

ASSESSMENT REPORT for Modification Proposal P158

Introducing the Ability to lodge a Consolidated Letter of Credit

Prepared by: Settlement Standing Modification Group

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This document has been distributed in accordance with Section F2.1.10¹ of the Balancing and Settlement Code.

RECOMMENDATIONS

The Settlement Standing Modification Group (SSMG) invites the Panel to;

- **AGREE that the Proposed Modification P158 should not be made;**
- **AGREE a provisional Implementation Date for Proposed Modification P158 (in the event that the Authority determines that Proposed Modification P158 should be made) of 3 November 2004 should an Authority decision be received on or before 30 July 2004, or 23 February 2005 should an Authority decision be received after that date but before 12 November 2004;**
- **AGREE that Modification Proposal P158 be submitted to the Report Phase; and**
- **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting of 13 May 2004.**

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1.1.1.1

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

As far as the SSMG has been able to assess the following parties/documents have been identified as being potentially impacted by Modification Proposal P158.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input checked="" 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 checked="" 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 checked="" type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
FAA <input checked="" type="checkbox"/>	N <input checked="" 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 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"/>		

X = Identified in Report for last Procedure
 N = Newly identified in this Report

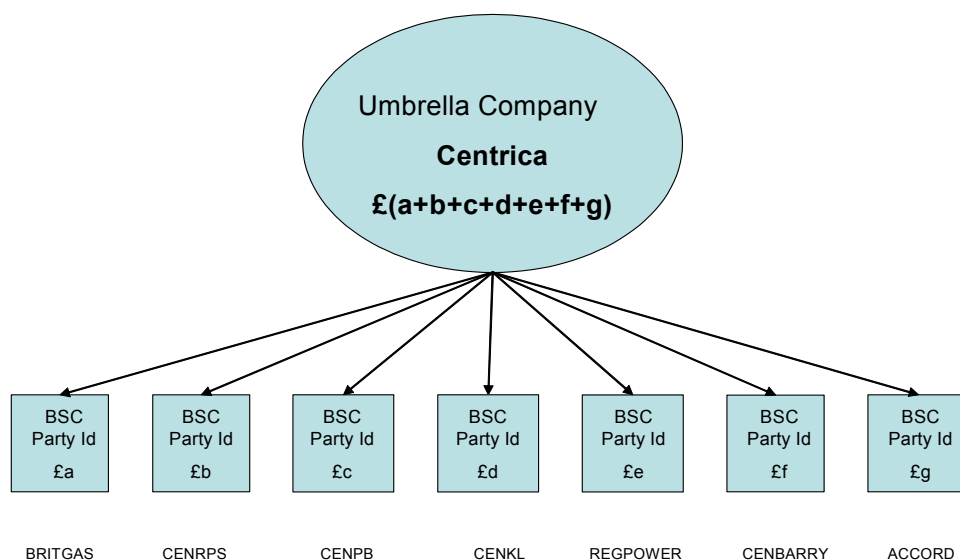
1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

1.1 Modification Proposal

Modification Proposal P158 'Introducing the Ability to Lodge a Consolidated Letter of Credit' (P158) seeks to modify the Balancing and Settlement Code ("the Code") to allow a group of BSC Parties to lodge a single consolidated Letter of Credit (LoC). The consolidated LoC would be sub-divided and specific amounts of Credit Cover allocated against each BSC Party/BSC Party Id², as opposed to posting an individual LoC for each BSC Party. The Proposer asserts that P158 would not alter the method of calculating a Party's Energy Indebtedness (pursuant to Section M 1.2 of the Code), which would still be calculated at a BSC Party level rather than against a group of BSC Parties.

The Proposer intends that P158 be introduced on a voluntary basis. Figure 1 below, diagrammatically explains how the consolidated LoC would be sub-divided against a number of BSC Parties.

Figure 1: Example Sub-division of a consolidated Letter of Credit



Currently the Code specifies, pursuant to Section M 2.1.1, that a LoC can only be lodged against an individual Party. The Code only contains provisions for a Trading Party (BSC Party) to apply for a single Letter of Credit (Annex M-1), thus preventing a group of Trading Parties from lodging a consolidated LoC.

The Code considers each Trading Party's application of Credit Cover on a separate basis and the Proposer believes this to be a defect within the current drafting of the Code. The Proposer therefore, believes that it would be appropriate for an additional consolidated Letter of Credit application form to be included in Section M 'Credit Cover and Credit Default' of the Code - potentially referenced as 'Annex M-2' which would allow a group of BSC Parties to lodge a consolidated LoC.

1.1.1.1

² Reference to BSC Party Id in the Modification refers to the unique Id given to each BSC Party (see Section A 4.3.3 of the Code) and should not be confused with the Supplier Id allocated to Supply Businesses and defined in Section S 1.3.

The Proposer asserts that P158 would assist BSCCo and the Funds Administration Agent (FAA) in managing the Credit Cover process. P158 will reduce the number of Credit Cover applications submitted by BSC Parties and therefore reduce the administrative burden placed on the FAA. The Proposer also believes that P158 would reduce the level of monitoring required by the FAA as P158 would reduce the monitoring obligations of the FAA as set out in the Code (detailed in Section M 2.2.3) - whereby the FAA notifies BSC Parties in advance of their impending LoC expiry date.

The Proposer therefore believes that P158 would better facilitate the achievement of Applicable BSC Objective (d) – “Promoting efficiency in the implementation and administration of the balancing and settlement arrangements”, by reducing administrative burdens on BSC Parties, BSCCo and the FAA.

Furthermore the Proposer believes that P158 would better facilitate achievement of Applicable BSC Objective (c) – “Promoting effective competition in the generation and supply of electricity and promoting competition in the sale and purchase of electricity”, as BSC Parties would be able to source Credit Cover more efficiently. It would also reduce the administration of having to refresh several LoCs a year.

1.2 Proposed Modification

The SSMG, after considering the issues set out in section 1.3 agreed the following mechanism to give effect to P158:

- A BSC Party (the Umbrella Company) would lodge a consolidated LoC with a bank on behalf of a group of BSC Parties. The group of Parties would then submit a consolidated LoC application to the FAA, using the proposed Annex M-2 form of the Code (defined in Annex 1 of this document - legal text). This form would provide a breakdown of each Party’s ring-fenced amount of Credit Cover and the FAA would record and treat each of these as separate single LoCs;
- Upon receiving the consolidated LoC application, the FAA would check the affiliation status of the Party group with ‘Companies House’. If the FAA deemed this group to be ‘affiliated’, the consolidated LoC would be approved;
- The FAA would be responsible for monitoring the amount of Credit Cover allocated to each BSC Party covered by the consolidated LoC. However, this would not require additional monitoring as each Party’s Credit Cover would be treated as a single LoC;
- If a Party went into Default (for whatever reason) and the FAA were to call upon a Party’s Credit Cover. The FAA would only be able to call upon that Party’s Credit Cover, as the ‘ring-fenced amount would be treated as a single LoC. Therefore, this would not impact any other Party within the affiliate group; and
- If for whatever reason, the Umbrella Company was unable to renew the consolidated LoC on time, this could potentially put the entire LoC into Credit Default. However, P158 is to be introduced on a voluntary basis and Parties should be made aware of this risk, prior to lodging a consolidated LoC.

1.3 Issues raised by the Proposed Modification

During the course of the Assessment Procedure, the SSMG considered the following issues:

- Criteria for lodging a consolidated LoC;
- Affiliation versus Non Affiliation;
- Apportionment of the consolidated LoC;

- Default;
- Withdrawal of a Party from a consolidated LoC;
- Format of a consolidated LoC;
- Cash Cover;
- Usage of consolidated LoCs; and
- Assessment of Risk.

The following subsections document the discussions and conclusions of the SSMG in relation to each of the above issues.

1.3.1 Criteria for lodging a consolidated LoC

The SSMG have considered the criteria for lodging consolidated LoCs under P158 and initially agreed that only affiliated companies should be eligible. It was the view of the SSMG that the definition of affiliation currently used to define a 'trading party group' for the purpose of BSC voting (pursuant to Annex B-2 'Election of Industry Panel Members', section 3.1.5) should be utilised under P158. This section outlines the issues considered by the SSMG and the arguments from which the SSMG drew its' initial conclusion.

1.3.1.1 Affiliation versus Non Affiliation

The SSMG considered whether limiting the consolidated LoC to groups of Parties meeting the existing Code definition of Affiliate (Section X Annex X-1) would discriminate against smaller Parties. Therefore, the SSMG considered the possibility of allowing an arbitrary group of BSC Parties to post a consolidated LoC.

Following further discussion, the SSMG noted that there would be two qualifying requirements for lodging a consolidated LoC under P158 as follows:

- Qualification criteria introduced via Code requirements (i.e. the groups of companies the Code is willing to accept a consolidated LoC for); and
- Qualification criteria under bank requirements (i.e. the groups of companies for which a bank is willing to provide a consolidated LoC for).

The SSMG noted that any criteria an individual bank sets when agreeing to provide a consolidated LoC for an Umbrella Party (to cover a number of affiliated or un-affiliated BSC Parties), would be outside of the scope of the Code. Also it was the view of the SSMG that, although banks may agree to provide a LoC for affiliated companies, it was unlikely that this would be the case for an arbitrary group.

In addition were a bank to issue a consolidated LoC for an arbitrary group and any Party in that group were to have its Credit Cover called upon by the FAA, the FAA would directly contact the lender (bank) of the LoC to request the payment of funds. As the Umbrella Company lodged the original consolidated LoC with the bank, the bank would therefore hold the Umbrella Company responsible for providing the outstanding funds. Therefore the overall risk would sit with the Umbrella Company. The SSMG felt that this process would be difficult for any such group in terms of either increasing or decreasing its amount of Credit Cover as this would need to be coordinated through the Umbrella Company.

The SSMG noted the FAA view that, if a valid consolidated LoC was provided by a bank, the FAA would be in a position to call upon any element of that amount, at any time, independent of any criteria for posting LoC under the Code (as each ring-fenced amount of credit would be treated as a single LoC) i.e. the ability of the FAA to call a consolidated LoC would not be dependent on affiliation status or otherwise of the Parties covered.

