

March 2003

MODIFICATION REPORT
MODIFICATION PROPOSAL P111 - Procedure to
allow the BSC Panel to refuse to accept
Contingent Modification Proposals

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

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I DOCUMENT CONTROL

a Authorities

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b Distribution

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Each BSC Agent	Various
The Gas and Electricity Markets Authority	Ofgem
Each BSC Panel Member	Various
energywatch	energywatch
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d Related Documents

Ref.	Document	Owner	Issue Date	Version
1	P111 – Modification Proposal		27 November 2002	-
2	P111 Initial Written Assessment	ELEXON	10 December 2002	1.0
3	P111 – GSMG Report to the Panel Paper 58/014	ELEXON	7 February 2003	-

Unless otherwise stated electronic copies of these documents can be found on the BSC Website, at www.elexon.co.uk.

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis and assessment undertaken in respect of this Modification Proposal during the Modification Procedures, and the resultant findings of this report, the Balancing and Settlement Code Panel (the Panel) recommends that:

Proposed Modification P111 should not be made.

In the event that the Authority determines that the Proposed Modification P111 should be made, the Implementation Date should be 20 Working Days after an Authority determination.

Note that no legal text has been prepared during the progression of P111 through the Modification Procedures as agreed by the Authority.

1.2 Background

Modification Proposal P111 'Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals' (P111) (Reference 1), was raised by Powergen UK plc and sought to extend the powers of the Panel to refuse to accept Modification Proposals.

P111 sought to introduce a "contingency test" to identify proposals to modify the Balancing and Settlement Code (the Code) that are contingent on the acceptance, by the Authority, of a Pending Modification Proposal or another as yet undefined Modification Proposal. This contingency test would then be applied at the time the Panel first considered any proposal to modify the Code. If a proposal to modify the Code failed the contingency test, i.e. it was contingent on approval of another Pending Modification Proposal or yet to be developed Modification Proposal, the Panel must refuse to accept its submission.

P111 also sought to apply the contingency test to all Modification Proposals currently within the Assessment Procedure or the Definition Procedure. If a proposal to modify the Code, failed such a test, the Panel would be obliged to direct that the Modification Proposal be submitted to the Report Phase.

P111 had been raised against a background of the submission of Modification Proposal P109 'A Hedging Scheme for changes to TLF in Section T of the code' (P109), which sought to hedge against the risk of a future change to the Code being introduced to change the values of Transmission Loss Factors to any value other than zero.

1.3 Rationale for Recommendations

At the Panel meeting on 13 February 2003 the Panel was presented with paper 58/014 (Reference 3) describing the views of the Governance Standing Modification Group (GSMG) and included a legal opinion from ELEXON (Annex 2). The legal opinion explained that the powers proposed under P111 were already included in the Code. The Panel agreed with the view of the GSMG that, in light of the legal opinion, none of the Applicable BSC Objectives were better facilitated by P111. Furthermore the Panel agreed that further assessment of P111 should be curtailed in accordance with paragraph F2.2.11 of the Code and that P111 should be submitted to the Report Phase with a recommendation that the Proposed Modification P111 should not be made.

The draft Modification Report was presented to the Panel on 13 March 2003 and the Panel confirmed their provisional views in respect of P111.

2 INTRODUCTION

This Report has been prepared by ELEXON Ltd., on behalf of the Panel, in accordance with the terms of 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 and all referenced documents can be found on the BSC Website, at www.elexon.co.uk

3 HISTORY OF PROPOSED MODIFICATION

P111 was submitted on 27 November 2002 by Powergen UK plc, in accordance with Section F 2.1.1 of the Code. The Initial Written Assessment (IWA) for P111 (Reference 2) was presented to the Panel meeting of 12 December 2002. The IWA proposed that P111 be submitted to a two-month Assessment Procedure to be undertaken by the P109 Modification Group. However, the Panel determined that P111 should instead be submitted to a 3-month Assessment Procedure to be undertaken by the GSMG. ELEXON indicated that if it was possible to report back to the Panel at an earlier stage, the GSMG would attempt to do this.

During the Assessment Procedure for P111, the GSMG met twice, initially on 9 January 2003 and again on 30 January 2003. The initial meeting of the GSMG discussed the issues identified within the IWA and attempted to develop an understanding of the characteristics of a contingency test.

During the discussion, the GSMG had significant difficulty in defining the characteristics that a contingent Modification Proposal may be said to exhibit and requested that ELEXON provide some legal advice in respect of P111. The GSMG also discussed the basis for a consultation to be undertaken in respect of P111 and requested that ELEXON prepare an initial draft of a consultation document for review by the GSMG.

