

Draft MODIFICATION REPORT for Modification Proposal P160

Removal of the Anomalous Effect of the Error Correction Payment (ECP) for Multiple Claims Affecting the same Settlement Period and Energy Account

Prepared by: ELEXON on behalf of the Balancing and Settlement Code Panel (the 'Panel')

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RECOMMENDATIONS

Having considered and taken into due account the contents of the P160 draft Modification Report, the Balancing and Settlement Code Panel recommends:

- **that Alternative Modification P160 should be made;**
- **that Proposed Modification P160 should not be made;**
- **an Implementation Date for Alternative Modification P160 of 10 Working Days after the Authority decision;**
- **an Implementation Date for Proposed Modification P160 of 10 Working Days after the Authority decision, in the event the Authority determines that the Proposed Modification P160 should be made; and**
- **the proposed text for modifying the Code, as set out in the draft Modification Report.**

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¹ The current version of the Balancing and Settlement Code (the 'Code') can be found at www.elexon.co.uk/ta/bscresl_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

The following parties/documents have been identified as being potentially impacted by Modification Proposal P160.

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

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

1.1 Modification Proposal

Paragraph P6 of the Code sets out how Past Notification Errors (PNEs) are to be administered. This paragraph was incorporated into the Code following approval by the Authority of Alternative Modification P37 'To provide for the remedy of past errors in Energy Contract Notifications and in Metered Volume Reallocation Notifications' (P37). Paragraph P6 includes provision for an ECP, which the Modification Group assessing P37 agreed should be 20% of the benefit arising from an upheld claim.

P160 was raised by EDF Trading Ltd on 29 January 2004 (reference 1). P160 proposes to amend paragraph P6.5 such that upheld claims affecting the same Party Energy Account and the same Settlement Periods would be grouped together for the purposes of calculating the ECP (in order to ensure the calculation and effect of the ECP is consistent for all PNE claimants).

The Proposer, in submitting P160, was of the opinion that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, P160 would better facilitate achievement of Applicable BSC Objective (c)².

Furthermore, the Proposer believed that P160 would be consistent with the Authority conclusion regarding P37 (which was Approved on the basis of better facilitating achievement of applicable BSC Objective (c)) i.e. that P160, by fulfilling the intent of P37, would better facilitate achievement of Applicable BSC Objective (c).

ELEXON presented an Initial Written Assessment (IWA) (reference 2) to the Balancing & Settlement Code Panel ('the Panel') at its meeting on 12 February 2004. The Panel agreed with the recommendation in the IWA that P160 be submitted to a two month Assessment Procedure to be carried out by the Error Processing Modification Group (EPMG).

The EPMG met three times during the Assessment Procedure and P160 was issued for industry consultation and impact assessment in order to support the group's assessment.

At its meeting on 9 April 2004, the Panel considered the Assessment Report and supported the recommendation of the EPMG that Modification Proposal P160 should be submitted to the Report Phase with a recommendation that Alternative Modification P160 be made.

1.2 Background

P160 seeks to address perceived issues with the calculation of the ECP to be made by Parties in relation to upheld PNE claims. In ELEXON's view the Code currently requires the ECP to be calculated separately for claims relating to separate Volume Notifications but affecting the same Settlement Period. As a result, the total ECP can significantly exceed 20% of the total financial benefit to a Party. This section provides background on the issues involved.

1.2.1 ECP Requirements

Paragraph P6.5 sets out the requirements for the ECP calculation as follows:

"6.5.1 Where the Panel determines that a Past Notification Error occurred and should be rectified:

² (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.

- (a) *the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Past Notification Error as determined by the Panel;*
- (b) *such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made;*
- (c) *if the Final Reconciliation Settlement Run for the relevant Settlement Period has already taken place before the Panel has made its determination under 6.5.1, such adjustments shall be made as soon as is practicable, and shall be taken into account in a Post-Final Settlement Run or Extra-Settlement Determination for the relevant Settlement Period after such adjustments have been made.*

6.5.2 *Where, in relation to a claim for Past Notification Error (or, if claims for more than one Past Notification Error in respect of the same Volume Notification are made, in relation to the sum of all such claims in aggregate), the adjustments to the data as determined pursuant to paragraph 6.5.1 result in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow of the relevant Contract Trading Parties (or either of them individually), such Party or Parties shall be liable to pay to the BSC Clearer the Error Correction Payment(s) applicable to its or their Energy Account(s) in accordance with the further provisions of this paragraph 6.5.*

6.5.3 *BSCCo shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:*

*ECP_a = 0.2 * max (Σ_j (NCAEI_{aj} - CAEI_{aj}), 0) where:*

- (a) *Σ_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;*
- (b) *CAEI_{aj} is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j;*
- (c) *NCAEI_{aj} (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of CAEI_{aj} for Energy Account a and relevant Settlement Period j, had the Past Notification Error not been rectified."*

1.2.2 ELEXON's interpretation of ECP Requirements

Throughout the PNE process, the definition of a PNE has been interpreted by ELEXON as follows:

- There is one PNE per combination of Settlement Period and Volume Notification (P6.1.1.1 (a)); and
- There is one claim per PNE but these can be aggregated to one claim for each group of PNEs resulting from the same Volume Notification (P6.2.4).

As such, one claim can cover a range of PNEs associated with separate Settlement Periods, providing each PNE is a result of the same Volume Notification. On the basis of the above, ELEXON's operational interpretation of paragraph P6.5 is as follows:

- *The ECP is calculated per PNE per Energy Account (P6.5.1, P6.5.3). One ECP is calculated for each Volume Notification (P6.5.1, P6.5.3 (a)). In ELEXON's view there is one PNE per Settlement Period per Volume Notification. However, a single claim may encompass all PNEs*

associated with a single Volume Notification. Each of these claims³ must then be treated independently for ECP purposes.