Whilst, the SSMG noted that this was a workable solution for P158 some members of the SSMG suggested that affiliation would provide a greater level of assurance in terms of the level of risk Parties could potentially be exposed to, were a Party to go into default for what ever reason.

Therefore the group agreed that for the purpose of Impact Assessment and consultation it should be assumed only affiliated companies would be eligible to post a consolidated LoC under P158. However, the SSMG requested views on whether the scope should be extended to include non-affiliate groups via consultation.

1.3.1.2 Checking Affiliation Status

The SSMG also considered the implications of limiting the criteria for lodging consolidated LoCs to affiliate groups and noted that this would require a new process for checking a Party's affiliation status. The SSMG considered who would be responsible for managing this process i.e. the FAA or BSCCo. The arguments for and against are outlined below:

BSCCo:

Under P158, the consolidated LoC process would commence with a Party lodging a consolidated LoC application with the FAA, this is in line with the existing process currently defined under the Code and within the FAA Service Description for lodging a single LoC. On receipt of an application for a consolidated LoC, the FAA would be required to notify BSCCo. BSCCo would then run a check on the affiliation status of that group of Parties through Companies House and inform the FAA of the results from that check, i.e. the group is genuinely affiliated or not. The FAA would then take the necessary steps to either accept the consolidated LoC application or reject it.

The results from the BSCCo and FAA Impact Assessment suggest that, if BSCCo were to undertake the affiliation checking process, the impact on BSCCo would not be insignificant. If BSCCo were required to undertake the affiliation check it would involve BSCCo obtaining information currently not operationally available and also the introduction of new defined manual flows between BSCCo and the FAA. BSCCo would also incur costs associated with accessing data from Companies House. It was also suggested that if the FAA were required to notify BSCCo of a consolidated LoC application and BSCCo were then required to run the affiliation check, this would create an unnecessary time-lag within the consolidated LoC application process.

FAA:

The results of the FAA Impact Assessment indicated that there would be no benefit in fragmenting the process of lodging a consolidated LoC and that this would be detrimental to the interest of BSC Party's lodging of Credit Cover. The FAA proposed that it would be able to carry out the checks on the affiliation status and this would prevent any delays occurring in processing applications. Under this approach, the main impacts on documentation would be to BSCP301, which would need to be amended to allow the FAA carry out the affiliation check. Changes to other documents such as the FAA Service Description, URS and IDD would be required but these would be minimal.

The initial FAA Impact Assessment stated that the FAA would absorb the cost of checking the affiliation status provided that Modification Proposals P142 and P152 were approved. However, the FAA later confirmed that it would absorb the cost of the affiliation process, independent of any other modification being approved by the Authority.

The SSMG considered each argument for an against the FAA and BSCCo undertaking the affiliation checking process and concluded that the FAA was in a better position to facilitate this role.

1.3.2 Apportionment of the LoC

The SSMG have considered how Credit would be apportioned between those Parties covered by a consolidated LoC. The SSMG agreed that the consolidated LoC would be lodged by the group of Trading Parties covered but would represent one underlying relationship between the lender (bank) and 'Umbrella Company'. The group specified that each allocated portion of Credit Cover would be 'ring fenced' and treated the same way as a single LoC is under the current Code baseline.

Hence, under P158, if a Party wished to either increase or decrease its Credit Cover, then it would have to follow the processes currently defined under the Code for single LoCs. For example, a BSC Party wishing to decrease its ring fenced portion of a consolidated LoC, pursuant to Section M 2.3 'Reduction of Credit Cover', would need to apply through the 'minimum eligible amount' process as defined in section M 2.3.2(b). However, if a BSC Party wished to increase its ring fenced portion of a consolidated LoC it would still need to follow the rules currently defined in section M 2.1 'Provision of Credit Cover' and 2.2 'Letter of Credit' of the Code. Therefore, any changes to the Credit Cover of an individual Party covered by a consolidated LoC would require a new Consolidated LoC to be posted. As such, an individual Party covered by a consolidated LoC would only be able to adjust its' Credit Cover amount with the involvement of the Umbrella Party (to which the bank has the direct relationship).

1.3.3 Default

The SSMG have considered how the default arrangements would apply to Parties covered by a consolidated LoC.

Default under the Code:

Currently, if a Party Defaults under the Code, pursuant to Section H.3.2.1, its Credit Cover will be frozen (until after the Final Reconciliation Run when a Party could apply to have any unused Credit Cover returned). The SSMG agreed that Parties covered by a consolidated LoC would be allocated individual, 'ring-fenced' amounts of Credit Cover which would be treated as an individual LoC. Therefore, if a Party Defaults under the Code only that individual Party would have its Credit Cover frozen and the remaining Parties within the group would not be impacted.

With regards to a Party being in default, the Panel is obliged to take decisions in relation to that Party. The SSMG agreed that this should not alter with the introduction of a consolidated LoC and that all affected Parties would be judged on an individual basis in relation to their portion of the consolidated LoC.

Payment Default:

If a Party fails to pay its Trading Charges, BSCCo may call upon any lodged Credit Cover. In the event that a Party (covered by a consolidated LoC) goes in to Payment Default only the Credit Cover associated with that Party could be called by the FAA, as its portion of credit would be treated as a single LoC. Therefore, the rest of the group covered by the consolidated LoC would not be affected by an individual Party failing to pay its Trading Charges and would not be liable for any unpaid Trading Charges.

Credit Default:

If a Party fails to have sufficient Credit Cover lodged, BSCCo may deem the Party to be in Credit Default. In the event that a Party (covered by a consolidated LoC) goes in to Credit Default only that specific Party would be affected. Therefore, the rest of the group covered by the consolidated LoC would not be affected by an individual Party failing to lodge sufficient credit.

Renewal of LoC:

If the renewal timescales for a consolidated LoC covering a number of its BSC Parties are not met, the FAA would be able to call upon the entire LoC (as the renewal dates of each single element would have expired at the same point in time). As such, the responsibility for renewing consolidated LoCs and the associated risk would sit with the Umbrella Company (since the lender has one underlying relationship with the Umbrella Company).

1.3.4 Withdrawal of a Party from a consolidated LoC

The SSMG considered what the implications would be if a Party, covered by a consolidated LoC were sold or voluntarily left the affiliated group. The SSMG consulted the view of the FAA, who confirmed that the unaffiliated Party's Credit Cover could still be called upon by the FAA until the Umbrella Company issued a revised / lodged a new consolidated LoC and removed that Party's name from the form. Therefore, the Umbrella Company would be responsible for lodging a new LoC. If the Umbrella Company does not lodge a new LoC then it would potentially remain obligated if the unaffiliated Party's Credit Cover were to be called upon by the FAA, i.e. if such a Party were in Payment Default. However, if the Umbrella Company had submitted a revised LoC, removing any reference to the Party that had been sold, then the new owners of that Party would be responsible for lodging Credit Cover for that Party. Failure to do so could mean that the Party was subject the default procedures in the Code.

The SSMG agreed that the risk of Parties leaving the affiliated group rested with the Umbrella Company. Therefore, it was agreed that once the initial affiliation check was carried out by the FAA, there would be no active monitoring of the affiliation status of Parties subject to a consolidated LoC.

1.3.5 Format of consolidated LoC

At its initial meeting, the group requested visibility of the draft legal text for Annex M2 'Consolidated Letter of Credit form' and sought reassurance that this form would be robust and legally binding (draft legal text is attached as Annex 1 of this document). The SSMG agreed that any consolidated LoC put forward under P158 should provide the market with an equivalent level of assurance to that provide by the existing single LoC. Therefore, the SSMG have taken the following steps in the preparation of the consolidated LoC:

- The FAA were invited to comment on the workability of the proposed drafting as part of the BSC Agent impact assessment of P158. No adverse comments on the workability of the consolidated LoC were made;
- The advice of an external LoC expert has been obtained and the comments provided incorporated into the drafting; and
- External legal advice on the format of the consolidated LoC has been taken and confirmed that the drafting is legally robust.

1.3.6 Cash Cover

The SSMG considered the extension of P158 to include cash cover and agreed that there would be no benefit in expanding the consolidated credit process to incorporate cash cover. The FAA confirmed that cash already gets 'ring-fenced' and put into a Reserve Account. Therefore, the SSMG agreed P158 would only be applicable for LoC.

1.3.7 Usage of consolidated LoCs

The SSMG considered the number of Parties which would potentially utilise the consolidated LoC and agreed that views on this issue should be obtained via industry consultation.

1.3.8 Assessment of Risk

The SSMG have considered whether there would be an increased risk associated with implementing P158, i.e. that a consolidated LoC provides less assurance than a single LoC.

Some members of the SSMG expressed concern that the level of risk on Parties could potentially be increased by the fact that a consolidated LoC is a new concept and that it had not been tested within the industry before. However, one member of the group noted that there had been a historical example of a consolidated LoC being utilised within the Gas industry. Prior to the former company TXU going into administration, it was able to lodge a consolidated LoC for a number of its Shipping Ids. When one shipper was unable to make payments, Transco called upon the entire LoC. This proves that there is historical evidence that a consolidated LoC has been used before.

The SSMG noted that the entire TXU consolidated LoC was called upon because the amounts of credit were not 'ring-fenced' to each individual Party. This would not be possible under the consolidated LoC proposed by P158 because Credit Cover would be allocated to specific Parties within the group and each amount 'ring-fenced'. Therefore, if the FAA were required to call upon a particular Party's LoC, it would only be able to call that Party's Credit Cover and no other Party's within the group.

In response to this evidence, the majority of the SSMG were of the opinion that although this historical information would serve to reduce the perceived level of risk associated with the consolidated LoC, it still did not carry the same level of assurance that the current baseline had to offer to the industry. Therefore, the single LoC was considered more robust and a greater level of confidence was associated with this type of LoC compared to a relatively untested consolidated LoC.

The SSMG discussed the concern raised by a consultation respondent that potential lenders could exploit loop-holes in the consolidated LoC, to avoid honouring the LoC. BSCCo received information from two external financial institutions. One of these sources suggested that if a Party within a consolidated group were to go into Default there may be a knock on effect to the other Parties within the group. Also their view was that a financial institution might not be comfortable with accepting a consolidated LoC due to the perceived extra work involved and the greater potential for errors. The second source stated that there was no additional risk when compared to a single LoC (for further information, refer to section 8 and Annex 7).

