Consultation for Modification Proposal P131: "Introduction of further provisions relating to the determination of Trading Disputes"

A consultation document developed on behalf of the P131 Modification Group.

For Attention of: **BSC Parties and all other interested parties.**

Date of Issue: **9 October 2003**

Responses Due: **17:00 on Wednesday 22 October 2003 (To:** **Modifications@elexon.co.uk)**

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1. INTRODUCTION

Modification Proposal P131, "Introduction of further provisions relating to the determination of Trading Disputes" ("P131") was raised on 23 June 2003 by the Trading Disputes Committee ("TDC") on behalf of the BSC Panel ("the Panel").

The Proposer of the Modification Proposal indicated that P131 had been raised as a result of legal issues arising from the TDC review of the criteria contained in Section 5.15 of BSCP11 "Volume Allocation and Settlement Run Queries". Legal opinion was, the linkage between the criteria contained in BSCP11 and to the Code was inadequate and as a consequence, use of such criteria in judging Trading Disputes was suspended by the BSC Panel. In addition, legal advice received stated that a Modification to the Code would be required if it was felt that criteria should still be applied to the determination of Trading Disputes.

The TDC is of the view that the Code should place obligations on Parties with regard to the timely detection and raising of Trading Disputes. Furthermore, the TDC believes that emphasis on prompt and accurate rectification of Settlement Errors would promote efficiency in the implementation and administration of the balancing and settlement arrangements, and therefore better facilitate the achievement of Applicable BSC Objective (d).

P131 is currently within the Assessment Procedure phase of the Modification process, and an Assessment Report is scheduled to be presented at the November meeting of the Panel. This consultation document describes the discussions of the P131 Modification Group ("the Group") to date, and seeks the views of market participants on the following:

- whether or not P131 would better facilitate achievement of the Applicable BSC Objectives;

- what form the dispute criteria should take (three alternative solutions are presented);

- at what level the materiality criterion for rectification of a Trading Dispute should be set;

- whether or not the submission of a Trading Query form is an appropriate basis against which to assess compliance with prescribed timeliness criteria; and

- whether there are any substantive issues that need to be brought to the attention of the Group.

2. MODIFICATION GROUP DISCUSSION

As part of the Assessment Procedure, the Group has met on three occasions to date - 18 September, 24 September and 1 October 2003. At these meetings, the Group has identified six basic options regarding the nature of timeliness criteria applicable to the raising of Trading Queries – no criteria, subjective criteria, high-level objective, criteria based on the content and publication times of information reported as detailed in Section V of the Code, objective criteria based on data type and objective criteria based on data items.

The perceived advantages and disadvantages of each of these options are summarised in Appendix 1 of this document.   Discussion of the six options identified two key characteristics which the Group believed any timeliness criteria ought to embody - clarity and ease of use both for TDC and for Parties. As a result, the Group developed further the three options it believed best embodied these characteristics – objective criteria by data type, high-level objective criteria with TDC discretion and a hybrid of the two. These three options are described in Sections 2.1, 2.2 and 2.3 below. The other sections summarise the Group's position on other key issues.

2.1   Option 1: Objective Criteria by Data Type.

Basic Concept - a list of data types, as exhaustive as possible, with associated timeliness criteria for raising a Trading Query, will be held within the BSCP and would be used by the TDC to judge Trading Disputes. Whilst the Code will state that if a Party believed an error had occurred in respect of one of these data types, or the processes associated with such a data type, the Party would need to raise the Trading Query within the prescribed timescale.

Assessment of Compliance – compliance with the prescribed timescale would be measured against the date when the F11/01Query Form was received by ELEXON.

Location of Criteria - the Code would state that timeliness criteria exist and that these criteria are contained in a Code Subsidiary Document (i.e. BSCP) and are based on the timing of Settlement Runs. The Code would also contain clauses to address circumstances in which the appropriate data type is not listed in the Code Subsidiary Document and where a Party is unable to submit a Trading Query within the relevant timescale due to circumstances beyond its control.

Data Type not Identified (- in Code Subsidiary Document) - if a perceived Settlement Error has occurred in the data and/or processes pertaining to a data type not included in the list, the Party in question would have a 20 month timescale within which to raise it as a Trading Query. Subsequently, a Change Proposal would be raised by the TDC adding the extra data type to the list with a suitable timescale.

TDC Discretion Criteria (OPTIONAL) – the TDC would be able to exercise its discretion in situations where unexpected, and significantly disruptive, circumstances beyond the control of a Party resulted in that Party being unable to raise a Trading Query within the relevant timescale.