- *Rectification is done through Settlement if possible (P6.5.1).* The Post Final Settlement Runs (PFSRs) are being used; the Settlement corrections for all upheld claims are included in PFSRs. It should be noted that the PFSR position will include adjustments made for reasons other than PNE claims, for example erroneous Estimated Annual Consumption/Annualised Advance (EAC/AA) corrections. As such, ELEXON is of the view that the ECP cannot be accurately calculated simply by comparison of the positions at the Final Reconciliation Settlement Run and the Post Final Settlement Run, in any case such an approach could not distinguish the effect of each individual claim as is currently required by the Code.
- *The calculation of the ECP starts with the Settlement position after adjustments have been made to reflect the upheld claims (P6.5.3(b)). The ECP is 20% of the benefit due to the correction of the PNE (P6.5.1, P6.5.3).* The benefit of each claim is determined by starting at the PFSR position and "subtracting" the effect of the claim which corrects that PNE. This in effect gives what would have been the Settlement position had that PNE not been rectified. The benefit due to the claim is then the difference between this calculated position and the PFSR. For this calculation, the System Sell Price (SSP) is applied to "long" portions of the difference in position, and the System Buy Price (SBP) is applied to "short" portions of the difference. This approach recognises the PFSR position will include adjustments made for reasons other than PNE claims, for example erroneous EAC/AA corrections.
- *Since claims are treated individually and independently (P6.5.1) the calculation of the benefit for each PNE starts with the PFSR position.*

In relation to P160, the key feature of the process is that the ECP will be calculated individually for claims associated with separate Volume Notifications but affecting the same Settlement Period and Energy Account. There are consequences of the calculation of ECPs individually and independently which can occur where more than one upheld claim for an Energy Account affects a single Settlement Period. Section 1.2.3 of this document illustrates the issues involved via reference to claims C028a-h and C029a-h.

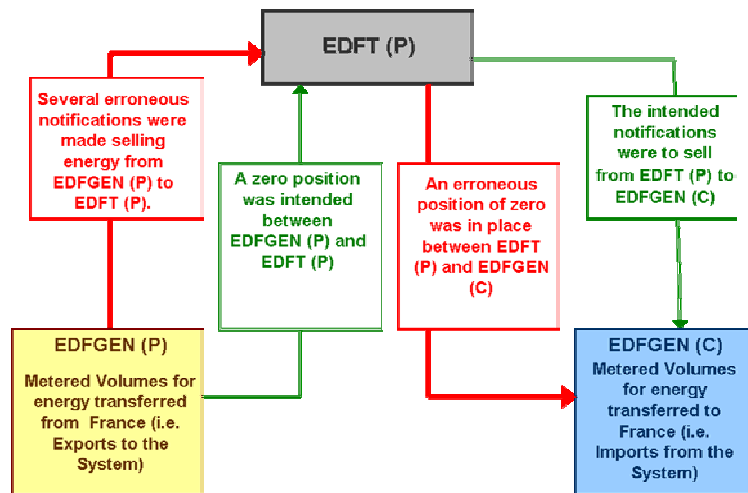
³ Each group of PNEs, affecting separate Settlement Periods but resulting from the same Volume Notification, was given a unique identifier of the form Cnnn in the claims process.

1.2.3 Operational Impact

The operational impact of the ECP requirements, as interpreted by ELEXON, is now considered via reference to example claims C028a-h and C029a-29h (the PNE Committee determined that these claims, considered under PNE Investigation I020, result from the same cause).

1.2.3.1 Example: Claims C028a-C028h and C029a-C029h

The intent of these claims is to replace a series of erroneous notifications between Energy Accounts EDFT Production (P) and EDFGEN01 (P) by a series of correct notifications between EDFT (P) and EDFGEN01 Consumption (C). There are multiple claims, arising from separate Volume Notifications, which relate to the same Settlement Periods, each having an additive affect.



Correction is achieved by applying a series of notifications between EDFT (P) and EDFGEN01 (P) to cancel out the erroneous notifications and adding a series of correct notifications between EDFT (P) and EDFGEN01 (C) (with each individual notification constituting a separate claim). This approach was put to and agreed by the PNE Committee.

The following three examples illustrate the impact on each of the Energy Accounts involved, in order to illustrate the issues surrounding the calculation of ECP payments individually and independently.

1.2.3.2 Example 1: No overall benefit

The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a long to a short position (i.e. no overall 'financial benefit'⁴). Energy Account EDFGEN01 (P) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim.

Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

- The imbalance position of Energy Account EDGEN01 (P) after the PFSR will be slightly short.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to Settlement as a result of the upheld claims for EDFGEN01(P) will not be of 'financial benefit' as a long position will become a short position and be subject to imbalance charges at SBP price. However, this is not reflected in the calculation of ECP as follows.

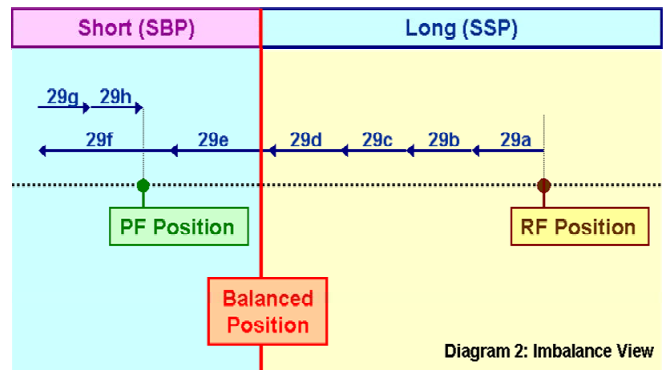


Diagram 2: Imbalance View
From the point of view of Imbalance Settlement, the net effect of claims 29a-h is to move the position from RF (long) to PF (short).

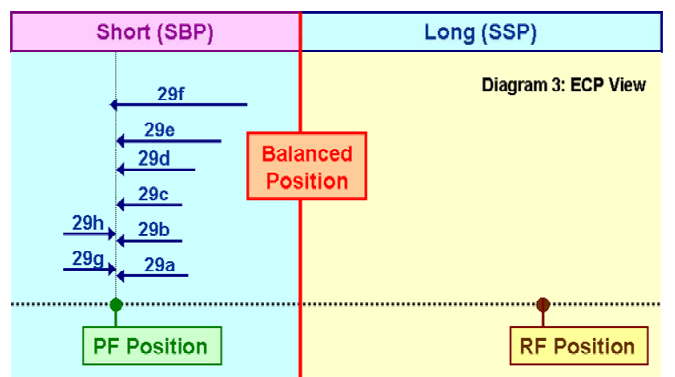


Diagram 3: ECP View
ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 29a-f appear not to be beneficial, as such no ECP is generated for these claims. Claims 29g and 29h appear to be beneficial (at SBP), and generate ECPs.