In addition, BSCCo sought advice from its external legal advisors and an external LoC expert. Both of these expressed the view that the consolidated LoC was robust.

Based on this information, a number of SSMG members were of the view that a consolidated LoC would be sufficiently robust and as workable as the current single LoC. However, a number of SSMG members were still concerned that the consolidated LoC may not provide the same level of assurance currently provided by single LoCs. Therefore, the SSMG considered the responses of Parties (as those directly affected by any increased risk) from the P158 consultation (the results of which can be viewed in section 6 of this document).

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

This section represents a summary of the SSMG's assessment of the Proposed Modification against the Applicable BSC Objectives. The SSMG, in undertaking this assessment, took account of the views expressed by respondents to the Assessment Consultation (see Section 6).

Majority View Against Proposed Modification

The majority of the SSMG³ were of the view that Proposed Modification P158 would not better facilitate Applicable BSC Objective (c):

“Promoting effective competition in the generation and supply of electricity and promoting competition in the sale and purchase of electricity”

The following arguments were expressed in support of this view:

- That there is a lack of historical evidence to suggest that a consolidated LoC has been utilised in the past. Therefore, the current drafting of the consolidated LoC does not provide an equal level of assurance when compared to the current single LoC;
- That the untested methodology of the consolidated LoC process could potentially weaken the existing LoC process and jeopardise the markets’ confidence in LoC and therefore increase the barrier to entry;
- That the lender may potentially exploit loop-holes in the consolidated LoC. This could result in the lender not honouring the LoC and therefore potentially subjecting the rest of the market to the risk of having to settle the outstanding liabilities associated with the consolidated LoC. This would have a negative impact on competition;
- That any amendments made to consolidated LoC would be carried out purely by the Umbrella Company and not by the individual Parties covered by the LoC. This could potentially be seen as detrimental to the flexibility of the current LoC amendment process. However, a Party’s decision to lodge a consolidated LoC would be a voluntary and commercial decision and the strength of the former argument could be weakened by the fact that applicants should consider these issues prior to lodging a consolidated LoC; and
- That the risks associated with the consolidated LoC outweighed the potential cost benefits P158 offered.

The SSMG (of those whom attended the last meeting) were also of the view that P158 did better facilitate Applicable BSC Objective (d):

“Promoting efficiency in the implementation and administration of the balancing and settlement arrangements”

It was acknowledged that P158 offered Parties reduced administrative costs and would potentially improve the efficiency of lodging and refreshing consolidated LoC. However, the majority of SSMG felt that this benefit was significantly outweighed by the detrimental effect of Applicable BSC Objective (c).

Minority view in Support of Proposed Modification

The minority of the SSMG (the Proposer) was of the view that P158 better facilitated the achievement of the Applicable BSC Objective (c) by promoting competition.

The following arguments were expressed in support of this view:

- That P158 offered Parties the ability to reduce administration costs by reducing the number of LoCs it would need to lodge and refresh on behalf of its BSC Parties. This minority view also

1.1.1.1

³ Small attendance at the last meeting should be noted. Therefore the recommendation were agreed by correspondence after the meeting

acknowledged that this benefit, albeit small, was significant for those Parties who wished to lodge a consolidated LoC;

- That there were no additional risks associated with the consolidated LoC, as BSCCo had sought advice from an external legal advisor as well as from an external LoC expert. Both of which confirmed that the consolidated LoC was robust;
- These points mean that P158 would improve competition by increasing efficiency of credit arrangements for Parties using consolidated LoCs, with no impact on risk and no change to the level of protection for Parties; and
- That potential loop holes could equally exist under the current single LoC.

The minority of the SSMG also believed that P158 better facilitated the achievement of the Applicable BSC Objective (d), in promoting efficiency.

The following arguments were expressed in support of this view:

- That P158 offers existing Parties and those entering the market a more efficient mechanism for sourcing Credit Cover.
- That there would be a reduction in the amount of time in which Parties would be required to source and lodge LoC;
- That there would be a reduction in the administrative burden on the Umbrella Parties lodging several LoC on behalf of its affiliated BSC Parties; and
- That there would be a reduction in the Credit Cover monitoring process undertaken by the FAA, as the Parties covered by a consolidated LoC would have the same LoC expiry date and the FAA would only have to notify one company, thus promoting efficiency.

Conclusion

Further to the SSMG's review of the P158 consultation responses (defined in section 6.1 of this document) and the additional information provided by external sources (defined under section 8.1 and Annex 7 of this document), the majority of the SSMG have concluded that P158, although it offers potential administrative benefits for Parties thus promoting (d), this is outweighed by the potential risks associated with a consolidated LoC. Therefore, the majority of the SSMG believe that P158 does not better facilitate the applicable BSC Objective (c) and as a result should not be made.

1.5 Governance and regulatory framework assessment

During the assessment of the Proposed Modification, the SSMG also considered the wider implications of P158 in the context of the statutory, regulatory and contractual framework within which the Code sits, as is required by the Code (Annex F-1, paragraph 1(g)). The SSMG was of the opinion that, were P158 to be implemented, there would be no such wider implications.

2 COSTS⁴

For the purpose of P158, the SSMG considered two costs associated with who would be responsible for facilitating the role of checking the affiliation. These options were as follows:

1.1.1.1

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

- Option 1 - costs associated with implementing P158 with BSCCo undertaking the role of checking the affiliation status of Parties wishing to lodge a consolidated LoC; and
- Option 2 - costs associated with the FAA undertaking the same role.

These costs are presented below:

PROGRESSING MODIFICATION PROPOSAL - OPTION 1

Demand Led Cost	£5,500 ⁵
ELEXON Resource	45 Man days £8,450

IMPLEMENTATION COSTS – OPTION 1

		Stand Alone Cost	P158 Incremental Cost	Tolerance
Service Provider⁶ 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		£0	£0	N/A

1.1.1.1

⁵ Demand Led Costs were not incorporated in the IWA, however, the group requested external legal advice and LoC expert advice. An estimate of this cost has been included.

⁶ BSC Agent and non-BSC Agent Service Provider and software Costs

Implementation Cost				
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ELEXON Implementation Resource Cost		Man days 133 £53,200	Man days 78 £31,200	+5% +5%
Total Implementation Cost		£53,200	£31,200	+14%

ONGOING SUPPORT AND MAINTENANCE COSTS – OPTION 1

	Stand Alone Cost	P158 Incremental Cost	Tolerance
Service Provider Operation Cost	£0	£0	N/A
Service Provider Maintenance Cost	£0	£0	N/A
ELEXON Operational Cost	£ 20,800 per annum	£20,800 per annum	+25% (£5,200)

IMPLEMENTATION COSTS – OPTION 2

	Stand Alone Cost	P158 Incremental Cost	Tolerance
Service Provider⁷ 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	£0	£0	N/A

1.1.1.1

⁷ BSC Agent and non-BSC Agent Service Provider and software Costs

	and Audit Support Costs			
Total Demand Led Implementation Cost		£0	£0	N/A

ELEXON Implementation Resource Cost		Man days 79 £31,600	Man days 34 £13,600	+5%
Total Implementation Cost		£31,600	£13,600	+5%

ONGOING SUPPORT AND MAINTENANCE COSTS – OPTION 2

	Stand Alone Cost	P158 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

For the purpose of clarification the costs associated with BSCCo undertaking the affiliation checking process (option 1) are higher than those costs associated with the FAA undertaking the same role (option 2). This is due to the fact that BSCCo would be required to implement new Systems and Processes and associated documentation changes to enable it to check the affiliation status of Parties. BSCCo would also have ongoing operation costs associated with this process.

Since its initial Impact Assessment, the FAA have confirmed that it would absorb the costs associated with the affiliation checking process, if it were required to facilitate this role. The FAA have also confirmed that it already has the internal systems in place to check the affiliation status of Parties via 'Companies House' and that this check would not require any additional processes or system changes, as would be required if BSCCo were to undertake the process. In addition, the absorption of this cost would be independent of Modifications P142 and P152 being approved (as indicated in its initial Impact Assessment). Therefore, there are no Service Provider costs indicated.

The SSMG in its assessment of the above costs and acknowledgement of the FAA's agreement to undertake the affiliation checking process, for no additional cost, have concluded that the FAA would be in a better position to facilitate this role.

3 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL

The majority of the SSMG believes that P158 would not better facilitate the Applicable BSC Objectives. Therefore, by a majority, the SSMG makes the following recommendations to the Panel:

- AGREE that the proposed P158 should not be made;

- AGREE a provisional Implementation Date for Proposed Modification P158 of 3 months after an Authority decision;
- AGREE that Modification Proposal P158 be submitted to the Report Phase; and
- AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting of 13 May 2004.

The SSMG's assessment of P158 in terms of Applicable BSC Objectives is contained in Section 1.4 (above) and the rationale for the proposed Implementation Date is contained in Section 8 (below).

4 IMPACT ON BSC SYSTEMS AND PARTIES

An assessment has been undertaken in respect of BSC Systems and Parties and the following areas have been identified as potentially being impacted by the Proposed Modification.

As agreed by the SSMG, the impacts discussed below are in relation to the FAA undertaking the affiliation checking process.

4.1 BSCCo

The CVA Programme would be impacted by the P158 as it would need to implement the relevant changes to the FAA Service Description and BSCP301 'Clearing, Invoicing and Payment'. This documentation would be updated to accommodate a consolidated LoC and to reflect the affiliation checking process, which the FAA would facilitate. 20 man days' effort would be required to implement these changes.

4.2 BSCCo Agent Systems

No impact on BSCCo Agent Systems were identified during the Assessment Procedure of Modification Proposal P158. However, there would be an impact on the FAA Credit Cover management process. The affiliation checking process would need to be included as an additional step to processing of LoC applications.

4.3 Parties and Party Agents

No impacts were identified on Parties and Party Agents during the Assessment Procedure of P158. Two 'no impact' responses were received to the Detailed Level Impact Assessment and are attached as Annex 5. However, as P158 will be introduced on a voluntary basis, Party processes may need to be amended to include the lodging of consolidated LoCs.