Legal Advice: legal advice received on this option expressed concern that it would be difficult to draft and inefficient to operate. First, its detailed nature would require all conceivable disputable data types to be identified and assigned a timescale. As a result, there would remain a significant risk that the list of data types would not be exhaustive and would require regular updating (see data type not identified above).   Second, the use of data types might not eliminate the need for judgement as to what timeliness criterion should apply (e.g. under which data type does a specific data item fall) potentially undermining the rationale for a detailed approach, clarity and the minimisation of subjective judgement.

Timescales - The five tables below specify the timeliness criteria associated with each data-type identified by the Group. Note that all terms used are defined terms under the Code.

Note: Some of the source data is missing from this table. In the finalised (legal) version of this option the sources will be completed.

TABLE A: REGISTRATION

Data Type	Source	Timescale
Market Domain Data	BSCP509	D + 2
Party Registration Data	A 4.2	SF + 20* / D + 40**

Trading Unit	K4	SF + 20 / D + 40
BM Unit	K3	SF + 20 / D + 40
Party Agent Appointment		RF + 70 / D + 361
Meter Technical Details		
Central Volume Allocation	BSCP20	SF + 20 / D + 40
Supplier Volume Allocation (Half Hourly)	BSCP502	R1 + 20* / D + 55
Supplier Volume Allocation (Non Half Hourly)	BSCP504	RF + 70 / D + 361
P/C status	K 3.5.1	SF + 20 / D + 40
GC / DC	K 3.4.8	SF + 20 / D + 40

TABLE B: CONTRACTS & NOMINATIONS

Data Type	Source	Timescale
ECVNA Authorisations		SF + 20 / D + 40
MVRNA Authorisations		SF + 20 / D + 40
Energy Contract Volume Notifications		SF + 20 / D + 40
Metered Volume Reallocation Notifications		SF + 20 / D + 40
Physical Notifications		SF + 20 / D + 40
Acceptances	Q 4.1.3	SF + 20 / D + 40
Bid Offer Data		SF + 20 / D + 40

TABLE C: PRICING & SETTLEMENT

Data Type	Source	Timescale
BSAD		20 months
QAS		SF + 20 / D + 40
TLF		SF + 20 / D + 40
TLM		SF + 20 / D + 40
Imbalance prices		20 months

TABLE D: METERING

Data Type	Source	Timescale
Central Volume Allocation		SF + 20 / D + 40
Supplier Volume Allocation (Half Hourly)		R1 + 20 / D + 55
Supplier Volume Allocation (Non Half Hourly)		RF + 70 / D + 361
Daily Profile Coefficient		D + 3
Interconnector		SF + 20 / D + 40

TABLE E: BSC AGENT PROCESSING

Data Type	Source	Timescale
Error in data and/or processes undertaken by BSC Agent or BSC Agent Systems excluding SVAA and its Systems		SF + 20 / D + 40
Error in data and/or processes undertaken by SVAA or SVAA Systems		RF + 70

All numbers mentioned in the table above refer to Working Days.

D = Settlement Day

SF = initial Settlement Run

R1 = first Reconciliation Run

RF = Final Reconciliation Run

[*Wherever there is an SF + 20 / R1 + 20 timescale it would be applicable to Trading Queries raised against perceived Settlement Errors occurring during a Reconciliation Run. For Trading Queries raised against subsequent Settlement Runs (i.e. they were not present in the previous Settlement or Reconciliation Run), the deadlines would be as follows; it must be identified in Rx +20 (i.e. 20 days after the relevant Settlement Run).

**Wherever there is a D + 40 timescale, it would be applicable to Trading Queries raised against perceived Settlement Errors occurring during 1st Reconciliation. For Trading Queries raised against subsequent Settlement Runs, the deadlines would be as follows: R2; SD + 100 Days, R3; SD + 170 Days and RF; SD + 358 Days.].

2.2   Option 2: High Level Objective Criteria with TDC Discretion

Basic Concept – under this option a general timeliness criterion would apply for raising Trading Queries with four exceptions to the general rule. These would cover data types derived from processes which operate to different timescales and a clause enabling TDC to exercise its discretion would be included in the Code.

Assessment of Compliance – compliance with the prescribed timescale would be measured against the date when the F11/01 Query Form was received by ELEXON.

Location – all criteria would be located within the Code under this option.