The draft consultation document and legal opinion were circulated to the GSMG on 24 January 2003 and 27 January 2003 respectively and subsequently discussed at the GSMG meeting on 30 January 2003.

In light of the legal opinion provided by ELEXON, the GSMG unanimously concluded that the Assessment Procedure should be stopped in accordance with paragraph F2.2.11 of the Code and agreed that a paper should be presented to the Panel requesting the cessation of the P111 Assessment Procedure. The GSMG also concluded that it was not appropriate to undertake a consultation until the Panel had formed an opinion on whether or not to stop the assessment of P111.

The Panel meeting on 13 February 2003 discussed the GSMG paper (Reference 3). Based on the views of the GSMG, and in particular the legal opinion prepared for the GSMG, the Panel agreed with the recommendation of the GSMG that P111 should proceed to the Report Phase with a recommendation that P111 should not be made as none of the Applicable BSC Objectives would be better facilitated by the introduction of P111.

The GSMG paper to the Panel (Reference 3) stated that no legal text had been prepared for P111. The Panel asked the Authority representative at the Panel meeting whether the Modification Report for P111 should contain legal text. The Authority representative confirmed that no legal text was required.

A draft Modification Report was issued for consultation on 19 February 2003, and six working days were allowed for responses to the consultation to be submitted.

The Panel meeting of 13 March 2003 discussed the P111 draft Modification Report. The Panel confirmed its provisional recommendation that P111 should not be made.

4 DESCRIPTION OF PROPOSED MODIFICATION

Paragraph F2.1.4 of the Code states that the Panel “may refuse to accept the submission” of a Modification Proposal. These are where, in the opinion of the Panel, the Modification Proposal has substantially the same effect as:

- a Pending Modification Proposal; or
- a Rejected Modification Proposal, where such Modification Proposal is made within 2 months of the decision of the Authority not to direct the Transmission Company to modify the Code in the manner set out in the Modification Proposal.

P111 seeks to place a new obligation on the Panel to perform a contingency test prior to accepting the submission of a Modification Proposal. The contingency test, would prevent the Panel accepting the submission of a Modification Proposal where the Proposer has failed to demonstrate “beyond reasonable doubt”, in the opinion of the Panel, that such a Modification Proposal is not contingent on the outcome of any other Pending Modification Proposal, or a “yet to be developed” future Modification Proposal.

P111 also seeks to place a further obligation on the Panel to assess all Pending Modification Proposals that are currently subject to either a Definition Procedure or Assessment Procedure against the proposed contingency test. Where the Panel determined that any such Pending Modification Proposal failed the proposed “contingency test” the Panel would be required to submit that Pending Modification Proposal to the Report Phase with a recommendation that the Proposed Modification should not be made.

It is the view of the Proposer that the perceived defect that P111 is attempting to resolve has arisen following the submission of Modification Proposal P109. Although P109 was intended to be a stand alone Modification Proposal at the time of its submission, the Proposer of P111 argues that an additional Modification Proposal is required to effect the substance of P109. The Proposer also argues that similar Modification Proposals of an anticipatory nature could be raised in the future which would “waste the BSC Panel’s, ELEXON’s and BSC Parties’ time”.

5 RATIONALE FOR PANEL RECOMMENDATIONS

The Panel considered the legal opinion (Annex 2) presented to the GSMG that the powers proposed under P111 were already included in the Code. The Panel agreed that in view of the legal opinion provided by ELEXON, that none of the Applicable BSC Objectives would be better facilitated by implementing P111. The Panel also agreed with the view of the GSMG that further assessment of P111 should be curtailed in accordance with paragraph F2.2.11 of the Code and that P111 should be submitted to the Report Phase with a recommendation that the Proposed Modification should not be made.

6 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

No legal text was prepared for P111 during the P111 Assessment Procedure. The Authority has confirmed that no legal text was required to be included within the P111 Modification Report.

7 ASSESSMENT

The GSMG met twice on 9 January 2003 and 30 January 2003.

7.1 GSMG Meeting 1 - 9 January 2003

The initial meeting of the GSMG discussed the three issues identified in the IWA for P111 (Reference 2):

- the definition of an appropriate contingency test;
- the issues relating to retrospection in the Implementation of P111; and
- an assessment against the Applicable BSC Objectives of whether it is appropriate to “refuse to accept” contingent Modification Proposals.

In addition, the GSMG discussed both the decision making process and Panel discretion should P111 be adopted.

The GSMG had encountered difficulties in defining what a contingent Modification Proposal might be. The GSMG also requested that BSCCo provide a legal opinion on whether a Code Modification was necessary in order to achieve the aims of P111.

