23 May 2001

URGENT MODIFICATION REPORT

MODIFICATION PROPOSAL P9

Correction of Technical Error in respect of the Energy Contract Volume Notifications and Adjustment of Settlement Data

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

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1 SUMMARY AND RECOMMENDATION

1.1 Purpose of the Report

This Urgent Report is the Modification Report for Urgent Modification Proposal P9 and hence includes the Panel's conclusions and recommendation to the Authority on that matter.

1.2 Nature of the Modification

Modification Proposal P9 proposes that the BSC should be modified to make provision for the correction in certain circumstances of erroneous Energy Contract Volume Notifications (ECVNs). The Modification Proposal includes the following description: "Modification to Section P.2.3 and U.2.5 to permit BSC Parties to correct submissions of ECVNS (retrospectively or otherwise) which are incorrect due to no fault technical error". Hence the Modification would make provision for the correction of notifications after gate closure; also, it is proposed that the new provisions would apply retrospectively (or prospectively). The circumstances described in the Modification Proposal centre on "trades which are notified erroneously through a no fault technical error in the software used by Participants" and "where trades have taken place between production and consumption accounts".

The justification stated for the proposal is that it would promote efficiency in the implementation and administration of the balancing and settlement arrangements.

1.3 The Process

The Proposed Modification was submitted on 4th May and with the agreement of both the Panel and Ofgem has been treated as an Urgent Modification. A Modifications Group was convened and at its meeting on 10th May 2001 explored the proposal. The Modifications Group did not reach unanimity, there being views expressed both for and against the proposal. The Modifications Group identified a number of issues raised by the proposal. Amongst these was the idea of a more general modification, expanding the scope of a Manifest Error to include ECVNs.

1.4 Consultation

The considerations of the Modifications Group were issued for consultation on 11th May 2001. There were 16 responses (and these respondents stated that they were responding on behalf of 27 Parties).

Of these responses, 4 representing 4 Parties were in favour of Modification Proposal P9; 10 responses representing 18 Parties were against Modification Proposal P9.

Regarding a more general modification, 5 respondents representing 8 Parties were in favour; 9 respondents representing 17 Parties were against.

1.5 The Panel's Considerations

The Panel considered the Modification Proposal P9 at Panel Meeting 18, held by a telephone conference call on 18th May 2001.

The Panel considered the proposal in the light of the responses to the consultation, and the majority view of respondents against the proposal.

The Panel noted that respondents in favour of the proposal considered that the imbalance charges arising from erroneous notifications could be disproportionate, and that the risk of incurring such charges could not readily be mitigated against. It was suggested that this risk could lead to a loss of liquidity in the forward markets close to real time, and higher market prices.

The Panel noted the view that the proposed mechanism for correcting erroneous notifications would not adversely affect other Parties. In particular, some respondents held the view that retrospective application was acceptable because Parties' behaviour would not have been different if the Modification had been implemented at Go-live.

The Panel noted that respondents against the proposal, however, felt that the basis of the imbalance charges was clear, and that Parties could and should have made appropriate risk management preparations. In this view, retrospectively changing the rules would adversely impact the Parties who had made such provisions; further, there was a view that retrospective application would itself lead to uncertainty in the market.

The Panel noted that a particular question that had been raised was whether the issue addressed by the proposal had been reasonably explored in the drafting of the BSC.

Regarding information available to Parties, it was noted that the 7-day ECVAA (Energy Contract Volume Aggregation Agent) Report had been published to Parties three times daily from go-live.

The Panel noted that the proposed modification dealt with one specific cause of an erroneous notification, that is one caused by a "no fault technical error" in the software used to submit Energy Contract Volume Notifications. Some respondents to the consultation had said that it would be difficult to define such faults.

The Panel noted that the proposal also refers specifically to trades between production and consumption accounts.

The proposed modification could apply retrospectively or prospectively. The Panel noted that there was a general presumption against retrospective changes to market rules, reflecting a similar presumption more generally in law.

The Panel noted that there was some support for the idea of a more general Modification to expand the scope of Manifest Errors to include erroneous Energy Contract Volume Notifications.

1.6 Conclusions

It was noted that there had been the opportunity to raise this issue through the NETA Programme pre-Go-live.

The Panel agreed with the views expressed that the proposal raises difficult issues of definition and would be likely to be difficult to apply in practice. It would be difficult for Parties to be sure what qualified as a "no fault technical error". The uncertainty would not make for improved efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel also concluded that were the BSC modified as proposed to address the circumstances described in the proposal, it was likely that further Modifications would be raised, each addressing different sets of circumstances. The need to consider, implement, and operate each such Modification would not make for improved efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel concluded that the retrospective aspect of the modification would lead to uncertainty in the market.

Further, it was noted that the suggested benefits of improved liquidity and lower prices resulting from risk reduction could only be prospective rather than retrospective. The case for retrospective application therefore centres on the point that the imbalance charges incurred have been disproportionate. This was not considered a sufficiently strong reason to recommend retrospective application, given the general presumption against retrospection in public law, the arguments advanced by those respondents that opposed the Modification, and the market uncertainty that the Panel had concluded would result.

Overall the Panel concluded that retrospective application would not therefore promote improved efficiency in the implementation and administration of the balancing and settlement arrangements and hence would not better achieve the objectives of the BSC.

The Panel therefore agreed with the majority of respondents to the consultation who were against Proposed Modification P9.

Regarding a possible more general Modification to expand the scope of Manifest Errors, the Panel did not believe that this would have the same affect as P9, and therefore the Panel concluded that they had no vires to make a recommendation on it as an alternative modification.

The Panel noted that should such a further Proposed Modification be brought forward, then its consideration should be expedited.

1.7 Recommendation

The Panel recommends to the Authority that Modification Proposal P9 should be rejected.

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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.

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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.

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4 DESCRIPTION OF PROPOSED MODIFICATION

On 4th May 2001 ScottishPower submitted a proposed modification to the BSC to allow for the corrections of Technical errors in respect of the Energy Contract Volume Notifications under Section P.2.3 and Adjustment of Settlement Data under Section U.2.5.

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

The specific changes cited by the Proposer are to insert a new paragraph following paragraph 2.3.6 of Section P.2.3 of the Balancing & Settlement Code. This paragraph would read:

"Where the Relevant Contract Party has submitted an erroneous Energy Contract Volume Notification due to a technical fault then it shall be entitled to:

(a) amend or vary the Energy Contract Volume Notification (retrospectively or otherwise) under Paragraph 2.3.6 and

(b) the data in respect of such Energy Contract Volume Notification shall be treated as manifestly erroneous pursuant to Paragraph 2.5.6 of Section U.2.5 and the relevant BSC Agent or Relevant Party shall be permitted to correct such data for the purposes of Settlement in relation only to the Settlement Days identified by the Relevant Contract Party and shall inform BSC Co. accordingly. The effect being to permit such corrected data to be taken into account for the purposes of Settlement (retrospectively or otherwise) under Paragraph 2.5.7 of Section U.2.5."

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

The Applicable BSC Objectives are set out in Annex 4.

The modification proposal states that:

"the modification is made pursuant to Transmission Licence Condition 7A(3)(d) – promoting efficiency in the implementation and administration of the balancing and settlement arrangements. The Applicable BSC Obligation is fulfilled as it is addressing the general issue of technical fault and is the correction of the position where (i) latent IT fault beyond the control of the BSC Party has caused an incorrect Settlement to occur and (ii) there is no physical imbalance resulting from such fault. It is not the purpose of the balancing and settlement arrangement to be implemented in a manner which imposes, and neither should it be possible for a settlement arrangement to be implemented in a manner which imposes, and neither should it be possible for a technical error to result in, a penal charge on a BSC Party and grant other BSC Parties a substantial and disproportionate benefit where there has been no physical imbalance on the GB system and no costs or loss occurring to such other Participants. It is not the purpose of the balancing and settlement arrangement to be implemented in a manner which imposes, and neither it should be possible for a settlement arrangement to be implemented in a manner which imposes, and neither should it be possible for a technical error to result in, a penal charge on a BSC Party and grant other BSC Parties a substantial and disproportionate benefit where there has been no physical imbalance on the GB system and no costs or loss occurring to such other Participants."

Subsequently, in their response to the consultation, the Proposer commented that the current arrangements introduce gains and losses that "distort competition in the generation and supply of electricity and hence are contrary to the objectives [BSC, Section B, 1.2.1(b)(iii)] of the BSC."

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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 ScottishPower ELEXON recommended to the Panel Chairman that Modification Proposal P9 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 4th May 2001

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7 THE PROCESS FOLLOWED

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

i) On 4th May 2001 ScottishPower raised Modification Proposal P9 (Correction of Technical Error in respect of the Energy Contract Volume Notifications and Adjustment of Settlement Data) 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 ratified by the Authority. A Modification Group was established (based on the membership of group that considered Modification Proposal P1/P4 – Contract Notifications 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 10th May 2001. The Group comprised the Proposer (ScottishPower), Ofgem representatives, industry experts and ELEXON technical experts.

- Following discussion at the Modification Group meeting, an Urgent Modification Report was drafted and issued for consultation on 11th May 2001. This requested that responses be submitted by 18.00hrs on 16th May 2001. These were then presented to the Panel on the 18th May 2001.

- The Panel held a meeting by telephone conference call on 18th May 2001 and considered this Modification. This Report records the Panels decision.

- In agreeing to proceed directly to the Report phase, it was confirmed that the Report be submitted to the Authority by 18.00hrs on Wednesday 23rd May 2001. This represents a variation to the agreed timetable which envisaged that the Panel's decisions would be presented to the Authority on Monday 21st May 2001. This change reflects a change from a progress update to a concluding Report.

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 perceived urgency of the Proposal no Initial Written Assessment was undertaken.

- Panel Members recommended treating the proposal as an Urgent Modification, citing the uncertainty that the proposal introduced into the market.

- The BSC Panel delegated agreement to the membership of the Modification Group to the BSC Chairman.

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- The Modification Group reviewed the proposal and identified a number of issues. The views of the Modification Group on the specific points of the proposal and the broader generic issues that it raised were collated in a Report by ELEXON and reviewed by the Modification Group. The agreed report was issued to the BSC Parties for consultation.

- The results of this consultation, together with the Report from the Modification Group were presented to the Panel.

- With diverse views for and against the proposal, an early recommendation was sought from the Panel. This was done to seek confirmation of support, or otherwise, for the proposal, thereby reducing market uncertainty and minimising the risks of nugatory work.

- With the proposal being rejected by the Panel, the detailed analysis specified for an Assessment Procedure has not been undertaken. In particular, the detailed costing, timing and implementation assessments that would have been sought from affected parties have not been commissioned.

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8 MODIFICATION GROUP DISCUSSIONS AND REPORT

8.1 Modifications Group Meeting

A Modifications Group was convened and met on Thursday 11th May 2001 to consider the proposed modification. The view of the Group was that whilst the proposal as set out related to a quite specific set of circumstances, it did raise issues relating to certain of the principles on which the Balancing and Settlement Code is founded. The Group agreed that, in order to provide the best starting point for the consultation process, it was appropriate to crystallise and consider these matters of principle.

During their discussions the Modification Group recognised the exclusive nature of the proposal and cautioned that unless the general issues were addressed, a series of highly specific modification proposals could arise. A view expressed was that such a proposal might consist of an expansion of the provisions currently in the BSC relating to the treatment of Manifest Errors. This idea was included in the report from the Group meeting.

The Modifications Group were not unanimous on most of the issues explored during the meeting. In most cases, two viewpoints were expressed, one generally in favour of the thrust of the Proposed Modification, and the other against.

8.2 Report of the Modifications Group Meeting

The report from the Modifications Group meeting was produced and issued for consultation on Friday 12th May 2001. The report included a description of the issues explored by the Group, and the differing viewpoints on each. The report is available on the ELEXON website.

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9 CONSULTATION

9.1 The Consultation Process

The report from the Modification Group was used as the basis for consultation. The report highlighted the following matters:

1. **Previous Consideration of the Issue**
2. **Intent of the BSC**
3. **Correct Execution of the BSC**
4. **Separation of Production and Consumption Accounts**
5. **Ex-Ante Notification of Contract Volumes.**
6. **Retrospective Modification**
7. **Impact on the Party Making the Erroneous Notification**
8. **Impact on Other Parties**
9. **Impact on Notifications Close to Gate Closure**
10. **Mechanisms for Parties to Correct Errors**
11. **Temporary or Enduring Provision**
12. **Metered Volume Reallocation Notifications**
13. **Treatment as a Manifest Error**

The report further pointed to four points of principle that this modification raises:

i) Should contract notification be definitive at Gate Closure, or should provisions be made for (gross) errors to be corrected.

ii) If correction of errors in contract notifications is permitted post Gate Closure, does this dilute incentives on Parties and their Agents to submit correct data for settlement.

iii) If supported, should the change be permitted retrospectively; from when the modification was raised, or from when implemented.

iv) If supported, should the change be made enduring for all parties, available to all parties but only for a limited duration (from Go-Live), or applied only to new entrants for a limited period of duration.

The report also identified the following specific aspects of the Proposed Modification which had been considered at the Modifications Group meeting: **"Technical Error", "No Fault"**, and **"Software".**

The report was issued for consultation on 11th May 2001, and responses were requested by 1800hrs on 16th May 2001 (this consultation can be found on www.ELEXON.co.uk/ta/modifications/mods_docs_dl/P9_UMR_Draft.pdf).

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9.2 The Results of the Consultation

The results of the consultation are included in Annex 2. The Annex includes an analysis of the responses in terms of the matters listed at 9.1 above and also includes the full text of those responses

There were 16 responses to the consultation. The respondents stated that they were replying on behalf of a total of 27 Parties.

Regarding the Proposed Modification P9:

4 responses (representing 4 Parties) were in favour
10 responses (representing 18 Parties) were against
2 responses (representing 5 Parties) could not be unambiguously classified.

Regarding the idea of a more general provision to expand the scope of Manifest Errors:

5 responses (representing 8 Parties) were in favour
9 responses (representing 17 Parties) were against

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9.3 Summary of the Arguments in favour and against the Proposal

Reference should be made to Annex 3 for full details of points made for and against by respondents.

9.3.1 Arguments for the Proposed Modification include the following:

a. This issue was not fully explored during the drafting of the BSC prior to Go-live, and, in particular was excluded from the consideration of Manifest Errors by the G3 Group.

b. Experience since Go-live has demonstrated that the risk associated with erroneous notifications is disproportionately large, and results in charges which could be seen as penal. This risk cannot be adequately mitigated.

c. Retrospective application of provisions to allow corrections would not adversely affect other Parties.

d. Allowing correction of erroneous notifications post gate closure in limited circumstances should not be viewed as a general erosion of the principle of determining trading positions at gate closure.

e. The Proposal is justified because it would better meet the objectives of the BSC because it would promote efficiency in the implementation and administration of the balancing and settlement arrangements. A mechanism for this would be that the reduction of risk achieved would reduce the costs of risk management; secondly, notifications close to gate closure would be less risky and would therefore be more likely to be made.

9.3.2 Arguments made by those who did not support the Proposed Modification include the following:

a. The issue of the responsibilities and liabilities of Parties was extensively discussed and consulted upon prior to Go-live.

b. The implications of erroneous notifications, and the basis on which any resultant imbalance charges would be calculated, should therefore have been clear to all Parties.

c. With this knowledge Parties were free to choose and implement whatever they considered to be the appropriate risk management measures. Use of the 7 day ECVAA report (published 3 times daily after go-live) would be one such measure.

d. Parties would be adversely affected by a retrospective application of the Proposal. Parties have invested in risk management measures to reflect the BSC as it stands, and may well have adopted a strategy for notifications on that basis, as well.

e. The Principle of trading positions being determined at gate closure should not be compromised.

f. The error addressed by the proposal was clearly one within an area of Party responsibility, albeit where use might be made of third party software. In such circumstances the onus should be on the Party to pursue any error with its service provider.

g. The definition of what constituted a “no fault technical error” would be likely to prove difficult.