TDC Discretion - the TDC would be empowered to exercise its discretion in the application of the timeliness criteria, for example, in extenuating circumstances or where none of the existing timescales are clearly applicable.

Legal Advice – legal advice did not identify any issues with this option.

Timescales – the timescales for the general, exceptions and the nature of discretion devolved to the TDC would be as follows:

GENERAL CRITERION

As a general rule, Parties will be required to raise Trading queries within 40 days (i.e. approximately SF + 20 days) of the first affected Settlement Day within which the Settlement Period against which the Trading Query is being made falls.

SVA HALF HOURLY CRITERION

For Trading Queries regarding the registration of SVA Metering Systems comprising Half Hourly Meters and the collection, aggregation and use in Settlement of data associated with such Metering Systems, a query must be raised within 55 (i.e. approximately R1 + 20 days)[1] days of the first affected Settlement Day within which the Settlement Period against which the Trading Query is being made falls.

SVA NON HALF HOURLY CRITERION

For Trading Queries regarding the registration of SVA Metering Systems comprising Non Half Hourly Meters and the collection, aggregation and use in Settlement of data associated with such Metering Systems, a query must be raised within 358 days (i.e. approximately RF + 70 days) of the first affected Settlement Day within which the Settlement Period against which the Trading Query is being made falls.

PROFILING CRITERION

For Trading Queries regarding Profiling or profiling data (e.g. Profile Coefficient) used in Settlement, a query must be raised within 3 days of the first affected Settlement Day within which the Settlement Period against which the Trading Query is being made falls.

MDD CRITERION

For Trading Queries regarding Market Domain Data (MDD), a query must be raised within 2 days of the first affected Settlement Day within which the Settlement Period against which the Trading Query is being made falls. This criterion would be applicable to all data contained with the MDD dataset (as defined in BSCP509).

DISCRETION CLAUSE

The Trading Disputes Committee (TDC) will be able to exercise its discretion and hear a Trading Dispute arising from a Trading Query raised outside the relevant timescale above. In exercising such discretion, the TDC would have regard to:

(a)   Evidence submitted by the Party raising the Trading Query indicating that the Trading Query   could not have been raised any earlier due to unexpected, and significantly disruptive, circumstances beyond the control of that Party;

(b)   Any delay to the Settlement Run within which the perceived Settlement Error was detected; and

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[1] Note that this timescale would be applicable to Trading Queries raised against perceived Settlement Errors occurring during 1st Reconciliation. For Trading Queries raised against subsequent Settlement Runs, the deadlines would be as follows: R2; SD + 100 Days, R3; SD + 170 Days and RF; SD + 358 Days.

> (c)   Where unexpected, and significantly disruptive, circumstances beyond the control of the Party result in that Party being unable to raise a Trading Query within the relevant timescale (see above), the TDC will consider the Trading Dispute if it is satisfied that sufficient evidence to substantiate such extenuating circumstances has been provided by the Party in question.
>
> For the avoidance of doubt, TDC discretion notwithstanding, no Trading Query may be raised later than twenty months after the Settlement Day against which the Trading Query is being made.

2.3   Option 3: Hybrid of Options 1 and 2

Basic Concept – a list of data types, as exhaustive as possible, with associated timeliness criteria for raising a Trading Query, will be held within the BSCP and would be used by the TDC to judge Trading Disputes (as option 1). The Code will state that if a Party believed an error had occurred in respect of one of these data types, or the processes associated with such a data type, the Party would need to raise the Trading Query within the prescribed timescale but will also contain a clause enabling TDC to exercise its discretion in cases where the Party felt the timescales in the BSCP were unreasonable for whatever reason.

Assessment of Compliance – compliance with the prescribed timescale would be measured against the date when the F11/01 Query Form was received by ELEXON.

Location – the Code would state that timeliness criteria exist and that these criteria are contained in a Code Subsidiary Document (i.e. BSCP) and are based on the timing of Settlement Runs. The Code would also contain clauses to address circumstances in which the appropriate data type is not listed in the Code Subsidiary Document and where a Party felt the timescales in the BSCP were unreasonable.

TDC Discretion - the TDC would be empowered to exercise its discretion in the case where a Party felt the timescales in the BSCP were unreasonable, where the data type is not listed and for example, in extenuating circumstances.

Legal Advice – legal advice received on this option expressed concern that it would be difficult to draft (uses the same list of data types as option 1).