For EDFGEN01 (P), the calculation of the benefit for ECP purposes (or 'ECP Benefit'⁵) must treat each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 3).

Although the net effect of all of the claims considered together is to make the account shorter (Diagram 2), some claims (29h and 29g), when considered individually, appear to make EDFGEN01's Production Account 'more long'. The apparent or 'ECP benefit' of these claims is significant and attracts a large ECP (as SBP is high).

Were all claims to be grouped for the purpose of calculating the ECP there would not appear to be an overall 'financial benefit' and no ECP would be generated for EDFGEN01 (P).

⁴ In this document the 'financial benefit' relates to Imbalance payments made to a Party as a result of one or more upheld PNE claims.

1.2.3.3 Example 2: Overall Benefit inaccurately represented

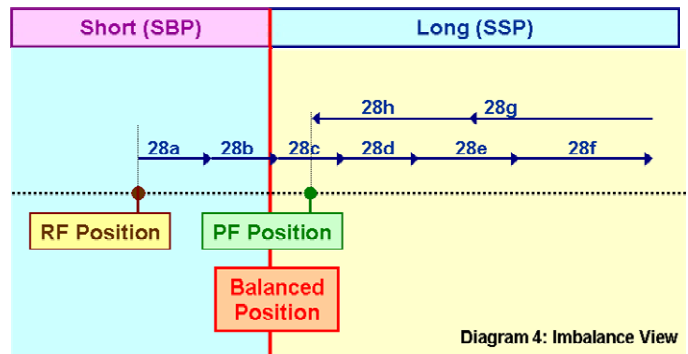
The following example outlines how ECP charges are to be calculated where multiple upheld claims have the overall effect of moving the Energy Account from a short to a slightly long position (i.e. an overall 'financial benefit'⁴). Energy Account EDFGEN01 (C) is taken as an example, this account is subject to multiple claims and a separate ECP will be calculated for each claim (although the total ECP charge will not equal 20% of the overall financial benefit).

Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

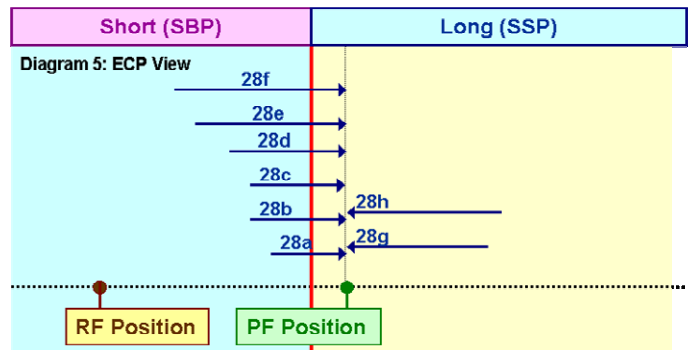
- The imbalance position of Energy Account EDGEN01 (C) after the PFSR will be slightly long.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to Settlement as a result of the upheld claims for EDFGEN01(C) will be of 'financial benefit' as a short position will become a long position and be subject to imbalance payments at SSP price (Diagram 4). However, this is not reflected in the calculation of ECP payments as follows.

For EDFGEN01 (C), the calculation of the benefit for ECP purposes (or 'ECP benefit'⁵) treats each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 5).

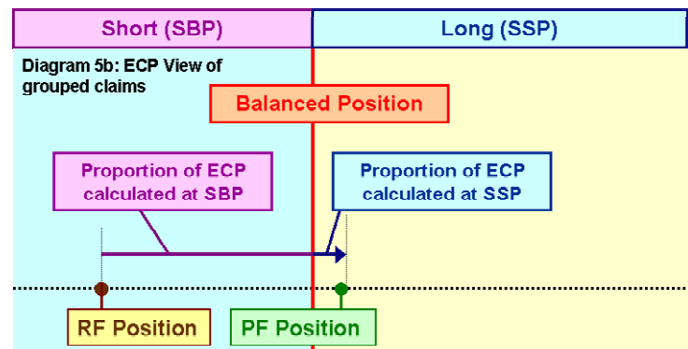
Considered individually, claims 28a-f appear to be beneficial (mainly at SBP, high) and a large ECP is calculated on this basis. Claims 28h and 28g do not appear individually beneficial and do not attract an ECP, furthermore the netting effect of these claims is not taken into account. Considering the claims individually results in an ECP which is significantly more than 20% of the actual 'financial benefit' (potentially resulting in a payment several times the magnitude of the financial benefit). This occurs as a proportion of the claims are actually of financial dis-benefit (28h and 28g) and the netting effect of these claims is not taken into account.



From the point of view of Imbalance Settlement, the net effect of claims 28a-h is to move the position from RF (short) to PF (slightly long).



ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 28a-f appear to be beneficial (at mainly SBP), as such a high ECP is generated for each of these claims. Claims 28g and 28h appear not to be beneficial, and do not generate ECPs, furthermore there is no cancelling effect on claims 28a-f.



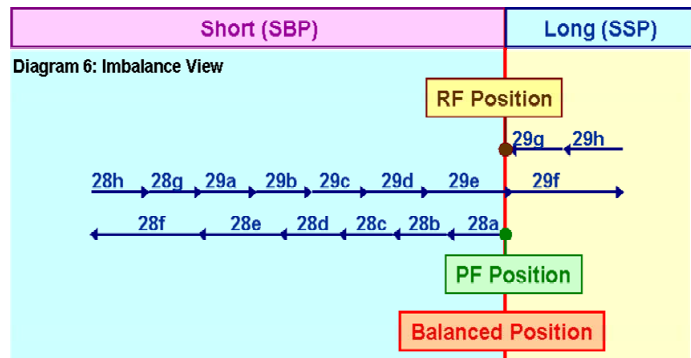
An ECP is calculated for the grouped claims, starting from the PF position. A proportion of the grouped claims appear to be beneficial at SBP and a proportion beneficial at SSP. The ECP will reflect 20% of the overall financial benefit.

