general views that may arise:

Q1. Do you support Modification Proposal P19?

Q2. Do you support the key feature of Modification Proposal P19, that the BSC should allow for the correction of notifications after gate closure?

8.2.3 Retrospection

In so far as retrospection is concerned, a number of arguments were considered, in the context of the above mentioned BSC Objectives. In P19 itself, it is argued that retrospective application of the proposal should be enabled because of the unusual difficulty of validating data in a timely manner in the initial period following the initiation of the BSC arrangements. The proposal also presented counter-views which, typically, underpin the presumption against retrospection:

- Parties may have acted differently, if they had known that new rules would apply
- A perceived risk may arise if retrospection is thought to be established as a precedent, rendering the trading rules inherently uncertain. Such a risk could lead to higher prices
- Settled transactions may be re-opened

The proposal provided some views on these points and the Modifications Group gave some further consideration to the first two of the points. The proposal suggests that no Party would have conducted itself differently in the balancing mechanism, since balancing action is related to physical position, not contracted position. Modifications Group discussions suggested that other actions, such as investment in notification and settlement systems and contracting strategies, might also have been influenced by the BSC as it stands.

On the second point, the proposal suggested that this risk is outweighed by the risk of unfair treatment which itself would factor into the achievement of the relevant BSC Objectives. The Modifications Group judged this balance of risks as being the key issue in respect of whether or not to apply the proposal retrospectively.

On the final point, the proposal noted that settlement has not been finalised for any period in question (by virtue of the 14 month reconciliation cycle) and that, in any event, legal precedents exist for re-opening transactions, in appropriate circumstances.

The proposal contends that discussions before Go-Live foresaw consideration of changes to the BSC in the light of operational experience.

The proposal also maintains that the circumstances experienced since Go-Live warrant consideration.

Q3. Do you agree that such a Modification to the BSC should apply retrospectively; covering the period from Go-live?

8.3 Impact

The Modifications Group considered two distinct instances where the proposal could impact; firstly, the Party and counterparty associated with a given notification (and its subsequent adjustment) and secondly, other Parties.

On the Party and counterparty, the direct impacts may be summarised as follows;

- Correction of imbalance liabilities
- Liability for the payment of a notification error claim fee

The Modifications Group recognised that certain variations were possible in respect of the fee. Firstly, there is the question of whether, or not, a fee should be levied. There is then the question as to the level of the fee. In the proposal, it was noted, some reference is made to the fee (suggested to be £5K) covering the costs associated with the processing of the claim. This would be a similar arrangement to that employed for Manifest Error provisions in the BSC. Secondly, there is the question as to whether the fee should be a fixed amount, or whether it should be weighted in some way, for example, as a percentage of the sum involved in the notification error claim.

Q4. Do you agree that the appropriate fee for raising each notification error claim should be:

- a. No charge?*
- b. A fixed fee of £5000?*
- c. Some other fixed fee?*
- d. A fee determined on some other basis (please specify)?*

The direct impact on other Parties was considered to be:

- Correction of revenue surplus allocations

This may have both cost and timescale implications for Parties generally.

In addition, the Modifications Group believed that there may be changes required to other contractual arrangements that are outside of the BSC, such as GTMA's, were the

proposal to be adopted. This might have further cost and timescale implications for Parties.

Q5. The adoption of this proposal might have implications for other contractual arrangements that are outside of the BSC. What period between the decision to adopt this proposal and implementation do you believe is necessary to enable such impacts to be resolved?

8.4 Enduring Process

The implication of the drafting given in P19 is that of a process largely the same as that employed for the Manifest Error provisions in the BSC. Hence, within a certain time limit a notification error claim may be lodged, along with a fee. Thereafter, the BSC Panel would consider the merits of the case, based on evidence (which is not prescribed) presented by the Party concerned. Depending on the decision of the BSC Panel following its deliberations, the notification error claim would either be accepted, for subsequent calculation of liabilities in settlement, or the claim would be rejected.