5 IMPACT ON CODE AND DOCUMENTATION

5.1 Balancing and Settlement Code

The proposed Modification requires changes to Section M 'Credit Cover and Credit Default' and Section N 'Clearing, Invoicing and Payment'.

Section M 2.1 'Provision of Credit Cover', describes the options for providing Credit Cover. Section 2.1.1 (c) will need to be added to include the use of a Consolidated LoC. This section (M2.1.1.A) also defines the criteria for who can lodge a consolidated LoC i.e. Affiliate group.

Section M2.1.2 will need to be amended to include the use of a consolidated LoC.

Section M2.1.3 which defines the amount of a Trading Party's Credit Cover will need to be amended to accommodate for the sum of individual Trading Party's covered by a consolidated LoC.

An additional clause will need to be added to section M, 2.1.5, which refers to the location of the Consolidated LoC (Annex-M2).

Section M2.2 'Letter of Credit' has an additional clause, Section M2.2.1A, which extends the reference of a LoC to incorporate a consolidated LoC.

Section M2.3, which defines the process for a Party wishing to reduce its Credit Cover, will need to be extended (Section 2.3.1(c)(ii)) to reflect the ability for Trading Parties, covered by a consolidated LoC, to request a reduction in Credit Cover

Annex M-2 'Consolidated Form of Letter of Credit' has been incorporated to allow a group of affiliated Parties to lodge a consolidated LoC application.

Section N9 which defines Payment Default, includes an additional clause, section N9.1.1A, which clarify that if a Party, covered by a consolidated LoC, can not pay its Trading Charges and goes in to Payment Default, only the Credit Cover associated with that Party could be called by the FAA, as its portion of credit would be treated as a single LoC. Therefore, the rest of the group covered by the consolidated LoC would not be affected by an individual Party failing to pay its Trading Charges.

Section X 'Definitions and Interpretation', Annex X-1 'General Glossary' has been updated to incorporate a definition of a consolidated LoC.

5.2 Code Subsidiary Documents

The Proposed Modification P158 would impact the following Code Subsidiary Documents:

- The FAA Service Description - include a description of a consolidated LoC. Other changes would include an update to the Credit Cover management process to reflect the use of a consolidated LoC and to ensure that the affiliation checking process is included (defined in section 1.3.1.2 'FAA Management of Consolidated LoC').
- BSCP301 'Clearing, Invoicing and Payment' - In particular Section 3.6 'Manage Credit Cover' would need to be updated to define the process for re-structuring Credit Cover allocations across a group of BSC Parties, covered by a consolidated LoC.

BSCCo estimate that the above documentation changes would require 20 ELEXON man days' effort to implement.

5.3 Other Configurable Items

The Proposed Modification P158 would impact the following other Configurable items:

- FAA User Requirements Specification – changes to reflect the definition of a consolidated LoC and to include a description of the affiliation checking process. This amendment would be implemented by the FAA.

5.4 BSCCo Memorandum and Articles of Association

No amendments would be required to the BSCCo Memorandum and Articles of Association as a consequence of the Proposed Modification.

5.5 Impact on Core Industry Documents and supporting arrangements

No changes would be required to any Core Industry Documents or supporting arrangements if either the Proposed or Alternative Modification were to be made.

6 SUMMARY OF CONSULTATIONS

A consultation document and questionnaire was issued to the industry on 9 March 2004, with a 16 March deadline for responses. Seven responses (37 Parties) were received and are attached as annex 3 of this report. However, a summary of the consultation responses can be viewed below.

Consultation question	Respondent agrees	Respondent disagrees	Opinion unexpressed
Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s)	4 (18)	3 (22)	1 (1)
Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	1 (3)	6 (37)	1 (1)
Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	5 (32)	1 (3)	2 (6)
Do you agree that an affiliation checking process is necessary? Please give rationale	6 (37)	1 (3)	1 (1)
Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale	1 (1) 2 (11)	2 (20) 1 (3)	2 (6)
Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	5 (21)	2 (19)	1 (1)
Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	1 (5)	5 (32)	2 (4)
Are there any further comments on P158 that you wish to make?	2 (4)	5 (36)	1 (1)

6.1 Modification Group's summary of the consultation responses

The following questions were asked of the respondents and the arguments are summarised below each question.

6.1.1 Applicable BSC Objectives

Four respondents (17 parties) believed that the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives (c) in promoting competition and (d) in promoting efficiency. The arguments raised by these respondents were that P158 would reduce the administrative costs associated with lodging several LoCs, thus having a positive impact on competition (c). P158 also promotes efficiency (d) by:

- offering those existing Parties and those entering the market a more efficient mechanism for sourcing Credit Cover;
- reducing the administrative burden on Umbrella Parties lodging several LoCs on behalf of its affiliated BSC Parties; and
- Reducing the Credit Cover monitoring process undertaken by the FAA, as the Parties covered by a consolidated LoC would have the same LoC expiry date and the FAA would only have to notify one company.

Three respondents (22 Parties) did not believe the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives for the following reasons:

- One respondent expressed concerns over the legal drafting of the Consolidated LoC, as there could be a possibility for the lender not to honour the consolidated LoC by exploiting potential loop-holes within the document.
- This respondent also believed that this could expose other market participants to the risk of having to pay the costs of the Parties associated with the consolidated LoC.
- That there would be a decrease in the flexibility of amending LoC, as these revisions would be carried out by an Umbrella Company and not the individual Parties themselves;
- That P158 would lead to discrimination of other Credit Cover provisions, i.e. cash;
- That the untested methodology of a consolidated LoC could potentially weaken the current LoC process;
- That there was difficulty guaranteeing the robustness of a brand news process; and
- That the risks associated with a consolidated LoC outweighed the potential benefits P158 offered i.e. reduced administrative costs (c) and sourcing LoC more efficiently (d).

One respondent (1 Party) had no comment.

6.1.2 Alternative solutions

One respondent (3 Parties) believed that there was an alternative solution to the Modification Proposal and that all forms of Credit should have the ability to be consolidated, including cash cover. This respondent believed that to not include all forms of credit provisions would be discriminatory and would have a negative impact on the industry. However, this issue had already been considered by the SSMG (see section 1.3.6) and its decision was to rule out the inclusion of cash cover.

Six Respondents (37 Parties) did not believe there was an alternative solution to P158.

One respondent (1 Party) had no comment.

6.1.3 Affiliation versus Non Affiliation

Five Respondents (32 Parties) believed that only affiliated Parties should be able to apply for a consolidated LoC. The arguments for this suggest that:

- It was unlikely that unaffiliated Parties would want to enter such an agreement and even if they were to do so, administratively it would be unwieldy and negate the benefits P158 offers;
- The fact that Parties were affiliated provided more assurance and security to the industry, as the Umbrella Company would have its reputation to consider if any of the affiliates were to go into default; and
- That no financial institute would provide a combined LoC for an arbitrary group of BSC Parties.

One respondent believed that affiliation was a matter to be decided between the provider of Credit and the relevant BSC Parties. This would not be of any concern to the BSC,

Two respondents (6 Parties) had no comments.

6.1.4 Affiliation checking process

Six respondents (37 Parties) believe that an affiliation checking process would be necessary for P158. One respondent suggested using the process BSCCo currently uses to determine the voting rights for BSC Parties. However, this would not be suitable for this Modification Proposal as this electoral list is only updated once a year. Another respondent supported the view of the SSMG that the affiliation checking process should be carried out by the FAA with minimum cost. The FAA have since confirmed that they will be able to facilitate this role with zero costs.

One Respondent (3 parties) was not in agreement with having an affiliation checking process as it was felt that affiliation was a matter between the provider of Credit Cover and the relevant BSC Parties. Therefore, it was of no concern to the BSC.

6.1.5 Usage of LoCs

Three respondents (23 Parties) stated that they would not utilise a consolidated LoC. One respondent suggested that the main benefit of being able to undertake consolidated LoC changes for more than one Party at the same time would not be a significant cost saving for Parties. The same respondent suggested a potential benefit in Parties being able to swap Credit Cover amounts between Parties within the group. However, a consolidated LoC has specific 'ring-fenced' amounts allocated to each BSC Party and these are considered as separate LoCs. Therefore, credit can not be moved between the Parties and the relevant processes to increase/decrease levels of credit still apply.

One respondent ((the Proposer)(1 Party) believed that its company would utilise a consolidated LoC as it would improve the existing process for lodging credit. This respondent further believed that a consolidated LoC would provide reduced renewal costs and allow for less time to be spent on sourcing Credit Cover.

2 respondents (11 Parties) offered qualified support for using a consolidated LoC. Both respondents' arguments welcomed the ability to lodge a consolidated LoC, although they noted that they would not necessarily utilise this at present.

One respondent (1 Party) had no comments.

6.1.6 Risk

Five respondents (20 Parties) believed that a consolidated LoC would provide a level of protection equivalent to that of the current single LoC. One particular respondent (the Proposer), made reference to the external legal advice sought by BSCCo's legal team which clarified that the consolidated LoC was robust and further suggested that it did not foresee any larger risk being caused by the fact that this would require a new process. This respondent also asserted that once a consolidated LoC had been lodged with the FAA, the principle for amending Credit Cover would be exactly the same as would apply for single LoC, because each allocated amount of Credit Cover would be 'ring-fenced'. Therefore, this would not contribute to an increased risk.

Two respondents (19 Parties) did not support the view that a consolidated LoC was as equally robust as a single Letter of Credit. The arguments for this were that banks would seek to avoid paying out where they could, and if there was any uncertainty surrounding a Letter of Credit they would seek to exploit this to circumvent payment; and it would be difficult to provide a qualified level of assurance as to the robustness of a new process without reference to historical evidence. In the absence of such assurance, it was perceived that the potential benefits of this modification would not justify the creation of a new format for Credit Cover.

One respondent (1 Party) had no comments.

6.1.7 Further Comments

One respondent (5 Parties) suggested that the bank would seek to avoid paying out where they could, and if there is any uncertainty surrounding a LoC they would seek to exploit this to circumvent payment.

2 respondents (4 Parties) did make further comments in relation to P158. One respondent (the Proposer) stated that the current drafting of the Code prevented BSC Parties from lodging consolidated LoC and that P158 would offer a more efficient process for companies with more than 1 Party to lodge credit.