⁵ The apparent 'ECP benefit' will differ from the actual 'financial benefit' as each claim is considered individually in relation to the PF position (which is why the ECP can exceed 20% of the actual benefit to a Party).

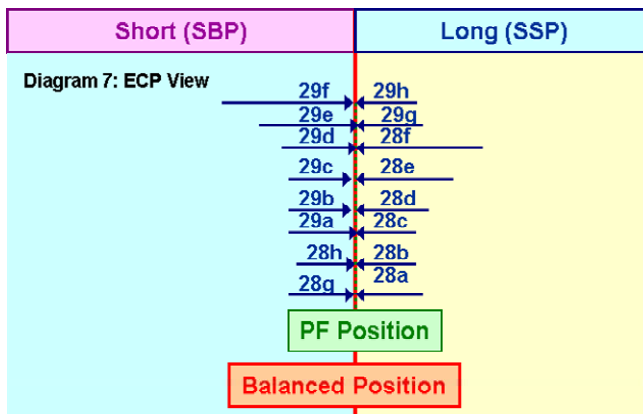
Were all the claims for EDFGEN01 (C) to be grouped and the net effect of all claims considered, a proportion of the ECP would be calculated at SSP and a proportion at SBP, resulting in an ECP payment for the Energy Account representing 20% of the total financial benefit (Diagram 5b).

1.2.3.4 Example 3: No change

The following example outlines how ECP charges are to be calculated where multiple upheld claims have no overall effect on the imbalance position of the Energy Account. Energy Account EDFT (P) is taken as an example, this account is subject to multiple apparently beneficial claims (when considered individually some of the claims appear beneficial) and a separate ECP will be calculated for each.



From the point of view of Imbalance Settlement, there is no net effect due to claims 28a-h and 29a-h.



ECPs are calculated for each claim individually, starting from the PF position. In this example, claims 29a-f, 28h and 28g appear to be beneficial (at SBP), as such an ECP is generated for each of these claims. Claims 28a-f, 29g and 29h appear not to be beneficial, and do not generate ECPs.

Although the results of the PFSR position for the Settlement Day in question is not yet known, indicative figures indicate:

- Energy Account EDFT (P) after the PFSR will be balanced.
- The SBP (average £113) for the relevant periods was higher than SSP (average £11).
- The net adjustment to settlement will be zero as a result of the upheld claims for EDFT(P), as each claim has an equal and opposite partner claim (Diagram 6). However, this is not reflected in the calculation of ECP payments as follows.

For EDFT (P), the calculation of the benefit for ECP purposes must treat each claim individually, by subtracting the effect of the claim from the PFSR position (Diagram 7). Although the net effect of all of the claims is zero (Diagram 6), some claims (29a-f, 28h and 28g) appear to make EDFT's Production Account 'more long', these claims appear to have an imbalance benefit to EDFT and attract a large ECP (as SBP, high).

Were all claims to be grouped for the purpose of calculating ECP there would not appear to be a financial benefit and no ECP would be generated for EDFT (P).

1.2.4 Financial impact

The estimated charges for each of the three Energy Accounts in the previous examples are set out in Table 1 below. NB: The 'ECP Benefit' is the value of each claim calculated for the purposes of the ECP, i.e. the effect starting from the PFSR position for each claim individually, rather than the actual Imbalance or 'financial benefit'.

Claim	EDFT (P)			EDFGEN01 (P)			EDFGEN01(C)		
	Volume change (MWh)	ECP Benefit (£)	ECP (£)	Volume change (MWh)	ECP Benefit (£)	ECP £	Volume change (MWh)	ECP Benefit (£)	ECP (£)
28a	-804	-9,052	0				804	79,756	16,167
28b	-6,708	-75,530	0				6,708	745,877	149,392
28c	-624	-7,026	0				624	59,477	12,105
28d	-624	-7,026	0				624	59,477	12,105
28e	-840	-9,659	0				840	29,562	6,129
28f	-612	-6,891	0				612	58,093	11,835
28g	773	83,869	16,774				-773	-9,791	0
28h	6,216	701,323	140,265				-6,216	-71,071	0
Sub Tot	-3,223		157,038				3,223		207,734
29a	804	90,712	18,142	-804	-7,972	0			
29b	6,708	756,833	151,367	-6,708	-74,449	0			
29c	624	70,403	14,081	-624	-5,945	0			
29d	624	70,403	14,081	-624	-5,945	0			
29e	840	32,339	6,468	-840	-556	0			
29f	612	69,049	13,810	-612	-5,810	0			
29g	-773	-8,710	0	773	83,869	16,774			
29h	-6,216	-69,990	0	6,216	701,323	140,265			
Sub Tot	3,223		217,948	-3,223		157,038			
TOTAL	0		374,986	-3,223		157,038	3,223		207,734

Table 1: Estimated ECP charges

Overall, the total ECP charge for the three Energy Accounts involved is estimated to be £740,000, in comparison with a net Imbalance or 'financial benefit' for the three Energy Accounts of £250,000.

The effect is highlighted further when considering the case of Energy Account EDFT (P) alone, (example 3). Throughout the process, the Energy Account remains balanced and imbalance charges will not be generated, hence the associated 'financial benefit' of the claims to EDFT is zero. However, as each claim relates to a separate Volume Notification the ECP for each must be calculated separately and, as a proportion of these claims appear beneficial when considered individually, an estimated ECP charge of £375,000 would be generated (i.e. the ECP is based on a perceived benefit of £1.9m, whereas in practice there is no financial benefit to Energy Account EDFT).

1.3 Proposed Modification

Under Proposed Modification P160, claims which affect the same Party Energy Account and Settlement Period would be grouped for the purpose of calculating the ECP (in order to address the issues identified with the ECP calculation).

The form and materiality of claim grouping under P160 was considered at length by the EPMG during the Assessment procedure (reference 3). It was noted by the EPMG that the ECPs calculated under Proposed Modification P160 (grouping by common Settlement Period) would ensure that the ECP reflected 20% of the financial benefit for the majority of Energy Accounts (see section 4.3). However, ECPs would still be generated for some Energy Accounts which were at a dis-benefit from the rectification of upheld PNE claims. As such, the EPMG agreed that Proposed Modification P160 would offer an improvement over the existing baseline, however some issues with the ECP calculation would remain unresolved (NB: these issues would be addressed under Alternative Modification P160).

