

## ASSESSMENT REPORT for Modification Proposal P187 'Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority'

Prepared by: P187 Modification Group

|                          |                    |                              |           |
|--------------------------|--------------------|------------------------------|-----------|
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This document has been distributed in accordance with Section F2.1.10<sup>1</sup> of the Balancing and Settlement Code.

### RECOMMENDATIONS

The P187 Modification Group invites the Panel to:

- **AGREE that the Proposed Modification P187 should be made;**
- **AGREE a provisional Implementation Date for the Proposed Modification of 10 Working Days following an Authority decision;**
- **AGREE the draft legal text for the Proposed Modification;**
- **AGREE that Modification Proposal P187 be submitted to the Report Phase; and**
- **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting of 14 July 2005.**

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<sup>1</sup> The current version of the Balancing and Settlement Code (the 'Code') can be found at <http://www.elexon.co.uk/bscrelateddocs/BSC/default.aspx>

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**SUMMARY OF IMPACTED PARTIES AND DOCUMENTS**

As far as the P187 Modification Group has been able to assess, the following parties/documents would be impacted by P187.

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

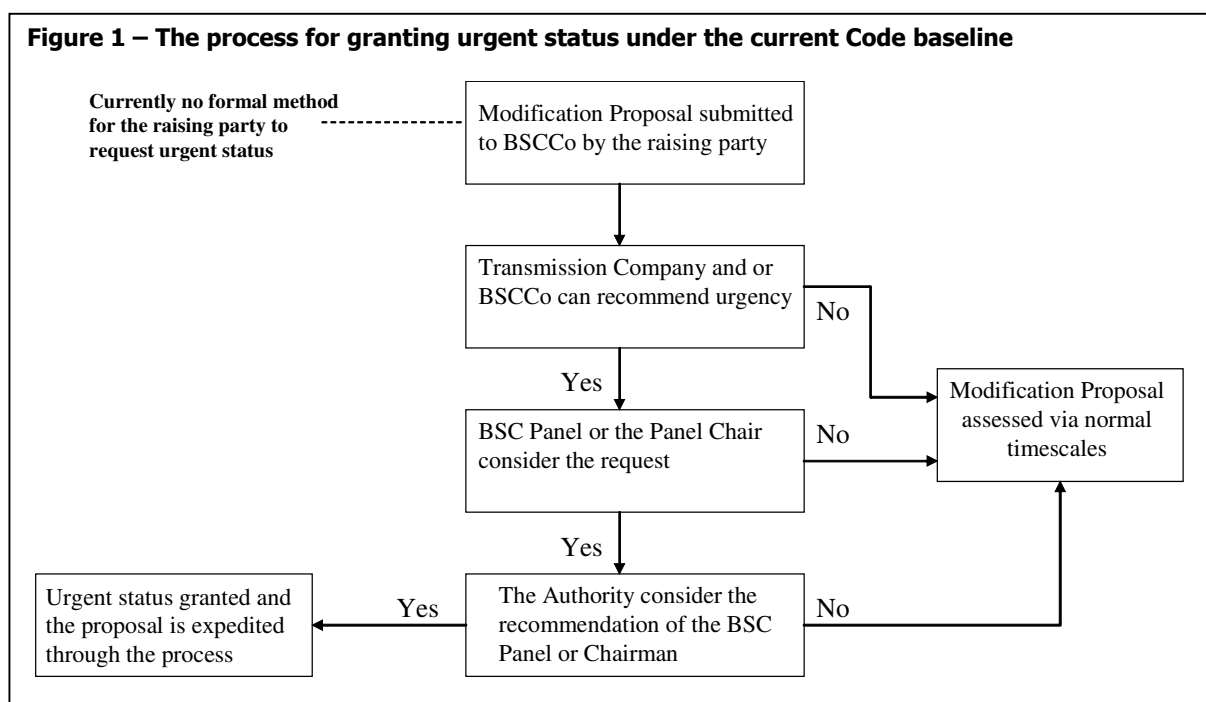
# 1 DESCRIPTION OF MODIFICATION PROPOSAL AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

## 1.1 Modification Proposal P187

Modification Proposal P187 'Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority' (P187) was raised by British Gas Trading ('the Proposer') on 4 April 2005. P187 proposes to introduce a formal process by which the Proposer of a Modification Proposal may request that it be treated as an Urgent Modification Proposal, and to mandate that the outcome of all such requests may only be decided by the Authority.

### 1.1.1 Existing process

Figure 1 (provided by the Proposer as an attachment to the Modification Proposal) gives a high-level overview of the existing request for urgency process.