Timescales – as follows:

> **Code:**
> Parties are required to raise Trading Queries within the timescales outlined in the relevant BSCP.
>
> If a Party feels it could not reasonably have been expected to raise the Trading Query within the relevant timescale, it can appeal to the TDC who will be able to exercise their discretion and consider such a Trading Query.
>
> If a Trading Query is raised regarding a data type not included in the relevant BSCP the TDC will consider the case using their discretion.
>
> (As option 2) Note: in using their discretion the TDC may have regard to:
> a) Evidence submitted by the Party raising the Trading Query indicating that the Trading Query could not have been raised any earlier due to unexpected, and significantly disruptive, circumstances beyond the control of that Party;
> b) Any delay to the Settlement Run within which the perceived Settlement Error was detected; and
> c) Where unexpected, and significantly disruptive, circumstances beyond the control of the Party result in that Party being unable to raise a Trading Query within the relevant timescale (see above), the TDC will consider the Trading Dispute if it is satisfied that sufficient evidence to substantiate such extenuating circumstances has been provided by the Party in question.

> **BSCP:**

Criteria with attached timescales will appear as in option 1.

2.4   Settlement Day vs. Settlement Run

The Group discussed whether it was more appropriate to have timescales relating to a Settlement Day or a Settlement Run. For example should timescales be written as (D + x) or as (SF etc + x) where x is a number of working days.

There are several issues associated with using Settlement Runs as opposed to Settlement Days as the basis of timescales:

- Settlement is carried out on the basis of Settlement Days (i.e. Settlement Run based criteria would be inconsistent with the general approach of the Code);
- Reporting is based on Settlement Days (i.e. changes to Section V might be required to support the use of Settlement Runs); and
- Use of Settlement Day would be more specific i.e. the precise timing of Settlement Runs can vary (Note: On this basis the period for raising a dispute would also vary. A delay in receipt, would reduce the time for a Party to raise a dispute)

However, to cater for a perceived Settlement error arising in a Settlement or Reconciliation Run that was not present in the previous Settlement or Reconciliation Run, two options are available when using Settlement Day based criteria:

- Include a statement that reads as follows "For Trading Queries raised against subsequent Settlement Runs, the deadlines would be as follows: R2; SD + 100 Days, R3; SD + 170 Days and RF; SD + 358 Days." However legal advice is that this method lacks clarity.
- Trading Queries that are raised against subsequent Settlement Runs on the grounds that they were not present in the previous Settlement Run are judged using the TDC's discretion (i.e. such circumstances could be accommodated through use of the discretionary clause). Note that this is the preferred option of the Group's legal advisor.

The Group in their discussion of this issue noted a preference for Settlement Run timescales, since a majority of errors are detected from Settlement Reports. This does not preclude a party from raising a dispute within these same timescales

2.5   TDC Discretionary Clause (Exceptional Circumstances)

The Group considered the inclusion of a clause that would allow Parties who felt they had good reason for being unable to comply with the relevant timescale to have their cases heard at the discretion of the TDC. Under option 1, there was unanimous agreement for the option of TDC discretion existing in instances where a data type, against which a Trading Query could be raised, had been omitted from the data type tables specified in the Code Subsidiary Document. In such circumstances it was felt that the TDC ought to exercise its discretion in assessing the timeliness of such a query.

There was no consensus regarding the inclusion of a situational type exception clause (i.e. one covering extenuating circumstances which frustrate a Party from submitting a Trading Query in a timely manner). Three members supported such a clause, and three opposed its inclusion.

The main differences between the options with reference to a TDC discretionary clause are:

- Under Option 1 (i.e. Objective Criteria by Data Type.), a discretionary clause would be optional (although legal advise recommends its inclusion) and if included would be used infrequently.
- Under Option 2 (i.e. High Level Criteria), a Party who has by default fallen under the general rule of D + 40 / SF + 20 but regards this as unreasonable under the particular circumstances, would be able to appeal to TDC with reference to the discretionary clause.

- Under Option 3, a Party who in their particular case view the timescales as unreasonable, would be able to appeal to TDC with reference to the discretionary clause.
  In addition, were <u>any</u> option not to include a provision for when a perceived Settlement Error occurs in a Settlement or Reconciliation Run that was not in the previous one, then the discretionary clause would have to cater for claims of this nature.

2.6   Final Materiality Criterion

The Group agreed that 'final materiality criterion' (i.e. a materiality threshold above which an upheld Trading Dispute would be rectified) would be necessary. Without such a threshold, Settlement Errors which it would be uneconomic for the market, as a whole, to address would still need to be rectified.