6.2 Comments and views of the Modification Group

In its assessment, the SSMG have reviewed industry consultation responses (defined in section 6.1) and the information provided by external sources (Annex 7) in its determination on whether P158 should be recommended to the Panel for approval.

The SSMG noted that the consultation indicated that there would be a limited uptake for a consolidated LoC if P158 were to be approved, and that the respondents supported the SSMG view that P158 should be limited to consolidated LoCs for affiliated Parties only.

The SSMG noted that the majority of respondents did believe that P158 would better facilitate the achievement of the Applicable BSC Objectives. However, the SSMG were concerned with the information received from the financial institute which indicated that the consolidated LoC increased risks for Parties (this information was not incorporated in the consultation document). Therefore, even in light of the information from the other financial institute, external legal advisors and LoC expert, the majority of the SSMG did not agree that P158 would better facilitate the achievement of the Applicable BSC Objectives.

The SSMG did believe that P158 better facilitated the achievement of the Applicable BSC Objective (d). However, it felt that the increased efficiency was significantly outweighed by the increased risk to the industry, as it may potentially have to settle the outstanding liabilities associated with the consolidated LoC.

7 SUMMARY OF EXTERNAL ADVICE

During the assessment procedure the SSMG asked BSCCo to seek external legal advice on the robustness of the draft legal for P158. The findings are discussed below:

7.1 Consultant's Findings

BSCCo's legal department sought external legal advice regarding the robustness of the draft consolidated LoC (Annex M-2) and clarification was provided by the external legal source that it was considered to be robust.

BSCCo also sought further advice from an external LoC expert who also provided extra reassurance that the consolidated LoC was robust.

Further advice by provided from a financial institution, which can not be named for legal reasons (Annex 7). Its view was that financial institutions might not be comfortable with accepting a consolidated LoC due to the perceived extra work involved and greater potential for errors. The source also suggested that if the FAA wanted to make a claim against one Party within the consolidated group and it was not satisfied with the grounds for such a claim (for whatever reason), it might seek a court injunction to stop the bank paying the FAA. This injunction may then take effect against the whole LoC, thereby freezing all the other Party's Credit Cover within the group. Therefore, this could potentially put all the Parties within the group into Credit Default. However, if it was just a single applicant LoC there would not be this knock on effect.

In light of this view, the Proposer consulted a further external financial institution source (who have suggested that it would honour a consolidated LoC) who was unresponsive of the initial source findings and suggested that it would be no more likelihood that an affiliate Party would obtain a court injunction than at present where affiliates have separate LoCs. This source also proposed that if the initial source was concerned over a court granting an injunction to prevent payment, this would not entail any additional increased risk on multi Party LoCs and that this could be remedied by a simple clause stating that "the bank has an obligation to pay, notwithstanding any objection from a multiple applicant". For clarification purposes, a minority of the SSMG would like to point out that this information although discussed, had not been made available to the group as documented evidence prior to the writing of the Assessment Report.

In its assessment of the above information and the consultation responses (section 6.1) the majority of the SSMG have concluded that it will not be recommending P158 to the Panel for approval. However, a minority of the SSMG (the Proposer) does not perceive that P158 would create any additional risk to Parties and therefore believes that P158 does better facilitate the Applicable BSC Objectives.

8 IMPLEMENTATION APPROACH

The changes required as a result of P158 do impact the BSCCo Agent. The changes do not directly impact BSCCo systems and processes but do require changes to a BSCP. Documentation changes will be managed by BSCCo. The estimated financial cost for implementation of the Alternative Modification is small, with 20 ELEXON man day effort being required to carry out changes to documents etc.

In addition, the SSMG agreed that:

- The Proposed Modification requires changes to the BSCCo Agent process and should be implemented as part of a wider Systems Release as the most cost-effective and efficient approach, since it avoids incurring the full costs of a stand-alone Release;
- This approach is consistent with BSCCo's Release Strategy.

The SSMG therefore agreed the following provisional Implementation Dates:

- 3 November 2004 if an Authority Decision is received on or before 30 July 2004; or
- 23 February 2004 if an Authority Decision is received after 12 November 2004 but on or before.

8.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	29/03/04	Change Delivery	SSMG	For review
0.11	31/03/04	Change Delivery	Change Delivery	For Review
1.0	02/04/04	Change Delivery	Panel	For Determination

8.2 References

Ref	Document	Owner	Issue date	Version

ANNEX 1 DRAFT LEGAL TEXT

Text for Proposed Modification – see Attachment 1

ANNEX 2 MODIFICATION GROUP DETAILS

Settlement Standing Modification Group (SSMG)

Modification Proposal P158

Name	Organisation (Role)	Member	Meeting Attendance		
			16/02/04	25/03/04	18/03/04
Thomas Bowcutt	ELEXON (Chairman)	Y	Y	Y	N
Roger Salomone	ELEXON (Chairman)	Y	N	N	Y
Michelle Spurden	ELEXON (Lead Analyst)	Y	Y	Y	Y
Mark Manley	BGT (Proposer)	Y	Y	Y	Y
Carl Wilkes	Npower	Y	Y	Y	Y
Helen Bray	London Electricity	Y	Y	N	N
Man Kwong Liu	Scottish Power	Y	Y	Y	N
Neil Smith	Powergen	Y	Y	Y	Y
Phil Russell	Not Applicable	Y	N	N	N
Steve Drummond	EDF Trading	Y	Y	N	N
Joanne Ellis	Cornwall Consulting	N	N	N	N
Kevin Rendell	NGT	Y	N	N	N
Martin Wiles	Logica CMG EPFAL	N	Y	Y	N
Thomas Wood	Logica CMG EPFAL	N	Y	Y	Y
Paul Davis	Logica CMG EPFAL	N	N	N	Y
Steve Mackay	Ofgem	N	Y	Y	Y

ANNEX 3 CONSULTATION RESPONSES

Responses from P158 Assessment Consultation

Consultation issued 16 March 2004

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	EDF Energy	P158_AR_001	9	0
2.	Aquila Networks	P158_AR_002	1	0
3.	Scottish Power	P158_AR_003	6	0
4.	Scottish and Southern	P158_AR_004	5	0
5.	Powergen	P158_AR_005	14	0
6.	EDF Trading and EDF Generation	P158_AR_006	2	0
7.		P158_AR_00		
8.		P158_AR_00		
9.		P158_AR_00		
10.		P158_AR_00		

P158_AR_001 – EDF Energy

Respondent:	Tony Diccico – EDF Energy
No. of BSC Parties Represented	9
BSC Parties Represented	EDF Energy Networks (EPN) plc; EDF Energy Networks (LPN) plc EDF Energy Networks (SPN) plc; EDF Energy (Sutton Bridge Power) EDF Energy (Cottam Power) Ltd; EDF Energy (West Burton Power) Ltd; EDF Energy plc; London Energy plc; Seeboard Energy Limited
No. of Non BSC Parties Represented	0
Non BSC Parties represented	N/A
Role of Respondent	Supplier/Generator/ Trader / Party Agent

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	Yes	This proposal could be used by Parties to help reduce their administration costs required to maintain many different Letters of Credit. It could also decrease ELEXON's administrative costs and therefore better facilitate Applicable BSC Objective (d).

Q	Question	Response	Rationale
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	Yes	It is unlikely that unaffiliated Parties would wish to enter into such an arrangement.
4.	Do you agree that an affiliation checking process is necessary? Please give rationale	Yes	The process used to determine voting rights could be appropriate.
5.	Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale	Possibly	The cost savings may be small but we welcome the ability to be able to lodge a consolidated Letter of Credit.
6.	Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	Yes	We believe that there is no increased risk on Parties.
7.	Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P158 that you wish to make?	No	

P158_AR_002 – Aquila Networks

Good Morning,

Midlands Electricity (formally Aquila Networks PLC) would like to return a response of 'No Comment' to P158 - P158 Assessment Consultations.

Regards,

Deborah Hayward
Distribution Support Office &
Deregulation Control Group

Midlands Electricity

P158_AR_003

Respondent:	<i>Man Kwong Liu</i>
No. of BSC Parties Represented	<i>6</i>
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). Scottish Power UK plc; ScottishPower Energy Management Ltd; Scottish Power Generation Ltd; ScottishPower Energy Retail Ltd; SP transmission Ltd; SP Manweb PLC.</i>
No. of Non BSC Parties Represented	<i>0</i>
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ⁸) Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	Yes	We believe that if the cost of administration is minimal and there is no additional risk, and it is to be beneficial to potential parties entering the market, it would better facilitate the BSC Objective (c).
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	We are not aware of any, that have not already been discussed.
3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	Yes	While legally and technical there would not be any difference between consolidated LC for non-affiliated and affiliated, we believe that the fact the parties are affiliated gives more comfort in security to the industry as the umbrella company will have its reputation to consider if any of the affiliates default.

1.1.1.1 _____

Q	Question	Response	Rationale
4.	Do you agree that an affiliation checking process is necessary? Please give rationale	Yes	But this should be at a minimum cost.
5.	Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale	No	
6.	Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	Yes	As mentioned in the document, it could be legally and technically enforced. We are not aware of any other risk which would indicate otherwise.
7.	Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P158 that you wish to make?	No	

P158_AR_004 - Scottish and Southern

Dear Sirs,

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

In relation to the eight questions contained within your note of 9th March 2004, and the associated Assessment Consultation for P158, we have the following comments to make:-

Q1 Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)

No. We believe that the legal status of the proposed Consolidated Letter of Credit is such that the providers of the Letters (i.e. the banks) will exploit any potential loop-hole/legal uncertainty etc., to avoid 'honoring' the Letter of Credit, exposing other market participants to the cost of the Party to whom the Letter of Credit applies.

Please note our response to any of the following questions should not be construed to lend support whatsoever to this Modification.

Q2 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale

No

Q3 Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale

No Comment.

Q4 Do you agree that an affiliation checking process is necessary? Please give rationale

Yes.

Q5 Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale

No Comment.

Q6 Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale

No. For the reasons outlined in our answer to Q1 above; i.e. that banks will seek to avoid paying out where they can, and if there is any uncertainty surrounding a Letter of Credit they will seek to exploit this to circumvent payment. In addition the suggested administration benefits from the P158 Modification are marginal.