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10 PANEL CONSIDERATIONS, CONCLUSIONS AND RECOMMENDATIONS

10.1 Introduction

The Panel, recognising the urgency of Modification Proposal P9, agreed to consider it via a Panel Meeting by telephone conference call held on 18th May 2001. Prior to this meeting, Panel Members had been sent the report of the Modifications Group meeting (the document that was issued for consultation), the responses to the consultation, and a summary of responses produced by ELEXON.

10.2 Panel Considerations

The Panel noted that the matter being considered was urgent, and was viewed as important not only by the proposer, but also by other Parties.

The Panel noted the results of the consultation, which showed a majority of respondents against the Modification Proposal, and also against the idea, raised at the Modifications Group, of an extension of the current provisions in the BSC for dealing with Manifest Errors.

The Panel recognised that the Proposed Modification raised a number of issues relating to the principles on which the BSC was founded, as had been highlighted in the report from the Modifications Group.

The Panel noted that respondents in favour of the proposal considered that the imbalance charges arising from erroneous notifications could be disproportionate, and that the risk of incurring such charges could not readily be mitigated against. It was suggested that this risk could lead to a loss of liquidity in the forward markets close to real time, and higher market prices.

Those in favour of the proposal were of the view that the proposed mechanism would allow this situation to be corrected without adverse effects on other Parties. In particular, some respondents held the view that retrospective application was acceptable because Parties' behaviour would not have been different if the Modification had been implemented at Go-live.

Respondents against the proposal, however, felt that the basis of the imbalance charges was clear, and that Parties could and should have made appropriate risk management preparations. In this view, retrospectively changing the rules would adversely impact the Parties who had made such provisions; further, in this view, retrospective application would itself lead to uncertainty in the market.

The Panel noted that a particular question that had been raised was whether the issue addressed by the proposal had been reasonably explored in the drafting of the BSC. (Annex 3 provides information on related work done prior to Go-Live.)

Regarding information available to Parties, it was noted that the 7-day ECVAA (Energy Contract Volume Aggregation Agent) Report had been published to Parties three times daily from Go-live which would allow Parties to check the data that they had submitted.

The Panel noted that the proposed modification dealt with a specific cause of an erroneous notification, that is one caused by a no fault technical error in the software

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used to submit Energy Contract Volume Notifications. Some respondents to the consultation had said that it would be difficult to define such faults.

The Panel noted that the proposal also refers specifically to trades between production and consumption accounts.

The proposed modification could apply retrospectively or prospectively. The Panel noted that there was a general presumption against retrospective changes to market rules, reflecting a similar presumption more generally in law.

The Panel noted that some respondents to the consultation were in favour of the idea of a more general Modification to expand the scope of Manifest Errors in the BSC to include erroneous Energy Contract Volume Notifications.

10.3 Panel Conclusions

It was noted that there had been the opportunity to raise this issue through the NETA Programme pre-Go-live.

The Panel agreed with the views expressed that the proposal raises difficult issues of definition and would be likely to be difficult to apply in practice. It would be difficult for Parties to be sure what qualified as a "no fault technical error". The uncertainty would not make for improved efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel noted that the Modification addressed narrowly defined circumstances and concluded that were the BSC modified as proposed to address the circumstances described in the proposal it was likely that further Modifications would be raised, each addressing different sets of circumstances. The need to consider, implement, and operate each such Modification would not make for improved efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel concluded that retrospective application of the modification would lead to uncertainty in the market.

Further, it was noted that the suggested benefits of improved liquidity and lower prices resulting from risk reduction could only be prospective rather than retrospective. The case for retrospective application therefore centres on the point that the imbalance charges incurred have been disproportionate. This was not considered a sufficiently strong reason to recommend retrospective application, given the general presumption against retrospection in public law, the arguments advanced by those respondents that opposed the Modification, and the market uncertainty that the Panel had concluded would result.

Overall the Panel concluded that retrospective application would not therefore promote improved efficiency in the implementation and administration of the balancing and settlement arrangements.

The Panel therefore agreed with the majority of respondents to the consultation who were against Proposed Modification P9.

The Panel considered that the above Conclusions were adequately supported by the information elicited to date and that therefore no useful purpose would be served by carrying out a more detailed assessment of the specific proposal set out in Modification Proposal P9.

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Regarding a possible more general Modification to expand the scope of Manifest Errors, the Panel did not believe that this would have the same affect as P9, and therefore the Panel concluded that they had no vires to make a recommendation on it as an alternative modification.

The Panel concluded that were such a further Proposed Modification to be brought forward, it would need full consideration, in particular in regard to the definition of what constituted an allowable Manifest Error.

The Panel recognised that any such Proposed Modification would need to be treated expeditiously. Further, the Panel considered that were such a proposal to be progressed, then for reasons of efficiency the Modifications Group that had worked on P9 should be used.

10.4 Panel Recommendations to the Authority

Following from the Considerations and Conclusions described above, the Panel recommends that the Authority rejects Modification Proposal P9.

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ANNEX 1 MODIFICATION P9

Modification Proposal	**MP No: P9** *(mandatory by BSCCo)*

Title of Modification Proposal *(mandatory by proposer)***:**

Correction Of Technical Error In Respect Of The Energy Contract Volume Notifications Under Section P.2.3 And Adjustment Of Settlement Data Under Section U.2.5.

Submission Date *(mandatory by proposer)***:** 04 May 2001

Description of Proposed Modification *(mandatory by proposer)***:**

Modification to Section P.2.3 and U.2.5 to permit BSC Parties to correct submission of ECVNS (retrospectively or otherwise) which are incorrect due to no fault technical error.

Description of Issue or Defect that Modification Proposal Seeks to Address *(mandatory by proposer)***:**

The Total System Residual Settlement Cashflow under Section T of the BSC is calculated with reference to the imbalance charges arising due to the mis-match of the physical balance of the system as against the trades notified under the BSC.

At present there has accrued and continues to exist a risk that the Total System Residual Settlement Cashflow can be distorted by trades which are notified erroneously through a no fault technical error in the software used by Participants. The position being that where trades have taken place between production and consumption accounts in order to match off the trading position against the physical flow the technical error undermines the position to create a distorted Total System Residual Settlement Cashflow. In order to correct this problem the ability should be given to parties who suffer such error to correct (retrospectively or otherwise) the data submitted to ensure that the correct calculation of the Total System Residual Settlement Cashflow is made.

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Modification Proposal	**MP No: P9** *(mandatory by BSCCo)*

Impact on Code *(optional by proposer)***:**

Paragraph 2.3.6 in Section P.2.3 should be amended by the addition of a new Paragraph 2.3.6A as follows:-

"2.3.6A

Where the Relevant Contract Party has submitted an erroneous Energy Contract Volume Notification due to a technical fault then it shall be entitled to:

(a) amend or vary the Energy Contract Volume Notification (retrospectively or otherwise) under Paragraph 2.3.6 and

(b) the data in respect of such Energy Contract Volume Notification shall be treated as manifestly erroneous pursuant to Paragraph 2.5.6 of Section U.2.5. and the relevant BSC Agent or Relevant Party shall be permitted to correct such data for the purposes of Settlement in relation only to the Settlement Days identified by the Relevant Contract Party and shall inform BSC Co. accordingly. The effect being to permit such corrected data to be taken into account for the purposes of Settlement (retrospectively or otherwise) under Paragraph 2.5.7 of Section U.2.5.

Impact on Core Industry Documents *(optional by proposer)***:**

None

Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties *(optional by proposer)***:**

None

Impact on other Configurable Items *(optional by proposer)***:**

Justification for Proposed Modification with Reference to Applicable BSC Objectives *(mandatory by proposer)***:**

The modification is made pursuant to Transmission Licence Condition 7A (3) (d) - promoting efficiency in the implementation and administration of the balancing and settlement arrangements. The Applicable BSC Obligation is fulfilled as it is addressing the general issue of technical fault and is the correction of the position where (i) latent IT fault beyond the control of the BSC Party has caused an incorrect Settlement to occur and (ii) there is no physical imbalance resulting from such fault. It is not the purpose of the balancing and settlement arrangement to be implemented in a manner which imposes, and neither it should be possible for a technical error to result in, a penal charge on a BSC Party and grant other BSC Parties a substantial and disproportionate benefit where there has been no physical imbalance on the GB system and no costs or loss occurring to such other Participants.

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Modification Proposal	MP No: P9 *(mandatory by BSCCo)*

Details of Proposer:

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If Yes, Title and No. of Pages of Each Attachment:

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ANNEX 2 SUMMARY OF RESPONSES TO ELEXON CONSULTATION ON P9

ANNEX 2.1 Table of Overall Responses to Consultation on P9

Responses from P9 Definition Report Consultation – Table 1

Representations were received from the following parties:

No	Company	For more general Modification	Against More General Modification	For P9	Against P9
1.	TXU Europe (Representing 9 Companies)		Y		Y
2.	Innogy		Y		Y
3.	Seeboard	See note 1	See note 1	See note 1	See note 1
4.	British Energy		Y		Y
5.	Edison Mission		Y		Y
6.	Dynegy		Y		Y
7.	Axia Energy Europe	Y		Y	
8.	Scottish & Southern	Y			Y
9.	Entergy Wholesale	Y		Y	
10.	Northern Electric		Y		Y
11.	Accord Energy		Y		Y
12.	British Gas Trading		Y		Y
13.	London Electricity (Representing 4 companies)	Y			See Note 2
14.	Powergen		Y		Y
15.	ScottishPower	Y		Y	
16.	Enron	See note 3		Y	

Note 1: The response suggests P9 “Would need further development to be workable”.

Note 2: The response says “the objectives of the BSC would be better served by the inclusion of a provision for the remedy of manifest errors”

Note 3: The response says “we believe the proposal must be modified to unambiguously define a set of circumstances which allow a party to change its ECVNS submission”

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ANNEX 2.2 Table of Responses to General Points of Consultation on P9

Comment on General Points

Name	Organisation	Is Further Consideration of the Issue Justified	Does the BSC Need to Change to Reflect it's Intent	Was there a Failure in the Execution of the BSC	Should the principle of Separating Production and Consumption Accounts be Reconsidered	Should the principle of Ex-Ante Notification of Contract Volumes be Reconsidered
Nikki Lea	TXU-Europe	No	No Comment	No Comment	No Comment	No Comment
Terry Ballard	Innogy	No	No	No	Separate Issue	Separate Issue
Sue Fraser	Seeboard	Yes	No	No	No	No Comment
Rachel Ace	British Energy	No	No	No	No Comment	No
John Sykes	Scottish & Southern	Yes	Yes	No	No Comment	No
Eldon Pethybridge	Accord Energy	No	No Comment	No Comment	No Comment	No
Lesley Mulley	Northern Electric	No	No Comment	No	No Comment	No Comment
Liz Anderson	London Electricity	Yes	Yes	No Comment	No	No
Danielle Lane	British Gas Trading	No	No Comment	No Comment	No Comment	No
Melanie K Wedgebury	Entergy	Yes	No Comment	No Comment	No Comment	No Comment
Peter Bolitho	PowerGen	No	No Comment	No Comment	No Comment	No Comment
William Pitcher	Axia Energy Europe Ltd	Yes	No Comment	No Comment	No Comment	No Comment
Lisa Waters	Dynergy	No	No Comment	No Comment	No Comment	No Comment
Mike Harrison	ScottishPower	Yes	Yes	No Comment	No	No
Phil Edgington	Edision Mission Energy	No	No Comment	No Comment	No Comment	No Comment
Nick Elms	Enron	Yes	No Comment	No Comment	No Comment	No Comment

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Comment on General Points

Name	Organisation	Should the Proposed Modification be Applied Retrospectively	In Considering Impact on the Party, is Relative Size More Important Than Absolute Size	Would the Proposed Modification Adversely Impact Other Parties	Do the Current Provisions Constrain Notifications Close to Gate Closure	Should Mechanisms for Parties to Correct Errors be Equivelent to Those for Central Service Providers
Nikki Lea	TXU-Europe	No Support	No Comment	No Comment	No Comment	No
Terry Ballard	Innogy	No	No Comment	Yes	Yes - but address elsewhere	No
Sue Fraser	Seeboard	No	As Important	Yes	No	No Comment
Rachel Ace	British Energy	No	No Comment	Yes	No	No Comment
John Sykes	Scottish & Southern	Yes	No Comment	No	No Comment	Yes
Eldon Pethybridge	Accord Energy	No Comment	No Comment	Yes	No	No
Lesley Mulley	Northern Electric	No Comment	No Comment	No Comment	No Comment	No Comment
Liz Anderson	London Electricity	Yes	As Important	No	Yes	Yes
Danielle Lane	British Gas Trading	No Comment	No Comment	Yes	No	No
Melanie K Wedgebury	Entergy	Yes	No Comment	No Comment	No Comment	No Comment
Peter Bolitho	PowerGen	No Comment	No Comment	No Comment	No Comment	No Comment
William Pitcher	Axia Energy Europe Ltd	Yes	No Comment	No Comment	No Comment	No Comment
Lisa Waters	Dynergy	No Comment	No Comment	Yes	No Comment	No Comment
Mike Harrison	ScottishPower	Yes	As Important	No	Yes	Yes
Phil Edgington	Edision Mission Energy	yes (if supported)	No Comment	No Comment	No Comment	No Comment
Nick Elms	Enron	Yes	No Comment	No	No Comment	No Comment

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Comment on General Points

Name	Organisation	Should Any New Provision be Temporary or Enduring	Should Any Conclusions Also Apply to Metered Volume Reallocation Notifications	Should the Issue be Treated in Line with Manifest Errors
Nikki Lea	TXU-Europe	No Comment	No Comment	No Comment
Terry Ballard	Innogy	No Comment	Yes	Yes
Sue Fraser	Seeboard	Enduring (if implemented)	Yes	No
Rachel Ace	British Energy	No Comment	No Comment	No
John Sykes	Scottish & Southern	Enduring	Yes	Yes
Eldon Pethybridge	Accord Energy	No Comment	No Comment	No Comment
Lesley Mulley	Northern Electric	No Comment	No Comment	No
Liz Anderson	London Electricity	Enduring	Yes	Yes
Danielle Lane	British Gas Trading	No Comment	No Comment	No Comment
Melanie K Wedgebury	Entergy	Enduring	No Comment	Yes
Peter Bolitho	PowerGen	No Support for Either	No Comment	No
William Pitcher	Axia Energy Europe Ltd	No Comment	No Comment	Yes
Lisa Waters	Dynergy	No Comment	No Comment	No
Mike Harrison	ScottishPower	Enduring	Yes	Yes
Phil Edgington	Edision Mission Energy	No Comment	No Comment	(yes, if supported)
Nick Elms	Enron	No Comment	No Comment	No Comment

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ANNEX 2.3 Analysis of Responses to ELEXON Consultation on P9

The report issued for consultation on 11 May invited responses on a number of specific points of principle and issues raised both in the Modification Proposal itself and during the discussion in the Modification Working Group where a number of opposing views were expressed. 15 responses were received by the deadline of 18.00 on 15 May 2001. A further response was received subsequently. The comments made in the written responses are summarised below in the order in which the issues were set out in Section 7 of the report which was issued for consultation. This summary is intended to reflect the range of views in relation to each issue and references respondents are references to the number of written respondents rather than the number of companies on whose behalf that response was submitted.

Justification for the proposed modification

Three respondents supported the modification with two of the three believing that the circumstances of the modification were too tightly drawn. They agreed broadly with a fourth respondent who did not support the proposal in the form submitted by Scottish Power but who said that an error in Energy Contract Volume Notifications should be allowed to be treated in the same way as a Manifest Error, subject to the same rigours of proof afforded to other Manifest Errors. A fifth respondent supported the proposed modification in principle but believed that prior to Panel acceptance the proposal must be modified to unambiguously define a set of circumstances which allow a party to change its ECVNS submission (since without an unambiguous definition it may be possible to change submissions to reflect ex-post contract trades). A sixth respondent believed that the objectives of the BSC would be better served by the inclusion of a provision for the remedy of manifest errors in Contract Notification.