7.1.1 Appropriate Contingency Test

The GSMG discussed some of the characteristics that contingent Modification Proposals *may* be said to exhibit and considered three possible characteristics. These are described below:

Characteristic 1: Trigger

A Modification Proposal that does not result in a change to a Parties' rights and obligations until “triggered into action” by approval of a subsequent Modification Proposal.

The GSMG discussed whether this characteristic was an appropriate test of contingency. Some members of the GSMG were concerned that at Go-Live, the Code had set certain parameters to have a null effect until triggered by the approval of a subsequent Modification Proposal. Such parameters included the Information Imbalance Price¹ and any deviation from zero of the value of Transmission Loss Factors².

Characteristic 2: Insurance

A Modification Proposal that seeks to insure against some form of regulatory risk in that, if implemented, the proposal would be likely to fetter the Authority's discretion in making a decision on subsequent Modification Proposals.

Concern was expressed by the GSMG that this characteristic attempted to legislate against a future rule change, although the GSMG recognised that this was impossible under the Code.

¹ As defined within paragraph T4.3.5 of the Code

² As defined in paragraph T2.2 of the Code

The GSMG agreed that even if a Modification Proposal sought to introduce a restriction, that restriction could simply be overwritten as the result of future Modification Proposals being implemented. The GSMG was not convinced, therefore, that this characteristic was appropriate but agreed that views could be sought during the P111 consultation.

Characteristic 3: Mitigation

It seeks to mitigate against the perceived risk of a particular future change without itself defining the exact details of that change. This definition of “contingent” would, for example, allow a phasing algorithm to be introduced to alter the value of Transmission Loss Factors from zero, provided it was accompanied by the mechanism for defining what those Transmission Loss Factors might be.

The GSMG was concerned that it might not be able to adequately define “contingent” Modification Proposals and felt that of all the characteristics identified, Characteristic 3 might be the most appropriate option for further consideration. The GSMG agreed that the P111 consultation should seek views on what characteristics should be used to define a “contingent” Modification Proposal.

Subsequent to the meeting, one of the members of the GSMG circulated a refinement to characteristic 3 that suggested that a “contingent” Modification Proposal might be defined as a Modification Proposal that would seek to reduce the perceived risk to one or more BSC Parties resulting from a particular hypothetical change to the Code.

7.1.2 Decision Making

The GSMG discussed the difference between the existing provisions within the Code and the change proposed within P111. Unless the Panel refuses to accept a Modification Proposal under paragraph F2.1.4 of the Code, it will proceed to the Report Phase. The Panel can also decide that a Modification Proposal should proceed directly to the Report Phase where its decision would be self evident. During the Report Phase, the Panel will make its final recommendation to the Authority. The ultimate decision whether to accept or reject the Modification Proposal then rests with the Authority.

P111 would extend the Panel's power to refuse to accept a Modification Proposal without proceeding to the Report Phase and allowing a Modification Proposal to be submitted to the Authority for decision.

7.1.3 Potential for Retrospection

The GSMG discussed the issue that P111 would seek to apply a contingency test to all Pending Modification Proposals that were in either the Definition Procedure or the Assessment Procedure. The GSMG was concerned that P111 sought to introduce a test that would be applied to all such Pending Modification Proposals that was not present when the relevant Modification Proposals were submitted to the Definition Procedure or Assessment Procedure. The GSMG considered that this introduced retrospection into the Modification Procedures and suggested that if this was to be avoided, there was scope for an Alternative Modification that excluded this retrospective element.

7.1.4 Panel Discretion

P111 requires “the BSC Panel to refuse to accept any new proposal where the Proposer (or his/her representative/alternate) has failed to demonstrate beyond reasonable doubt that such

a proposal is not contingent on one or more future or Pending Modification Proposals being approved by the Authority."

The GSMG recognised that this was an inherent part of P111, and considered whether this should be a mandatory requirement on the Panel or whether the Panel should have any discretion in applying such a contingency test. The GSMG agreed at that time to seek consultation views on whether an Alternative Modification was appropriate to deal with this issue.

During the discussion, the GSMG encountered difficulties in defining the characteristics that a contingent Modification Proposal may be said to exhibit and requested that ELEXON provide legal advice in respect of P111. The GSMG also discussed the basis for a consultation to be undertaken in respect of P111 and requested that ELEXON prepare an initial draft of a consultation document for review by the group.

7.2 Draft Consultation Document

The draft consultation document prepared by ELEXON was circulated to the GSMG on 24 January 2003 in order that it could be reviewed during the second meeting of the GSMG on 30 January 2003. A summary of the issues identified within this draft consultation document is contained above within paragraph 7.1.