1.4 Issues raised by the Proposed Modification

The following issues were considered during the Assessment of Proposed Modification P160:

- Assessment against the Applicable BSC Objectives;
- Grouping of claims;
- Materiality of claim grouping;
- Interaction between P163 and P160;
- Retrospection;
- ECP invoicing timetable; and
- Intent of P37.

These issues are discussed in the Assessment Report (reference 3) and are not covered further here.

1.5 Assessment of how the Proposed Modification will better facilitate the Applicable BSC Objectives

Having considered the assessment issues and reviewed the consultation responses, the EPMG concluded that Proposed Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to the current baseline. The EPMG considered the arguments for and against the better achievement of the Applicable BSC Objectives under Proposed Modification P160 as follows:

- The EPMG supported the rationale provided by the Proposer i.e. that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, would better achieve Applicable BSC Objective (c).
- The EPMG noted that in general retrospective changes to rules do not facilitate competition and, as such, Proposed Modification P160 could be considered to have a negative effect on the achievement of Applicable BSC Objective (c). In particular a number of EPMG members noted that Parties should have considered the effects of the ECP prior to raising any claims and, as such, a retrospective amendment may not be viewed as justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. Furthermore, the majority of the group were of the view that the issues identified with the ECP calculation could be attributed to a failure of the Central Arrangements (as the existing Code

drafting does not cater for the scenario where multiple claims affect the same Energy Account and Settlement Period). As such, the majority of the EPMG concluded a retrospective change was justified in this case.

- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed that Proposed Modification P160 would better facilitate achievement of Applicable BSC Objective (d)⁶.

Overall, the majority of the EPMG agreed that the benefits to competition of increased consistency in the ECP calculation would outweigh any negative effect of introducing a retrospective rule change. Therefore, the majority of the EPMG concluded that Proposed Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to the current baseline.

1.6 Alternative Modification

P160 seeks to address a perceived defect whereby the Energy Account ECP for Parties with upheld PNE claims can be greater than 20% of the total financial benefit to the Energy Account. Under Proposed Modification P160 this would be achieved by grouping claims which affect the same Party Energy Account and Settlement Period for the purpose of the ECP calculation.

The EPMG identified an alternative solution to the defect identified under P160, whereby all claims resulting from the same 'cause' (this term is utilised under existing paragraph P6.2.6 for grouping claims for fee calculation) would be grouped for the purpose of the ECP calculation. This approach would ensure that the ECP for an Energy Account is not significantly more than 20% of the financial benefit to the Energy Account. As such, this potential alternative solution would address the defect identified under P160 and is a valid Alternative Modification P160.

On consideration of the materiality of various approaches to grouping claims for the purpose of the ECP calculation (see section 4.3), the EPMG agreed that grouping by same cause would ensure the ECP calculation was equitable for all participants. Hence, the EPMG agreed that this approach should be progressed as Alternative Modification P160.

1.7 Issues raised by the Alternative Modification

The following issues were considered during the Assessment of Alternative Modification P160:

- Assessment against the Applicable BSC Objectives;
- Grouping of claims;
- Materiality of claim grouping;
- Interaction between P163 and P160;
- Retrospection;
- ECP invoicing timetable; and
- Intent of P37.

These issues are discussed in the Assessment Report (reference 3) and are not covered further here.

⁶ (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

1.8 Assessment of how the Alternative Modification will better facilitate the Applicable BSC Objectives

Having considered the assessment issues and reviewed the consultation responses the EPMG concluded that Alternative Modification P160 would better facilitate achievement of Applicable BSC Objectives in comparison to the current baseline. The EPMG considered the arguments for and against the better achievement of the Applicable BSC Objectives under Alternative Modification P160 as follows:

- The EPMG supported the rationale provided by the Proposer i.e. that amending the ECP calculation, such that Parties would not be required to pay significantly more than 20% of the actual net financial benefit of any upheld claims, would ensure that the calculation and effect of the ECP is consistent for all PNE claimants and, as such, would better achieve Applicable BSC Objective (c).
- The EPMG noted that in general retrospective changes to rules do not facilitate competition and, as such, Alternative Modification P160 could be considered to have a negative effect on the achievement of Applicable BSC Objective (c). In particular a number of EPMG members noted that Parties should have considered the effects of the ECP prior to raising any claims and, as such, a retrospective amendment may not be viewed as justified. However, the majority of the group were of the view the issues with the ECP calculation identified under P160 are a result of the complexities of the investigations affected and could not have been reasonably foreseen. Furthermore, the majority of the group were of the view that the issues identified with the ECP calculation could be attributed to a failure of the Central Arrangements (as the existing Code drafting does not cater for the scenario where multiple claims affect the same Energy Account and Settlement Period). As such, the majority of the EPMG concluded a retrospective change was justified in this case.
- The EPMG noted that clarification of the ECP process would reduce the possibility of legal challenge in this area and hence promote efficiency. Therefore, the EPMG agreed that Alternative Modification P160 would better facilitate achievement of Applicable BSC Objective (d).

Overall, the majority of the EPMG agreed that potential benefits to competition resulting from increased consistency in the calculation of the ECP would outweigh any negative effect of introducing a retrospective rule change. Therefore, the majority of the EPMG concluded that Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to the current baseline.

Furthermore, the EPMG unanimously agreed that Alternative Modification would ensure that the effect of the ECP is consistent across claimants to a greater extent than Proposed Modification P160 (see section 4.3). Therefore, the EPMG unanimously agreed that Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to Proposed Modification P160.

1.9 Governance and regulatory framework assessment

It is envisaged that were either Proposed Modification P160 or Alternative Modification P160 to be approved there would be no impact on the governance and regulatory framework.