The Modifications Group considered a number of aspects of this process. Firstly, it was recognised that certain options existed for limiting the time for the submission of notification error claims. In the proposal itself, the point from which this time limit should be measured was taken to be the end of the last settlement period to which the notification related. Subsequent legal advice has suggested that this may be problematical, for example, in the case of 'evergreen' notifications. This raises the question as to what other points of reference might be used. The following provide some of these options:

- The time at which the erroneous notification was made
- The first Gate Closure relating to the erroneous notification
- The end of the last settlement period relating to the erroneous notification (as per P19)
- Some other reference time

Q6: Do you agree that the appropriate reference point for measuring the time within which a notification error claim must be made should be:

- a. The time at which the erroneous notification was made?*
- b. The first gate closure relating to the erroneous notification?*
- c. The end of the last settlement period relating to the erroneous notification (as per P19)?*
- d. Some other reference time (please specify)?*

In so far as potential time limits were concerned, the Modifications Group discussions suggested the following options:

- A very short timescale, over which self-checking might be feasible, for example, 3.5 hours
- A timescale commensurate with the provision of initial information from central settlement systems, for example 24 hours
- A timescale consistent with the desire not to allow the error to propagate through settlement, for instance 72 hours, which is the proposal in P19.

Q7. Do you agree that the appropriate time limit for application to correct an erroneous notification should be:

- a. 3.5 hours?*
- b. 24 hours?*
- c. 72 hours?*
- d. Some other period (please specify)?*

The Modifications Group then considered whether the provision of evidence should be entirely non-prescriptive. One proposition was that, one element of prescription should be that both Parties associated with the notification (or one Party, if the trade is a transfer between accounts within one BSC signatory organisation) should support the error claim. This would avoid the process becoming embroiled in any dispute between Parties that may arise and mirrors current Manifest Error requirements.

Q8. Do you agree that the evidence required to support an application should

- a. Be entirely at the discretion of the Panel?*
- b. Always include supporting declarations from Party and Counterparty*
- c. Include other prescribed components?*

A further option considered by the Group was whether certain potential notification errors should be excluded from being considered. One option suggested was that of not allowing an error to be claimed when no notification at all was originally made.

Q9. Do you believe that any specific circumstances should preclude a notification error claim (other than the time limits explored in questions 3 & 7)?

The Modifications Group also considered whether the BSC drafting should allow for the BSC Panel to avail itself of any assurance as to the evidence provided by the Party in support of a claim. The suggestion was that such assurance might assist in confirming that a notification error reflected a true ex-ante intent. The view was that this should be left to the discretion of the Panel.

Q10 What assurance, if any, should be specified in the code to support the evidence for a notification error claim?

Finally, the Modifications Group recognised that the impact on credit cover arrangements would need to be clarified. There was a view that whatever ex-post adjustments to notifications might arise, there should be no change to the treatment of the “erroneous” notifications pending a ruling by the Panel. ELEXON are currently considering this matter further.

8.5 Initial Process

If the proposal is to be implemented retrospectively, as per P19, then a period of 5 days from implementation is proposed for retrospective claims relating to periods back to 27th March 2001 to be made. A further question raised by the Modifications Group was whether some similar extension to the normal time limit should be provided for future new entrants. The basis of this approach was that new entrants will suffer similar difficulties to

those experienced by participants that were Parties when the BSC was first given effect. Further consideration would need to be given as to how a new entrant might be defined and what extension might be appropriate.

Q11. Do you believe that the notice period for retrospective claims should be 5 days after the Modification becomes effective?

Q12. Do you agree that for future new entrants the time limit for raising notification error claims should be extended?

8.6 BSC Drafting

A number of points have been suggested by ELEXON's legal advisors, some of which have already been covered. However there are a number of further points which may be summarised as follows:

- It may not be clear, in seeking to define a notification error, what a "trade in Active Energy" is, nor indeed what an "agreement" might entail. Hence, it may be preferable to avoid any such description in the BSC and, instead, adopt an approach that is similar to that used in the BSC Manifest Error provisions.
- It may be desirable to include the relevant ECVNA in the process, as the Panel is likely to want to seek the views of the relevant ECVNA.
-
- There is no need for the Panel to exercise discretion as to the amounts of the rectification in making adjustments, since the outcome of the Panel deliberations would be restricted to either rejecting or accepting the claim. A view from the Modifications Group was that some discretion might be necessary where the Panel has to deal with multiple overlaid erroneous notifications.