7.3 Legal Opinion

The BSCCo legal opinion was issued to the GSMG on 27 January 2003 and discussed at the GSMG meeting on 30 January 2003.

ELEXON considered whether it was necessary to make a Code Modification in order to extend the powers of the Panel in relation to contingent Modification Proposals. The provisions of Section F of the Code that dealt with the refusal to accept the submission of Modification Proposals and concluded that a Code Modification was not necessary to achieve the aims of P111 as the provisions were already there.

Specifically, paragraph F2.1.3 of the Code provides that where a Modification Proposal "fails in any material respect to comply with the requirements of paragraph 2.1.2 the Modification Secretary may refuse to accept such submission..."

Paragraph F2.1.2 of the Code relevantly provides that (**Emphasis added**):

F2.1.2 A proposal made pursuant to paragraph 2.1.1 shall be submitted in writing in accordance with BSCP 76, and shall contain the following information in relation to the proposal:

...

*(c) a description (in reasonable but not excessive detail) of the **issue or defect** which the proposed modification seeks to address;*

...

*(f) the reasons why the Proposer believes that the proposed modification would better facilitate the achievement of the applicable BSC Objective(s) as compared with the **then current version of the Code**.*

The legal opinion stated that a contingent Modification Proposal would fail to comply with paragraph F2.1.2 as:

- a) there is no issue or defect relating to the 'then current version of the Code'; and

- b) there can be no assessment of whether the proposal better facilitates the achievement of the Applicable BSC Objectives as compared with the 'then current version of the Code'.

BSCCo proposed that the GSMG recommend to the Panel that the assessment of P111 be stopped in accordance with paragraph F2.2.11 as it did not better facilitate the achievement of any of the Applicable BSC Objectives. Furthermore P111 should be sent to the Report Phase with a recommendation that the Proposed Modification should not be made.

7.4 GSMG Meeting 2 – 30 January 2003

On the basis of the legal opinion, the GSMG unanimously concluded that it would be appropriate to request that the Panel agree to stop the Assessment Procedure of P111 in accordance with paragraph F2.2.11. The GSMG further recommended that P111 be submitted to the Report Phase with a recommendation that the Proposed Modification should not be made.

The recommendation was based on the fact that providing powers to the Panel that already existed within the Code was inefficient and therefore did not better facilitate the achievement of Applicable BSC Objective (d) "Promoting efficiency in the implementation and administration of the balancing and settlement arrangements".

The GSMG concluded that none of the Applicable BSC Objectives would be better facilitated by the introduction of P111.

7.5 Costs of P111

P111 seeks to introduce powers that currently exist under the Code. Although no impact assessments were undertaken due to the curtailment of the assessment of P111, it is envisaged that the costs of implementing P111 would be insignificant.

Any costs associated to the implementation of P111 would relate to the physical changes to the Code and the issuing of this documentation along with the application of a contingency test to all Pending Modification Proposals.

8 SUMMARY OF REPRESENTATIONS

A total of 9 responses (26 Parties, 1 non-Party) to the consultation on the draft Modification Report. Of these:

- The majority, 8 responses (25 Parties, 1 non Party) agreed with the Panel's provisional recommendation in the draft Modification Report that Proposed Modification P111 should not be made; and
- 1 respondent (1 Party) provided a "No Comment" response.

No new arguments were expressed by any of the consultation respondents.

A summary of the responses to the P111 draft Modification Report consultation is included below.

Respondent	Agree with Panel Recommendation	Agree with Implementation Date	Number of Parties	Number of non Parties
IMServ	✓	X	-	1

Respondent	Agree with Panel Recommendation	Agree with Implementation Date	Number of Parties	Number of non Parties
SEEBOARD	✓	X	1	-
Aquila Networks	NC	NC	1	-
British Gas Trading	✓	NC	1	-
NGC	✓	✓	1	-
British Energy	✓	✓	3	-
Scottish and Southern	✓	✓	4	-
LE Group	✓	✓	9	-
Scottish Power	✓	✓	6	-

8.1 Arguments Expressed in Support for the Panel's Recommendation that the Proposed Modification P111 Should Not Be Made

One respondent (1 non Party) agreed with the argument expressed within the legal opinion provided by ELEXON.

Five respondents (10 Parties) stated that P111 would not better facilitate the achievement of the Applicable BSC Objectives. The reason provided by 2 of these respondents (2 Parties) was that it would introduce duplication into the Code.

One respondent (9 Parties) stated that it believed the legal advice provided by ELEXON was key to the decision of the Panel.