Ten respondents did not support the modification. One respondent said that unlimited opportunity to correct mistakes would not meet the Applicable Objective which required efficiency in the implementation and administration of the balancing and settlement arrangements, although time-limited (ie issue raised within 72 hours) mistake correction when strict criteria had been met could bring improvement, but any change to the BSC should not reward slack business controls that do not detect an error within a short period (eg 72 hours). It said that the current proposal would need further development to be workable.

Another respondent said that no new BSC provisions were justified and that any changes would be unfair to those Parties that had successfully complied with the terms of the BSC as it stands. A further respondent said that it was not apparent that the modification would better promote effective competition in the generation and supply of electricity or competition in the sale and purchase of electricity. Another said that it did not believe that it was possible to justify this proposal on the grounds of better meeting Applicable BSC Objectives; the error described had no impact on market prices or the efficiency of the market.

One respondent said that, as a matter of principle, the BSC should not be changed simply for the convenience of one or two parties who it would appear had problems with their own systems. Such a change would need very careful monitoring if abuse was to be avoided. The BSC rules at go live were clear to all parties and hence the panel should

reject this change. Another respondent agreed with this and said that all ECVNAs (Energy Contract Volume Notification Agents) who signed the Grid Trade Master Agreement did so knowing that they must notify accurately or face imbalance charges. It said that the modification should not have been raised since the principle for catering for manifest errors, which was accepted and included within the BSC as a result of the work carried out by the G3 group specifically excluded ECVNs. The problem appeared to be restricted to an agency system and it was therefore the responsibility of the agent to ensure that timely and accurate ECVNs were submitted to the ECVAA. Two further respondents endorsed this general view saying that allowing adjustment to ECVNs post gate closure would undermine the principle of establishing definitive physical notifications and contractual positions for each Trading Party and would create uncertainty for the Grid Operator and other Parties.

Another respondent, whilst not supporting the modification said that, having suffered as a result of erroneous notification, if the modification were to be approved it would wish to make a retrospective claim.

Another respondent said that the proposal was unfairly favourable towards integrated players who would be the sole beneficiaries of the modification since the error that arises is specific within the inter-company group trades. These participants would be capable of reallocating their operational risks to the central system through the changes and it believed that the parties should remain liable for the consequences of their errors. It said that the proposed modification would not meet the relevant objectives. It would not incentivise participants to manage their own operational risk when transferring energy from their own energy accounts, therefore reducing the efficiency within the market. By rejecting this modification parties would facilitate trading through ensuring proper in-house controls to provide correct energy submissions. The onus should remain on parties to manage their own risk through being exposed to imbalance prices.

Previous consideration of the issue

Six respondents commented on this point. Three agreed that the issues of manifest error, erroneous notifications and central system failure had been discussed on a number of previous occasions, most recently during the G3 work and that nothing had changed to challenge the conclusion of that work which was that provision should not be made centrally for the type of error ScottishPower was trying to resolve.

Another respondent took a different view; it said that the G3 group had considered ECVNs in its consultation work but decided to exclude them on the basis that there was a mechanism for mitigating this risk contractually; now the market had opened it was clear that risks of this magnitude had never been envisaged at the time of the consultation. It said that the G3 group also indicated that if ECVNs were to be included then it would be the subject of a modification post go live and the respondent concluded that there was therefore some expectation that ECVNs might be included sooner or later. Two other respondents agreed with this view. They added that the industry now had the benefit of operational experience with systems and processes that had had the testing phase compressed and had been hurriedly implemented; it could be seen that the consequential penalty could be both extreme and grossly disproportionate; it was a manifestation of the high level of trading risk that Trading Parties faced and it was not conducive to the efficient operation of the BSC.

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Intent of the Balancing and Settlement Code

Six parties responded on this point. One said it did not believe it was the intent of the BSC to penalise a Party to the benefit of others because of a demonstrable error that could be corrected and which when corrected reflects more accurately what actually happened in practice. Another respondent made a similar point saying that it was not the purpose of the arrangements to be implemented in a manner which imposed a penal charge on a BSC party and grants other BSC parties a substantial and disproportionate benefit where there has been no physical imbalance on the England and Wales system and no costs or losses occurring to such other participants. A further respondent agreed with the points made above but in addition said that such gains and losses distort competition in the generation and supply of electricity and hence are contrary to the objectives of the BSC.

One respondent commented that whilst it noted that the intention of imbalance charges was that they should be reflective of costs on the system it was clear from an early stage that these charges could at times be high and that this risk pointed to the importance of individual parties ensuring that contract notifications were accurate. One said that the intent of the BSC was not limited to the physical aspects of balancing and that the principle of contract notification before gate closure was clear; any relaxation of this position opened the possibility of gaming. Another supported this view saying that the principles and mechanisms of the BSC were clear at go live.

Correct execution of the BSC

Five respondents commented on this point. Two agreed that the BSC had been executed correctly. One said that the error which ScottishPower was seeking to redress was and should be outside the scope of the BSC and that in this instance the central systems and processes had functioned as intended. Another agreed that the circumstances described by the Proposer were out of scope.

One, whilst not challenging the principles of the BSC and agreeing that, in this instance the Code was applied correctly, called into question the current application of the Code in pursuit of the principle of ensuring correct and accurate representation of Settlement between BSC Parties that reflect costs incurred. One respondent, whilst not disputing the correct execution of the current BSC said that it was its belief that the current BSC did not fulfil its principles of promoting accurate and cost reflective settlement between parties by not allowing errors whose real intent can be supported by evidence to be corrected.

A further respondent said that it did not believe that the circumstances described in the modification proposal were outside the scope of the BSC and referred to the October consultation which it said expressly envisaged that a modification might be introduced covering manifest errors in the notification of energy contract volumes; the arguments regarding the effect of volume notification errors must be addressed in order to avoid the discrimination and distortion of competition which would otherwise arise.

Separation of Production and Consumption Accounts

Six respondents commented on this issue. One party said that it accepted the arguments regarding the benefits to competition of maintaining separate production and consumption accounts. The proposal was consistent with such separation; no benefit should arise here by vertical integration. It said that modification P9 related specifically to the circumstances of an intra-group volume notification because this type of notification had

some unique features including that no other party was affected by an erroneous notification so that correction of such errors had no adverse consequences for third parties; there was no counterparty to detect the fault, nor could the counterparty submit the notification in the event of system failure and there was a propensity for some types of fault to affect member companies of the same group disproportionately. (It described the effect of the fault in its response.)

One respondent said there should be no change to the arrangement. Another respondent said that this issue was debated at great length prior to go-live and it felt that this was a separate issue from the one under consideration. Another said that it agreed that the principle of separate accounts was not being challenged by this proposal but that it would be supportive in the event that the Authority felt that any provisions for the remedy of manifest errors in Contract Notification should apply on a wider basis than in the context of inter-group trades put forward in this proposal.

One party said that all participants wishing to trade between production and consumption accounts should have been aware of the potential magnitude of the risks associated with incorrect contract notification and that other parties may have incurred significant expenditure in developing systems with that in mind. If the systems failed then the problem lay with the software and not within the BSC rules and any affected participant should then seek redress from its software supplier.

Another party said that the proposal may consider the error in notifying contract quantities between production and consumption account to be "self evident" however, selling energy from a consumption account and buying energy into a production account is feasible under the current trading arrangements and as the market becomes more sophisticated and trading volumes increase such actions are likely to become increasingly common place. What may be considered self evidently an error now, may well become a normal trading practice in future. It believed that implementation of this proposal would set dangerous precedents, especially if such precedents were used to judge future claims.

Ex-Ante Notification of Contract Volumes

Ten respondents commented on this point. Two respondents, whilst not disputing the principle of ex-ante notification said that there were occasions when retrospective amendments to data will further the objective of a more accurate and cost reflective settlement calculation and should, in these circumstances, be allowed. A further respondent, supporting the proposed modification in principle, said that unless unambiguous circumstances were defined, allowing ex-post modification of ECVNs submissions opens the door to unofficial ex-post contract trading and a party could potentially modify its ECVNs submission (under the pretext of a no fault technical error) to reflect an ex-post contract trade; all loopholes in the BSC should be avoided if possible since they only serve to increase uncertainty and reduce efficiency and effectiveness of the market.

One respondent argued that the issue had been debated at great length prior to go-live and was a separate issue to the one under consideration. Another said that, despite suffering as a result of erroneous notifications, contract notification should be definitive at gate closure (except if due to the failure of central systems). One respondent said that companies were well aware of the importance of ensuring contract notifications were made correctly and many invested time and resources appropriately. Another said that the principle of ex-ante notification should be maintained. Two other respondents agreed that gate closure should establish definitive physical notifications and contractual positions

for each Trading Party and allowing adjustments to ECVNs post gate closure would undermine this principle, creating uncertainty for the Grid Operator and other Parties.

Another respondent said it saw no reason at this time to permit ex-post notification of contract volumes and said that the proposal related to the ex-post correction of erroneous ex-ante notifications. The burden of proof and provision of evidence lay with the Party raising the claim.

Retrospective Modification

Eleven respondents commented on this point with four against retrospection. One respondent said that if it was apparent that a rule change would have led Trading Parties or NGC to act differently then there was an argument against the retrospective application of a rule change. However, in the case of manifest errors occurring in the notification of inter-group trades between Production and Consumption Accounts, it could not see how any other party would have acted differently hence it followed that retrospective application of the proposed modification should apply and was desirable.

One respondent recognised the normal presumption against retrospective amendments but believed that the distortion of competition caused by this fault was sufficient justification for this modification to be applied retrospectively from go-live in order to cover the entire period of operation of the BSC. Such retrospective application would remove the distortions which had been introduced into the competitive positions of the BSC Parties. No extra charges would be incurred by any Party and any clawback of funds from the residual cashflow reallocation cashflow would merely redress the earlier windfall gains which resulted from the error. It was not its intention that manifest error provisions should act as an alternative to the development of robust systems, rather as a safety net for a latent error arising at a later date.

Another respondent said that, on an on-going basis, it supported the concept of a time limit for raising requests for retrospective amendments as part of the framework that will need to be confirmed and that whether retrospective claims beyond this time limit should be allowed in the initial stages of market operation was a matter for debate but that whatever was decided must apply equally to any claim from any Party.

One respondent said that failure to correct obvious errors in notification process and mechanics when clear evidentiary support existed to do so compounded the original error. BSC signatories and the markets benefited alike from increased integrity in the notification process whenever corrected; on this basis it strongly supported retrospective implementation to and before the date Modification P9 was submitted.

One respondent agreed with the view of some of the Modification Group that retrospective intervention is inefficient in a market in particular due to the impact of uncertainty on the crucial trading liquidity. Another said that to allow retrospective implementation of this proposal would introduce regulatory uncertainty as funds had already flowed on the basis of the rules as they stand. Another respondent said that the behaviour of Parties in a number of respects had been determined by the provisions of the BSC as set out before go live and retrospective behaviour would invalidate the basis for such behaviour. One respondent said that it was not opposed to prompt correction of data under controlled circumstances, for example the procedure agreed for ECVAA failures, however errors discovered as late as first settlement stage should not be allowed and in this case the change should not be applied retrospectively.

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Another respondent said that whilst it recognised that there were asymmetrical allowances for retrospective changes to data, in that central systems were able to make such changes, it believed that this was entirely appropriate. Errors by participants, whether manual or technical, were wholly within the control of participants and prudent participants could fully check all reports and have contingency systems and internal checks in place should their main systems not be performing adequately in order to mitigate the risk of providing erroneous data to the central systems. Technical errors were entirely an issue for participants and their software providers.

Impact on the Party Making the Erroneous Notification

Nine respondents addressed this specific point. Three parties agreed with the Modification Group that the significance of the impact on the originating Party was determined not just by the absolute size of the payment, but also by its size in relation to size of the Party. One of the three said that any manifest error provisions would need to assess the impact relative to, for instance, the party's credit cover requirements and the scale of its activity in the market. Another said that the impact on the Party making the erroneous notification was disproportionate to the consequences of the error. It said that in the case cited by ScottishPower there was no physical imbalance and therefore no additional cost to the balancing mechanism. The Party was therefore acting in a manner encouraged by the BSC and in fact it could be argued that in doing so prevented the imbalance charges being higher than they were. The high, volatile and wide differential of Balancing Market prices to which the Party has not contributed and over which he had no control then forms the basis on which the Party is penalised; the purpose of balance payments was to encourage Parties to be in balance, not to penalise Parties for unrelated errors.

Others took a different view. One said that reports issued by ECVAA should allow parties to spot any discrepancies and to make changes prior to gate closure. The onus was on participants to check eg the 7-day report; if parties chose not to undertake this validation then they faced exposure to imbalance charges should errors occur. Another said that the principle of parties being responsible for their own data was central to the new arrangements and the proposed modification ran the risk of discriminating in favour of those with inadequate systems. Three respondents agreed that it was correct that the consequences of an error introduced by a Party Agent should be borne by the Party.

Impact on Other Parties

Eight respondents commented specifically on this area. One respondent said that the view that other parties would have based their strategies on the BSC as it stands was not sustainable. It argued that no-one had predicted the level of prices and the volatility of the market in its early stages of operation, and to claim that the results of errors of this kind formed part of a trading strategy was not credible. Other parties had benefited from the windfalls associated with the re-distribution of the high charges collected but as they did not incur any costs there was no entitlement to these amounts. BSC Parties were fully familiar with the concept of Initial Settlement and Reconciliation and redistribution of cashflows following correction and submission of additional data. Another party endorsed the view about familiarity with uncertainty about the firmness of payments.

Another respondent said that the only example it had heard in support of the argument that people would have acted differently had the provisions of the proposed modification been built in to the BSC was that some Parties might have built their systems to less

exacting standards. It thought that this argument was rather weak. In response to the view that Parties might have drawn conclusions from the Total System Residual Cashflow (TSRC) sums that would have impacted on their trading strategy it said that no explanation had been offered as to how strategy might change and that it believed that Parties would have recognised that the payments were excessive, were possibly incorrect and were not a reliable guide to the future level of such payments. Another respondent endorsed this view adding that it had invested heavily in order to mitigate the perceived risks surrounding the new market arrangements but believed that experience had demonstrated that the consequences of volume notification errors were significantly greater than was generally expected by the industry. In any event all parties were aware that the BSC might be amended post go live and the possibility of a modification of considerably broader scope than that now being proposed was expressly envisaged in the October 2000 consultation. The serious distortions caused by these errors outweighed any supposed disbenefit from the hypothetical possibility that the investment or trading strategies of some parties might be affected by this change.

One respondent said that others would be impacted at the first settlement if not before depending on the error. If any change was to be allowed it must be done promptly and satisfy strict criteria.

Other respondents took a different view with one saying that the error described in the proposal had had no impact on the market prices or the efficiency of the market. The result of such errors may well be a redistribution of moneys between market participants and you could argue that this redistribution provided the correct market driver on participants to provide accurate notifications and robust systems. It was certainly difficult to conclude that prices to customers would be affected.

One respondent said that the error appeared to be an internal transaction, which was entirely the responsibility of that company. Whether the fault was a so called “no fault technical error” or indeed a direct error resulting from manual data entry made no difference. Parties have, to a greater or lesser extent, invested in systems and procedures and agreed contracts with system providers in the full knowledge of the potential risks involved. In its view it would not be appropriate for more prudent players to have to make allowances for those who had unfortunately made errors (irrespective of the magnitude of those errors). This view was shared by a number of other respondents.

Another said that there were two clear undesirable impacts of (this particular) error on other parties. First, parties invested heavily in systems and other resources prior to go-live in recognition of the importance of accurate notifications. It said that there was no justification for parties that were inadequately prepared receiving preferential treatment. This view was supported by another respondent. Second the impact of erroneous notifications on settlement values was already influencing parties’ further investment decisions and longer term contract negotiations. Another respondent noted that Parties would have taken actions and incurred expenditure based on the BSC as it stands, and would now need to modify these if a change were to be contemplated. Further, there would be the direct implication that payments through the Total System Residual Cashflow mechanism would be subject to retrospective revision – this would create significant market uncertainty.