Q7 Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale

Yes, the issues outlined in our answer to Q1 above; i.e. that banks will seek to avoid paying out where they can, and if there is any uncertainty surrounding a Letter of Credit they will seek to exploit this to circumvent payment. This should be examined in detail and a Legal Opinion obtained.

Q8 Are there any further comments on P158 that you wish to make?

Nothing further at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

P158_AR_005 – Powergen

Respondent:	<i>Powergen</i>
No. of BSC Parties Represented	<i>14</i>
BSC Parties Represented	Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy
No. of Non BSC	<i>0</i>

Parties Represented	
Non BSC Parties represented	0
Role of Respondent	<i>Supplier/ Generator/ Trader / Exemptable</i>

1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	No	<p>Powergen concur with the modification group that a consolidated letter of credit may allow some parties to source credit cover more efficiently by combining several LoC in to a single LoC. However we consider these potential benefits to be relatively small and somewhat offset by a reduction in flexibility caused by the necessity for all amendments to the consolidated LoC to be conducted purely by the 'umbrella' company. Our overriding concern is due to the relatively untested methodology of consolidation. Currently the market has confidence based on historical proof that the single LoC is robust. Although we believe the proposed consolidated LoC to appear a logical extension to the existing credit cover arrangements, we are cautious about the prospect of potentially weakening the current process. Unfortunately it is difficult to guarantee the robustness of a brand new process. It is therefore equally difficult to quantify the potential for increased risk. Historical perspective often offers the necessary assurance and as such we believe that the proven single LoC provides a greater level of confidence when compared to the proposed consolidated LoC.</p> <p>Ultimately, we feel that the likely benefits (albeit small) to be gained from efficient sourcing would be outweighed by the potential risk of a party going in to default with an inadequate LoC. As such this modification could have a negative impact on applicable BSC objective 'C'.</p>
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	

3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	Yes	Affiliation may provide a greater level of assurance for participants.
4.	Do you agree that an affiliation checking process is necessary? Please give rationale	Yes	We believe that an affiliation checking process would be beneficial. We agree with the modification group that the FAA are best placed to provide the affiliation check in the most efficient manner.
5.	Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale	No	At the present moment we would not wish to utilise a consolidated letter of credit.
6.	Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	No	We have sympathy with the proposer of this modification as it is very difficult to provide a qualified level of assurance as to the robustness of a new process without reference to historical evidence. In the absence of such assurance, we believe that the potential benefits of this modification do not justify the creation of a new format for credit cover.
7.	Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P158 that you wish to make?	No	

P158_AR_006 EDF Trading

Respondent:	<i>EDF Trading Ltd</i>
No. of BSC Parties Represented	<i>2</i>
BSC Parties Represented	<i>EDF Trading Ltd and EDF (Generation)</i>
No. of Non BSC Parties Represented	<i>None</i>
Non BSC Parties represented	<i>N/A</i>
Role of Respondent	<i>Trader and Generator</i>

Q	Question	Response 8	Rationale
1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	Yes	Administratively, it appears to help parties and Elexon and as such it better facilitates BSC Objectives (c) and (d).
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	No	
3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	Yes	It is most unlikely that any other arrangement would be possible and, if it were, then it would be administratively unwieldy such that it would negate whatever benefits the modification offered.
4.	Do you agree that an affiliation checking process is necessary? Please give rationale	Yes	But no more so than Elexon currently does for checking the voting rights of parties.
5.	Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale	Possibly	Although the administrative effort and cost savings would be small in our case.
6.	Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	Yes	We believe the level of risk to parties as being no different in either case. Monies can still be called upon against individual BSC Parties and the default arrangements are all the same.
7.	Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale	No	
8.	Are there any further comments on P158 that you wish to make?	No	

P158_AR_007 British Gas Trading

Respondent:	Mark Manley
No. of BSC Parties Represented	
BSC Parties Represented	British Gas Trading (BGT)
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	Yes	<p>BGT do believe this modification better facilitates Applicable BSC Objective (d) and to a lesser extent Objective (c). In specific circumstances BGT believes the process for lodging credit cover is inefficient.</p> <p>Companies that own more than 1 BSC Party must lodge individual letters of credit for each entity. Using Centrica plc as an example (the group), the group owns 7 BSC Parties and is obligated to lodge 7 individual Letters of Credit (LoC). This is a resource intensive process that involves numerous different departments within the process. Being able to lodge 1 consolidated LoC would significantly reduce the workload and thereby improve the efficiency of the process.</p> <p>Also sourcing the credit cover for 7 individual BSC parties means that the company incurs costs that could be avoided if the Code allowed affiliated groups to lodge a consolidated LoC. BGT believe introducing the ability to lodge a consolidated LoC will improve the overall efficiency by reducing the time and costs</p>

Q	Question	Response	Rationale
			<p>associated with the process. This will better facilitate Applicable BSC Objective (d) by increasing efficiency in lodging credit. To a lesser extent it will also reduce the cost of lodging credit and thereby better facilitate Applicable BSC Objective (c).</p> <p>BGT also believe there will be reduction in the administrative effort that is required by the FAA to manage the credit process. This is due to the reduced number of LoC that will be lodged with the FAA and the reduced requirement to notify Parties of the imminent expiry of their Loc. This will also better facilitate Applicable BSC Objective (d).</p>
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	No	
3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	Yes	<p>The original intent when raising this proposal was to allow only affiliated BSC Parties to lodge a consolidated LoC. As the proposer of this modification BGT still believes only affiliated BSC Parties should be able to lodge a consolidated LoC. BGT believe it would be impractical and unworkable for an arbitrary group of Parties to be able to lodge a consolidated LoC. This is due to the potential requirement to increase or decrease the value of an individual Party listed on the LoC.</p> <p>BGT also note this view is consistent with that of the modification group. The</p>

Q	Question	Response	Rationale
			<p>modification group state in the assessment consultation that they do not believe a financial institution would provide a combined LoC for an arbitrary group of BSC Parties. The FAA as custodians of the credit process in the BSC also supported this view. As a consequence BGT see little value in introducing a process that is unlikely to be utilised.</p>
4.	<p>Do you agree that an affiliation checking process is necessary? Please give rationale</p>	Yes	<p>Due to the anticipated difficulties of an arbitrary group of BSC Parties being able to source a consolidated LoC BGT are unsure of the value of further checks. However in light of the FAA response to the Impact Assessment and their statement that this process could be undertaken at zero cost (subject to the approval of other modifications) BGT would support the implementation of an affiliation checking process.</p>
5.	<p>Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale</p>	Yes	<p>The group would take advantage of this proposed added functionality and would lodge a consolidated LoC for the BSC Parties it owns. This would be an improvement on the existing process of lodging credit, which is inefficient and resource intensive. Utilising a consolidated LoC would be a much more efficient process.</p> <p>BGT believe there would be a cost saving from lodging a consolidated LoC due to the reduction in renewal costs and time spent on sourcing the credit cover. The group currently lodges 14 individual LoC each year this would reduce to a maximum of 2 renewals per year if this modification were to be implemented. This would</p>

Q	Question	Response	Rationale
			provide a cost saving. The other cost saving BGT would benefit from is the significant reduction in man-hours required to refresh 1 consolidate LoC.
6.	Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale	Yes	<p>BGT do not believe a consolidated LoC provides less protection for BSC parties than is currently provided under the current baseline. In raising the proposal it was certainly not the intent to increase the risks faced by the BSC community. BGT would not have raised this proposal if we believed the proposed solution was less robust than the current baseline.</p> <p>Furthermore during the assessment phase the group has received confirmation from ELEXON's internal legal team and external legal advisers that the proposed solution is robust. The BSC Agent that would be required to manage this new functionality, the FAA, has similarly provided this view.</p> <p>BGT are unsure of the validity of the argument that suggests just because this is a new process it poses a bigger risk than the current baseline. Once the LoC has been lodged with the FAA the risk profile is exactly the same as that under the current baseline. The FAA has been able to draw on single LoC and there is no reason to believe that they wouldn't equally be able to draw on a consolidated LoC.</p> <p>Furthermore the proposed solution is risk averse in that it only allows Parties to amend their credit cover in a very controlled manner using the</p>

Q	Question	Response	Rationale
			<p>Minimum Eligible Amount (MEA) calculation. Parties when lodging the consolidated LoC would be required to specify an amount that was attributable to each individual Party. This would then be ring-fenced and could not be changed without renewing the LoC and or requesting that an MEA calculation is undertaken by a BSC Agent.</p>
7.	<p>Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale</p>	No	
8.	<p>Are there any further comments on P158 that you wish to make?</p>	Yes	<p>BGT believes there is a defect within the BSC that fails to provide a route, which would allow BSC Parties to lodge a consolidated LoC. The existing process is inefficient. P158</p>

Q	Question	Response	Rationale
			<p>provides a more efficient process for companies that own more than 1 BSC Party to lodge credit. It does so in a risk averse manner with a relatively low implementation cost if delivered as part of a batched release. BGT would expect that if P158 were approved then it would be implemented via a batched release.</p> <p>BGT have contacted a financial institution that has confirmed that they would be happy to provide a consolidated LoC based upon the draft document that was circulated as part of the consultation. This is further proof of the workability and robustness of the proposed solution.</p>

P158_AR_008 – British Energy

Respondent:	<i>Martin Mate</i>
No. of BSC Parties Represented	<i>3</i>
BSC Parties Represented	<i>British Energy Power & Energy Trading Ltd, British Energy Generation Ltd, Eggborough Power Ltd.</i>
No. of Non BSC Parties Represented	<i>-</i>
Non BSC Parties represented	<i>-</i>
Role of Respondent	<i>Supplier/Generator/Trader/Consolidator/Exemptable Generator/Party Agent</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification P158 better facilitates the achievement of the Applicable BSC Objectives ? Please give rationale and state objective(s)	No	Although some parties may obtain efficiency gains from the proposal, these benefits have not been quantified in any detail. On balance we are unconvinced that the efficiency gains for the industry as a whole merit the cost (BSC Objective (d) not met), and have some concerns that competition may be diminished by allowing efficiencies to parties which are part of larger groups (BSC Objective (c) not met).
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale	Yes	If credit were permitted in consolidated form, then all forms of credit should be capable of consolidation, ie cash and letters of credit. We see no reason to discriminate between providers of cash and Letters of Credit, and indeed such discrimination could act against BSC Objective (c) (competition).
3.	Do you believe that only affiliated BSC Parties should be able to apply for a consolidated Letter of Credit? Please give rationale	No	Provided the terms of the consolidated credit are robust between the provider and the BSC Clearer, we see affiliation as a matter between the provider of Credit and the relevant BSC Parties, which need not concern the BSC.
4.	Do you agree that an affiliation checking process is necessary? Please give rationale	No	See answer to 3.