Another respondent (6 Parties) stated that there is no need to waste any time and effort progressing P111 through the Modification Procedures.

8.2 Arguments Expressed Against the Panel Recommendation – i.e. Arguments Supporting the Proposed Modification

No arguments were expressed against the recommendation made by the Panel.

8.3 Comments on Legal Text

No legal text was provided with the draft Modification Report.

8.4 Implementation Date

The provisional recommendation from the Panel was that in the event that the Authority approved the Proposed Modification P111, it would have an Implementation Date of 20 Working Days after the Authority determination.

Respondents were asked whether they agreed with the proposed Implementation Date for P111.

5 Respondents (23 Parties) agreed with the proposed Implementation Date for P111.

Of these 1 respondent (1 Party) stated that whilst it accepted that the Panel was required to include an Implementation Date, it questioned the value of doing this for a Modification Proposal without legal drafting. This respondent also stated that any Implementation Date would need to take into account the requirement to apply a contingency test to all

Modification Proposals currently within the Assessment Procedure or Definition Procedure. Another of the respondents who supported the Panel's recommendation on the Implementation Date also stated that providing an Implementation Date was not applicable.

One respondent (1 non Party) suggested that no Implementation Date had been provided. This respondent was subsequently contacted by ELEXON in order to draw attention to the Implementation Date as provided within Section 1 of this Modification Report.

Another respondent (1 Party) stated that it did not agree with any Implementation Date because it did not support the Modification Proposal.

8.5 Other Comments

One respondent, a non Party, suggested that changes relating to a particular aspect of the trading arrangements should be grouped together. Attempts were made to contact this respondent by phone and e-mail in order to explain this aspect of the Modification Procedures. The respondent did not return the calls or respond to the e-mails.

All of the above arguments had been already discussed by the GSMG in forming its original recommendation within the P111 Progress Report.

ANNEX 1 – REPRESENTATIONS

Responses from P111 Draft Report Consultation

Consultation issued 19 February 2003

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented	On Proforma
1.	IMServ	P111_DR_001		1	✓
2.	SEEBOARD	P111_DR_002	1		✓
3.	Aquila Networks	P111_DR_003	1		X
4.	British Gas Trading	P111_DR_004	1		X
5.	NGC	P111_DR_005	1		✓
6.	British Energy	P111_DR_006	3		✓
7.	Scottish and Southern	P111_DR_007	4		X
8.	LE Group	P111_DR_008	9		✓
9.	Scottish Power	P111_DR_009	6		✓

P111_DR_001 – IMServ

Respondent:	<i>Carmen Page</i>
No. of BSC Parties Represented	
BSC Parties Represented	
No. of Non BSC Parties Represented	1
Non BSC Parties	IMServ Europe Ltd

represented	
Role of Respondent	<i>HHDC, HHDA, HHMOP, NHHMOP, NHHDA, NHHDC</i>

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	The argument given makes sense.
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	Yes / No	There is no implementation date proposed. It is proposed to withdraw the change.
3	Are there any further comments on P111 that you wish to make?	Yes	What would be useful to avoid modifications being raised dependent on other modifications is that any modification proposal raised should be checked thoroughly for impact and all changes relating to a particular aspect grouped together. This would save respondents time and money in assessing changes and would give consistency and avoid unnecessary fixes. If all areas are not considered in a modification proposal, which does happen, then we are left with the situation of producing papers, briefing notes etc, to correct the situation, this means that we spend a lot of time reviewing the modification proposals and other industry changes.

P111_DR_002 – SEEBOARD

Respondent:	Dave Morton
No. of BSC Parties Represented	1
BSC Parties Represented	SEEBOARD Energy Limited
No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	Supplier

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	BSC already provides for rejection of modifications described in his proposal. Therefore, this modification cannot be seen to better facilitate BSC objectives.
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	No	As we do not consider that this proposal better facilitates BSC objectives we cannot support any implementation date detailed within draft modification report.
3	Are there any further comments on P111 that you wish to make?	No	

P111_DR_003 – Aquila Networks

AQUILA NETWORKS CHOSE NOT TO SUBMIT THEIR RESPONSE ON THE ASSOCIATED PROFORMA. IN ORDER TO PRESENT A SUMMARY OF THEIR VIEW THE RESPONSE PROVIDED BY THEM HAS BEEN INTERPRETED BY BSCCO AS FOLLOWS:

Respondent:	Jason Guest
No. of BSC Parties Represented	1
BSC Parties Represented	Aquila Networks
No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response ³	Rationale
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Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	No Comment	
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	No Comment	
3	Are there any further comments on P111 that you wish to make?	No Comment	

AQUILA NETWORKS FULL RESPONSE FOLLOWS:

Please find that Aquila Networks Response to P111: Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals is 'No Comment.'

