



May 2003

DRAFT MODIFICATION REPORT
**Modification Proposal P115 – Disapplication of
Supplier Charges under Certain Circumstances**

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

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a Authorities

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b Distribution

Name	Organisation
Each BSC Party	Various
Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
Energywatch	energywatch
Core Industry Document Owners	Various

c Intellectual Property Rights and Copyright

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d Related Documents

The following documents are referenced from within this document:

- 1 Modification Proposal P115 – Assessment Report – Version 1.0, 04 April 2003
- 2 Letter requesting Authority's Provisional Thinking – 27 March 2003
- 3 Modification Proposal P115 Assessment Consultation – P115AC – 5 March 2003
- 4 SVG Paper 25/351 – 4 March 2003 – P115 Feedback from the VASMG on generic SVA issues identified.

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Modification Procedures, and the resultant findings of this report, the BSC Panel recommends that:

- **Proposed Modification P115 should not be made;**
- **However, if the Authority determine that the Proposed Modification should be made, the Implementation Date should be 01 January 2005, if an Authority decision is received by 01 September 2003, and an Implementation Date of 01 May 2005 if an Authority decision is received after 01 September 2003 and before 01 January 2004.**

1.2 Background

Modification Proposal P115 'Disapplication of Supplier Charges Under Certain Circumstances' (P115) was submitted on 24 December 2002 by Innogy plc.

P115 proposes to allow the Panel to disapply part, or all, of the Menu of Supplier Charges for those periods where the application of such charges may be inconsistent with the status of the charges as "liquidated damages", or it may be otherwise unreasonable to apply them.

The Proposer believes that the removal of "generic problems" from Supplier Charges will raise performance to a level where the effect of caps is avoided, and that this would be a positive incentive for Suppliers to investigate the cause of problems due to their own failures. The Proposer believes this will better facilitate the achievement of Applicable BSC Objectives (c) and (d).

The Assessment Report was presented to the Panel meeting on 10 April 2003. The Panel agreed with the recommendation of the Volume Allocation Standing Modification Group ("the Group") that Modification Proposal P115 should not be made. The Panel determined that P115 should be submitted to the Report Phase, with the completed draft Modification Report to be presented to the Panel meeting on 08 May 2003.

1.3 Rationale for Recommendations

The Panel noted the Group had been unable to identify a viable solution for how to disapply Supplier Charges, or indeed the extent to which a Modification Proposal is required, with the existing provisions for Supplier Force Majeure (SFM).

The Panel agreed with the Group that without a viable solution, or clear current baseline, it was not possible to adequately assess whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives.

As a result of their considerations the Panel unanimously recommended that the Proposed Modification should not be made.

All responses, including the Proposer, supported the recommendation that the Proposed Modification should not be made (except 1 response that provided no comments). The responses contained no new arguments.

2 INTRODUCTION

This Report has been prepared by ELEXON Ltd, on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('the Code'). The Code is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the Code.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC Website, at www.elexon.co.uk

3 HISTORY OF MODIFICATION PROPOSAL

Modification Proposal P115 'Disapplication of Supplier Charges Under Certain Circumstances' (P115) was submitted on 24 December 2002 by Innogy plc.

Supplier Charges are an important part of the Performance Assurance Framework (PAF) and primarily compensate non-Half Hourly (NHH) Suppliers for any energy allocation errors in Supplier Volume Allocation (SVA). In this respect they are expected to represent "a genuine pre-estimate of the loss likely to be suffered by other Parties as a result of a failure by a Supplier to meet the applicable Performance Level". They also have a secondary effect in that they create a financial incentive for Suppliers to improve their performance.

Annex S-1 defines 11 Serials that measure various aspects of the Supplier's performance. Each Serial has an associated Performance Level and if a Supplier's performance for the Serial drops below this level then they will accumulate a charge, the amount of which is also defined in Annex S-1.

Annex S-1 also defines the Supplier's Monthly Cap, which is designed to limit each Supplier's maximum liability to charges, and how all collected charges are to be redistributed to BSC Parties, with 10% being shared amongst all Trading Parties, and the remaining 90% being shared amongst the NHH Suppliers.

In addition Section S3.3 defines provisions for a Supplier to raise a claim of SFM. However, prior to P115 it was believed that this would not affect the level of Supplier Charges, as the algebra in Annex S-1 contains no provisions to amend any calculations to take into account extenuating circumstances, such as SFM.