ELEXON will prepare final legal drafting of the supporting Code changes, in the light of responses to this consultation.

ANNEX 1 MODIFICATION P19

Modification Proposal – F76/01	MP Number: P19
Title of Modification Proposal	
To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications.	
Submission Date	
11 June 2001	
Date Logged	
12 th June 2001	
Description of Proposed Modification	
<p>London Electricity ('London') proposes a modification which would amend Section P of the Code to enable errors in Energy Contract Volume Notifications and Metered Volume Reallocation Notifications to be remedied on an ex-post basis.</p> <p>Where such a notification failed to reflect the true trading positions of one or more Parties, the Party/Parties concerned would be entitled, once it/they had recognised the error, to submit a claim for the Notification Error to be rectified, with a longstop for the claim of 72 hours. (The Proposed Modification would, however, also allow Parties to claim rectification of Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of the Modification, even where the 72 hour limit has been passed.)</p> <p>To ensure that claims for rectification of a Notification Error are restricted to errors of genuine significance, a fee of £5,000 would be payable in respect of each claim.</p> <p>It would be for the parties to prove to the satisfaction of the Panel that there had, in fact, been a Notification Error.</p> <p>Where the Panel was so satisfied, it would be required to determine that appropriate adjustments be made to the erroneous notification, in order to bring it into line with the true trading position.</p> <p>The adjusted notifications would then be used for the purposes of settlement.</p>	
Description of Issue or Defect that the Modification Proposal Seeks to Address	
<p>Condition 7A.1 of NGC's transmission licence requires NGC to have in force a document (the BSC) setting out the terms of the balancing and settlement arrangements. Those arrangements are defined in condition 7A.2(b)(ii) to include arrangements for the settlement of obligations between the BSC parties:</p> <p style="text-align: center;"><i>'arising by reference to the [physical quantities of electricity allocated to BSC parties], including the imbalances ... between such quantities and the quantities of electricity contracted [our emphasis]</i></p>	

for sale and purchase between BSC Parties'.

The Modification Proposal is designed to ensure that the BSC fulfils the requirements of condition 7A.2(b)(ii) of NGC's licence, by providing for each Party's imbalance position to be settled by reference to its true contract position, rather than by reference to a notified position which turns out to have been erroneous.

The BSC places on contracting Parties the onus of notifying to the Energy Contract Volume Aggregation Agent details of its contractual position in respect of each Settlement Period. Once Gate Closure has been reached for any given Settlement Period, there is no facility for Parties to correct any errors in their contract notifications. This means that, in cases where an erroneous notification has been made, and has not been corrected before Gate Closure, the settlement of imbalances will be effected by reference to the difference between the Party's physical production (or consumption) and the notified amount, rather than by reference to the difference between the Party's physical production (or consumption) and the contract amount.

This means that the objects described in Condition 7A.2 are not achieved, and that the affected Party may consequently suffer substantially higher imbalance charges than would apply if the correct contract volumes had been used to calculate settlement liabilities.

In order to achieve final settlement, the BSC must provide an effective mechanism for the Settlement Administration Agent to collate information as to each Party's contract position for each Settlement Period, and to calculate settlement liabilities accordingly. In practice, the contracting Parties are best placed to provide information as to their contract position, and it is appropriate that they should be required and incentivised to provide accurate information. In particular, in order to achieve finality of settlement, it is desirable that there should come a point, in respect of each Settlement Period, at which Parties' notified contract volumes must be treated as definitive of their contractual position.

However, there is no good reason why Parties should be denied the opportunity to correct erroneous notifications, provided that:

- (i) the Parties do so sufficiently soon to avoid any delay in final settlement;
- (ii) the opportunity for Parties to rectify erroneous notifications does not unduly diminish incentives to provide accurate notifications in the first place; and
- (iii) the opportunity to rectify erroneous notifications is used for its proper purpose – namely, to rectify erroneous notifications of Parties' true trading positions, and not to effect and notify changes in a Party's contract position which occur after Gate Closure.

The Proposed Modification is designed to introduce into the BSC a provision enabling Parties to rectify notification errors within these limits.