2 COSTS⁷

PROGRESSING MODIFICATION PROPOSAL	
Demand Led Cost	£0
ELEXON Resource	42 Man days £11,120

IMPLEMENTATION COSTS				
		Stand Alone Cost	P160 Incremental Cost	Tolerance
Service Provider⁸ Cost	Change Specific Cost	£0	£0	N/a
	Release Cost	£0	£0	N/a
	Incremental Release Cost	£0	£0	N/a
	Total Service Provider Cost	£0	£0	N/a
Implementation Cost	External Audit	£0	£0	N/a
	Design Clarifications	£0	£0	N/a
	Additional Resource Costs	£0	£0	N/a
	Additional Testing and Audit Support Costs	£0	£0	N/a
Total Demand Led Implementation Cost		£0	£0	N/a

ELEXON Implementation Resource Cost		15 Man days £6,000	15 Man days £6,000	+/- 10% +/- £600
Total Implementation Cost		£6,000	£6,000	+/- 10%

ONGOING SUPPORT AND MAINTENANCE COSTS				
		Stand Alone Cost	P160 Incremental Cost	Tolerance
Service Provider Operation Cost		£0	£0	N/a
Service Provider Maintenance Cost		£0	£0	N/a
ELEXON Operational Cost		£0	£0	N/a

⁷ Clarification of the meanings of the cost terms in this section can be found in Annex 4 of this report

⁸ BSC Agent and non-BSC Agent Service Provider and software Costs

3 RATIONALE FOR PANEL'S RECOMMENDATIONS

On consideration of the Assessment Report (reference 3), the Panel supported the recommendations of the EPMG and agreed by majority that Alternative Modification P160 should be made.

The Panel supported the rationale put forward by the EPMG and agreed by majority that the potential benefits to competition resulting from increased consistency in the calculation of the ECP would outweigh any negative effect of introducing a retrospective rule change. Furthermore the Panel agreed P160 would reduce the possibility of legal challenge to the ECP calculation and thereby benefit efficiency. Hence, the Panel agreed by majority that both Proposed and Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives. Contrary to this majority, one Panel member was of the view P160 would not better facilitate achievement of the Applicable BSC Objectives, indicating that a retrospective rule change could not be justified to address the defect identified under P160.

It was noted by the Panel that Alternative Modification P160 would ensure that the effect of the ECP is consistent across claimants to a greater extent than Proposed Modification P160. Therefore, the majority of the Panel concluded that Alternative Modification P160 should be made.

The Panel unanimously agreed that both Proposed and Alternative Modifications should be implemented 10 Working Days after an Authority decision.

Although the Panel noted that each Modification Proposal must be assessed independently against the existing baseline, the Panel noted the interaction between P160 and Modification Proposal P163 'Clarification of the circumstances in which paragraph 6.5 of Section P (calculation of Error Correction Payment) should apply' (P163) as follows:

- Proposed Modification P160 would stand as an independent Modification;
- Alternative Modification P160 would stand as an independent Modification;
- Proposed Modification P163 would stand as an independent Modification;
- Proposed Modification P160 and Proposed Modification P163 are logically inconsistent in some circumstances. As such, approval by the Authority of Proposed Modification P160 and P163 would not be possible;
- Alternative Modification P160 and Proposed Modification P163 require the same form of claim grouping and are logically consistent, hence could be implemented in parallel. As such, both Alternative Modification P160 and Proposed Modification P163 could be approved by the Authority; and
- Should Alternative Modification P160 be approved, Proposed Modification P163 would not be required, as Alternative Modification P160 would provide clarification which is consistent with P163 and therefore addresses the defect identified under P163. Hence, if Alternative Modification P160 were approved, P163 would not be required.

On consideration of the interaction between P160 and P163 (but noting the requirement to assess each Modification Proposal independently against the existing baseline), the Panel noted, via minutes of its meeting 9 April 2004, the unanimous view that Alternative Modification P160 would better facilitate achievement of the Applicable BSC Objectives in comparison to Proposed Modification P163.

4 IMPACT ON BSC SYSTEMS AND PARTIES

An assessment has been undertaken in respect of BSC and Party Systems and no areas have been identified as being potentially impacted by P160 (Proposed or Alternative). However, BSCCo would need to amend the internal system/process to be used for calculating the ECP.

4.1 BSCCo

The changes required to the ECP calculation system and the incorporation of the changes to the Code would be of the order of 15 man days effort.

4.2 BSC Systems

No impact identified.

4.3 Parties and Party Agents

No impact has been identified on Party and Party Agent Systems. However, there would be a financial effect as a result of the revised ECP calculation as outlined in the table below (It should be noted that these estimates are based on indicative figures and will be subject to change when the results of the Post Final Settlement Run position for the affected Settlement Days are known).

Both P160 and P163 would only impact the ECP calculation for those PNE investigations involving more than one Volume Notification (i.e. those investigations with multiple Cnnn numbers³). As such, claims directly impacted by P160 and P163 are those associated with PNE Investigations I003, I020, I029 and I030. In addition, there would be a second order impact on all Parties which would occur via the re-allocation of ECPs (this is considered further in reference 3).

	Claims	Energy Account	Estimated Financial Benefit (£k)	Estimated ECP (£k) (as %age of Financial benefit to Energy Account)			
				Current	P160 Proposed	P160 Alternative	P163
I003	C034	AESDRAX	318	64 (20)	64 (20)	64 (20)	64 (20)
	C714	BEPET001	-63	6.8 (-11)	6.8 (-11)	0	0
I020	C028	EDFT	0	375 (∞)	0	0	0
	C029	EDFGEN (P)	-45	157 (-350)	0	0	0
		EDFGEN (C)	295	208 (71)	59 (20)	59 (20)	208 (71)
I029	C629-46	Innogy	0	850 (∞)	0	0	0
	C653-70	Npower	4,201	830 (20)	830 (20)	830 (20)	830 (20)
		YE	-501	15 (-3)	15 (-3)	0	0
I030	C647-52	Innogy	-390	0	0	0	0
		YE	626	125 (20)	125 (20)	125 (20)	125 (20)

5 IMPACT ON CODE AND DOCUMENTATION

5.1 Balancing and Settlement Code

For draft legal text to give effect to both Proposed Modification P160 and Alternative Modification P160 see Annex 1 of this document.

5.2 Code Subsidiary Documents

No impact on Code Subsidiary Documents has been identified.