Regards,

Jason Guest

On Behalf of Rachael Gardener

Jason J Guest
Distribution Support Office
Aquila Networks plc

P111_DR_004 – British Gas Trading

BRITISH GAS TRADING CHOSE NOT TO SUBMIT THEIR RESPONSE ON THE ASSOCIATED PROFORMA. IN ORDER TO PRESENT A SUMMARY OF THEIR VIEW THE RESPONSE PROVIDED BY THEM HAS BEEN INTERPRETED AS FOLLOWS:

Respondent:	Mark Manley
No. of BSC Parties Represented	1
BSC Parties Represented	British Gas Trading

No. of Non BSC Parties Represented	0
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	British Gas Trading (BGT) does not support the Modification Proposal and does not believe this would better facilitate Applicable BSC Objectives. The effect of this proposal is to introduce duplication into the BSC and this cannot be seen to better facilitate Applicable BSC Objective (d).
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	No Comment	
3	Are there any further comments on P111 that you wish to make?	No Comment	As stated in the ELEXON legal advice BGT believe that there are existing powers in the BSC to allow for the rejection of a Modification Proposal that is not raised against the current baseline. Therefore BGT support the Panel's decision to expedite the process and proceed straight to report and their provisional recommendation to reject the proposal.

BRITISH GAS FULL RESPONSE FOLLOWS:

Re: Modification Proposal P111 – Procedure to allow the BSC Panel to refuse to accept Contingent Modification Proposals

Thank you for the opportunity of responding to this draft modification report considering Modification Proposal P111. British Gas Trading (BGT) does not support the Modification Proposal and does not believe this would better facilitate Applicable BSC Objectives. The effect of this proposal is to introduce duplication into the BSC and this cannot be seen to better facilitate Applicable BSC Objective (d).

As stated in the ELEXON legal advice BGT believe that there are existing powers in the BSC to allow for the rejection of a Modification Proposal that is not raised against the current baseline. Therefore BGT support the Panel's decision to expedite the process and proceed straight to report and their provisional recommendation to reject the proposal.

Yours sincerely

Mark Manley
Contract Manager
P111_DR_005 – NGC

Respondent:	<i>National Grid</i>
No. of BSC Parties Represented	One
BSC Parties Represented	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant). National Grid</i>
No. of Non BSC Parties Represented	N/A
Non BSC Parties represented	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant). N/A</i>
Role of Respondent	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state ³) BSC Party</i>

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	The Modification Proposal seeks to introduce powers that already exist under the Code and therefore we support the Panel recommendation that modification P111 should not be made.

³ Delete as appropriate – please do not use strikethrough, this is to make it easier to analyse the responses

Q	Question	Response ³	Rationale
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	Yes	We accept that the Panel is required to provide an implementation date in the report to the Authority. However, we question the value of specifying an implementation date for a modification without legal drafting. In addition, the modification suggested applying the contingency test to pending modification proposals (currently in definition or assessment) any implementation timetable would need to address this issue.
3	Are there any further comments on P111 that you wish to make?	No	

P111_DR_006 – British Energy

Respondent:	J R Capener
No. of BSC Parties Represented	3
BSC Parties Represented	British Energy Generation Ltd, British Energy Power and Energy Trading Ltd, Eggborough Power Ltd
No. of Non BSC Parties Represented	
Non BSC Parties represented	
Role of Respondent	(Supplier/Generator/ Trader

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	We agree with the legal opinion presented to the GSMG that the powers proposed under P111 were already included in the Code. That legal stated that implementing P111 would better facilitate none of the Applicable BSC Objectives. We also agree with the with the view of the GSMG that further assessment of P111 should be curtailed in accordance with F2.2.11 and that P111 should be submitted to the Report Phase with a recommendation that the Proposed Modification should not be made.
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111?	Yes	

Q	Question	Response ³	Rationale
	Please give rationale.		
3	Are there any further comments on P111 that you wish to make?	No	

P111_DR_007 – Scottish and Southern

SCOTTISH AND SOUTHERN CHOSE NOT TO SUBMIT THEIR RESPONSE ON THE ASSOCIATED PROFORMA. IT SHOULD BE NOTED HOWEVER THAT ALL QUESTIONS WITHIN THE PROFORMA WERE ANSWERED. IN ORDER TO PRESENT A SUMMARY OF THEIR VIEW THE RESPONSE PROVIDED BY THEM HAS BEEN INTERPRETED AS FOLLOWS:

Respondent:	Garth Graham
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	0
Non BSC Parties represented	
Role of Respondent	

Q	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	We agree with the proposed BSC Panel recommendation to the Authority that this Modification Proposal P111 should not be made. We do not believe (given that the powers concerning contingent modifications already exist within the BSC), that this Modification will better facilitates the achievement of the BSC Objectives. We note that this is also a view shared by GSMG together with the Panel and concur with the legal opinion outlined in the Sandra Wybrow Memorandum of 27th January. Please note our response to any of the following questions should not be construed to lend support whatsoever to this Modification.
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111?	Yes	If the Modification Proposal P111 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.