Given that there has been a greater risk of notification errors during the early period of the operation of the BSC, the Proposed Modification is designed to allow the rectification of all past notification errors, including those in respect of Settlement Periods for which initial settlement has been completed prior to the publication or adoption of the Proposed Modification.

The Proposed Modification also embodies a similar modification to deal with erroneous notifications of Metered Volume Reallocation Notifications.

Impact on Code

Section P should be amended by the insertion of a new paragraph 2.3.6A as follows:

2.3.6A

- (1) *For the purposes of this Section P, a Notification Error occurs where and only where:*
 - (a) *the information contained in an Energy Contract Volume Notification (taken*

- together with any prior Energy Contract Volume Notification that remains in force pursuant to paragraph 2.3.5(b)) does not, at Gate Closure for any Settlement Period to which that notification relates, accurately reflect a trade of Active Energy; or*
- (b) *a trade of Active Energy is not, at Gate Closure for any Settlement Period to which that trade of Active Energy relates, reflected in an Energy Contract Volume Notification.*
- (2) *In relation to a claim under paragraph (3) for rectification of a Notification Error, a trade of Active Energy is:*
- (a) *an agreement between two Trading Parties for the sale and purchase of a quantity (or quantities) of Active Energy in relation to one or more Settlement Periods; or*
- (b) *a resolution on the part of a single Trading Party to transfer Energy Contract Volume(s) from one of its Energy Accounts to the other which has been implemented within the Trading Party's own books or other records of account.*
- (3) *Where a Party considers that there has been a Notification Error in relation to any trade of Active Energy to which it is Party, it may, subject to paragraph (4), as soon as reasonably practicable after becoming aware of the Notification Error and, in any event, no later than 72 hours after the end of the Settlement Period(s) to which the trade of Active Energy relates, make a claim for rectification of the Notification Error by giving notice of such claim to the Energy Contract Volume Aggregation Agent, together with details of the other Party (if any) to the relevant trade of Active Energy;*
- (4) *Where a Party makes a claim for rectification of a Notification Error, it shall pay a fee to BSCCo, the amount of which (for each such claim) shall be £5,000, or such other amount as the Panel may from time to time, after Consultation with Parties, determine upon not less than 30 days' notice to Parties – which fee shall not be reimbursed in any circumstances.*
- (5) *Where a Party gives notice of a claim for rectification of a Notification Error to the Energy Contract Volume Aggregation Agent, that agent shall within 24 hours of receiving such notice forward the notice to BSCCo, and to all Contract Trading Parties and Volume Notification Agents.*
- (6) *The Panel shall consider claims for rectification of Notification Errors in accordance with this paragraph (6):*
- (a) *For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 2.3.6A; and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so.*
- (b) *Where a claim for rectification of a Notification Error is made:*
- i. *the Panel Secretary shall arrange for the claim to be placed on the agenda of the Panel (consistently with paragraph (6)(b)(iii)), and shall request:*

- *the Party claiming rectification of the Notification Error to provide such evidence and information supporting its claim as it may consider appropriate to resolve the claim; and*
 - *the Energy Contract Volume Aggregation Agent to provide comments in relation to the claim;*
- ii. *the Panel shall determine in its opinion whether there was a Notification Error and (if so) shall also determine what adjustments are to be made to the relevant Energy Contract Volume Notification or (in the case of a Notification Error under paragraph (1)(b)) what Energy Contract Volume Notification should be treated as having been submitted in respect of the relevant Settlement Period(s);*
- iii. *the Panel shall wherever practicable consider and determine the claim in time for any such adjustments to be taken into account in the Initial Settlement Run;*
- iv. *the Panel Secretary shall notify the Panel's determinations to the Energy Contract Volume Aggregation Agent and to all Contract Trading Parties and Volume Notification Agents;*
- v. *the fee under paragraph (4) shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph (6)(b)(iv), and shall be paid accordingly.*
- (c) *The determination of the Panel (or any Panel Committee established or appointed under paragraph (6)(a)) as to whether there was a Notification Error, and (if so) what adjustments are to be made under paragraph (6)(b)(ii), shall be final and binding on all Parties.*
- (7) *Where the Panel has determined pursuant to paragraph (6)(b)(ii) that adjustments are to be made to the relevant Energy Contract Volume Notification or that an Energy Contract Volume Notification should be submitted, a notification in such terms shall be treated as having been submitted by the relevant Energy Contract Volume Notification Agent in respect of the relevant Settlement Period(s) in accordance with paragraph (8) below.*
- (8) *An Energy Contract Volume Notification submitted in accordance with paragraph (7):*
- (a) *shall be deemed (for the purposes of the Code) to have been received:*
 - (i) *in the case of a Notification Error under paragraph (1)(a), at the time at which the original such notification was received; or*
 - (ii) *in the case of a Notification Error under paragraph (1)(b), in the period immediately before Gate Closure for the first Settlement Period to which the relevant trade of Active Energy relates; and*
 - (b) *if valid in accordance with paragraph 2.3.4, shall, notwithstanding that it may be submitted after Gate Closure for any Settlement Period, be in force and (subject to paragraph 2.4) effective for Settlement Periods for which:*
 - (i) *in the case of a Notification Error under paragraph (1)(a), the original Energy Contract Volume Notification would (consistent with paragraph 1.2.4) have been in force; or*
 - (ii) *in the case of a Notification Error under paragraph (1)(b), the trade of Active Energy relates.*