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Impact on Notifications Close to Gate Closure

Eight respondents expressed views explicitly on this point. One party said that without a facility to correct erroneous ECVNs then it would argue that there would be a tendency for operations to be managed in a way which focused on minimising the risk of notification error rather than the pursuit of best possible physical balance. This would run counter to the spirit of the BSC and would serve to reduce the efficiency of the new trading arrangements. This view was endorsed by another respondent who said that mitigation of the risk to the notifying party without increasing the costs or risks faced by other parties must be of overall benefit to the market.

One respondent recognised that the risks inherent in short notice notifications were a concern for the market but argued that these were being addressed elsewhere, both in other modifications and in market initiatives to address the risks via a contractual route. Another said that it had always been clear that it was important to have robust arrangements for contract notification, especially if a company was intending to notify close to gate closure. To suggest that this modification could have an impact on this was to accept that the whole process would become subject to frequent revision and ongoing uncertainty. Another respondent said it believed it was possible to put in place adequate risk management measures to mitigate the risk of contract notification close to gate closure. Three others said that allowing adjustments to ECVNs post gate closure would undermine the principle that gate closure should establish definitive physical notifications and contractual positions for each Trading Party and would create yet another market uncertainty.

Mechanisms for Parties to Correct Errors

Fourteen respondents expressed views on this point. One said that failing to correct obvious errors in notification processes and mechanics when clear evidentiary support existed to do so compounded the original error. BSC signatories and the markets benefited alike from increased integrity in the modification processes whenever corrected. Two respondents agreed that there should be symmetry of treatment in the facilities to remedy errors arising in both central Agents and Party Agents with one saying that it was inequitable that in a BSC that relied on data submitted by both BSC Party Agents and NETA Central Agents for correct calculation of settlement that errors in data submitted by Party Agents could not be considered for amendment. It said that the mechanism would need to be able to distinguish between genuine errors and scurrilous gaming. A further respondent supported the view that the market arrangements were asymmetrical regarding the correction of manifest errors. It said there were two asymmetries; first, the BSC agents could correct manifest errors whilst party agents could not (and the argument that failures by the actions of BSC agents would affect all parties but failures by party agents only affected one party ignored the distortionary effects of the transfer of funds from the affected party to all other parties following an erroneous notification by a party agent). Second, that manifest errors in the post gate closure market could be corrected but those in the pre gate closure market, if discovered post gate closure, could not.

One respondent said that ECVN should be allowed to be treated in the same way as Manifest Errors (see justification above).

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Others disagreed with the views expressed above. One respondent said that there was justification for BSC Agents' errors being treated differently from parties' errors. Another respondent expressed particular concern about the precedent that could be set should this modification be implemented. It did not believe that changes should be made to the Code in order to offset the risks associated with participants' internal software failures. It said that it was incumbent on parties to provide their own risk management of internal systems, whether through contingency plans or the use of third party agents. Errors within central systems were entirely beyond the control of participants and were likely to have an effect on all participants. Errors by participants, whether manual or technical, were wholly within the control of participants. A reasonable and prudent participant may fully check all reports and have contingency arrangements and checks in place should their main systems not be performing in adequately in order to mitigate the risk of providing erroneous data to the central systems. Technical errors were entirely an issue for participants and their software providers. This view was supported by a number of other participants, one of whom pointed out that it had committed substantial resources to testing which undoubtedly compromised its normal business activities but ensured successful entry into NETA. Another said that participants had made commercial decisions on the degree of investment in their trading systems and the consequences of this investment should be borne by the participant; allowing the correction of errors would not incentivise participants to develop and test robust systems for contract notification. Instead it would allow participants to use inadequate systems safe in the knowledge that failures in notification could be corrected after the event.

One respondent argued that making accurate contract notification was a risk associated with taking on the Energy Contract Volume Notification Agent role and that those who felt unable to take on the risk themselves could take advantage of the BSC provision for parties to appoint a third party ECVNA. Appointing third parties would mitigate the original party's risk of errors and compensation terms for any failure by the third party ECVNA would be within the agreement between the party and his agent.

One respondent said that the onus was on parties to check reports issued by the ECVAA and to make changes prior to gate closure. If parties chose not to undertake any validation then they faced exposure to imbalance charges should errors occur.

One respondent said that it was difficult to draw a logical demarcation line between different forms of error. In practice it was probably only realistic to allow an appeals process for all forms of notification error outside the central systems, whether these were inter or intra-company, technical or manual. It understood that such a broadening of the scope of the proposal may be supported by some BSC participants. In practice such a wide scope could open the floodgates for all sorts of spurious claims. If the BSC Panel became the appeals body for such claims they would be faced with making judgements, which could easily be open to legal challenge especially if different rulings on ostensibly similar cases were made. The scope for such challenge was potentially huge compared to the limited scope of the current BSC manifest error provisions. This would potentially place the BSC Panel in a very difficult position.

Temporary or Enduring Provision

Six respondents commented explicitly on this. Two agreed that there was clearly a greater risk of errors occurring at and immediately after go live. However one argued that this justified a temporary or market start up provision in addition to an enduring

arrangement given that there would always be a risk, especially for new entrants. The other said that the time for a temporary arrangement had now passed but that if there was a case for a procedure to correct errors then it should endure. Two respondents said that the provisions ought to be provided on an enduring basis with one of the two suggesting that a compromise solution would be one that recognises the early difficulties of the market and provides for a reasonable period in which claims to rectify errors could be raised; this might follow the precedent set in ELEXON Circular EL00009 for temporary relaxation of Disputes Criteria and the timescales for raising a manifest error claim for erroneous ECVN during the first three months should be extended to allow for difficulties that Parties might have in interpreting the available data. It proposed that in the first three months there should be no time limits imposed but that once systems and processes have settled in to a steady state then the allowed period should be relatively short. It suggested that there may be a benefit in extending a similar regime to new Parties, allowing a more generous window for their first three months and shorter thereafter.

Another respondent agreed that it might be expected that the risk of faults occurring in systems was higher during the initial period of the market and would reduce over time; the BSC was implemented with a tight timescale against a fixed go live date and participants generally supported the go live decision in order to deliver the benefits of the new arrangements for customers. Provisions for rectification of errors for a limited period from market go live might be sufficient in these circumstances. However, the risk of latent faults remaining after systems have been modified and tested will always be present, and new entrants to the market would also be faced with the risk that there were some residual errors in their new systems. It was of the view that the arrangements should be enduring but with a strict time limit after which no claim would be accepted.

A further respondent said that it did not support the change but if it were to be considered it should not be enduring.

Metered Volume Reallocation Notifications

Five respondents commented on this point. All endorsed MVRNs being accorded treatment consistent with ECVNs.

Treatment as a Manifest Error

Twelve respondents expressed views on this issue. One said that it believed the provisions covering manifest error needed to be addressed. It referred to the DTI/Ofgem consultation document which said that BSC Parties would be free to make a modification proposal post go live to address this issue should they wish. It said that it regarded P9 as being a specific proposal to deal with a particular incident which would, under a general manifest error provision, be submitted to capable of submission to the Trading Disputes Committee. It believed that the introduction to the BSC of a general manifest error provision to cover volume notifications would enable the BSC to better meet the objectives of the BSC, specifically be promoting efficiency in the generation and supply of electricity and promoting efficiency in the implementation and administration of the balancing and settlement arrangements. However it would not wish the debate surrounding a general provision to delay or jeopardise the urgency with which P9 was being treated by ELEXON and the Authority.

One respondent said that the intention of the ScottishPower proposal would be better implemented through a more general manifest error provision; it had some difficulty with the concept of “no fault” error since it was arguable with hindsight that the affected

Parties could have taken further actions to avoid or mitigate risk. Four respondents explicitly supported the expansion of the scope of the manifest error provisions in the Code to include erroneous notifications. One of the four stated that the most important provision should be that each case be treated on its merit and that the burden of proof of intent should be on the Party submitting the claim for retrospective amendment. In addition this respondent said that the correction should only be accepted if it was judged more equitable for the ECVN to be corrected than not. Another said that a tightly specified extension of the scope of Manifest Errors would be likely to provide the most efficient mechanism for dealing with erroneous notifications. Another said that if there was a case for a procedure to correct errors then it should not be part of the day to day contract notification process. It added that by making it a Manifest Error then this should signal that this was an infrequently trod path for which strict criteria would need to be satisfied.

Another respondent said that it did not agree with the view that the appropriate way to deal with erroneous notifications was through the expansion of the scope of the existing provisions for Manifest Errors. One respondent disagreed with this but set out its reservations in detail in the context of the ability to identify 'no fault technical errors'; its views are set out in the section dealing with technical errors. One respondent said that the present provisions for accepted bids and offers was common practice to allow for continuous trading; it was unnecessary to impose this additional risk upon the central system and also upon market participants who would be exposed to additional costs. One respondent said that it had yet to see any compelling arguments (save for some of the issues on ex post notifications discussed in the P1 Modifications Group) to indicate the scope of BSC manifest error provisions should extend beyond the central systems. It said that what could be reasonably defined as a manifest error was considered in detail in the DTI/Ofgem consultations prior to go live. It wished to draw the Panel and the Authority's attention to two recent decisions on manifest errors made by Ofgem under the gas Network Code; both proposals (one of which was not dissimilar to the effect of the P9 proposal) were rejected.

The consultation document identified four points of principle which the Modification Proposal raised. These were:

(i) Should contract notification be definitive at Gate Closure, or should provisions be made for (gross) errors to be corrected.

(ii) If correction of errors in contract notifications is permitted post Gate Closure, does this dilute incentives on Parties and their Agents to submit correct data for settlement?

(iii) If supported, should the change be permitted retrospectively; from when the modification was raised, or from when implemented?

(iv) If supported, should the change be made enduring for all parties, available to all parties but only for a limited duration (from Go-Live), or applied only to new entrants for a limited duration.

Nine respondents addressed (i) above explicitly (see also, responses to Notification close to gate closure above). One respondent said it believed that the imbalance settlement arrangements require the actual contract position to be definitive at gate closure, but that corrections to the notified contract position should be possible after gate closure where supported by appropriate auditable evidence of the pre gate closure position. Another respondent agreed with this principle stating that unless unambiguous circumstances were

defined, allowing ex-post modification of ECVNs submissions opened the door to unofficial ex-post contract notification. One respondent said it believed that the objectives of the BSC would be better satisfied by inclusion of a facility to remedy ECVN errors after gate closure.

One respondent observed that an underlying principle of the whole set of NETA reforms was for parties to take active responsibility for contracting against their physical position. It noted that in an ideal world, there was no justification for the involvement of Central Agencies, ELEXON or Ofgem, in this part of the market. An integral part of this responsibility was the requirement to back up this contracting with accurate notifications. Five others said that contract notification should be definitive at gate closure with two arguing that the consequences of an error introduced by a Party Agent should be borne by the Party and stating that incentives inherent in the design and development of the imbalance regime encouraged Parties to submit correct notification and that the changes proposed would fundamentally weaken those incentives to the detriment of the design.

A further respondent supported definitive gate closure and went on to qualify this by reference to exceptions in the case of central systems failure. A further respondent agreed with these points adding that it had yet to see any compelling arguments (save for some of the issues on ex post notifications discussed in the P1 Modifications Group) to indicate that the scope of BSC manifest error provisions should extend beyond central systems.

In response to (ii) one respondent said that correction of notification errors, even under tightly specified circumstances, ran the risk of creeping dilution of incentives on parties to ensure correct data is submitted.

One respondent said that post-gate closure contract notification of errors in contract notification would clearly dilute the incentives and should not be allowed. Another respondent said that allowing post event contract notification reduced confidence in the TSRC payments and created yet another market uncertainty.

One respondent said that with the benefit of hindsight the working assumption that the risk of erroneous and failed contract notifications could be offset was mistaken and that the costs associated with these risks would have to be recovered from customers; new entrants might see these costs as barriers to entry. Allowing the modification would enable the risks of making a genuine error to be mitigated, leading to more stability and predictable operation of the market and lower costs to customers. This respondent said that if the Modification were approved it would make a submission to correct an ECVN made in respect of 5 April 2001.

Another respondent said that the incentives to submit correct contract data would remain strong; time limiting the facility for the correction of errors would provide a good incentive and it anticipated that Parties would only be able to avail themselves of the facility for error correction in exceptional circumstances and to learn lessons from any such event to prevent recurrence. A further respondent agreed that the correction of errors after gate closure would not dilute the incentives on parties and their agents to submit correct data for settlement. Since the only errors which would be corrected were those which were outside the control of the affected party, the modification could have no impact on the conduct of parties in submitting data. In the absence of the ability to correct, the consequences would serve as distortions of competition due to the magnitude of the unjustifiable imbalance payments which were reallocated to other parties; this effect may militate against the benefits that a reduced gate closure time is expected to deliver. The issue which the proposer wished to support was that correct data had been inputted to its

own systems for settlement purposes but the outturn of that data had been corrupted by a software error – it was the corruption of that data which it wished to correct and not the concept that correct data should be submitted. A further respondent said that allowing post event contract notification reduces confidence in Total System Residual Cashflow payments and creates yet another market uncertainty.

Two other respondents believed that the incentives associated with the imbalance regime were inherent to the design, to the way in which the regime had been developed, and encouraged Parties to submit accurate notifications; they believed that the changes proposed by this modification would fundamentally weaken the incentives on Parties to the detriment of the regime.

Eleven respondents explicitly addressed the issue of retrospection (iii above). Seven respondents supported some form of retrospection. Two supported retrospective implementation to and before the date P9 was submitted/served. One respondent said that, given the circumstances of market start up it strongly believed that only retrospective application back to the start of the market would be acceptable. A further respondent endorsed that position saying that circumstances had demonstrated a fundamental flaw in the market arrangements and anything less than a retrospective modification covering notifications made prior to the date of the proposal's submission would have no effect in respect of the error which prompted the proposal to be made.

Four respondents opposed the principle with one respondent arguing that inconsistent treatment of erroneous notifications, in particular a temporary application of a solution for a 'bedding in' period, ran some risk of discriminating in favour of incumbents over new entrants. Two respondents said that to allow retrospective implementation of this modification proposal would introduce regulatory risk to all market participants with one stating that there would be regulatory uncertainty as funds had already flowed on the basis of the rules as they already stand and third saying that post gate closure correction of errors would clearly dilute incentives and should not take place. Another said that if the BSC was changed then the changes should not be applied retrospectively.

On the principle of whether changes should be limited in duration or permanent and available to all or some parties (see (iv) above) one respondent commented that Central Agencies' accurate and timely reporting of notified positions is inextricably linked with parties' ability to take responsibility for their own notifications. It said that in most feasible circumstances of erroneous notification, the combination of parties' adequate systems and Central Agencies' accurate and timely reporting of notified positions should enable errors to be corrected before Gate Closure. Another respondent said that it did not support the change but if it were to be considered then it should not be enduring. One party said that it did not support the proposal on either a temporary or enduring basis. A further respondent said that the changes should be made enduring for all parties. Other relevant comments were made in relation to the sub section on 'Temporary or Enduring Provisions' above.

A number of additional points were made in the responses.

Technical error

One respondent said that the proposal was not intended to be a general manifest error proposal; the cause of the notification error was defined as a "no fault technical error in the software" to distinguish it from, for example, operator error. It believed that with the limited testing which was available prior to go live, the difficulties with settlement data

flows (which contributed to the failure to detect the fault), and having taken the precaution of purchasing the notification systems and software from a reputable contractor, ScottishPower had a strong case for the implementation of the proposed modification and the recovery of the excess imbalance payments which had been made.

One respondent took the view that there was no such thing as a "no fault technical error". It noted that there would be circumstances when suppliers let companies down, when testing was not rigorous enough and when business controls and procedures were weak. In these circumstances ScottishPower should take responsibility.

One party said that there was an inherent difficulty in assessing what a "no fault technical error in the software" might be and asked who would decide whether or not a submission had resulted from a technical error, and indeed whether the participant was at fault or not.