P115 proposes to allow the Panel to disapply part, or all, of the Menu of Supplier Charges for those periods where the application of such charges may be inconsistent with the status of the charges as "liquidated damages", or it may be otherwise unreasonable to apply them.

P115 suggests that such circumstances would include where:

- there is a known defect in the mechanism for calculating the charges and/or their re-distribution;
- the Performance Levels and Serials in respect of which the charges are applied do not take account of a recognised defect in industry process or arrangements;

- performance has been significantly impacted by a failure of a previous Supplier(s) to comply with obligations under the Code.

The Proposer believes that in such circumstances, payments due to “generic problems”, combined with a Supplier’s Monthly Cap, could dilute the resulting incentive on Suppliers to improve their own performance. Therefore the removal of “generic problems” from Supplier Charges will raise performance to a level where the effect of caps is avoided, and that this would be a positive incentive for Suppliers to investigate the cause of problems due to their own failures.

The Initial Written Assessment for P115 was presented to the Panel meeting on 16 January 2003. The Panel determined that P115 should undergo a 3-month assessment by the Volume Allocation Standing Modification Group, and that the Assessment Report should be presented to the Panel at their meeting on 10 April 2003.

During the Assessment Procedure 3 meetings of the Group were held, and one consultation performed. In addition an Interim Report was sent to the Panel for their meeting on 13 March 2003. This resulted in the Panel requesting the Authority’s provisional thinking regarding P115 (Reference 2), which was received on 09 April 2003 (Annex 1).

The Assessment Report (Reference 1) and the Authority’s provisional thinking (Annex 1) were presented to the Panel meeting on 10 April 2003. The Panel agreed with the Group’s recommendation that Modification Proposal should not be made. The Panel also determined that P115 should be submitted to the Report Phase, with the completed draft Modification Report to be presented to the Panel meeting on 08 May 2003.

A draft Modification Report was prepared and sent to Parties on 17 April 2003 for consultation by 28 April 2003. Subsequently the draft Modification Report has been amended in the light of the representations received, together with a summary of those representations.

4 SUMMARY OF ASSESSMENT PROCEDURE

The majority of the Group, and also consultation responses during the Assessment Procedure, supported the principle that it should be possible to disapply some Supplier Charges in some circumstances.

The Group tried to find ways of achieving this, by investigating ways to quantify the effect “generic problems” may have on one or more Suppliers, and ways to link this to the existing Serials. The Group considered the merits of different approaches, ranging from statistical methods that automatically compensate for a generic level of error, through to justified approaches that are considered on a case by case basis. Examples of the former could include reducing the Performance Levels, or increasing the Supplier’s Monthly Cap, whereas an example of the latter would be extending the existing provisions for Supplier Force Majeure.

The Group found this to be a difficult task and although they identified a number of potential “generic problems”, they could not quantify the effect they may have on Supplier Charges¹. The Group also recognised the complexity of the algebra in Annex S-1, and that it would be difficult to disapply charges in a manner that continued to compensate NHH

¹ These potential “generic problems” were identified to SVG (Reference 4), such that the root causes of the problems could be investigated, and Change Proposals raised should suitable fixes be identified.

Suppliers, and still provided an incentive for Suppliers to improve performance. This process was made more difficult by the effect of the caps, which the Group recognised could distort incentives if a significant number of NHH Suppliers reached their caps. In recognising these difficulties the Group believed it was important to ensure any proposed approach was clearly defined, non-arbitrary and transparent.

The Group also investigated the expected materiality of the Modification Proposal². They recognised this would be difficult to quantify as the Supplier Charges that had accumulated since Go Live were only now being applied, and would not include Serial 1 (RF) until the process reaches the calculations for May 2002. This particular Serial was considered important as the Group recognised that, with the current level of NHH energy being settled on estimates, a significant number of Suppliers were expected to reach their caps³ due to this one Serial alone.

The Group also considered the degree to which incentives could be diluted when a Supplier's Monthly Cap was reached, as was suggested within the Modification Proposal. It was clear that any change in performance would not be reflected in the resulting Supplier Charge whilst the charge was capped, and this would apply to both HH and NHH Suppliers. However, the Group also noted that if a significant number of NHH Suppliers all reached their caps, then the collected charges, and redistributed amounts, would be largely determined by the Supplier's total energy in that GSP Group, and these would tend towards similar values. The Group also recognised that the manner in which the caps affect different types of Supplier (HH/NHH and large/small) could distort any incentive, but the Group could not determine whether this would be material to P115.