A similar, but separate, provision will need to be included under Section P (as a new paragraph 3.3.6A, after 3.3.6) for Metered Volume Reallocation Notifications.

A supplemental provision will be needed to deal with the making of claims for Notification Errors in respect of Settlement Periods which have closed before the publication or adoption of this Proposed Modification. London proposes that claims in respect of such Notification Errors should require to be made within five days of the adoption of the Proposed Modification.

A number of consequential and supplementary amendments may also need to be made as a result of the addition of new paragraphs 2.3.6A and 3.3.6A.

Impact on Core Industry Documents

None

Impact on BSC Systems and other Relevant Systems and Processes used by Parties

None

Justification for Proposed Modification with Reference to Applicable BSC Objectives

The Proposed Modification is justified on the following grounds:

- (i) It will ensure that, in principle, settlement will be conducted by reference to Parties' true contract positions, rather than by reference to erroneously notified positions. This requires that Parties should be allowed to correct erroneous notifications. However, they should not be entitled to do so if, by doing so, they would undermine the finality of settlement, or introduce inefficiency into the settlement process, to such an extent (in either case) as to prevent the BSC from operating efficiently or to introduce doubts into the market.

London submits that the Proposed Modification strikes an appropriate balance between (1) securing that settlement is effected by reference to accurate data, while ensuring that parties are incentivised to provide accurate data at the outset, and (2) securing that settlement is effected efficiently.

It is reasonable to require Parties to adopt effective measures to ensure that they make accurate notifications under the BSC. However, if Parties were to be confident of *never* making a notification error, then they would have to spend disproportionate amounts on the design and operation of their notification systems and procedures. Moreover, if there is no facility to correct notification errors, Parties are likely to manage their trading operations in such a way as to minimise the risk of notification errors, in preference to optimising their trading position: for example, they might aim to complete their trading and notify (and check) their contract position well before Gate Closure, instead of trading up to Gate Closure. This would unnecessarily curtail available trading time. (In fact, there is some evidence that this is what is happening now.)

Overall, it is likely to be less costly, and therefore more efficient, to allow Parties to correct notification errors.

However, there are costs to other parties in dealing with notification errors. These fall into two main categories:

- (a) the cost of processing/determining a Party's claim that there has been a notification error and correcting settlement information if the claim is made out; and
- (b) the cost to other Parties which might arise if there were an open-ended possibility of having settlement of previous Settlement Periods re-opened, by virtue of notification errors discovered long after the event.

The first of these costs can be addressed by requiring a Party claiming rectification of a notification error to pay a fee, to cover the costs of processing the claim. The obligation to pay a fee to have errors rectified will also serve to incentivise Parties to avoid making errors at the outset.