Q	Question	Response	Rationale
5.	<p>Would your company utilise a consolidated Letter of Credit? If yes, Do you believe the opportunity to post a consolidated Letter of Credit would provide a cost benefit to your company? Please give rationale</p>		<p>Unlikely. The benefits of the proposal indicated in the consultation document appear to be limited. BE currently provides most of its credit through one party, the party undertaking group external trading and to which most physical energy is credited. In any case, all the normal processes for increasing or reducing levels of credit for individual parties would apply. The main saving in internal effort would be the ability to undertake changes for more than one party at the same time, but these savings are probably not large. There may be some benefits where credit can be swapped from one party to another without changing the overall level, but in practice these would still require similar effort at a party level as at present. Negotiation for provision of consolidated credit from a provider would probably incur up-front costs, and provision for the service may incur an explicit or implicit operating cost.</p>
6.	<p>Do you consider the consolidated Letter of Credit arrangements proposed under P158 would provide a level of protection equivalent to the current requirement for a single Letter of Credit? Please give rationale</p>	Yes	<p>Subject to written legal confirmation, the proposal as currently constituted appears to provide a level of protection equivalent to the current requirement.</p>
7.	<p>Does P158 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale</p>	Yes / No	

Q	Question	Response	Rationale
8.	Are there any further comments on P158 that you wish to make?	Yes	Companies weigh up the advantages and disadvantages of operating as a larger consolidated company or smaller affiliations of individual companies. The BSC credit requirements are only one of the factors a company must take into consideration in choosing its corporate structure and trading methods. The BSC currently treats parties as individual entities for financial and legal purposes (with the exception of voting), and this avoids any charge that the BSC favours larger groups of companies or discriminates against smaller or single company parties.

ANNEX 4 BSC AGENT IMPACT ASSESSMENTS

NETA Change Form		ELEXON Reference	
		A.1.1.1	P158
Title		Version No.	
<i>Introducing the ability to lodge a consolidated Letter of Credit'</i>		A.1.1.4	version, 1.0
		A.1.1.5	EPFAL Reference
		A.1.1.6	P158/credit
Type of Assessment	Date CP Received	Date IA Issued	
A.1.1.7 DLIA / Quotation	A.1.1.8 26/03/04	3/3/04	
Brief Summary of Change			
A.1.1.9 P158 seeks to modify the Balancing and Settlement Code to allow a group of BSC Parties to lodge a single consolidated Letter of Credit (LoC).			
Logica EPFAL's Proposed Solution			

A.1.1.10 *The FAA can accommodate the proposals captured in P158 for a consolidated Letter of Credit as the number of Parties it is likely to impact will be minimal.*

The FAA would propose carrying out the affiliation checks internally as it can't see any benefit to BSC Party's in fragmenting the process and the FAA has the resource available to carry out the necessary checks.

Deviation from ELEXON's Solution / Requirements

No deviation from the proposal other than recommending the FAA carries out the affiliation checks . Cosmetic changes will be required to BSCP301.

Operational Solution and Impact

To accommodate affiliation checks.

Testing Strategy

Unit		Change Specific		End to End	
Module		Operational Acceptance		Participant Testing	
System		Performance		Parallel Running	
Regression		Volume		Deployment/ Backout	

Other:

N/A

Validated Assumptions

N/A

Outstanding Issues

N/A			
Changes to Service			
Services Impacted <i>[Tick boxes to show impacted systems and associated documentation]</i>			
	Funds Transfer System	Other 1	Other 2
Software			
IDD Part 1			
IDD Part 2			
URS			
SS			
DS			
OSM			
RTP			
Comms			
Other			
Nature of Documentation Changes			
<p><i>Cosmetic changes to BSCP301, no impact upon on the FAA service Description, URS, IDD.</i></p> <p><i>If the proposal to add a BSCCo process to verify that the BSC Parties on c consolidated LoC are affiliated, this might require changes to the FAA Service Description, URS and IDD in order to include the BSCCo every time a new consolidated LoC is submitted.</i></p>			
Nature / Size of System Changes			
N/A			
Type of Release Costed:	A.1.1.11 Patch		
Deployment Issues, eg Outage Requirements:	N/a		
Impact on Service Levels:	No impact on service levels		
Impact on System Performance:	No impact on service levels		

Responsibilities of ELEXON			
<i>Confirmation of agreed proposal adopted</i>			
Acceptance Criteria			
N/A			
Any Other Information			
N/A			
A.1.2 Attachments			
A.1.2.1 PRICING			
Price Breakdown			
A.1.2.2	Item description	Remarks	Price (ex VAT)
A.1.2.5	Change Specific Cost	A.1.2.6	A.1.2.7
A.1.2.8	Project Overhead	A.1.2.9	A.1.2.10
<i>[Price excluding VAT]</i>			
Project Duration			A.1.2.11
Operational Price (eg per annum or event)			
Rationale			

2		Providing the cost of implementing P142 and P152, can be met the FAA can undertake the above Modification for no extra cost.
Annual Maintenance Price		A.1.2.13
Rationale		
N/A		
Validity Constraints		
N/A		
Authorised Signature		Date Signed

ANNEX 5 PARTY IMPACT ASSESSMENTS

Modification Circular

To BSC Change Administrators (BCAs) / Party
Agent Change Administrators (PACAs)

No. MC00080

From ELEXON Modifications

Date 10 March 2004

P158 - Introducing the Ability to Lodge a Consolidated Letter of Credit

High Level Impact Assessment

P158 seeks to modify the Balancing and Settlement Code to allow a group of BSC Parties to lodge a single consolidated Letter of Credit (LoC). The consolidated LoC would be sub-divided and specific amounts of Credit Cover allocated against each BSC Party/BSC Party Id, as opposed to posting an individual LoC for each BSC Party.

More information can be found in the attached Requirements Specification.

High Level Impact Assessment

Parties and Party Agents are requested to review the attached Requirements Specification and respond to the questions included in the response form attached to this circular. Responses are required by **5pm on Tuesday 16 March 2004**.

Please let me know as soon as possible if you are unable to meet this deadline, as it may not be possible for the Modification Group to consider late responses. No response to this circular will be taken to mean that your organisation is not impacted by the proposed changes.

If you have any queries please do not hesitate to contact the ELEXON Helpdesk on 020 7380 4222 or email helpdesk@elexon.co.uk.

Kind Regards

Tom Cash

Attachments:

- P158: Requirements Specification

PLEASE RETURN BY 5pm on Tuesday 16 March 2004

To: ELEXON Modifications
4th Floor
350 Euston Road
LONDON
NW1 3AW

Tel: 020 7380 4025

Fax: 020 7380 4360

A.1.3 Email: modifications@elexon.co.uk

Respondent 1:

MC00080: High Level Impact Assessment of P158

Please provide responses to the following questions:

1. Would any of the Proposed Modification implementation options, as outlined in the attached Requirements Specification, impact your organisation? ~~Yes~~/No*
2. If yes, please indicate which of the options would impact your organisation and provide a brief description of the impact, any costs incurred, and the implementation timescale required:
3. Any other comments:

Name: _____ Saeed Patel _____

BCA/PACA* _____ BCA _____

Organisation: _____ EDF Trading Limited _____

Date: ___11th March 2004_____

*Please delete as appropriate

Respondent 2:

MC00080: High Level Impact Assessment of P158

Please provide responses to the following questions:

4. Would any of the Proposed Modification implementation options, as outlined in the attached Requirements Specification, impact your organisation? **NO**
5. If yes, please indicate which of the options would impact your organisation and provide a brief description of the impact, any costs incurred, and the implementation timescale required:
6. Any other comments:

Name: **Sue Macklin**
BCA/PACA*

Organisation: **Scottish and Southern Energy; Southern Electric; Keadby Generation Ltd; and SSE Energy Supply Ltd.**

Date: **16th March 2004**

*Please delete as appropriate

ANNEX 6 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 Procedures.

SERVICE PROVIDER⁹ 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 Cost	Additional costs on top of base Release Costs for delivering the specific 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.

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	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. For SVA BSC Systems Releases, this will include the management and operation of the Acceptance Testing and the associated testing

1.1.1.1

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.

	environment. This cost relates solely to the short-term employment of contract staff to assist in the implementation of the release.
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 a 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.

ANNEX 7 TERMS OF REFERENCE AND REPORT/ANALYSIS OF EXTERNAL CONSULTANTS/ADVISORS

7.1 SSMG Terms of Reference

Modification Proposal P158 will be considered by the Settlement Standing Modification Group (SSMG) in accordance with the SSMG Terms of Reference.