Based on the information contained within the consultation responses, and their own views, the majority of the Group supported the principle of P115, and also favoured an approach where each Supplier would be expected to justify each claim on a case by case basis. This would be similar to how the Group saw the existing provisions for Supplier Force Majeure.

Legal advice received during the Assessment Procedure also established that the existing provisions of Supplier Force Majeure were linked to Supplier Charges, and in the case of a successful claim then part, or all, of a Supplier's charges could be disappplied.

Although this established that the principle of disapplying Supplier Charges was already in the Code, from the perspective of P115 this still represented two problems:

- it was not clear as to the extent of the current SFM provisions, and the degree to which they may already be applicable to the sort of issue raised in the Modification Proposal. Section S3.3.1 allows claims for events outside a Supplier's control and already contains a varied set of possible causes. In addition the Code does not exclude claims for the circumstances described in the original P115 Modification Proposal. However, it was not clear how the merits of any claim would be evaluated, and the likelihood of a claim being upheld. Legal advice was that this was unlikely to become clearer until tested for real with specific cases;

² See the Assessment Procedure Consultation document (Reference 3) for further details on the materiality.

³ The consultation document identified that the average level of Serial 1 (RF) performance during the last six months of 2001 was 92%. It also identified that a Serial 1 (RF) performance of 93% during the peak winter month was sufficient to cause a Supplier to reach their cap.

- it was not clear how any disapplication of charges could be achieved (for either SFM or P115) in a manner that was defined, non-arbitrary and transparent. The rules and supporting systems are defined by a precise set of algebraic rules in Annex S-1 of the Code, which do not themselves provide an explicit facility to disapply charges.

As a result of their assessment, and attempts to identify a viable solution for how to disapply charges, the Group did not believe they could identify a change to the Code, or indeed the extent to which a Modification Proposal is required, with the existing provisions for SFM.

Without a viable solution, or clear current baseline, it was not possible for the Group to adequately assess whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives.

As a consequence of the above, the majority view of the Group was to complete the Assessment Procedure with a recommendation that Modification Proposal P115 should not be made. This was on the grounds that no solution (other than SFM) could be identified. In addition there may already be sufficient provisions within the Code (based on SFM), although as noted above no mechanism for processing SFM claims is defined. The Group also believed no legal text should be provided.

However, the Group strongly believed that further, potentially significant, work would be required to clarify the existing SFM provisions and define a mechanism to be used, should a claim be upheld. This would be operational work and, at least initially, would be best investigated outside the Modification Procedures, e.g. under the control of the Supplier Volume Allocation Group (SVG), with any resulting processes and procedures being endorsed by the Performance Assurance Board (PAB) (to ensure operability). Depending on the findings this may identify the need for a Modification Proposal to formalise the resulting rules.

5 RATIONALE FOR PANEL RECOMMENDATIONS

In addition to the Assessment Report, the Panel had been issued with the Authority's provisional thinking (Annex 1). This reinforced the view that disapplication of Supplier Charges risks diminishing their function as a genuine pre-estimate of loss, and that losses incurred by other Parties, due to a Supplier's under performance, would not be account for, or reimbursed. It also recognised that the existing Performance Levels already contain a degree of allowable error, and this reflects that there are generic issues in the market. Furthermore, if the existing levels are considered inappropriate, then change processes and mechanisms are in place to allow Supplier to propose to modify them. The Authority were also concerned about the practicalities of implementing a simple, transparent and equitable mechanism to disapply Supplier Charges, noting the need to continue to compensate those who are most affected by the energy allocation errors. This would be particularly difficult if any charges arising from poor performance from a previous Supplier could be disapplied.

A Panel member expressed concern that the materiality of the defect had not been made clear, and suggested that this would have helped determine how to progress the Modification Proposal. The Panel noted that the consultation document (Reference 3) contained a variety of data relating to the materiality, however, it had not been possible to combine this into a simple view concerning the overall materiality.

The Panel considered the Group's view that the provisions for SFM may offer a potential way forward, but questioned whether the three problems listed within P115 could be classed as SFM. It was explained that this had also concerned the Group, however, S3.3 did not appear to limit the circumstances that could be considered outside a Supplier's control, and that the explicit causes (S3.3.1.(a)-(h)) were not defined to be an exhaustive list. The Group did not believe this issue would become clearer until tested against specific cases. The Panel agreed that it would be difficult to clarify what would constitute a valid claim of SFM, and that this was a topic that had challenged contract law for many years. The Panel were against expending further effort to clarify the range of circumstances that may be considered valid within S3.3, and considered that each claim should be evaluated on a case by case basis.