The second of these costs can be substantially avoided, or mitigated, by imposing a

longstop date for claims for rectification of notification errors (being a longstop date consistent with the present timetable for final settlement) and/or by ensuring that, as soon as a claim for rectification of an alleged notification error is made, all Parties are notified of the claim (and can therefore factor it into their forecasts of their settlement liabilities). It is proposed that, for claims in respect of notification errors made after the adoption of the Proposed Modification, a longstop for making a claim be adopted of 72 hours after the Settlement Period(s) to which the claim relates. This will provide Parties with an incentive to check their notifications promptly. There is no justification for an even shorter longstop, since Parties to the BSC do not rely on the notified contract position of other Parties for the purposes of their own trading decisions. (Parties will only be concerned that the figures used for the Initial Settlement Run are as accurate as possible.) This position can be contrasted with that of claims of Manifest Error in the submission and/or acceptance of Bids and Offers in the Balancing Mechanism (paragraph 7 of Section Q). In those specific circumstances, a longstop for making claims of four hours is appropriate since Parties will be making important trading decisions on the basis of Bids and Offers being made by other Parties and accepted by NGC. Any errors in the submission and/or acceptance of Bids and Offers must be corrected at the earliest opportunity to avoid misleading the market.

London submits that, in the light of all the above considerations, the Proposed Modification would:

- (a) provide for settlement of imbalance obligations to be undertaken by reference to Parties' true contract positions, as required by Condition 7A.2(b)(ii) of NGC's transmission licence. It would therefore promote the attainment of the objective specified in Condition 7A.3(a) of that licence (the efficient discharge by NGC of its licence obligations); and
 - (b) promote efficiency in the implementation and administration of the balancing and settlement arrangements (Condition 7A.3(d)).
- (ii) The Proposed Modification is also intended to allow Parties who have already made notification errors in respect of past Settlement Periods to submit claims for correction of those errors. To this extent, the 72-hour longstop in relation to making claims for Notification Error should be relaxed, and a different longstop time applied (for example, as we have proposed above, five days after adoption of the Proposed Modification).

London proposes that the Proposed Modification should apply retrospectively to take account of the fact that, in the period immediately following the introduction of NETA, Parties have found it unusually difficult to validate notification data in a timely manner. In particular, problems arising from the operation of systems employed by central parties have frequently led to inaccurate data being fed back to the Parties for validation. (This is clear from Elexon circulars issued at or around that time, notably numbers 11 to 13, 15 to 17, 19 to 21, 24, 27, 28, 33, and 41, and the Logica bulletin dated 11 April relating to settlements for 3 April.) In consequence, it was often unusually difficult for Parties to distinguish errors arising from central systems from errors in Parties' own notifications. This meant that Parties were often unable to identify and correct errors before Gate Closure, with errors becoming apparent only on the provision of data in respect of the initial settlement run. By way of example, initial validation reports received by London on 3 and 4 April 2001 both indicated substantial imbalances but were accompanied by a warning from Elexon that malfunction in its systems might have led to errors, and that apparent imbalances would be corrected automatically, without intervention by London. In the event, however, only the figures for 4 April resolved themselves. The figures for 3 April represented a significant imbalance resulting from a Notification Error which, by the time it became apparent, it was then too late for London to correct.

The plethora of data errors was compounded by the Parties' initial lack of familiarity with the reports in the early days of trading. These factors have resulted, in some cases, in the use of erroneous notification data to calculate settlement imbalances. This has, in turn, led

to substantial imbalance liabilities. The adoption of the Proposed Modification, allowing these past errors to be corrected, would serve the general purpose of ensuring that settlement liabilities in respect of past Settlement Periods are calculated by reference to Parties' true contract positions.

The Proposed Modification is therefore justified on the basis that it contributes to the better attainment of the objectives of the BSC, as detailed above. It is also consistent with the approach taken in recent Trading Disputes, where difficulties encountered by Parties immediately following Go-Live have led to a temporary (three-month) relaxation of the requirements for the timely notification of disputes.

A question may arise as to whether retrospective application of the Proposed Modification is appropriate. In some cases, the retrospective application of new rules may be regarded as inappropriate. This may be the case where, for example:

- (a) the retrospective application of new rules may be unfair to parties who would have acted differently, if they had known that the new rules would apply;
- (b) the retrospective application of new rules on one occasion may create a perception among present and future participants that there will be other occasions where new rules are adopted and applied retrospectively to the detriment of parties, thereby causing them to regard participation in the arrangements as carrying additional risk, which will feed through into higher prices; or
- (c) the retrospective application of rules may re-open settled financial transactions.