One respondent said that defining the conditions of a no fault technical error would be difficult. To ensure that the claim had been made as a result of a true fault and that the facility was not being abused for commercial reasons would involve expensive and lengthy independent audits of commercially sensitive areas of the participant's trading operations. It asked who would bear the cost of such investigations. It suggested that to prevent recurring faults undertakings would need to be made by the affected Party that the fault would be corrected by a reasonable guaranteed date and the Panel would need to provide guidance on how far removed a fault had to be from any earlier one for them to be considered to be different and for a separate claim to be allowed. It therefore recommended that if the modification were to go ahead a fee should be introduced to discourage inappropriate claims and that submission of claims be time limited to one working day following receipt of the ECVAA I014 notification report which details the previous day's actual notifications. A second respondent supported the concept of imposing a charge and suggested that this should be either the greater of £2,500 or the actual costs incurred by BSC Parties to correct the error.

Consequences of errors and management of risks

One party said that the consequences of notification error (technical or manifest) under NETA rarely if ever related to the cost, type or scope of the error, the culpability of the ECVNA, or any other known variable and consequently no known statistical risk analysis tool exists to capture the amount of capital risk under NETA. If companies cannot mitigate or calculate trading risk responsible, ethical companies will not trade or invest in that market and that market will become illiquid. Illiquid markets will ultimately reduce market competition, a result inconsistent with the laws of the United Kingdom.

One respondent said that it did not support the view that the risks could have been anticipated and therefore mitigated or that reporting is adequate. The fact that additional contractual position reporting is currently being pursued demonstrated that current reporting was considered to be less than sufficient.

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ANNEX 2.4 Responses to ELEXON Consultation on P9

P9_Def_001 – TXU Europe Energy Trading

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Gareth Forrester
Modifications Manager
Elexon Ltd
3rd Floor
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London, NW1 3DX

14 May 2001
Dear Gareth

Urgent Modification Proposal P9: Correction of Technical Error In Respect of the Energy Contract Volume Notifications Under Section P.2.3 and Adjustment of Settlement Data Under Section U.2.5

Thank you for the opportunity to comment on the above Urgent Modification Proposal. TXU Europe Energy Trading Ltd. would like to make the following comments on behalf of all TXU Europe companies.

TXU oppose implementation of this modification proposal. We do not believe that it will better facilitate the relevant BSC objectives. It is not apparent how the implementation of this modification would better promote effective competition in the generation and supply of electricity or competition in the sale and purchase of electricity.

We are particularly concerned with the precedent that could be set should this modification be implemented. We do not believe that changes should be made to the Balancing and Settlement Code in order to offset the risks associated with participants' internal software failures. It is incumbent on participants to provide their own risk management of internal systems, whether through contingency plans or the use of third party agents.

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Whilst we recognise that there are asymetrical allowances for retrospective changes to data, in that central systems are able to make such changes, we believe that this is entirely appropriate. Errors occurring within the central systems are entirely beyond the control of participants and are likely to have an effect on all participants. However, errors by participants, whether manual or technical are wholly within the control of participants. For example, a reasonable and prudent participant may fully check all reports and have contingency systems and internal checks in place should their main systems not be performing adequately in order to mitigate the risk of providing erroneous data to the central systems. Technical errors are entirely an issue for participants and their software providers.

Making accurate contract notifications is a risk associated with taking on the Energy Contract Volume Notification Agent role. Where parties feel that they are unable to take on that risk, either for notification of bilateral trades or trades between production and consumption accounts, then the BSC allows them to appoint a third party ECVNA. Appointing a third party ECVNA would mitigate a party's risk of making inaccurate notifications or failure to make notifications, and compensation terms for any failure by the third party ECVNA would be within the agreement.

Further to the ability to appoint a third party, reports issued by ECVAA should allow parties to spot any discrepancies and to make changes prior to gate closure. Data that is submitted to ECVAA and therefore any subsequent reporting would contain any such erroneous submissions as specified in the modification proposal. It is for parties to check such reports. For example in this instance the 7-day report would have detailed the size and nature of the trade between the production and consumption accounts. The onus is on participants not only to check that the data in the 7-day report matches what was sent by the participants' systems, but also that the volumes notified are correct. If parties choose not to undertake this validation then they face exposure to imbalance charges should errors occur.

All participants wishing to trade between production and consumption accounts should have been aware of the potential magnitude of the risk associated with failure to make such contract notifications accurately, and parties may have developed their systems (both primary and contingency) with that in mind, and incurred significant expenditure in doing so. If those systems then fail, the problem lies within the software and not within the BSC rules, therefore parties affected by such problems should seek redress from their software suppliers.

Furthermore there is an inherent difficulty in assessing what exactly a "no fault technical error in the software" is. Who will decide whether or not a submission has resulted from a technical error, and indeed whether the participant is at fault or not?

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TXU also believe that to allow retrospective implementation of this modification proposal would introduce regulatory uncertainty as funds have already flowed on the basis of the rules as they stand.

TXU do not support this modification proposal. We hope you have found our comments useful and should you wish to discuss any aspect of this reponse further please do not hesitate to contact me.

Yours sincerely

Nicola Lea
Market Development Analyst

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P9_Def_002 - Innogy

Consultation on Modification P9

Innogy View

As requested in the Modification Report for Modification P9, Innogy is pleased to have the opportunity to respond to the issues and points of principle raised in the Report.

Issues

1. Previous Consideration of the Issue

Innogy would agree with the view that nothing had changed to challenge the conclusions reached in earlier considerations of erroneous notifications, including the work of G3.

2. Intent of the BSC

Whilst Innogy would endorse the intention of imbalance charges to be reflective of costs on the system, it was clear from an early stage that these charges could at times be penal, and this risk pointed up the importance of accurate contract notifications.

3. Correct Execution of the BSC

Parties' internal notification systems are outside the scope of the BSC, and there seems little doubt that central systems and processes functioned as intended in the particular circumstances described by the proposer.

4. Separation of Production and Consumption Accounts

This issue was debated at great length prior to Go-Live, and Innogy feels it is an issue separate from the one under consideration.

5. Ex-Ante Notification of Contract Volumes

This issue was debated at great length prior to Go-Live, and Innogy feels it is an issue separate from the one under consideration.

6. Retrospective Modification

Innogy would agree with the arguments that retrospective regulatory intervention is inefficient in a market, in particular due to the impact of uncertainty on the crucial trading liquidity.

7. Impact on the Party Making the Erroneous Notification

No comments.

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8. Impact on Other Parties

There are two clear undesirable impacts on other parties. Firstly, parties invested heavily in systems and other resources prior to Go-Live, in recognition of the importance of accurate notifications. There is no justification for parties that were inadequately prepared receiving preferential treatment. Secondly, the impact of erroneous notifications on settlement values is already influencing parties' further investment decisions and longer term contract negotiations.

9. Impact on Notifications Close to Gate Closure

The risks inherent in short notice notifications are a source of concern for the market, in particular due to the impact on liquidity. However Innogy feels that this aspect is being addressed elsewhere, both in other modifications and in market initiatives to apportion the risks via a contractual route.

10. Mechanisms for Parties to Correct Errors

Innogy would agree with view that there is justification for BSC Agents' errors being treated differently from parties' errors.

11. Temporary or Enduring Provision

No comments

12. Metered Volume Reallocation Notifications

Innogy would endorse MVRNs being accorded treatment consistent with ECVNs.

13. Treatment as a Manifest Error

Innogy would agree that a tightly specified extension of the scope of Manifest Errors would be likely to provide the most efficient mechanism for dealing with erroneous notifications.

Points of Principle

Innogy would like to make observations in four areas on Points of Principle.

1. An underlying principle of the whole set of NETA reforms was for parties to take active responsibility for contracting against their physical position. An integral part of this responsibility is the requirement to back up this contracting with accurate notifications. In an ideal world, there is no justification for the involvement of Central Agencies, Elexon or OFGEM, in this part of the market.

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2. Correction of notification errors, even under tightly specified circumstances, runs the risk of creeping dilution of incentives on parties to ensure correct data is submitted.

3. Inconsistent treatment of erroneous notifications, in particular a temporary application of a solution for a 'bedding in' period, runs some risk of discriminating in favour of incumbents over new entrants.

4. Central Agencies' accurate and timely reporting of notified positions is inextricably linked with parties' ability to take responsibility for their own notifications. In most feasible circumstances of erroneous notification, the combination of parties' adequate systems and Central Agencies' accurate and timely reporting of notified positions should enable errors to be corrected before Gate Closure.

Innogy Summary

On balance, Innogy does not support the modification as proposed. The principle of parties being responsible for their own data is central to the new arrangements, and we are concerned that the proposed modification runs the risk of discriminating in favour of those with inadequate systems.

P9_Def_003 – Seeboard

From: Fraser, Sue[SMTP:SFraser@seeboard.com]
Sent: 16 May 2001 15:56
To: 'modifications@elexon.co.uk'
Subject: P9 Modification Report Comments - SEEBOARD's response

In general, Seeboard feels that to make this modification retrospective and thereby set a president for retrospectivity would greatly increase the regulatory risk to all market participants and is something that we would oppose.

However, our comments on this particular proposal are as follows:-

1) "no fault technical error"

Seeboard takes the view that there is no such thing as a "no fault technical error". Undoubtedly there are circumstances when suppliers let companies down, when testing is not rigorous enough and when business procedures and controls are weak. Where events lead to this kind of situation Scottish Power must take responsibility for what can only be a lack of thorough testing compounded by weak controls (e.g. incorrect contract volumes should have been detected at "day after" and Initial Interim Settlement stage). It should be noted that we, and I am sure most others, committed substantial resources to testing which undoubted

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compromised our normal business activities but ensured successful entry into NETA.

2) Justification for the Proposed Modification

Efficiency in the implementation and administration of the balancing and settlement arrangements is a commendable aim. Unlimited opportunity to correct mistakes would not achieve this objective. Time limited (issue raised within 72 hours) mistake correction when strict criteria have been met could bring improvement. Any change to the BSC should not reward slack business controls that do not detect an error within a short period such as the one suggested. The current proposal would need further development to be workable.

3) Previous Consideration of the Issue

No Comment

4) Intent of the BSC

The intent of the BSC is not limited to the physical aspects of balancing. The principle of contract notification before gate closure is clear, with any relaxation of this position opening the possibility of gaming. Companies were well aware of the importance of ensuring contract notifications were made correctly and many invested time and resources appropriately.

5) Correct Execution of the BSC

The BSC has been executed correctly

6) Separation of Production and Consumption Accounts and Ex-Ante Notification of Contract Volumes

Seeboard agrees with the unanimous modification group - there should be no change.

7) Retrospective Modification

Seeboard is not opposed to prompt correction of data under controlled circumstances e.g. the procedure agreed for ECVAA failures. Errors discovered as late as first settlement stage should not be allowed. See 2) above.

8) Impact on the Party Making the Erroneous Notification

Seeboard agrees with the unanimous modification group

9) Impact on Other Parties

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Other parties are definitely impacted the moment first settlement takes place and perhaps before, depending on the error. Again if any changes are to be allowed it must be done promptly and satisfy strict criteria. If this modification leads to a change in the BSC then it should not be applied retrospectively. The principle adopted regarding other changes should not be broken.

10) Impact on Notifications Close to Gate Closure

The importance of robust arrangements for contract notification, especially if a company was intending to notify close to gate closure, has always been clear. To suggest that this modification could have an impact on this is to accept that the whole process will become subject to frequent revision and ongoing uncertainty.

11) Mechanisms for Parties to Correct Errors

No further comment.

12) Temporary or Enduring Provision

There clearly was greatest risk at and immediately after go-live. The time for a temporary arrangement has now passed. If there is a case for a procedure to correct errors then it should endure.

13) Metered Volume Reallocation Notifications

Any changes for contract notifications should be mirrored for MVRN's. The issues are identical.

14) Treatment as a Manifest Error

If there is a case for a procedure to correct errors then it should not be part of the day to day contract notification process. By making it a Manifest Error this should signal that this is an infrequently trod path for which strict criteria would need to be satisfied.

Summary

There is no such thing as a "no fault technical error".

Any change to the BSC that might emerge from this proposal should follow strict criteria over short timescales.

If this modification leads to a change in the BSC then it should not be applied retrospectively.

Sue Fraser
for Dave Morton 0190 328 3465

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P4_Def_004 – British Energy

British Energy's Response to Modification Proposal P9
Correction of technical error in respect of energy contract volume notifications and adjustment of settlement data

British Energy having considered this proposed modification are opposed to it implementation. As a matter of principal the BSC should not be changed simply for the convenience of one or two parties who it would appear have problems with their own systems. Such a change we believe would need very careful monitoring if abuse is to be avoided. The BSC rules at go live were clear to all parties. The panel should reject this change. Our detailed comments are set out below:

Principal Matters Raised
British Energy (BE) believes no new BSC provisions are justified and that any changes would be unfair to those Parties that had successfully complied with the terms of the BSC as it stands.

Previous Consideration of the issue
The work undertaken by the G3 Group concluded that erroneous notifications should not be considered as manifest errors, we support the conclusions reached by this group.

Intent of the BSC
We support the counter view that the principals and mechanisms of the BSC were clear at go live.

Correct Execution of the BSC
We believe that the circumstances described by the Proposer are outside the scope of the BSC.

Ex-Ante notification of Contract Volumes
We believe that this principal should be maintained.

Retrospective Modification
We believe that the behaviour of Parties in a number of respects have been determined by the provisions of the BSC as set out before Go-live, and retrospective amendment would invalidate the basis for such behaviour.

Impact on Other Parties
We support the counter view that Parties would have taken actions and incurred expenditure based on the BSC as it stands, and would now need to modify these if such a change were to be contemplated. Further, there would be the direct implication that payments through the Total System Residual Cashflow mechanism, which are derived from imbalance charges, would be subject to retrospective revision. This would create significant market uncertainty.

Impact on Notifications Close to Gate closure

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We believe that it is possible to put in place adequate risk management measures to mitigate the risk of contract notification close to Gate Closure.

Treatment as a Manifest Error
We do not agree with the view that the appropriate way to deal with erroneous notifications is through the expansion of the scope of existing provisions for Manifest Errors.

Points Of Principal
We have the following comments on the points of principal:

I. Contract notification should be definitive at Gate Closure.

II. Post Gate Closure correction of errors in contract notification will clearly dilute incentives and should not take place.

III. We do not support this proposal but if such a change were to be contemplated we believe it should be made from the date implemented. We repeat our concern that such a change could be subject to abuse and would need very careful monitoring.

IV. We do not support this change but again if such a change were to be considered it should not be enduring.

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P9_Def_005 – Edison Mission

16 May 2001

Dear ELEXON

Comments on Modification P9

Summary

Edison Mission Energy has given careful consideration to this modification proposal to allow ex-post submission of ECVN's in the case of a no fault technical error. Having weighed up the pros and cons of the modification, on balance we do not support it. However, having suffered as a result of erroneous notifications, if the modification were to be approved, we would wish to make a retrospective claim.

General comments

Like many other participants, Edison Mission Energy has made substantial investments in risk management systems on the basis of the BSC. We recognise that it highly unlikely that any participant system could be so robust that software faults can be entirely avoided or so comprehensively tested such the effects of every combination of circumstances can be examined. However, participants have made commercial decisions on the degree of investment in their trading systems and the consequences of this investment should be borne by the participant. Allowing the correction of any errors will not incentivise participants to develop and test robust systems for contract notification. Instead, it will allow participants to use inadequate systems safe in the knowledge that failures in notification can be corrected after the event.

Like some other participants, Edison has suffered as a result of erroneous notifications. Despite this loss, we consider that contract notification should be definitive at gate closure (except if due to the failure of central systems). Allowing post event contract notifications reduces confidence in Total System Residual Cashflow payments and creates yet another market uncertainty.

As is recognised in this Modification Report, defining the conditions of a no fault technical error will be difficult. To ensure that the claim has been made as a result of a true fault and that the facility is not being abused for commercial reasons will involve expensive and lengthy independent audits of commercially sensitive areas of the participant's trading operations. Who will bear the costs of such investigations?