The Panel also considered the Group's concern that a clear mechanism to disapply charges was not defined in the Code, and that the Group had not been able to identify a potential solution. The Panel had mixed views on whether this was best left until it was required for a real claim. They felt that this would give most flexibility in determining how to progress each claim. It was pointed out that both the Group, and Authority, believed that the mechanism for SFM should be simple, transparent and equitable. This would be harder to achieve if the rules were not defined before addressing a claim. The Panel agreed that ELEXON has an obligation to ensure that the Code is operational and that ELEXON (rather than SVG) should undertake an appropriate amount of work to investigate the existing provisions for dealing with an SFM claim and report back to the Panel as necessary.

As a result of their considerations the Panel unanimously recommended that the Proposed Modification should not be made and that P115 should be submitted to the Report Phase, with the completed draft Modification Report to be presented to the Panel meeting on 08 May 2003.

6 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

No legal drafting is provided as part of this report as no viable solution has been identified. The Authority has indicated that legal drafting for the Proposed Modification P115 is not required.

7 ASSESSMENT

The Assessment Procedure for P115 lasted for three months and full details of the assessment can be found in the P115 Assessment Report [RD/1].

As the Assessment Procedure did not result in a viable solution to the Modification Proposal, there are no changes to any BSC Systems.

8 SUMMARY OF COSTS

As no solution is being proposed by the Modification Group, there are no associated costs.

9 SUMMARY OF REPRESENTATIONS

The draft Modification Report was issued for consultation on 17 April 2003 with responses due back on 28 April 2003. 8 responses were received representing 45 BSC Parties and 1 non BSC Party:

- all responses, including the Proposer, supported the recommendation that the Proposed Modification should not be made (except 1 response which provided no comments);

The views expressed in the responses are summarised below:

Respondent	No. BSC Parties Represented	No. non BSC Parties Represented	Agree with Recommendation (Reject)	Agree with Implementation Date
IMServ	0	1	✓	✓
Aquila Networks	1	0	No comment	No comment
Scottish Power	6	0	✓	✓
LE Group	9	0	✓	X ⁴
Scottish and Southern	4	0	✓	✓
British Gas Trading	1	0	✓	✓
Npower	9	0	✓	✓
Powergen	15	0	✓	✓
TOTAL (8)	45	1	7(44+1)	6(35+1)

The responses contained no new arguments, copies of the actual responses received are contained in Annex 2.

The majority of respondents recognised that it was not clear whether a Modification was required, and even if it was, that it would be difficult to find and implement a solution. One respondent noted that without a viable solution, or clear current baseline, it is not possible to adequately assess whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives.

Although supporting the Panel's recommendation, some respondents reiterated their support for the principle of the Modification Proposal, believing that further analysis of the current Supplier Charges was required.

One respondent believed that the report focussed too much on SFM. Furthermore he felt that the consultation responses for the Assessment Procedure showed that without further analysis of the materiality it would not be possible to assess whether the current Supplier Charges incentivise non-performing Suppliers to improve performance. The Group have investigated the materiality, but found it difficult to form a simple view concerning the overall materiality. The Group recognised that this would probably not become clearer until the full set of charges, for all Serials, were available to Suppliers.

Another respondent felt that the "allowances" in some of the current standards did not adequately reflect some of the market problems that have emerged as the result of changes such as NHH Agent Competition. The respondent suggested the standards should be reviewed once the current problems have been assessed, and new changes, such as the Review of Electricity Metering Arrangements (REMA), and the introduction of competition in Distribution (Modification Proposal P62), had bedded down.

⁴ The respondent believed that giving an Implementation Date was redundant as no viable solution had been identified.

However, another respondent believed it would be better to wait until all chargeable Serials⁵ are included in the overall Supplier Charges, and then review the issue once there has been sufficient time to see how the existing framework developed.

ANNEX 1 – PROVISIONAL THINKING

The Authority's provisional thinking in relation to Modification Proposal P115 is attached as a separate document.