Taking these three issues in turn:

The first of these issues does not arise in this case: no Party would have conducted itself differently in the balancing market if it had known that erroneous contract notifications could be rectified, since balancing trades are based on notifications of physical positions, and not contract positions. (This also means that, where some Parties have benefited from errors in others' notifications, that benefit has been a windfall.)

The second issue is of a more general nature, and is based on a common concern that *any* retrospective application of new rules creates increased risk. This is a misconception. It may equally be argued that a refusal to implement retrospective changes to address unfairnesses is a risk factor which participants must factor into their decision-making. Indeed, London submits that, in this case, the BSC has caused unnecessary unfairness by exposing Parties to substantial imbalance settlement liabilities, which were not foreseen at the time when the BSC was concluded. If the BSC is now amended to provide for retrospective correction of such unfairnesses, then that would send a signal to participants that Parties are protected from unforeseen unfairnesses in the operation of the BSC. Parties can therefore be expected to regard a retrospective application of the Proposed Modification as in fact decreasing, rather than increasing, the risks associated with participation in the BSC.

The third of these issues need not be of concern in the present case because:

- (a) the retrospective application of the Proposed Modification will not interfere with transactions which have been finally settled, since final settlement in respect of any given Settlement Period is not completed until 14 months after its close;
- (b) there is no absolute rule of law prohibiting the re-opening of transactions which have been fully settled: see, for example, *Kleinwort Benson Ltd v Lincoln City Council* [1998] 4 All ER 513 (HL);
- (c) the retrospective application of the Proposed Modification should therefore be permitted if the benefits of retrospective application (as outlined above) are likely to outweigh any detriments.

London submits that, in this case, retrospective application of the Proposed Modification will be beneficial overall. Any detriments can be avoided by ensuring that the rationale for retrospective application of the Proposed Modification is fully explained in any report or

decision document, to allay concerns that new rules might be applied retrospectively in materially different, cases.

The retrospective application of the Proposed Modification can therefore be expected to:

- (a) provide for Parties' imbalances in respect of past Settlement Periods to be settled by reference to their true contract positions, as required by Condition 7A.2(b)(ii). This will contribute to the efficient discharge by NGC of the obligations imposed on it by its licence (Condition 7A.3(a));
- (b) promote effective competition in the generation and supply of electricity, by allowing Parties, and new entrants in particular, to place reliance on the effectiveness of the BSC in addressing unfairnesses (Condition 7A.3(c)). To the extent that new entrants to the market may be more likely to make Notification Errors, then the Proposed Modification may further serve to promote competition from new entrants, by protecting them from the disproportionate consequences of such Errors; and
- (c) promote efficiency in the implementation of balancing and settlement arrangements (Condition 7A.3(d)), by reducing the risk to Parties of participating in the BSC, and thereby reducing the risk-related costs of balancing and settlement activity.

(iii) It may be argued (as it was recently in the context of Modification Proposal P9) that the balance of fairness lies in favour of making no Code modification (or no retrospective modification) because Parties had an opportunity to address these considerations before the BSC was signed. London submits that such an argument would be incorrect because:

- (a) discussions of the proposed terms of the BSC prior to its signature expressly contemplated that the question of notifications post-Gate Closure would be reconsidered in the light of the operation of the BSC, and also that Parties would be free to make a modification proposal post Go-Live to address errors in Energy Contract Volumes or in Metered Volume Reallocation (see, respectively, page 48 of the Ofgem/DTI 'conclusions document' on NETA dated October 1999, and pages 2 and 3 of the joint NETA Programme/Elexon working group paper dated October 2000 on Manifest Errors in Balancing Mechanism Transactions);
 - (b) discussions before signature of the BSC focused on whether Parties should be allowed to notify trades conducted after Gate Closure, whereas the Proposed Modification relates only to the notification after Gate Closure of trades effected (but not correctly notified) before Gate Closure;
 - (c) experience of the operation of the BSC shows that, in the weeks immediately after the commencement of the BSC, it has been more difficult than might previously have been expected for Parties to validate contract notification data, because of the large numbers of unrelated errors in the data put to them for validation, so that any conclusion on these issues reached through discussions conducted prior to the start date of the BSC could properly be re-opened in the light of experience; and
- (c) discussions as to the terms on which the BSC should be adopted focused on the adoption of terms which would be appropriate to cater for the normal functioning of the market, and were not addressed to the exceptional circumstances which would apply in the period immediately following the introduction of NETA. There should therefore be no objection to adopting a retrospective modification to cater for the exceptional difficulties arising from the exceptional circumstances of the period immediately following Go-Live.