To prevent recurring faults, undertakings would need to be made by the affected Party that the fault will be corrected by a reasonable guaranteed date. The Panel will need to provide guidance on just how far removed a

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fault has to be from any earlier one for them to be considered to be different and for a separate claim to be

allowed. Again an audit will be required to establish the degree of difference. If this modification were to go ahead, we would therefore recommend the introduction of a fee similar to that for manifest errors to discourage inappropriate claims and would support the expansion of the scope of the manifest error provisions to deal with erroneous notifications. We would like to see the submission of any claims that occur as result of future notification failures to be time limited to one working day following the receipt of the ECVAA-I014 notification report which details the previous day's actual notifications.

Yours faithfully

Phil Edgington

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P9_Def_006 - Dynegy

Mr G Forrester
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16 May 2001

Dear Gareth,

Modification Proposal P09: Correction of Technical Error in Respect of the Energy Contract Volume Notifications (ECVNs) Under Section P.2.3 and Adjustment of Settlement Data Under Section U.2.5.

Dynegy do not support this modification that proposes changes to Section P.2.3 and U.2.5, to permit BSC parties to correct submission of ECVNs which are incorrect due to no fault technical errors.

Dynegy believe this proposal is unfairly favourable towards integrated players, who will be the sole beneficiaries of the modification. The proposed modification relates to trades between production and consumption energy accounts, in order to match off their trading positions against the physical flow. The error that arises is specific within the inter-company group trades and therefore benefits the vertically integrated players, who have numerous consumption and production accounts. These participants will be capable of reallocating their operational risks to central system through the implementation of changes to P.2.3 and U.2.5 of the BSC. Dynegy believe parties should remain liable for the consequences of such errors, where they are likely to be maintained through participants being exposed to imbalance prices.

Dynegy believe the present manifest error provision in the balancing mechanism available to parties and the transmission company for accepted bids and offers is common practice to allow for continuos trading. Dynegy believe it is unnecessary to impose this additional risk upon the central system and also upon market participants who will be exposed to additional costs due to erroneous errors created by physical participants transferring energy between accounts.

Dynegy also believe that the proposed modification does not meet the relevant objectives. The implementation of this modification would not incentivise participants to manage their operational risk when transferring energy from their own energy accounts, therefore reducing the efficiency within the market. By rejecting this modification parties would facilitate trading through ensuring proper in-house controls to provide correct energy submissions. The onus should remain upon parties to manage their own risk through being exposed to imbalance prices. By incentivising participants

to manage their own risk associated with the transfer of energy between their own energy accounts would also help NGC to efficiently discharge their licence obligations, by reducing the probability of erroneous errors and the cost base of the industry.

Yours sincerely
Lisa Waters
Senior Regulatory Analyst
cc: Nick Simpson - Ofgem

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P9_Def_007 – Axia Energy Europe Limited

16 May 2001
P9 Modification Report Comments

MODIFICATION PROPOSAL P9
Correction of Technical Error in Respect of the Energy Contract Volume Notifications under Section P 2.3 and Adjustment of Settlement Data under Section U 2.5

Axia Energy Europe Limited, the European marketing and trading arm of Entergy-Koch, LP (AEEL), seconds the comments of Entergy Wholesale Operations submitted by Dr Wedgbury on 16 May 2001 respecting this Modification Proposal. AEEL supports modification proposal P9, which permits correction of erroneous ECVNs (retrospectively or otherwise) due to a no fault technical error. However, AEEL likewise supports the expansion of the scope of the manifest error provisions in the BSC to include erroneous notifications, as recommended by the Modifications Group on 11 May. In addition, Axia would add respectfully the following points based on its experience since NETA Go-live:

* The consequences of notification error (technical or manifest) under NETA rarely if ever relate to the cost, type or scope of the error, the culpability of the ECVNA, or any other known variable; in other words the consequences of NETA notification error cannot be predicted and appear to be entirely random.
* Consequently, no known statistical risk analysis tool exists to capture the amount of capital at risk under NETA.
* If companies cannot mitigate or, in the case of NETA, calculate trading risk, responsible, ethical companies will not trade or invest in that market and the market will become illiquid.
* Illiquid markets will ultimately reduce market competition, a result inconsistent with the laws of the United Kingdom.

The lengthy list of modification proposals submitted since NETA Go-live belie the argument the industry was aware of the risks and mechanics of NETA at NETA Go-live. To fail to correct obvious errors in notification process and mechanics when clear evidentiary support exists to do so compounds the original error. BSC signatories and the markets benefit alike from increased integrity in the notification processes whenever corrected. Accordingly, AEEL strongly supports retrospective implementation to and before the date Modification Proposal P9 was submitted.

AEEL believes that BSC parties should have an incentive to submit correct data, and therefore would not oppose a charge conditional to correcting error of the greater of £2500 or the actual costs incurred by BSC Parties to correct the error.

/s/

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P9_Def_008 – Scottish & Southern

From: John Sykes[SMTP:John.Sykes@scottish-southern.co.uk]
Sent: 16 May 2001 16:50
To: Modifications@elexon.co.uk
Subject: P9 Modification Report Comments

COMMENTS ON P9 MODIFICATION

SCOTTISH AND SOUTHERN ENERGY plc

Summary
Scottish and Southern Energy (SSE) does not support the Modification P9 in the form submitted by Scottish Power, but does support the broader views put forward at the Modification Group that an error in Energy Contract Volume Notifications should be allowed to be treated in the same way as a Manifest Error, subject to the same rigours of proof afforded to other Manifest Errors.

In supporting this broader change, SE does not challenge the principles of the BSC, but calls into question the current application of the Code in pursuit of the principle of ensuring correct and accurate representation of Settlement between BSC Parties that reflect costs incurred. It agrees that in the case
cited by Scottish Power in their Modification Proposal, and in the other instances of similar occurences discussed at the Modifications Group, the BSC as it currently stands was applied correctly, and that in order to ensure that correct and accurate representation of Settlement between BSC Parties that reflect costs incurred can occur, a modification to the Code is required.

SSE believes that with the benefit of operational experience, the working assumption that the risk of erroneous and failed contract notifications could be offset is mistaken and that the costs associated with these risks will eventually have to be recovered from customers. New entrants to the market may see such risks as a barrier to entry. This modification would enable the risks of making a genuine error to be mitigated, leading to more stability and
predictable operation of the market and lower costs to customers.

SSE also declares that should the Modification be approved to allow ECVNs to be corrected, it will making a submission to correct an ECVN made in respect of 5 April 2001.

Previous Consideration of Issue
The G3 Group considered ECVNs in their consultation work, but decided to exclude them on the basis that there was a mechanism for mitigating this risk through contractual channels. Now that the market has opened, it is

clear that risks of this magnitude were never envisaged at the time of the consultation. The G3 Group also indicated that if ECVNs were to be included then it would be the
subject of a modification post Go Live. There was, therefore, some expectation
that ECVNs might need to be included sooner or later.

Intent of the BSC
SSE does not believe that it is the intent of the BSC to penalise a Party to the benefit of others because of an demonstrable error that can be corrected, and which when corrected reflects more accurately what actually happened in practice.

Correct Execution of the BSC
The correct execution of the current BSC is not disputed. However, it is our belief that the current BSC does not fulfil its principles of promoting accurate and cost reflective settlement between parties by not allowing errors whose real intent can be supported by evidence to be corrected.

Ex-Ante Notification of Contract Volumes
The principle of ex-ante notification is not disputed. However, there are occasions when retospective amendments to data will further the objective of a more accurate and cost reflective settlement calculation, and in these circumstances should be allowed.

Retrospective Modification
On an ongoing basis, SSE supports the concept of a time limit for raising requests for retospective amendments as part of the framework that will need to be confirmed. Whether retrospective claims beyond this time limit should be allowed in the initial stages of market operation is a matter for debate. However, whatever is decided must apply equally to any claim from any Party.

Impact on Party Making the Erroneous Notification
The impact on the Party making the erroneous notification is disproportionate to the consequences of the error. In the case cited by Scottish Power, as in the other two cases discussed at the Modification Group, there was no physical imbalance, and therefore no additional cost to the balancing mechanism. The Party was therefore, acting in a manner encouraged by the BSC, and in fact it could be argued that in doing so prevented the imbalance charges being higher
than they were. The high, volatile and wide differential of Balancing Market prices, to which the Party has not contributed and over which he has no control, then forms the basis on which the Party is penalised.

In addition it must be borne in mind what the purpose of balance payments is. They are to encourage Parties to be in balance, not to penalise Parties for unrelated errors.

Impact on Other Parties

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The view that other parties would have based their strategies and decisions on the BSC as it stands is not sustainable. No one had predicted the level of prices and the volatility of the market in its early stages of operation, and to claim that the results of errors of this kind formed part of a trading strategy is not credible. Other parties have benefitted from the windfalls asociated with the re-distribution of the high charges collected, but as they did not incur any costs there is no entitlement to these amounts. BSC Parties are fully familiar with the concept of Initial Settlement and Reconcilliation and redistribution of cashflows following correction and submission of additional data is not out of the ordinary.

Mechanisms for Parties to Correct Errors
Currently there is no mechanism whereby an error in data submitted by a BSC Party Agent can be considered for amendment. This is not the case for data submitted by NETA Central Agents, and in a Balancing and Settlement Code that relies on all these parties for the correct calculation of Settlement Cashflowsthis is inequitable.

The view expressed that errors by Central Agents affect all Parties whereas errors by Party Agents affect only the Party concerned is quite clearly not true for the kind of errors which the Modification is seeking to address.

The mechanism must be able to distinguish between genuine errors and scurrilous gaming. However, it would be inequitable not to have a mechanism for dealing with genuine errors where the intent was clear just because other claims of a less deserving nautre might be made.

Temporary or Enduring Provision
SSE's view is in a new market with supporting software developed relatively quickly, some errors are bound to be encountered no matter how much testing is carried out in advance. The Central Systems have encountered just such problems and so have Parties. The volatile market prices at the start ofthe market
exacerbate the situation. This justifies a temporary or "market start up" provision.

However, there will always be a risk, especially for new entrants, and it would be inequitable for new entrants not to be able to seek the same recourse. An enduring arrangement is, therefore, also appropriate.

SSE does not support the view that the actual risks that materialise could have been anticipated, and therefore mitigated, or that reporting is adequate. No Party makes forseen errors, only unforseen ones. The fact that additional
contractual position reporting is currently being pursued demonstrates that current reporting is considered to be less than sufficient.

MVRNs

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There is no reason why an MVRN should not be afforded the same treatment as an ECVN, and be allowed to be considered for retrospective amendment, subject to
the same conditions of proof.

Treatment as Manifest Error
SSE believe that errors of this nature should qualify to be classed as Manifest Errors. The current arrangements for Manifest Errors contain the kind of framework into which ECVN errors ought to be considered. The exact framework will need to be worked up in due course.

However, the most important provisions are that each case should be treated on its merit, and that the burden of proof of intent is on the Party submitting the claim for retospective amendment.

The correction should also only be accepted if it is judged more equittable for the ECVN to be corrected than not.

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P9_Def_009 – Entergy Wholesale

16 May 2001

MODIFICATION PROPOSAL P9
Correction of Technical Error in Respect of the Energy Contract Volume Notifications under Section P 2.3 and Adjustment of Settlement Data under Section U 2.5

Entergy Wholesale Operations (EWO) supports modification proposal P9 to allow the correction of ECVNs (retrospectively or otherwise) which are erroneous due to a no fault technical error. However, EWO believes the circumstances of the modification are too tightly drawn and would, therefore, support the expansion of the scope of the manifest error provisions in the BSC to include erroneous notifications, as considered by the Modifications Group on 11 May.

EWO believes that NETA experiences to date demonstrate that the consequences of erroneous notifications are disproportionate. It is suggested that the early NETA experiences and the consequent size of the risk involved were not envisaged prior to Go-live. EWO, therefore, endorses the views expressed at the 11 May Modifications Group meeting regarding the cost of mitigating such risk and the effect this will have on the cost base of the industry. This is believed to be sufficient to warrant the inclusion of erroneous notifications within the scope of the manifest error provisions in the BSC.

Regarding the temporary versus enduring issue, if the decision is taken to expand the scope of the manifest error provisions it should be done on an enduring basis. A view expressed at the Modifications Group meeting rightly points out that erroneous errors with significant consequences are not necessarily limited to the short-term 'settling in' period.

If supported, EWO should wish to see the changes permitted retrospectively, ie from the date on which notice of the modification was served.

Melanie K Wedgbury
Senior Manager, Regulatory Affairs
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Entergy Wholesale Operations is a business name of Entergy Enterprises, Inc.
Incorporated with limited liability in the USA. Registration number FC019149

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P9_Def_010

16th May 2001

Modifications
ELEXON
3rd Floor
1 Triton Square
London
NW1 3DX

Dear Sir

Modification Proposal P9:
Correction of Technical Error in Respect of the Energy Contract Volume Notifications under Section P.2.3 and Adjustment of Settlement Data under Section U.2.5.

Northern Electric ? Gas Ltd welcomes the opportunity to comment on the Modification for Correction of Technical Error in Respect of the Energy Contract Volume Notifications under Section P.2.3 and Adjustment of Settlement Data under Section U.2.5.

Having considered Modification Proposal P9, Northern Electric ? Gas Ltd is opposed to this Modification. We believe there is no requirement for this modification, as the incorrect submissions of Energy Contract Volume Notifications (ECVNs) encountered by the Proposer are the result of problems with their systems and/or processes and firmly outside the jurisdiction of the Balancing & Settlement Code. All ECVNA's who signed the Grid Trade Master Agreement did so knowing that they must notify accurately or face imbalance charges.

Prior to Go-Live all ECVNAs had the same amount of time to have their systems and/or processes tested and in place, and therefore the same amount of time to discover and rectify errors. During Unified Pre Production we encountered similar problems, and modified our systems accordingly, and we therefore would have expected all ECVNA's to have done the same. Accepting this principle would result in discriminating against those agents who invested significant resource in resolving this, and similar issues prior to Go-Live.

We believe that this modification should not have been raised as the principle of catering for manifest errors, which was accepted and included within the BSC as a result of the work carried out by the G3 Group, specifically excluding ECVN's.

We believe the trading arrangements are operating in accordance with the BSC. The problem appears to be restricted to an agency system and it is

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therefore the responsibility of the agent to ensure that timely and accurate ECVNs are submitted to the ECVAA.

Acceptance of this modification would, in our opinion, result in the removal of the responsibility of the agent to operate in accordance with the BSC.

Yours faithfully

Lesley Mulley
Industry Communications Manager

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P9_Def_011 – Accord Energy

Gareth Forrester
ELEXON Ltd
1 Triton Square
London
NW1 3DX

16 May 2001

Dear Gareth

Urgent Modification Proposal 9 - Correction of technical error in respect of the energy contract volume notifications and adjustment of settlement data

Thank you for the opportunity for commenting on this Modification Proposal.

Accord Energy do not support the implementation of Modification Proposal P9. As the Modification Report states, Gate Closure should establish definitive physical notifications and contractual positions for each Trading Party. Allowing adjustments to ECVNs post Gate Closure would undermine this principle, creating uncertainty for the Grid Operator and other Parties. As such Accord believe notifications should be definitive at Gate Closure.

The Modification Proposal is concerned with errors that are 'a no fault technical error in the software'. We support the view expressed in the Modification Group that sufficient system testing should reveal faults in the software. This is distinct from errors caused by failure of the Central Systems, addressed by Modification Proposal 1.

Accord believe it is correct that the consequences of an error introduced by a Party Agent should be borne by the Party. The incentives associated with the imbalance regime are inherent to the design to the way the regime has been developed and encourage Parties to submit accurate notifications. We believe the changes proposed by this Modification would fundamentally weaken the incentives on Parties to the detriment of the regime.

We trust that our views will be accommodated in the final report.

Yours sincerely
Eldon Pethybridge

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P9_Def_012

Please reply to:

Gareth Forrester
ELEXON Ltd
1 Triton Square
London
NW1 3DX

50 Windsor Road
Slough
Berkshire
SL1 2HA

Tel. (01753) 758
Fax (01753) 758

Our Ref.
Your Ref.
16 May 2001

16 May 2001

Dear Gareth

Urgent Modification Proposal 9 - Correction of technical error in respect of the energy contract volume notifications and adjustment of settlement data

Thank you for the opportunity for commenting on this Modification Proposal.