ANNEX 2 – REPRESENTATIONS

Representations were received from the following parties to the consultation issued 17 April 2003:

No	Company	No. BSC Parties Represented	No. Non-Parties Represented
1.	IMServ	0	1
2.	Aquila Networks	1	0
3.	Scottish Power	6	0
4.	LE Group	9	0
5.	Scottish and Southern	4	0
6.	British Gas Trading	1	0
7.	Npower	9	0
8.	Powergen	15	0

The following questions were asked:

1. Do you agree with the Panel's views on P115 and the provisional recommendation to the Authority contained in the draft Modification Report that P115 should not be made?
2. Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P115?
3. Are there any further comments on P115 that you wish to make?

P115_DR_001 – IMServ

Respondent:	Tom Cook
No. of BSC Parties Represented	Nil
BSC Parties Represented	
No. of Non BSC Parties Represented	One
Non BSC Parties represented	IMServ
Role of Respondent	Party Agent

⁵ Serial 1 (RF) was identified during the Assessment Procedure as the Serial most likely to cause Suppliers to reach their caps. The impact of this Serial will not occur until the calculation of Supplier Charges for May 2002.

Q	Response	Rationale
1	Yes	Whilst the Proposal has our full support it is accepted that implementation is not straightforward. Therefore, it may not be feasible to proceed.
2	Yes	
3	No	

P115_DR_002 – Aquila Networks

Please find that Aquila Networks Plc response to P115 Consultation on draft Modification Report is 'No Impact'.

regards
Rachael Gardener

Deregulation Control Group &
Distribution Support Office
AQUILA NETWORKS

P115_DR_003 – Scottish Power

Respondent:	John W Russell (SAIC Ltd)
No. of BSC Parties Represented	6
BSC Parties Represented	Scottish Power UK plc; ScottishPower Energy Trading Ltd.; ScottishPower Generation Ltd.; ScottishPower Energy Retail Ltd.; SP Transmission Ltd.; SP Manweb plc.
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	Supplier / Generator / Trader / Consolidator / Exemptable Generator / Party Agent

Q	Response	Rationale
1	Yes	We agree with VASMG and the Panels recommendation that without a viable solution, or clear current baseline, it is not possible to adequately assess whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives. Therefore we agree that this Modification should not be made.
2	Yes	Notwithstanding that we disagree with this Modification, we would agree that the long implementation date appears to be appropriate.

Q	Response	Rationale
3	Yes	<p>We are concerned that the report seems to focus too heavily on Supplier Force Majeure (SFM). SFM was viewed as being one potential solution to the problem of the lack of a dispute mechanism covering Supplier Charges. We would suggest that further analysis should be carried out to:</p> <p>1) Assess the materiality of the issue presented by P115. In particular, this should look at how effective the current Supplier Charges framework is at incentivising non-performing Suppliers to improve.</p> <p>2) Consider the requirement for some mechanism to be available to Suppliers for them to raise concerns over their Supplier Charges if they believe them to be unrepresentative of their particular situation. This could include some form of dispute mechanism and a facility to disapply the relevant proportion of charges if a "dispute" is upheld.</p> <p>On the support for P115 expressed in the consultation responses, we would make the point that the consultation responses also raised doubt over the materiality of the issue. In our view, this shows that there is support for a Supplier Charges framework which achieves the objectives that the current framework has (i.e. to incentivise Suppliers to improve performance), but that respondees felt unsure whether this objective was achieved using the current arrangements. In other words, it is not clear until further analysis is carried out whether the current Supplier Charges are "broken".</p>

P115_DR_004 – LE Group

Respondent:	Paul Chesterman
No. of BSC Parties Represented	9
BSC Parties Represented	LE Group plc, London Electricity plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd,
No. of Non BSC Parties Represented	None that we consider applicable
Non BSC Parties represented	
Role of Respondent	Supplier / Generator / Party Agent / Distribution Business

Q	Response	Rationale
1	Yes	This is a pragmatic response. We believe that the effort involved in finding a solution (which has so far proved to be very elusive) will far outweigh the scale of the problem.
2	No	We believe that giving an implementation date is redundant, especially in this case where there a viable solution has not been identified.
3	Yes	We would not wish to see Elexon utilise much resource on this issue. We would prefer to see how the application of Supplier Charges develops as further Serials are introduced. We would suggest the issue is reviewed at the end of this calendar year.