There was discussion as to what purpose a final materiality criterion would provide - i.e. would it be solely to make sure that only errors that have a material effect on the accuracy of Settlement are rectified or would it be, in addition to this, to act as a timeliness incentive. A dual threshold type materiality criterion (i.e. two thresholds depending on when the rectification would place in the Settlement Calendar) would be to encourage timeliness as the later the dispute was raised the higher the materiality would have to be for it to be rectified. A single threshold would simply be to ensure that only errors that have a material effect on settlement accuracy are rectified. The Group also thought it was appropriate to have a materiality threshold that was representative of the cost of rectification.

The Group decided that a single threshold was appropriate as timeliness would be encouraged through the prescribed timeliness criteria for the raising of Trading Queries.

The cost of a Post-Final Settlement Run was established to be in the region of £400. Therefore, a £500 materiality threshold was suggested and agreed upon by the Group.

2.7   Trigger

The Group considered whether an additional set of timescales, covering the detection of an anomaly rather than the raising of Trading Query, would be required to provide an incentive for Parties to raise a Trading Query as soon as practical after detecting a perceived Settlement Error. However, the Group decided that even though it may be ideal to provide such an incentive, its inclusion would make for overly complex criteria. Therefore, it was decided that to pass the criteria a Party would have to send in the Trading Query form within the timescales outlines by the criteria, regardless of when detection occurred.

3.   CONSULTATION

Respondents are invited to respond to the questions contained in the attached pro-forma. For reference, the Applicable BSC Objectives are as follows:

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

(b)   The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;

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

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

(e)   without prejudice to the foregoing objectives and subject to paragraph 3A, the undertaking of work by BSCCo (as defined in the BSC) which is:

(i)   necessary for the timely and effective implementation of the proposed British Electricity Trading and Transmission Arrangements (BETTA); and

(ii)   relevant to the proposed GB wide balancing and settlement code;

and does not prevent BSCCo performing its other functions under the BSC in accordance with its objectives.

You are invited to respond to the questions in the attached pro-forma.

Please send your responses entitled 'P131 Assessment Consultation' by 17:00 on Wednesday 22 October 2003 to the following email address: Modifications@elexon.co.uk

Any queries on the content of the consultation pro-forma should be addressed to Dena Harris (020 7380 4364) e-mail address Dena.Harris@elexon.co.uk

Appendix 1: options for criteria

From Modification Group Meeting 2 - 24 September 2003

The Group identified basic forms the criteria might take:

1) No criteria
2) Subjective criteria
3) High level criteria and guidelines (non-binding and contained in a Code Subsidiary Document)
4) Report based criteria (i.e. criteria based on the data and publication date of the reports contained in Section V of the Code).
5) Data type objective criteria
6) Data item objective criteria

The perceived advantages and disadvantages of each option were discussed, and are summarised in the tables below. As a result of this discussion, the Group decided to take forward and develop a modified version of option 3 (i.e. 'option 2' in the main text of this document) and option 6.

No Criteria

Pros	Cons
• Thus far, no significant rise in the number of disputes • Saves time in P131 Mod Group and TDC • P107 limits raising Trading Disputes to 20 months anyway • Results in more correct Settlement • Reduced risk of audit qualification	• May yet be 'flood' of disputes as people now using their LWI that recognise criteria • More time spent by TDC as can't reject any claims on criteria grounds • Increased uncertainty and inaccuracy of settlement early on – impact on working capital will affect smaller players more • Reduced incentive to get accurate final reconciliation
1 member was in favour of taking this idea further, 5 were against	

Subjective Criteria

Pros	Cons
• Save time at P131 Modification Group meetings	• Increased potential for Legal challenges • Increased referral to Panel / arbitration • Increased uncertainty • Trust in TDC membership.. • More TDC decision making time
No members supported this option	

High Level Criteria and Associated Guidelines

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Pros	Cons
• Increased Flexibility • Ease of use • Industry accustomed to it	• Element of subjectivity • Legal value of guidelines (i.e. non binding)
2 members supported, 3 members qualified their support by stating a preference for obligations rather than guidelines, 1 member did not support taking this option forward.	