British Gas Trading (BGT) do not support the implementation of Modification Proposal P9. As the Modification Report states, Gate Closure should establish definitive physical notifications and contractual positions for each Trading Party. Allowing adjustments to ECVNs post Gate Closure would undermine this principle, creating uncertainty for the Grid Operator and

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other Parties. As such BGT believe notifications should be definitive at Gate Closure.

The Modification Proposal is concerned with errors that are 'a no fault technical error in the software'. We support the view expressed in the Modification Group that sufficient system testing should reveal faults in the software. This is distinct from errors caused by failure of the Central Systems, addressed by Modification Proposal 1.

BGT believe it is correct that the consequences of an error introduced by a Party Agent should be borne by the Party. The incentives associated with the imbalance regime are inherent to the design to the way the regime has been developed and encourage Parties to submit accurate notifications. We believe the changes proposed by this Modification would fundamentally weaken the incentives on Parties to the detriment of the regime.

We trust that our views will be accommodated in the final report.

Yours sincerely

Danielle Lane
Transportation Analyst
A company

British Gas Trading Limited Registered in England No.3078711 Registered Office Charter Court 50 Windsor Road Slough Berkshire SL1 2HA

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P9_Def_013

Direct line: 020 8266 0432
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Chris Rowell
Chairman of Modification Group - MP9
Elexon
3rd Floor
1 Triton Square
LONDON NW1 3DX

Your ref: UMR1.0

Mod9

16 May 2001
Dear Chris,

Re: BSC Modification Proposal P9
Response to consultation issued on 11 May 2001.

This response is made on behalf of the following BSC Parties: London Electricity Plc, Jade Power Generation Ltd. London Energy Company Ltd. Sutton Bridge Power.

Introduction

We believe that the objectives of the BSC would be better served by the inclusion of a provision for the remedy of manifest errors in Contract Notification.

The consultation report leads us to hope that the BSC Panel and the Authority will consider a more general manifest error provision for erroneous Contract Notifications, than the rather specific instance that MP9 seeks to address. For this reason we will refrain, for the time being, in the submission of a similar, but more general Modification Proposal.

It is not the purpose of the balancing and settlement arrangement to be implemented in a manner which imposes a penal charge on a BSC party and grants other BSC parties a substantial and disproportionate benefit where there has been no physical imbalance on the England and Wales system and no costs or loss occurring to such other participants. Accordingly, the BSC should provide a means to prevent such an outcome arising as a result of a manifest error.

Trading Risk and BSC Objectives

The BSC has no facility to address failure in Contract Notification arising in the Trading Parties' systems. We appreciated that this was the situation

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that we were starting with, but had an expectation that difficulties in this area would need to be dealt with as they arose.

The market now has the benefit of operational experience and it has become apparent that a number of very significant errors have occurred. With the benefit of hindsight, it seems inevitable that such difficulties were likely, given the implementation of NETA to a very tight timescale.
Experience has also demonstrated that the consequences of failure in contract notification can be a grossly disproportionate penalty. It follows that Trading Parties carry a substantial risk due to the inability to correct an error occurring in Contract Notification after Gate Closure. The usual response to risk is that a premium has to be extracted from the supply chain to 'cover' for the eventuality.

We therefore argue that the BSC objective of "promoting efficiency in the implementation and administration of the balancing and settlement arrangements" would be better served if this substantial risk were removed.

As requested we have set out our comments against the issues and points of principle to the order in the executive summary of the consultation paper.

1. Previous Consideration of the issue.

Regardless of the previous consideration of the issue, due to time constraints we do not believe that it was given full consideration and indeed we believe it was recognised as an issue that might require further consideration after Go-Live. The industry now has the benefit of operational experience with systems and processes that have had the testing phase compressed and have been hurriedly implemented. From the errors that have arisen, it can be seen that the consequential penalty can be both extreme and grossly disproportionate. The main argument of our case stems from this disproportionate penalty. It is a manifestation of the high level of risk that Trading Parties face and is not conducive to the efficient operation of the BSC.

2. Intent of the BSC.

We do not believe that it is the intent of the balancing and settlement arrangement to be implemented in a manner which imposes a penal charge on a BSC party and grants other BSC parties a substantial and disproportionate benefit where there has been no physical imbalance on the England and Wales system and no costs or loss occurring to such other participants.

4. Separation of Production and Consumption Accounts.

We would agree that the principle of separate Production and Consumption Accounts is not being challenged by this Modification Proposal. We would be supportive in the event that the Authority felt that any provisions for the remedy of manifest errors in Contract Notification should apply on a wider

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basis than in the context of inter-group trades put forward in this Modification Proposal.

5. Ex-Ante Notification of Contract Volumes.

We would agree that the principle of Ex-Ante notification of contract volumes is not being challenged by this Modification Proposal. However, we do believe that in special circumstances such as to remedy a manifest error, then correction of ECVN data after Gate Closure would be desirable.

6. Retrospective Modification.

If it is apparent that a rule change would have led Trading Parties and or NGC to act differently, then there is an argument against the retrospective application of a rule change. In the case of manifest errors occurring in the notification of inter-group trades between Production and Consumption Accounts, we can not see how any other party would have acted differently. In this case and as we are talking about the correction of errors, it follows that retrospective application of the proposed modification should apply and is desirable.

7. Impact on the Party Making the Erroneous Notification.

We agree that the significance of the impact on the originating Party should be determined not just by the absolute size of the payment, but also by its size in relation to the size of the Party.

8. Impact on Other Parties.

The consultation paper says that a view was expressed that some Parties would have behaved differently had the provisions of the Proposed Modification been incorporated in the BSC previously. The only example that we have heard in support of this was that some Parties might have built their systems to less exacting standards. This seems a rather weak argument, since it does not consider the possibility of a failure occurring and the ensuing difficulties that arise. It is also rather weak in that had ex-post rectification of ECVNs been facilitated from the outset, we still believe that Parties would have set out to build good systems and processes.

Also a view was heard that Parties might have drawn conclusions from the sums in the Total System Residual Settlement Cashflow that would have impacted their trading strategy. However, no explanation was offered on how trading strategy might have changed. We believe that Trading Parties will have recognised that the size of the Total System Residual Settlement Cashflow payments was excessive, possibly incorrect and certainly not a reliable guide to the future expected level of such payments.

We do not see much significance in the point that correction of erroneous notifications after Gate Closure would lead to uncertainty over the

firmness of payments. This is because Supply businesses have become used to changes in payments, as a result of the 1998 Trading Arrangements. In addition, it would seem possible for any implementation of the Modification Proposal to impose time limits for making a claim to correct an error. Once all systems and processes have settled into a steady state, then the allowed period should probably be relatively short.

9. Impact on Notification Close to Gate Closure.

Without a facility to correct erroneous ECVNs then we would argue that there will be a tendency for operations to be managed in a way which focuses on minimising the risk of notification error rather than the pursuit of best possible physical balance. This would run counter to the spirit of the BSC and will serve to reduce the efficiency of the new trading arrangements.

10. Mechanism for Parties to Correct Errors.

We wish to see the asymmetry in the facilities to remedy of errors arising in central Agents as opposed to Party Agents removed.

11. Temporary or Enduring Provision.

On balance we would advocate an enduring solution because we see it as inevitable that any Party could experience an error or failed Contract Notification, with the potential for an extreme and disproportionate penalty. This position also follows from arguing that the Objectives of the BSC would be better satisfied by reducing the risk associated with being unable to correct an error.

A compromise solution would be one that recognises the early difficulties of the market and provides for a reasonable time period in which claims to rectify errors can be raised. This might follow the precedent in Elexon Circular EL00009 for the temporary relaxation of Disputes Criteria. For example, the timescale for raising a manifest error claim for an erroneous ECVN, during the first three months (say) should be extended to allow for the difficulties that Parties may have in interpreting the available data. We propose that during the first three months, there are no time limits imposed. However, once all systems and processes have settled into a steady state, then the allowed period should probably be relatively short.
There may well be a benefit in extending a similar regime to new Parties, allowing a more generous window for their first three months and shorter thereafter.

12. Metered Volume Reallocation Notifications.

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We would agree that any facility for the remedy of erroneous ECVNs should apply similarly to Metered Volume Reallocation Notifications.

13. Treatment as a Manifest Error.

We firmly believe that the intention of the proposal from Scottish Power would be better implemented through a more general manifest error provision and we have followed this approach throughout our response. Indeed we have some difficulty with the concept of "no fault" error since, in almost any circumstance, it is arguable, with hindsight that the affected Parties could have taken further actions to avoid or mitigate their risk.

Points of Principle raised by this modification

(i) Should contract notification be definitive at Gate Closure, or should provisions be made for (gross) errors to be corrected?

We believe that the objectives of the BSC would be better satisfied by inclusion of a facility to remedy ECVN errors after Gate Closure.

(ii) If correction of errors in contract notifications is permitted post Gate Closure, does this dilute incentives on Parties and their Agents to submit correct data for settlement?

We believe that the incentives to submit correct data for settlement remain very strong. The incentive of saved 'management time' will remain by striving for good processes that get it right first time. In addition it would seem likely that a facility for the correction of errors will have a time limit in which they can be raised. This characteristic would provide a good incentive. We would also expect that Parties would be only be able to avail themselves of the provision for error correction in exceptional circumstances and to learn lessons from any such events to prevent recurrence.

(iii) If supported, should the change be permitted retrospectively; from when the modification was raised, or from when implemented.

We believe that Elexon has a measure of the number of problems of this nature that have arisen in the few weeks after market start-up. Given the circumstances of the market start-up, we strongly believe that only retrospective application back to the start of the market would be acceptable.

(iv) If supported, should the change be made enduring for all parties, available to all parties but only for a limited duration (from Go-Live), or applied only to new entrants for a limited period of duration.

Please see our comments at No.11 - 'Temporary or Enduring Provision' above.

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Conclusions

We believe that it is essential for the efficient operation of the new trading arrangements that provision for the remedy of a manifest error in Contract Notification should be made. This should be retrospectively applied from market start-up.

There can be no justification for grossly disproportionate penalties incurred by those falling to an error which has not caused any damage to the effective and efficient physical balancing of the system. Neither can there be any justification for other Parties collecting windfall gains that they have not by any stretch of the imagination justly earned.

Yours sincerely,
Liz Anderson
General Manager,
Energy Strategy & Regulation

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P9_Def_014

16 May 2001
Chris Rowell
P9 Modification Group Chairman

Dear Chris

Modification Proposal P9 - Correction of a technical error in respect of the energy contract volume notifications and adjustment of settlement data.

Thank you for giving us the opportunity to comment on these proposals:-

Powergen does not support this proposal on either a temporary or enduring basis. Nor do we support extending this proposal to include other forms of notification error. What could reasonably be defined as a manifest error was considered in detail in the DTI/Ofgem G3 consultations prior to go-live. We have yet to see any compelling arguments (save for some of the issues on ex post notifications discussed in the P1 Modifications Group) to indicate the scope of BSC manifest error provisions should extend beyond the central systems.

Our specific comments on the proposals are as follows:

* The error described in the proposal has had no impact on the market prices or the efficiency of the market. The result of such errors may well be a redistribution of moneys between market participants - you could argue that this redistribution provides the correct market driver on participants to provide accurate notifications and robust systems. It is certainly difficult to conclude that prices paid by consumers would be affected. As such we do not believe it is possible to justify this proposal on the grounds of better meeting the Applicable BSC Objectives.

* The error made appears to be an internal transaction, which is entirely the responsibility of that company. Whether the fault is a so called "no fault technical error" or indeed a direct error resulting from manual data entry in our view makes no difference. Parties have to a greater or lesser extent invested in systems and procedures and agreed contracts with system providers in the full knowledge of the potential risks involved. In our view it would not be appropriate for perhaps more prudent players to have to make allowances for those have unfortunately made errors (irrespective of the magnitude of those errors).

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* It is difficult to draw a logical demarcation line between different forms of error. In practice it is probably only realistic to allow an appeals process for all forms notification error outside the central systems, whether these are inter or intra-company, technical or manual. We understand that such a broadening of the scope of the proposal may be supported by some BSC participants. In practice such a wide scope could open the floodgates for all sorts of spurious claims.

* If the BSC Panel became the appeals body for such claims (whether such responsibilities were delegated or otherwise) they would be faced with making judgements, which could easily be open to legal challenge especially if different rulings on ostensibly similar cases were made. The scope for such challenge is potentially huge compared to the limited scope of the current BSC manifest error provisions. This potentially places the BSC Panel in a very difficult position.

* The proposal may consider the error in notifying contract quantities between production and consumption account to be "self evident". However, selling energy from a consumption account and buying energy into a production account, (even very large quantities) is feasible under the current trading arrangements, indeed as the market become more sophisticated and trading volumes increase such actions are likely to become increasingly common place. What might be considered self evidently an error now, may well become a normal trading practice in future. We therefore believe implementation of this proposal would set dangerous precedents, especially if such precedents were to be used to judge future claims.

* We would also wish to refer the BSC Panel and the Authority to recent decisions on "manifest errors" made by Ofgem under the gas Network Code. In the first instance a modification proposer requested that a data entry error be referred to a Network Code committee for consideration as a manifest error (Modification Proposal 0402 - Referral of entry capacity disputes to the Energy Balancing Credit Committee). This is not dissimilar to the effect of the P9 proposal. A follow-up proposal was aimed at implementing a mechanism to rapidly unwind manifest errors should they occur in future (Modification Proposal 0419 - Avoidance or correction of shipper errors in purchasing and selling entry capacity"). Both proposals were rejected by Ofgem on 21 June 2000 and 23 February 2001 respectively.

In the light of the above comments we would urge the Panel to recommend this proposal be rejected.

Yours sincerely

Peter Bolitho
Head of Modifications
Powergen UK plc

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ScottishPower

16 May 2001

The Modifications Secretary
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Dear Sir,

Urgent Modification Proposal P9 – Response to Consultation

ScottishPower welcomes the opportunity to comment on the Urgent Modification Report regarding P9. We appreciate the steps being taken within the recognised process to expedite a solution to the problem which prompted this modification to be proposed. The issues raised develop from the Modification Proposal and we recognise that a general ESI input may broaden the scope of the original Proposal.

Our comments on the issues and points of principle are set out below in the order and with the titles used in the executive summary of the report.

1 PREVIOUS CONSIDERATION OF THE ISSUE

It is suggested in the paper that the issue of manifest errors in the notification of contract volumes has been considered by the G3 Group. However, the consultation on Manifest Errors in October 2000 makes clear that the G3 group was constituted under the Implementation Scheme and that its mandate regarding manifest errors was limited solely to the Balancing Mechanism and did not extend to manifest errors in the notification of energy contract volumes. Indeed, the October 2000 consultation expressly recognised (at para 1.8) that BSC parties would be free, should they so wish, to make a modification proposal post go-live to address this issue. The acceptance by ScottishPower of the G3 proposals was made on the narrow balancing mechanism approach to manifest error stated in the proposals and should not be interpreted as a rejection of wider manifest error provisions. Even if the issues surrounding erroneous contract volume notifications had been dealt with at an earlier stage of the NETA design process no-one could then have anticipated the magnitude of the imbalance cashout prices and hence of imbalance charges which have in fact occurred during the early operation of the BSC and which demonstrate the need for manifest error provisions to be introduced. The fault which prompted this modification proposal occurred in a system supplied by the principal supplier of NETA systems. To invest more heavily to further reduce the risk of erroneous notifications would increase costs to customers, inhibit new entry, and would be a poor alternative to the introduction of manifest error provisions.

ScottishPower believes that erroneous notifications should be considered as manifest errors.