5.3 BSCCo Memorandum and Articles of Association

No impact on the BSCCo Memorandum and Articles of Association has been identified.

5.4 Impact on Core Industry Documents and supporting arrangements

No impact has been identified.

6 REPORT PHASE CONSULTATION

Seven responses (representing 40 Parties) were received in respect of the consultation on the draft Modification Report. These responses are summarised in the table below and in the remainder of this section. It should be noted that no new issues were raised by the respondents.

Consultation question	Respondent agrees	Respondent disagrees	Opinion unexpressed
Do you agree with the Panel's views on Proposed Modification P160 and the provisional recommendation to the Authority contained in the draft Modification Report that Proposed Modification P160 should not be made?	6 (39)	-	1 (1)
Do you agree with the Panel's views on Alternative Modification P160 and the provisional recommendation to the Authority contained in the draft Modification Report that Alternative Modification P160 should be made?	4 (22)	2 (17)	1 (1)
Do you agree with the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal?	4 (35)	-	3 (5)
Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P160 (Proposed and Alternative)?	5 (36)	-	2 (4)

6.1 Proposed Modification

Respondents expressing an opinion on Proposed Modification P160 unanimously supported the Panel's provisional recommendation that the Proposed Modification should not be made. The arguments expressed were consistent with those considered during the Assessment Procedure and outlined in section 1.5 of this document.

The majority of respondents supported the rationale provided by the Panel that, although the Proposed Modification would better facilitate the Applicable BSC Objectives in comparison to the current baseline, the Alternative Modification would ensure that the effect of the ECP is consistent across claimants to a greater extent than Proposed Modification P160. Hence, it was the view of this majority that Proposed Modification P160 should not be made.

A minority of respondents were of the view that P160, both the Proposed and Alternative Modifications, would constitute a retrospective amendment that could not be justified to address the defect identified. Therefore, this minority of respondents were of the view that Proposed Modification P160 would not better facilitate achievement of the applicable BSC Objectives and should not be made.

6.2 Alternative Modification

The majority of respondents supported the Panel's provisional recommendation that Alternative Modification P160 should be made. The arguments expressed were consistent with those considered during the Assessment Procedure and outlined in section 1.8 of this document.

The majority of respondents supported the Panel's view that the potential benefits to competition resulting from increased consistency in the calculation of the ECP would outweigh any negative effect of introducing a retrospective rule change. These respondents also supported the Panel's view that Alternative Modification P160 would reduce the possibility of legal challenge to the ECP calculation and thereby benefit efficiency. Therefore, the majority of respondents were of the view that Alternative Modification P160 would better facilitate the Applicable BSC Objectives in comparison to the current baseline. Furthermore, as Alternative Modification P160 would ensure the effect of the ECP is consistent across claimants to a greater extent than Proposed Modification P160, the Alternative Modification should be made.

The minority of respondents were of the view that P160 would not better facilitate achievement of the Applicable BSC Objectives, indicating that a retrospective rule change could not be justified to address the defect identified under P160. Hence, these respondents were of the view neither Proposed nor Alternative Modification P160 should be made.

6.3 Legal Text

Respondents expressing an opinion on the P160 legal text unanimously supported the Panel's view that the legal text provided in the draft Modification Report correctly addresses the defect or issue identified in the Modification Proposal.

6.4 Implementation Date

Respondents expressing an opinion on the P160 Implementation Dates unanimously supported the Panel's recommendation.

6.5 General comments

One respondent expressed concern with the Panel's view that clarification of the ECP process would reduce the possibility of legal challenge in this area and promote efficiency, thereby better facilitating achievement of Applicable BSC Objective (d).

This respondent expressed general concern with the view that avoiding potential legal challenge would better facilitate Applicable BSC Objective (d). It was the view of this respondent that there are very few Modification Proposals which receive unanimous support from participants and it is therefore hypothetically possible for every decision to be legally challenged. In recognising that the threat of litigation is potentially ever present, it was the view of the respondent that there is no value in pre-empting such action when considering Applicable BSC Objectives against the current baseline. Hence it

was the view of this respondent that to accept that the potential avoidance of litigation better facilitates the Applicable BSC Objectives would set an undesirable precedent. The view was expressed that a modification should be judged on its own merits and not on speculation about what the Proposer may or may not do if it is not approved by the Authority.

It should be noted that it was the view of the Panel that, in the absence of any clarification, the existing Code baseline would be open to challenge (on the basis that the existing drafting does not recognise the scenario where multiple claims affect the same Party Energy Account and is therefore ambiguous in this area). It was the view of the Panel that clarifying the existing baseline to remove this ambiguity would reduce the possibility of legal challenge to the operational application of this section of the Code, thereby improving efficiency and better facilitating Applicable BSC objective (d). Hence, contrary to the suggestion of this respondent, no view in relation to the possibility of challenge to an Authority decision on a particular Modification Proposal had been made in the assessment that Applicable BSC Objective (d) would be better facilitated. Rather it was a view that the existing baseline could be considered to be ambiguous and thereby open to legal challenge.

7 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

No impact on the Transmission Company was identified.

8 IMPLEMENTATION APPROACH

The Panel recommends an Implementation Date of 10 Working Days after an Authority decision. This would provide sufficient time to make the required changes to the ECP calculation system and the Code.

It is estimated that making the necessary changes to the ECP calculation system and the Code would require 15 man days of ELEXON effort.

9 DOCUMENT CONTROL

9.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	13/04/04	Change Delivery	Change Delivery	Initial Draft
0.2	14/04/04	Change Delivery	Industry	Updated for consultation
0.3	29/04/04	Change Delivery	Change Delivery	Updated following consultation
0.4	30/04/04	Change Delivery	Change Delivery	Updated following review
0.5	07/05/04	Change Delivery	Panel	For Decision

9.2 References

Ref	Document	Owner	Issue date	Version
1	Modification Proposal P160	ELEXON	29/01/04	1.0
2	P160 Initial Written Assessment (IWA P160)	ELEXON	02/02/04	1.0
3	Assessment Report for P160 (P160AR)	ELEXON	05/02/04	1.0

ANNEX 1 DRAFT LEGAL TEXT

- Text for Proposed Modification is contained in Attachment 1.
- Text for Alternative Modification is contained in Attachment 2.