Q	Question	Response ³	Rationale
	Please give rationale.		
3	Are there any further comments on P111 that you wish to make?	No	We have no further comments to make on P111 at this time.

FULL RESPONSE FOLLOWS:

Dear Sirs,

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

In relation to the three questions listed in the Consultation Paper, contained within your note of 19th February 2003 concerning Modification Proposals P111, we have the following comments to make:-

Q1 Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report?
Please give rationale.

We agree with the proposed BSC Panel recommendation to the Authority that this Modification Proposal P111 should not be made. We do not believe (given that the powers concerning contingent modifications already exist within the BSC), that this Modification will better facilitates the achievement of the BSC Objectives. We note that this is also a view shared by GSMG together with the Panel and concur with the legal opinion outlined in the Sandra Wybrow Memorandum of 27th January.

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

Q2 Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.

If the Modification Proposal P111 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.

Q3 Are there any further comments on P111 that you wish to make?

We have no further comments to make on P111 at this time.

Regards

Garth Graham
Scottish and Southern Energy plc

P111_DR_008 – LE Group

Respondent:	<i>Tony Dicicco</i>
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	Question	Response ³	Rationale
1	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	We believe that the legal advice from Elexon is key to the Panel's recommendation to reject P111
2	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	Yes	However, we think this is non/applicable. The case against P111 seems conclusive to us.
3	Are there any further comments on P111 that you wish to make?	No	

P111_DR_009 – Scottish Power

Respondent:	Name John W Russell (SAIC Ltd)
No. of BSC Parties Represented	6
BSC Parties Represented	Please list all BSC Parties responding on behalf of (including the respondent company if relevant). Scottish Power UK plc; ScottishPower Energy Trading Ltd.; Scottish Power Generation plc; ScottishPower Energy Retail Ltd.; SP Transmission plc; SP Manweb plc.
No. of Non BSC Parties Represented	

Non BSC Parties represented	Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).
Role of Respondent	(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state) Supplier/Generator/ Trader / Consolidator / Exemptable Generator / Party Agent

Q	Question	Response	Rationale
	Do you agree with the Panel's views on P111 and the provisional recommendation to the Authority contained in the draft Modification Report? Please give rationale.	Yes	<i>We agree with the Panels recommendation to reject on the basis that if the existing process already deals with contingency issue, there is no reason to waste any time and effort in progressing this Mod.</i>
	Do you agree with the Panel's provisional recommendation concerning the Implementation Date for P111? Please give rationale.	Yes	<i>The proposed implementation date looks appropriate, notwithstanding our expectation that this mod will be rejected.</i>
	Are there any further comments on P111 that you wish to make?	No	

ANNEX 2 – LEGAL OPINION IN RESPECT OF P111

Memorandum

<p>To GSMG</p> <p>From Sandra Wybrow</p> <p>Date 27 January 2003</p>	<p>cc. Chris Rowell Dorcas Batstone Richard Clarke Roger Salamone ELEXON Legal Services</p>
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Legal issues – P111

To date, GSMG discussion of P111 has focussed on:

- the definition/scope of what might be a 'contingent' or 'anticipatory' modification; and
- the perception that the proposal may be seeking to fetter the discretion of the Authority or hedge against future regulatory risk.

Broadly, a contingent modification has been considered to be a proposal that is dependent upon another modification, or is, in itself, an incomplete proposal.

However, before continuing discussion along these lines, it is necessary to examine the substance of the proposal at a higher level. In our view, the key issue arising is whether a modification to the Code is required to extend the powers of the Panel in relation to 'contingent' proposals, given the existence of Sections F2.1.1 and F2.1.2. Recent developments in relation to P109 have caused us to consider operation of these sections in detail, and we believe they contain the powers P111 seeks to introduce.

Existing Code provisions

Section 2.1.2 relevantly provides that:

2.1.2 *A proposal made pursuant to paragraph 2.1.1 shall be submitted in writing in accordance with BSCP 76, and shall contain the following information in relation to the proposal:*

...

*(d) a description (in reasonable but not excessive detail) of the **issue or defect** which the proposed modification seeks to address;*

...