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2 INTENT OF THE BSC

The intent of the BSC is that imbalance cash-out prices target the costs of balancing the system onto the parties on whose behalf the SO has taken balancing actions. Practically, the imbalance volumes can only be calculated by the SAA in the knowledge of a party's contracted volume and hence it is necessary for parties to submit volume notifications. ScottishPower fully accepts this philosophy and has successfully managed to balance its physical and contract positions. The proposal is entirely consistent with this philosophy. It addresses circumstances where, even when a balanced position has been achieved, vast sums of money would be transferred between parties as a consequence of a simple volume notification error. ScottishPower does not believe that it is the purpose of the imbalance settlement system to penalise a Party which has sought to match its physical and contract positions but is frustrated by a no fault error, thus generating windfall gains and losses for BSC Parties. Such gains and losses distort competition in the generation and supply of electricity and hence are contrary to the objectives of the BSC.

ScottishPower believes that imbalance charges were intended to recognise the costs of physically balancing the system when Parties were in imbalance, not to apply disproportionately large charges purely as a result of a failure to correctly notify trades.

3 CORRECT EXECUTION OF THE BSC

There is no basis for the suggestion that the circumstances described in the modification proposal are outside the scope of the BSC. Indeed, as noted above, the October 2000 consultation expressly envisaged that a modification might be introduced covering manifest errors in the notification of energy contract volumes. In any event, the arguments regarding the effect of volume notification errors must be addressed in order to avoid the discrimination and distortion of competition which would otherwise arise.

ScottishPower does not believe that this issue is outside the scope of the BSC.

4 SEPARATION OF PRODUCTION AND CONSUMPTION ACCOUNTS

ScottishPower accepts the arguments regarding the benefits to competition of maintaining separate production and consumption accounts and cashing out each imbalance separately. The proposal is consistent with such separation. No benefit should arise here by virtue of vertical integration. The modification proposal P9 relates specifically to the circumstances of an intra-group volume notification because this type of notification has some unique features. On the one hand no other party is affected by an erroneous notification so that correction of such errors has no adverse consequences for third parties (a reason in favour of correcting the erroneous imbalance charge in itself). On the other hand, there is no counterparty to detect the fault, nor can the counterparty submit the notification in the event of system failure. In the instance which formed the basis for P9, an actual imbalance of magnitude x MWh was converted into an imbalance of magnitude $2x$ MWh in each of the production and consumption accounts. The more that the party endeavoured to minimise the notified imbalance, the greater that imbalance became. Clearly the risk of erroneous notifications close to gate closure affects all parties, but there is a propensity for some types of fault to affect member companies of the same group disproportionately.

ScottishPower agrees with the principle of separate production and consumption accounts and does not believe that special provisions should be introduced where trades are between member companies of the same group.

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5 EX-ANTE NOTIFICATION OF CONTRACT VOLUMES

ScottishPower sees no reason at this time to permit ex-post notification of contract volumes. The proposal relates to the ex-post correction of erroneous ex-ante notifications. The burden of proof and provision of evidence relating to the ex-ante errors lies with the Party raising the claim.

ScottishPower supports the principle of ex-ante contract volume notification.

6 RETROSPECTIVE MODIFICATION

ScottishPower recognises the normal presumption against retrospective amendments but believes that the distortion of competition caused by this fault is sufficient justification for this modification to be applied retrospectively from Go-Live in order to cover the entire period of operation of the BSC. Such retrospective application would remove the distortions which have been introduced into the competitive positions of the BSC Parties. No extra charges would be incurred by any Party and any clawback of funds from the residual cashflow reallocation cashflow would merely redress the earlier windfall gains which resulted from the error.

ScottishPower entirely endorses the behaviour of parties who have invested in robust systems. It is certainly not ScottishPower's intention that manifest error provisions should act as an alternative to the development of robust systems, rather as a safety net for a latent error arising at a later date.

ScottishPower believes that retrospective application of the modification is acceptable and desirable.

7 IMPACT ON THE PARTY MAKING THE ERRONEOUS NOTIFICATION

ScottishPower agrees that the significance of the impact on the originating party relates to both the absolute size of the payment and its size in relation to the size of party. Any manifest error provisions would need to assess the impact relative to, for instance, the party's credit cover requirements and the scale of its activity in the market.

8 IMPACT ON OTHER PARTIES

Implementation of the proposed modification and rectification of the erroneous volume notifications under consideration would not result in any extra charges being incurred by other parties, although it would result in a clawback of the inflated residual cashflow reallocation payments. ScottishPower recognises that investment and other decisions may have been made on the basis of the designated BSC, but believes that the proposed modification could not vitiate such decisions. ScottishPower itself invested heavily prior to Go-Live in order to mitigate the perceived risks surrounding the new market arrangements but believes that experience has demonstrated that the consequences of volume notification errors are significantly greater than was generally expected by the industry. In any event, all parties were aware that the BSC might be amended post Go-Live and the possibility of a modification of considerably broader scope than that now being proposed was expressly envisaged in the October 2000 consultation. The benefit to all parties of being able to rectify the serious distortions caused by these errors outweighs any supposed disbenefit from the hypothetical possibility that the investment or trading strategies of some parties might be affected by this change. Whilst Parties with confidence in their abilities may plan to receive a positive residual cashflow reallocation cashflow, to rely on windfall gains would be imprudent.

ScottishPower believes that the correction of erroneous notifications would not adversely affect other parties and would bring a general benefit to the market.

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9 IMPACT ON NOTIFICATIONS CLOSE TO GATE CLOSURE

Physical trading parties require liquid markets operating as close as possible to real time in order to mitigate the risk of physical imbalance. The requirements of the system operator have led to the gate closure time being set at 3.5 hours. The vagaries of the volume notification system have extended the practical time limit for trading in order to reduce the risk of the notification not being accepted. The lack of remedy in the event of a volume notification being discovered to be faulty after gate closure has passed further militates against the liquidity of the market as gate closure approaches and increases the risk of physical imbalance. In the current instance, the cost of an erroneous notification has outweighed the potential cost of the physical imbalance and can be seen as a disincentive to balance, thus increasing the cost incurred by the system operator and generally increasing the costs to the customer. If costs to the customer are to be minimised it is imperative that traders have confidence in the ability of the market arrangements to allow rectification of erroneous notifications. Mitigation of the risk to the notifying party without increasing the costs or risks faced by other parties must be of overall benefit to the market. Further investment to mitigate the risk would increase costs to customers, inhibit new entry, and is not an issue here as ScottishPower and other participants have purchased systems from the principal supplier of systems for NETA which they are entitled to rely upon in terms of market compliance and robustness.

ScottishPower believes that the risk of erroneous notifications is sufficiently large to discourage notifications close to gate closure.

10 MECHANISMS FOR PARTIES TO CORRECT ERRORS

ScottishPower supports the view that the market arrangements are asymmetrical regarding the correction of manifest errors. There are in fact two asymmetries. Firstly, the BSC agents can correct manifest errors whilst the party agents cannot. It has been argued that failures by BSC agents will affect all parties whilst failures by party agents only affect one party, but this argument ignores the distortionary effects of the transfer of funds from the affected party to all other parties following an erroneous notification by a party agent. Secondly, manifest errors in the post gate closure market, the balancing mechanism, can be corrected, but those in the pre-gate closure market, if discovered post gate closure, cannot. Thus there is a critical window during which errors may occur for which (subject to the proper construction of paragraph 2.5.6 of Section U of the BSC) there is no redress under the BSC other than to introduce a modification proposal for retrospective implementation.

ScottishPower believes that these asymmetries regarding the correction of manifest errors should be removed.

11 TEMPORARY OR ENDURING PROVISION

The BSC was implemented with a tight timescale against a fixed Go-Live date. Participants generally supported the Go-Live decision in order to deliver the benefits of the new arrangements for customers. A consequence of this decision was the curtailment of testing of both central and party systems. In this environment it might be expected that the risk of faults occurring in systems is higher during the initial period of the market and will reduce over time. Provisions for the rectification of errors over a limited period from market Go-Live might be sufficient in these circumstances. However, the risk of latent faults remaining after systems have been modified and tested will always be present, and new entrants to the market will also be faced with the risk that there are some residual errors in their new systems. Given these circumstances and the need to remove the asymmetries discussed above we are of the view that the arrangements should be enduring but with a strict time limit after which no claim will be accepted.

ScottishPower believes that the provisions to correct erroneous notifications should be enduring.

12 METERED VOLUME REALLOCATION NOTIFICATIONS

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ScottishPower believes that any conclusions reached regarding ECVNs should apply similarly to MVRNs.

13 TREATMENT AS MANIFEST ERROR

ScottishPower believes that provisions covering manifest errors in volume notifications need to be addressed and note the comment (para 1.8) in the October 2000 consultation on manifest errors in the balancing mechanism that "The provisions do not extend to manifest errors in the notification of energy contract volumes...BSC Parties would, of course, be free to make a modification proposal post go-live to address this issue, should they wish." It was not our intention, in submitting P9, to make such a modification proposal; we regarded P9 as being a specific provision to deal with a particular incident which affected ScottishPower. However, we understand the argument that our proposal has been tailored to suit our problem by including specific detail which would, under a general manifest error provision, be submitted to the Trading Disputes Committee as justification for the claim. ScottishPower believes that the introduction to the BSC of a general manifest error provision to cover volume notifications would enable the BSC to better meet the objectives of the BSC, specifically by promoting effective competition in the generation and supply of electricity and promoting efficiency in the implementation and administration of the balancing and settlement arrangements, and would support the introduction of such a provision. However, we would not wish the debate surrounding such a provision to delay or jeopardise the urgency with which the issue is being treated by Elexon and the Authority and the rectification of the errors which have affected our position.

ScottishPower believes that the appropriate way to deal with erroneous notifications is through an expansion of the scope of existing provisions for manifest errors.

SUMMARY REGARDING MATTERS OF PRINCIPLE

(i) **ScottishPower believes that the imbalance settlement arrangements require the actual contract position to be definitive at gate closure, but that corrections to the notified contract position should be possible after gate closure** where supported by appropriate auditable evidence of the pre gate closure position.

(ii) **ScottishPower does not believe that the correction of errors after gate closure dilutes the incentives on parties and their agents to submit correct data for settlement**. Since the only errors which would be corrected are those which are outside the control of the affected party, the modification could have no impact on the conduct of parties in submitting data. In fact, we believe that, in the absence of the ability to correct, the consequences would serve as distortions of competition due to the magnitude of the unjustifiable imbalance payments which are reallocated to other parties. This effect may militate against the benefits that a reduced gate closure time is expected to deliver. The very issue which ScottishPower wishes to support is that correct data had been inputted in to its own systems for settlement purposes but the outturn of that data had been corrupted by a software error. It is corruption of this data which ScottishPower is wishing to correct and not the concept that correct data should be submitted.

(iii) **ScottishPower believes that** circumstances have demonstrated a fundamental flaw in the market arrangements and that **the modification should be implemented retrospectively** to cover notifications made prior to the date of the modification proposal being submitted, otherwise a manifest error provision would be of no effect in respect of the error which prompted the proposal to be made.

(iv) Similarly, **ScottishPower believes that the changes should be made enduring for all parties.**

SPECIFIC ISSUES RELATING TO THE MODIFICATION PROPOSAL AS DRAFTED

As noted above, the ScottishPower modification proposal was not intended to be a general manifest error proposal. As such, the cause of the notification error was defined as a "no-fault technical error

in the software" to distinguish it from, for example, operator error. We believe that, with the limited testing which was available prior to Go-Live, the difficulties experienced with settlement data flows (which contributed to the failure to detect the fault), and having taken the precaution of purchasing the notification systems and software from a reputable contractor, ScottishPower has a strong case for the implementation of the proposed modification and the recovery of the excess imbalance payments which have been made.

We appreciate that beyond this clear case there may be other instances where error has occurred in volume notification and that each case would need to be substantiated on its merits. Each issue is considered in turn below.

1. Technical Error

ScottishPower believes this to be the clearest case where the Participant could not be held responsible.

2. No fault

In ScottishPower's case the latent nature of the fault meant that it was not discovered by testing - such errors are by definition not detectable at the time of testing. No fault assumes that the Participant has carried out testing procedures to the standard of a reasonable and prudent operator and the error has nevertheless not been capable of detection.

3. Software

Again in ScottishPower's case the reference to software highlights the clearest end of the scale where the error was not readily discoverable. ScottishPower accepts that other categories of error may fall to be considered.

Conclusion

We would confirm our appreciation of the efforts of the Modification Group to bring this matter to a speedy resolution. Inevitably as discussion has broadened on this topic a number of issues have arisen flowing from the proposal. Whilst ScottishPower welcomes the widening of this debate it is keen to ensure that such widening does not prevent a speedy resolution of the process as was envisaged by Elexon and the Authority in authorising the urgent modification procedure to be used.

Yours sincerely

Mike Harrison
Scottish Power UK plc

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ANNEX 3 PREVIOUS CONSIDERATION OF ISSUE

At one Panel member's request, the Panel was provided with the notes below on "Consultations on Notification Agent Failures". The Party proposing the Modification in their response to the consultation also refers to the October 2000 consultation. This includes a comment to the effect that BSC Parties would be free, should they wish, to make a modification proposal post go-live to address the issue.

Consultations on Notification Agent Failures

There have been several consultations/discussion papers addressing the issue of Notification Agent errors. The following provides a (non-exhaustive) summary of these:

1) DISG 24/08 (21st December 1999) "Accreditation and Certification of BSC Parties' Agents"

In this paper, it was recognised that "further analysis of the ECVNA and CEPNA[1] Agents poor performance will only adversely effect the Parties who contract with the offending Agents".

As a consequence of this paper, it was proposed not to incorporate accreditation provisions for Notification Agents within the BSC.

It was clear that in these discussions, DISG participants were aware that that the consequences of Notification Agent errors would be borne by the directly affected Parties only, and that such risks would not be managed centrally.

2) May 2000 - Consultation of the BSC

This document did not contain any provisions for centrally managing the risks/costs associated with Notification Agent failures. In fact, Section G of this version of the BSC (dealing with contingencies) was not at that time drafted. However, an accompanying scoping paper for Section G was produced. Section 2.7 of this paper noted that "It has been determined that if Energy Contract Volume and/or Meter Volume Reallocation Notifications cannot be sent to the ECVAA either from a single ECVNA/MVRNA, or on a widespread basis, because of a fault on the notification systems, no action will be taken."

3) July 2000 - BSC Consultation Meetings

The issue of the treatment of Manifest Errors in the Balancing Mechanism was explicitly raised in the BSC Consultation meetings held in July 2000. As a consequence, provisions were made in the Implementation Scheme to permit the G3 Group to address the issue of Manifest Errors in the Balancing Mechanism

4) July 2000 - Implementation Scheme Consultation

As noted above, the consultation on the scope of the Implementation Scheme included provisions for the treatment of Manifest Errors in the Balancing Mechanism, but not for Notification Agent failures. No comments were received in response to this consultation to suggest that such latter provisions should be included.

[1] Now replaced by "MVRNA"

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5) August 2000 - Designated Version of the BSC and Implementation Scheme

The designated version of the BSC did not incorporate provisions for centrally managing the risks associated with Notification Agent failures. The scope of the Implementation Scheme provisions for considering Manifest Errors extended only to the Balancing Mechanism. There were provisions in the Implementation Scheme for considering what provisions should be made to cater for systems failures.

6) September 2000 onward - G3 Discussions on Manifest Errors

In accordance with the provisions of the Implementation Scheme, the scope of the discussions on Manifest Errors was limited to their occurrence in the Balancing Mechanism, and did not extend to Notification Agent Failures.

7) September 2000 onward – G3 Discussion on Systems Failures

The G3 Group (and EMEG Sub-Group) did consider the appropriateness of incorporating special provisions for Notification Agent systems failures. This issue was addressed in a number of consultation and conclusions documents, including:

- November 2000 - Special Provisions for Computing Systems Failures. This set down possible options/proposals for dealing with computing systems failures, including Notification Agent failures);

- January 2001 – Ofgem/DTI conclusion in relation to treatment of Notification Agent Failures raised in November Consultation. This concluded that no special provisions for Notification Agent systems failures should be included in the BSC.

- February 2001 – Ofgem/DTI Conclusions document for Special Provisions for Computing Systems Failures (in conjunction with Manifest Errors in the Balancing Mechanism and Black Start). This document reiterated the conclusion issued in January 2001 in relation to Notification Agent Failures.

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ANNEX 4 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;
(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

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