P115_DR_005 – Scottish and Southern

Respondent:	Garth Graham - Scottish and Southern Energy
No. of BSC Parties Represented	4
BSC Parties Represented	Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	

Q	Response	Rationale
1	Yes	<p>We fully agree with the comments in the Initial Written Assessment (comments that are echoed in sentiment in the Authority's letter of 9th April 2003) that:-</p> <p>"Supplier Charges seek to incentives Suppliers to improve performance and are an important aspect of the Performance Assurance Framework. Any change to the way these charges are applied would need to ensure the incentive is adequately maintained and also consider the wider aspects of the PAF."</p> <p>We are not persuaded that the materiality of the reported defect is sufficient to support this Modification Proposal, particular in light of these IWA comments and the need to ensure that incentives, in regard to performance, are maintained on Suppliers.</p> <p>In addition we also note the comments in section 4.2 of the Assessment Report concerning the ongoing CoS and CoA initiative and believe this casts further doubts on the materiality of the reported defect.</p> <p>Please note our following comments should not be construed to lend support whatsoever to this Modification.</p>
2		If the Modification Proposal P115 is approved, we agree with the proposed BSC Panel recommendation on the timing for the Implementation Date, as outlined in Section 1.1 of the Modification Report.
3		We do not support retrospective changes to the Code. This gives rise to serious Regulatory Risk for BSC Parties. In the normal course of business we proceed on the basis of the Code (and other industry documents) as they are currently written. If retrospective changes are to be allowed then this opens up serious dangers for all BSC Parties that having proceeded to carry out their business in accordance with the rules and obligations of the BSC, they find their actions to have been wasted. This cannot be said to meet the BSC Objectives.

P115_DR_006 – British Gas Trading

Respondent:	Andrew Latham
No. of BSC Parties Represented	British Gas Trading Limited
BSC Parties Represented	1
No. of Non BSC Parties Represented	N/A

Non BSC Parties represented	N/A
Role of Respondent	Supplier

Q	Response	Rationale
1	Yes	British Gas agrees with The Panel that whilst this Modification is sound in principle it is currently extremely difficult to implement retrospective charges.
2	Yes	
3	No	

P115_DR_007 – Npower

Respondent:	Richard Harrison, Npower Limited
No. of BSC Parties Represented	9
BSC Parties Represented	Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern Supply Limited, Npower Yorkshire Limited and Npower Yorkshire Supply Limited
No. of Non BSC Parties Represented	N/A
Non BSC Parties represented	N/A
Role of Respondent	Supplier / Generator/ Trader / Consolidator / Exemptable Generator / Party Agent

Q	Response	Rationale
1	Yes	We note the views of the Panel and the Provisional view of the Authority, and are inclined to agree that it would be impracticable to implement the Modification in its present state, and also that this may not be necessary given the Legal advice concerning the Supplier Force Majeure provisions.
2	Yes	In the event that the Authority advises it does require Legal drafting, the proposed implementation timescales should be sufficient to allow this (together with any Code subsidiary document developments).

Q	Response	Rationale
3	Yes	<p>Whether or not a Modification results, we believe that the process of considering this Proposal has been useful in gaining recognition of a number of issues with the current market arrangements and, hopefully, prompting more action to address these.</p> <p>We note the concerns about the potential impact of dis-applying some SCs under some circumstances on compensation of other market participants. However, we would observe that, where another Supplier or its Agents or an apparent defect or weakness in a market process has impacted a Supplier's performance and hence its SCs, the Supplier concerned currently faces a loss (not shared across the market) for which there is no compensation.</p> <p>We ourselves did some work on looking at how "blame" for individual errors contributing to under-performance could be attributed, which could form the basis of an adjustment solution, but our conclusion was that this is very difficult and potentially costly to do in the context of complex industry processes, and it is probably more worthwhile concentrating on cooperative resolution of the industry process issues.</p> <p>We are not convinced that the "allowances" in some of the current standards adequately reflect some of the market problems which have emerged as the result of changes such as NHH Agent Competition, and we feel that a review of these standards and SCs may be appropriate once some of the current problems have been addressed and new changes such as REMA and the introduction of competition in Distribution have bedded down.</p>

P115_DR_008 – Powergen

Respondent:	Afroze Miah
No. of BSC Parties Represented	15
BSC Parties Represented	Powergen UK plc, Powergen Retail Limited, Diamond Power Generation 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 Limited
Role of Respondent	Supplier

Q	Response	Rationale
1	Yes	Although we agree with the principle behind disapplying supplier charges, the method(s) to do this have been difficult to define and the implications difficult to measure.
2	Yes	
3	Yes	We believe further analysis of the current supplier charges regime is required before this modification proposal can be progressed and that this will require some time.