Report-Based Criteria

Pros	Cons
• Objective • Comprehensive list • Defined terms • No additional complexity	• Problem with aggregated reports • Same data items appear in different reports • Is section V exhaustive in SVA realm? • Is there a legal issue with attaching timescales to reports?
2 members supported, 2 members expressed qualified support and 2 members did not support taking this option forward	

Data Type, Objective Criteria

Pros	Cons
• Objective • Can capture majority of data items by using categories of data types • Clarity • Certainty • Maintainability • Ok to use	• Not exhaustive • Exception clause required • Difficult to use
5 members supported and 1 member did not support taking this option forward	

Data Item, objective criteria – this option was rejected by all as being unnecessarily detailed and complex.

Key points from Group Discussion

High Level Criteria and Associated Guidelines.

The Group tried to envisage how this option would appear in the relevant documents and considered that there would be general criteria (similar to suspended criteria (i) and (ii)) in the Code and then associated guidelines would be published in a supporting document, similar like the CALF guidelines used by the ISG. The high level criteria would state that Parties should prove they detected the error in a reasonable amount of time and the guidelines would outline what is considered reasonable. The Group believed the guidelines could take the form of a list of data types with associated timescales. The list of data types could be

objective criteria and several members of the Group considered that if there was going to be such a list with associated timescales it should be an obligation rather than a guideline. One member of the Group pointed out that with an objective list of obligations, an exception clause would be used only for exceptional circumstances/cases, whereas with guidelines exceptions could occur and be considered frequently.

The Group reconsidered whether they wanted to continue detailing a solution involving high level criteria and guidelines. Five members of the Group favoured halting development of this potential solution and one member favoured taking it further.

Data Type, Objective Criteria

This was envisaged as being a statement in the Code (similar to suspended criteria (i) and (ii)) which referred to a definitive set of timeliness criteria listed in the relevant BSCP.

In addition, a precedent register would be established to document for how the TDC had dealt with data types that were not included in the list and to enable Change Proposals to be raised as required to add to the list.

The Group noted that care would need to be taken to use as many defined terms in list of data types as possible.

APPENDIX 2

Disputes heard by the TDC in the last 12 months
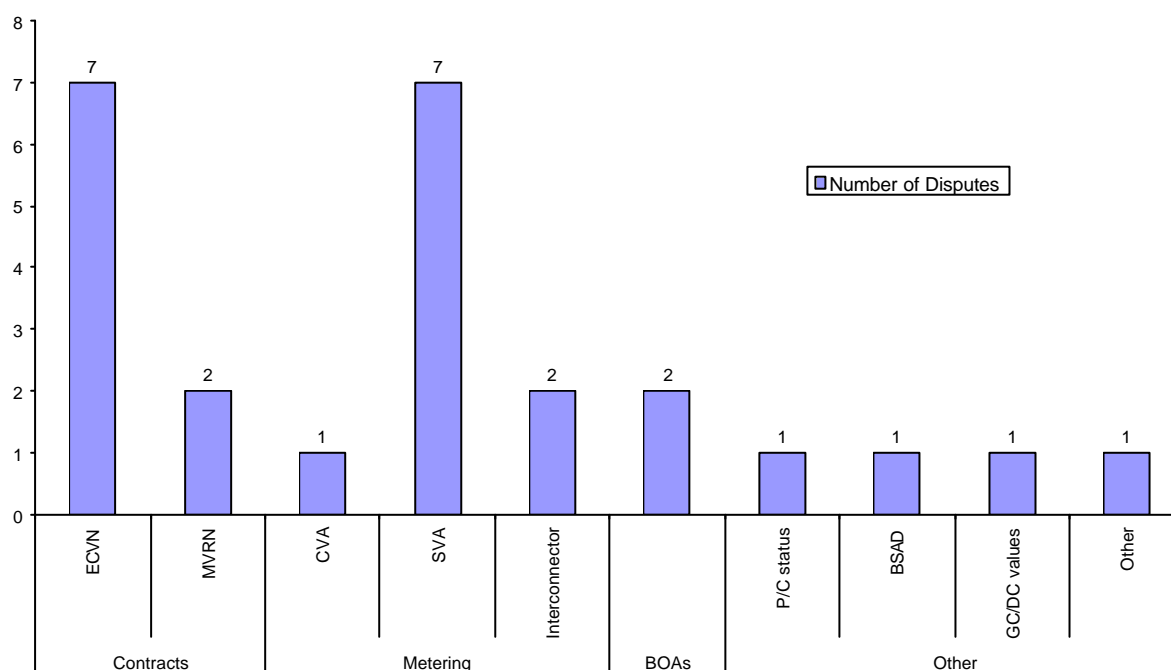
Queries raised in past 12 months