Details of Proposer

Name: Roger Barnard
Organisation: London Electricity plc
Telephone: 0207 331 3398
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Attachments

For completeness, London details in its letter covering this application a recent instance of contract notification error in respect of which it will wish to make a retrospective claim for rectification, if the Proposed Modification is adopted.

London asks that that letter be treated as an integral part of this Modification Proposal.

Attached Letter

Mr Nicholas Durlacher
Chairman, BSC Panel
c/o Elexon Limited
Third Floor, 1 Triton Square
London NW1 3BX

RB/MVB

11 June 2001

Dear Mr Durlacher

ERRONEOUS NOTIFICATIONS: MODIFICATION PROPOSAL

London Electricity ('London') wishes to propose a modification to the Balancing and Settlement Code to ensure that the Code fulfils the objectives of Condition 7A.2 of NGC's transmission licence by providing that each Party's imbalance position is settled by reference to its true contract position rather than by reference to a notified position which turns out to have been erroneous.

This letter adds some background to the proposed modification, which we have submitted separately in the prescribed manner, and should be treated by the Panel as an integral part of our submission.

London is a Trading Party to the BSC, which governs the operations of the NETA market. These new arrangements commenced on 27 March 2001. As you and other Panel members will know, many BSC Parties had some initial problems with their business processes or systems during the first few weeks of operation of NETA. As you also know, these problems were compounded in the early days of NETA by the feedback to Parties, from the central parties, of inaccurate data for validation. All this is verifiable by reference to Elexon circulars.

One such process problem on London's part, and its unfortunate combination with other problems arising from the operation of the systems employed by the central parties, resulted in an undetected error in London's submission of its contract position relating to the day of 3 April, only a week after the commencement of the new market. The consequence of this error was that Elexon's calculation of London's net financial liability for that day was increased by some £7.5 million above the level corresponding to its true contract position.

In brief, although London's error had no adverse effect whatsoever on the physical balancing or costs of operation of the electricity system, it had a very large adverse effect on the calculation of London's liability for imbalance charges for the day of 3 April. The total cost to London was then redistributed to other BSC Parties, resulting in windfall gains for them.

The justification for our proposed modification of the BSC is that, under present arrangements, the objects described in Condition 7A.2 of NGC's licence are not achieved, with the result that the affected Party – as in London's case in relation to the events described above – may suffer substantially higher imbalance charges than would apply if the correct contract volumes had been used to calculate the Party's settlement liabilities.

Given that for all Parties there has been a greater risk of notification errors during the early period of operation of the BSC, our proposal is designed to provide for the rectification of all past notification errors, including those in respect of trading periods for which initial settlement has been completed prior to the adoption of the proposed modification. We believe that the case for such retrospection is a strong one, from which all BSC Parties stand to benefit, both immediately and on a continuing basis, particularly as regards new market entrants.

Our case is set out in more detail in the separate formal proposal, which we have formulated in the light of, amongst other things, the Authority's decision dated 8 June in relation to Modification Proposal P9. For the avoidance of doubt, (1) we ask that our proposal be treated as an urgent modification, and (2) we confirm that London will wish to make a retrospective claim for the rectification of its notification error in respect of its contract position for the day of 3 April, if the proposed modification is adopted.

If you or other Panel Members have any questions in relation to the above, we would be happy to deal with them. We look forward to hearing from you.

Yours sincerely

Roger Barnard

Regulatory Lawyer
London Electricity Group

ANNEX 2 APPLICABLE BSC OBJECTIVES

The Applicable BSC Objectives are set out in paragraph 3 of Condition 7A of the Licence, as follows:

- (a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;
- (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; and
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

ANNEX 3 MODIFICATION GROUP MEMBERSHIP

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ANNEX 4 PROPOSED LEGAL DRAFTING

To be sent out separately for consultation.