ANNEX 2 MODIFICATION GROUP DETAILS

Member	Organisation
Sarah Parsons	ELEXON (Chairman)
Thomas Bowcutt	ELEXON (Lead Analyst)
Steve Drummond	EDF Trading (Proposer P160)
David Tolley	RWE Innogy
Neil Smith	Powergen
Andrew Colley	Scottish and Southern
Man Kwong Liu	Scottish Power
Mark Edwards	Edison Mission
Mark Manley	BGT
Rachel Lockley	British Energy
Helen Bray	London Electricity

ANNEX 3 CONSULTATION RESPONSES

- Report phase consultation responses are contained in Attachment 3.

ANNEX 4 CLARIFICATION OF COSTS

There are several different types of costs relating to the implementation of Modification Proposals. ELEXON implements the majority of Approved Modifications under its CVA or SVA Release Programmes. These Programmes incur a base overhead which is broadly stable whatever the content of the Release. On top of this each Approved Modification incurs an incremental implementation cost. In order to give Stakeholders a feel for the estimated cost of implementing an Approved Modification the templates shown in Attachment 1 have three columns:

- **Stand Alone Cost** – the cost of delivering the Modification as a stand alone project outside of a CVA or SVA Release, or the cost of a CVA or SVA Release with no other changes included in the Release scope. This is the estimated maximum cost that could be attributed to any one Modification implementation.
- **Incremental Cost** - the cost of adding that Modification Proposal to the scope of an existing release. This cost would also represent the potential saving if the Modification Proposal was to be removed from the scope of a release before development had started.
- **Tolerance** – the predicted limits of how certain the cost estimates included in the template are. The tolerance will be dependent on the complexity and certainty of the solution and the time allowed for the provision of an impact assessment by the Service Provider(s).

The cost breakdowns are shown below:

PROGRESSING MODIFICATION PROPOSAL	
Demand Led Cost	This is the third party cost of progressing a Modification Proposal through the Modification Procedures in accordance with Section F of the Code. Service Provider Impact Assessments are covered by a contractual charge and so the Demand Led cost will typically be zero unless external Legal assistance or external consultancy is required.
ELEXON Resource	This is the ELEXON Resource requirement to progress the Modification Proposal through the Modification Procedures. This is estimated using a standard formula based on the length of the Modification Procedure.

SERVICE PROVIDER ⁹ COSTS	
Change Specific Cost	Cost of the Service Provider(s) Systems development and other activities relating specifically to the Modification Proposal.
Release Cost	Fixed cost associated with the development of the Service Provider(s) Systems as part of a release. This cost encompasses all the activities that would be undertaken regardless of the number or complexity of changes in the scope of a release. These activities include Project Management, the production of testing and deployment specifications and reports and various other standard release activities.
Incremental Release	Additional costs on top of base Release Costs for delivering the specific

⁹ A Service Provider can be a BSC Agent or a non-BSC Agent, which provides a service or software as part of the BSC and BSC Agent Systems. The Service Provider cost will be the sum of the costs for all Service Providers who are impacted by the release.

Cost	Modification Proposal. For instance, the production of a Test Strategy and Test Report requires a certain amount of effort regardless of the number of changes to be tested, but the addition of a specific Modification Proposal may increase the scope of the Test Strategy and Test Report and hence incur additional costs.
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IMPLEMENTATION COSTS

External Audit	Allowance for the cost of external audit of the delivery of the release. For CVA BSC Systems Releases this is typically estimated as 8% of the total Service Provider Costs, with a tolerance of +/- 20%. At present the SVA Programme does not use an external auditor, so there is no External Audit cost associated with an SVA BSC Systems Release.
Design Clarifications	Allowance to cover the potential cost of making any amendments to the proposed solution to clarify any ambiguities identified during implementation. This is typically estimated as 5% of the total Service Provider Costs, with a tolerance of +/- 100%.
Additional Resource Costs	<p>Any short-term resource requirements in addition to the ELEXON resource available. For CVA BSC Systems Releases, this is typically only necessary if the proposed solution for a Modification Proposal would require more extensive testing than normal, procurements or 'in-house' development.</p> <p>For SVA BSC Systems Releases, this will include the management and operation of the Acceptance Testing and the associated testing environment.</p> <p>This cost relates solely to the short-term employment of contract staff to assist in the implementation of the release.</p>
Additional Testing and Audit Support Costs	Allowance for external assistance from the Service Provider(s) with testing, test environment and audit activities. Includes such activities as the creation of test environments and the operation of the Participant Test Service (PTS). For CVA BSC Systems Releases, this is typically estimated as £40k per release with at tolerance of +/-25%. For SVA BSC Systems Releases this is estimated on a Modification Proposal basis.

TOTAL DEMAND LED IMPLEMENTATION COSTS

This is calculated as the sum of the total Service Provider(s) Cost and the total Implementation Cost. The tolerance associated with the Total Demand Led Implementation Cost is calculated as the weighted average of the individual Service Provider(s) Costs and Implementation Costs tolerances. This tolerance will be rounded to the nearest 5%.

ELEXON IMPLEMENTATION RESOURCE COSTS

Cost quoted in man days multiplied by project average daily rate, which represents the resources utilised by ELEXON in supporting the implementation of the release. This cost is typically funded from

the "ELEXON Operational" budget using existing staff, but there may be instances where the total resources required to deliver a release exceeds the level of available ELEXON resources, in which case additional Demand Led Resources will be required.

The ELEXON Implementation Resource Cost will typically have a tolerance of +/- 5% associated with it.

ONGOING SUPPORT AND MAINTENANCE COSTS	
ELEXON Operational Cost	Cost, in man days per annum multiplied by project average daily rate, of operating the revised systems and processes post implementation.
Service Provider Operation Cost	Cost in £ per annum payable to the Service Provider(s) to cover staffing requirements, software or hardware licensing fees, communications charges or any hardware storage fees associated with the ongoing operation of the revised systems and processes.
Service Provider Maintenance Cost	Cost quoted in £ per annum payable to the Service Provider(s) to cover the maintenance of the amended BSC Systems.