P158 – Introducing the ability to lodge a consolidated Letter of Credit (LoC)

Assessment Procedure

- 1.1 The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P158 pursuant to section F2.6 of the BSC.
- 1.2 The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 8 April 2004.
- 1.3 The Modification Group shall consider and/or include in the Assessment Report as appropriate:
 - **Criteria for qualifying for a consolidated LoC** – Consideration is required as to who can apply for a consolidated LoC, i.e. whether this should only apply to affiliated companies / companies within the same group, or whether the process should be extended such that any arbitrary group of unrelated BSC Parties can elect to submit a consolidated LoC. In either instance, consideration should be given to the implications of, and the process to be followed where, one or more of the BSC Parties to whom the LoC applied left the group, and / or other BSC Parties joined the group;
 - **Number of Parties using Consolidated LoC** – If it is determined that applying for a consolidated LoC should be restricted to affiliated companies/companies within the same group, the Modification Group should consider how many Parties this would apply to;
 - **Impact on different types of Parties** – The Modification Group should consider whether allowing affiliated companies to apply for a consolidated LoC would create any unfair advantages over Parties who are not part of a larger company group;
 - **Apportionment of LoC** – Consideration is required to be given as to whether the apportionment of Credit Cover between BSC Parties is to be fixed at the point at which the LoC is first provided, or whether the credit could be dynamically reallocated between the BSC Parties covered by the LoC at any point, following a yet to be defined process;
 - **Reduction in Credit Cover** - In the event that a BSC Party covered by the consolidated LoC wishes to reduce its Credit Cover the Modification Proposal implies that it will have to continue to go through the 'minimum eligible amount' (MEA) process, as detailed in Section M 2.3 of the Code, as the Proposal asserts that once Credit Cover has been apportioned, the currently defined processes for managing that Credit Cover will apply to each BSC Party. However, this process may be impacted by P158, for example if a dynamic apportionment process which bypasses the MEA process is defined, and thus any impacts and amendments will need to be identified;
 - **Increase in Credit Cover** - In the event that a BSC Party covered by the consolidated LoC wishes to increase its Credit Cover, processes for doing so may need to be defined. For example the increase could be achieved from the re-apportionment of credit from another Party covered by the LoC, or could be achieved by replacing the LoC with a new one for an

increased amount, or even by lodging a new LoC specific to the one BSC Party for the additional amount required;

- **Default** – Issues may arise from having a consolidated LoC under different Default circumstances, for example:
 - i **Default under the Code:** Currently, if a Party Defaults under the Code, pursuant to Section H.3.2.1, its Credit Cover is frozen, and this may have implications on the consolidated LoC and require a new / amended process for managing this;
 - ii **Payment Default:** If a Party is unable to pay its Trading Charges the BSCCo may decide to call upon any lodged Credit Cover, and the implications of calling on a consolidated LoC should be explored, specifically for the example where the default amount exceeds the apportioned Credit Cover;
 - iii **Credit Default:** Issues may arise where a Party with a consolidated LoC fails to comply with renewal time-scales, potentially resulting in the entire LoC becoming invalid, impacting all the BSC Parties covered by the LoC; and
 - iv **Status of BSC Parties:** Where a Party defaults, the Panel is obliged to take decisions in relation to that Party. Therefore consideration should be given as to whether a consolidated LoC prevents BSC Parties from being treated as individual entities by the Panel, or obliges the Panel to take different decisions.

The Modification Group should consider the implications of a consolidated LoC on the above circumstances.

- **Withdrawal of a Party from a consolidated LoC** – The Modification Group should consider what the provisions should be made to allow a BSC Party from a consolidated LoC if, for example, the Party is sold to another company.
- **Application to LoCs Only** – The Modification Proposal limits the consolidation of credit to LoCs only, by implication excluding cash cover. Therefore the rationale for this constraint should be explored, and where it is considered appropriate by the Modification Group, the process may be expanded to include the consolidation of other forms of credit; and
- **Legal / Commercial Issues** – The use of a consolidated LoC may create legal and / or commercial issues where multiple BSC Parties are covered by a single LoC. Therefore this aspect should be explored by the Modification Group to ensure that there are no legal / commercial inconsistencies with this approach.
- **Costs/benefits** – The Modification Group should assess the costs savings to Parties of using a consolidated Letter LoC.

7.2 Financial Institute's Opinion of P158

The information supplied in this document has been provided by an external financial establishment ("the source"), which can not be named for legal reasons. The following information provides an external banking opinion (the source wanted to make it clear that this is not a legal opinion) on the robustness of the draft consolidated Letter of Credit, as supplied by ELEXON.

The source sought Specialist Support advice regarding the wording of the draft consolidated Letter of Credit (LoC), in order to find out whether a similar document had been seen before or whether such a document could have been potentially agreed by the British Bankers Association. Neither of which were confirmed. However, the wording of the draft consolidated LoC was considered workable, but the following points were raised by the source:

1. Whilst it would be possible to issue a standby on behalf of multiple applicants it could potentially cause problems from an operational point of view in that the lender could only record a liability against one name. To record against multiple names, covered by a consolidated LoC, the lender would need to open a separate instrument for each applicant to record their portion of the overall liability. The lender would also need to have a 'base' file which would be the actual instrument that the lender would issue and all of these files would need to be cross referenced. Due to the extra work involved and greater potential for errors the source suggested that it would prefer to steer clear of this type of document.
2. In the event of a claim against one of the applicants, it would be possible for another applicant to obtain a court injunction to prevent the bank from paying. Although the source deemed this unlikely, it proposed that any lender would be obliged to act in accordance with the terms of any Court Order, even if it were to 'freeze' the entire standby.
3. The wording of the draft LoC states that the standby could be claimed against should the lender not extend or replace it in accordance with the underlying Balancing and Settlement Code, or if the lender was to fall short of the required credit rating as detailed in the same Code. The source clarified that it had no knowledge of the Code and subsequently warranted this aspect to be a separate and independent consideration from the standby. The source asked ELEXON to appreciate the fact that the beneficiary could present claims for these reasons even if the applicant(s) was not in default, which the lender would be obliged to pay. Therefore, Specialist Support have suggested that ELEXON may wish to satisfy itself with the acceptability, or otherwise, of the terms of the Balancing and Settlement Code, before it can agree to this point.
4. Specialist Support have drawn attention to the 'set-off' clause and have stated that this could deprive the bank of certain rights.
5. The clause relating to UCP must state that it is ICC Publication No. 500.

7.3 Counter Opinion to that of the Financial Institution

BGT in their response to the assessment consultation stated that they had spoken to a financial institution that confirmed they would be happy to provide a consolidated LoC under the format proposed. They have put this in writing and were fully aware of the concerns expressed by the other financial institution.

"Further to our telephone conversation on 29.3.04, we are in principle agreeable to issuing a standby LC in the attached format."

Also we have gained an internal legal view on the concerns expressed by the source and they are as follows:-

"(i) It is envisaged that the vast majority of LC's covering multiple BSC Parties will be covering parties who are affiliates and subsequently share information. As such, there would be no more likelihood of such applicant obtaining a court injunction than at present where affiliates have separate LC's.

(ii) The probability of a court granting an injunction to prevent payment does not increase for such multi party LC, the court would still only be concerned with whether the pre-requisites of such demand were met.

(iii) If this is of specific concern, which is not our view, the LC could be amended simply to the effect that; "the bank has an obligation to pay, notwithstanding any objection from a multiple applicant"."

7.4 PANEL MINUTES (DRAFT)

P158: INTRODUCING THE ABILITY TO LODGE A CONSOLIDATED LETTER OF CREDIT (LoC) – 75/007

This paper provided a summary of the Assessment Report for Modification P158. The Panel was invited to endorse the recommendation of the Settlement Standing Modification Group (SSMG) that P158 should be submitted to the Report Phase with a recommendation that it should not be made.

ELEXON presented the report to the Panel noting the split views from consultation respondents. Those who supported the Modification Proposal believed that it provided a more efficient means of sourcing and administering credit cover but those respondents who were against it believed it would result in an increase in risk to the market from defaulting Parties with insufficient credit cover. The SSMG had concluded that P158 better facilitated Applicable BSC Objective (d) by providing a more efficient mechanism for sourcing credit cover and reducing the administrative burden on Parties, but that this benefit was outweighed by the detrimental effect on Applicable BSC Objective (c) caused by the increase in risk to Parties. The SSMG had commented that the proposed methodology was largely untested with a lack of historical evidence. ELEXON asked the Panel to note that the information on the historic use of a consolidated Letter of Credit in the gas industry was not available for the consultation.

A Panel Member commented that the cost of credit was a fundamental issue to smaller players. It would have helped if responses to the historical evidence had been included for the Panel's consideration. ELEXON reported that the information had been circulated to the SSMG members after the final meeting and their comments would be included in the draft Modification Report for consultation. A Panel Member requested that open questions be used to seek the views of the respondents. Another Panel Member commented that the Modification Proposal was aimed at larger participants so the issue of security to the industry was more significant.

A Panel Member commented that there was insufficient detail on the benefits of the Modification Proposal. ELEXON reported that respondents, including the Proposer, had indicated that there would be cost benefits but that they would be minimal. One respondent had stated that his company would use a consolidated Letter of Credit, whilst two further respondents had welcomed the ability to be able to use it at some point in the future.

A Panel Member queried whether the consolidated Letter of Credit would have a time limitation and whose responsibility it would be to monitor the process. ELEXON confirmed that the Letter of Credit would be required to be revised if the trading party group configuration was changed and that it was the responsibility of the umbrella company to make any amendments. This was in line with current credit procedures.

A Panel Member noted the comments on the perception of risk of an untried product and queried whether any consideration had been given to developing an Alternative based on the findings in the gas arena. ELEXON explained that the Modification Group had been constrained by the wording of the Modification Proposal.

A Panel Member noted the contradictory statements from the two banks from which advice had been sought. The first bank did not support the proposed consolidated Letter of Credit due to a perceived increase in risk and stated that it would not be providing them, whilst the second bank thought that appropriate drafting would remove the risk. He queried whether the response from the first bank had been challenged. ELEXON reported that there had been insufficient time.

A Panel Member commented that the issue was confusing; there were no costs, the benefits were meagre and the statements from the banks were contradictory and unchallenged. The Chairman queried whether further assessment would be of benefit to better ascertain the benefits and to get a better handle on the risks, measured against the baseline.

A Panel Member noted the general agreement that the Modification Proposal better facilitated Applicable BSC Objective (d) based on the cost savings and the reduction in a barrier to entry. The requirement for credit cover was draconian and therefore any relaxation in the requirement would be perceived as a risk. The credit hurdle could be regarded as being set too high. Another Panel Member

expressed concern that the Panel would be in the position of acting as arbiter between the opposing views of two large banks.

Several Panel Members agreed that it would be useful to undertake some further work to encapsulate the value of the Modification Proposal. A Panel Member queried the comment of the Proposer stating that the Modification would result in 'minimal' savings. The Ofgem Representative agreed that the exercise was costing the industry money and it appeared that the Proposer himself could not justify raising the Modification Proposal.

The Panel agreed that further assessment on the benefits and risks, including further exploration of the statements from the banks, was required. The Panel:

- NOTED the P158 Assessment Report and the recommendations of the SSMG.
- DETERMINED to submit Modification P158 to a further 1-month Assessment.
- INSTRUCTED ELEXON to issue an industry consultation in respect of the above. The revised Assessment Report will be presented to the Panel meeting of 13 May 2004.