*(f) the reasons why the Proposer believes that the proposed modification would better facilitate the achievement of the applicable BSC Objective(s) as compared with the **then current version of the Code**. (Emphasis added)*

What type of proposal constitutes a Modification Proposal?

The opening words of Section F2.1.1 are, "A proposal to modify **the Code** may be made by any of the following.....". This means that to come within Section F at all a proposal must seek to modify the Code as it exists at that time. A proposed modification that does not relate to the current version of the Code is not a proposal to modify the Code.

What is the current version of the Code?

Code text becomes legally effective from the time it is approved by the Authority (unless a specific Effective Date is expressly stated in the Authority's decision letter), regardless of its Implementation Date. The current legal version of the Code at any particular time is the version of the Code as published, read together with the legal text of all Approved Modifications awaiting implementation.

What if there is a material failure to comply with 2.1.2?

Section F2.1.3 provides that:

2.1.3 *If a submitted proposal **fails in any material respect** to comply with the requirements of paragraph 2.1.2....the Modification Secretary may refuse to accept such submission, provided that:*

- (a) *the Modification Secretary shall furnish the Proposer with the reasons for such refusal;*
- (b) *the Modification Secretary shall report such refusal to the Panel at the next Panel Meeting;*
- (c) *if the Panel decides to reverse the Modification Secretary's decision to refuse the submission, the Modification Secretary shall notify the Proposer accordingly and the proposal shall be dealt with in accordance with the succeeding provisions of this paragraph 2;*
- (d) *nothing in this paragraph 2.1.3 shall prevent a Proposer from submitting a revised proposal in compliance with the requirements of paragraph 2.1.2 in respect of the same subject-matter. (Emphasis added)*

A contingent proposal will (assuming, of course, that it first achieves the threshold imposed by Section F2.1.1) fail in a material respect to comply with 2.1.2 as:

- there is no issue or defect **relating to the current version of the Code**; and
- there is no assessment of whether the proposal better facilitates the BSC Objective(s) **as compared with the current version of the Code**.

In such cases the Modification Secretary ought to refuse to accept the proposal pursuant to 2.1.3.

Such refusal would be a mere administrative action, rather than a subjective decision or judgement. It is not a question of the Modification Secretary being permitted to consider whether there is an 'adequate' issue or defect, or a 'good' issue or defect – but only whether there **is** an issue or defect **which relates to the Code** as it exists at the time of the proposal. The absence of a Code-related issue or defect must lead to a proposal being refused just as the absence of the Proposer's name and details would.

Similarly, the refusal of the Modification Secretary to accept a contingent proposal on the basis that it did not contain an assessment of whether the proposal better facilitates the BSC **objectives as compared with the current versions of the Code** would not involve the Modification Secretary considering the adequacy of the assessment, but whether there was a comparison **as against the existing Code**. There will be no such comparison in the case of a contingent proposal which assesses the proposal as against a version of the Code that will only exist if a modification is approved by the Authority.

P109

P109 is an example of a proposal which could have been refused by the Modification Secretary on the strength of F2.1.2(c) of (f). As you are aware, P109 essentially seeks to implement a hedging scheme in relation to Transmission Loss Factors (TLFs) should TLFs be set at any value other than zero in the future. At the time P109 was raised TLFs were set at zero, and therefore it can be argued that P109 effectively sought to mitigate future regulatory risk by ensuring against future 'unfavourable' changes to the Code. This raised no issue or defect with the current version of the Code at that time. Nor did it assess BSC Objectives against the then current version of the Code. However, during the P109 Assessment Procedure, the Authority approved P82 – effectively setting TLFs to a factor other than zero, and therefore in effect legitimising P109.

Panel Review

Section 2.1.3 provides for Panel review of the Modification Secretary's decision to refuse a proposal. This provides a safeguard ensuring the proper exercise by the Modification Secretary of his powers under Section F2.1.3. Such a review by the Panel should take into account legal advice as to the existence of an issue or defect **relating to the Code** or of an assessment of BSC Objective(s) against the **current version of the Code**. The Panel should overrule the Modification Secretary's decision only where he has erred in exercising his power under 2.1.2.

The way forward for P111

It is our view that as P111 seeks to provide the Panel with no broader powers than already exist under the Code, it is an unnecessary Modification Proposal. The appropriate action is for the GSMG to recommend to the Panel that P111 be sent to the Report Phase immediately in accordance with F2.2.11. Without such instruction from the Panel, the GSMG has no power to otherwise stop the P111 Assessment Procedure.

Sandra Wybrow

Lawyer (qualified in Queensland, Australia)

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