Section F2.9 of the Balancing and Settlement Code contains the process under which the progression of a Modification Proposal may be expedited as an Urgent Modification Proposal. Under the current Code baseline, there are three stages to the process whereby a Modification Proposal receives urgent treatment:

- (1) On receipt of a Modification Proposal, **BSCCo** and/or **the Transmission Company** can recommend to the BSC Panel ('the Panel') that the Modification Proposal be treated as urgent. If neither BSCCo nor the Transmission Company recommends urgent treatment, the proposal is progressed via the normal Modification Procedures (i.e. urgent treatment is not granted). A decision by BSCCo and the Transmission Company not to recommend urgency is final, and does not require agreement from the Panel or the Authority. Implicitly, a decision by BSCCo and the Transmission Company not to recommend urgency therefore determines that a proposal is not progressed as urgent.

- (2) Where BSCCo and/or the Transmission Company have recommended urgent treatment, **the Panel** must consider whether to recommend to the Authority that the Modification Proposal be treated as urgent. If the Panel does not recommend urgent treatment, the Proposal is progressed via the normal Modification Procedures (i.e. urgent treatment is not granted). A decision by the Panel not to recommend urgency is final, and does not require Authority approval. Implicitly, a decision by the Panel not to recommend urgency therefore determines that a proposal is not progressed as urgent.
- (3) Where the Panel has recommended urgency, **the Authority** must decide whether to agree to the urgent treatment of the Modification Proposal and the proposed timetable for its progression. If the Authority does not agree to urgent treatment, the proposal is progressed via the normal Modification Procedures (i.e. urgent treatment is not granted). The decision of the Authority whether to grant or deny a request for urgency is final.

A Modification Proposal may therefore only be treated as urgent with the agreement of the Authority. However, the decision of BSCCo, the Transmission Company or the Panel *not* to recommend urgent status does not require Authority agreement.

Existing practice is that BSCCo and the Transmission Company consider whether to make a recommendation of urgency where urgent treatment has been specifically requested by the Proposer.<sup>2</sup> However, there is no formal process within the Code whereby the Proposer of a Modification Proposal may request urgency – and the Code provisions do not require BSCCo’s or the Transmission Company’s recommendation to be triggered by such a request.

The Proposer of P187 considers that there is a flaw in the current Code provisions, in that the Authority does not always determine the outcome of an urgency request. The Proposer believes that the decision whether to grant urgency should lie wholly with the Authority in all circumstances – in the same way as the Authority’s decision whether to approve or reject a Modification Proposal. The Proposer also believes that there should be a formal process for the Proposer of a Modification Proposal to request urgent status.

### 1.1.2 Proposed P187 process

P187 proposes to:

- (1) Introduce a formal process within the Code by which the Proposer of a Modification Proposal may request that it be expedited as an Urgent Modification Proposal;
- (2) Mandate that all such requests must be passed by BSCCo to the Panel, regardless of BSCCo’s or the Transmission Company’s view as to whether the Modification Proposal should be treated as urgent;
- (3) Mandate that the Panel’s recommendation must be passed to the Authority, regardless of whether that recommendation is to grant or deny urgent status;
- (4) Mandate that the outcome of requests for urgency may only be decided by the Authority (i.e. only the Authority may determine that a Modification Proposal shall or shall not be treated as an Urgent Modification Proposal following a request for urgency);
- (5) Retain the ability for BSCCo and/or the Transmission Company to independently recommend urgency for a Modification Proposal to the Panel, where urgency has not already been requested by the Proposer – but clarify that such recommendations are separate from any Proposer request, and must also proceed to the Authority for final decision; and

<sup>2</sup> Please note that in some circumstances the Transmission Company may actually be the Proposer concerned, since it is able to raise Modification Proposals in its own right. The Panel may also be the Proposer of a Modification Proposal raised on the recommendation of BSCCo under the limited circumstances set out in paragraph F2.1.1(d) of the Code.

(6) Potentially introduce guidance or criteria regarding the basis on which urgency is considered.

The Proposer believes that P187 would better facilitate competition by ensuring that the case for urgency is always considered by the Authority, and would improve efficiency and transparency by ensuring consistent treatment of requests for urgency. The Proposer therefore believes that P187 would better facilitate the achievement of Applicable BSC Objective (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';

and Applicable BSC Objective (d):

'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'.

Further detail regarding the proposed solution can be found in Section 1.3.

## **1.2 Process followed to date**

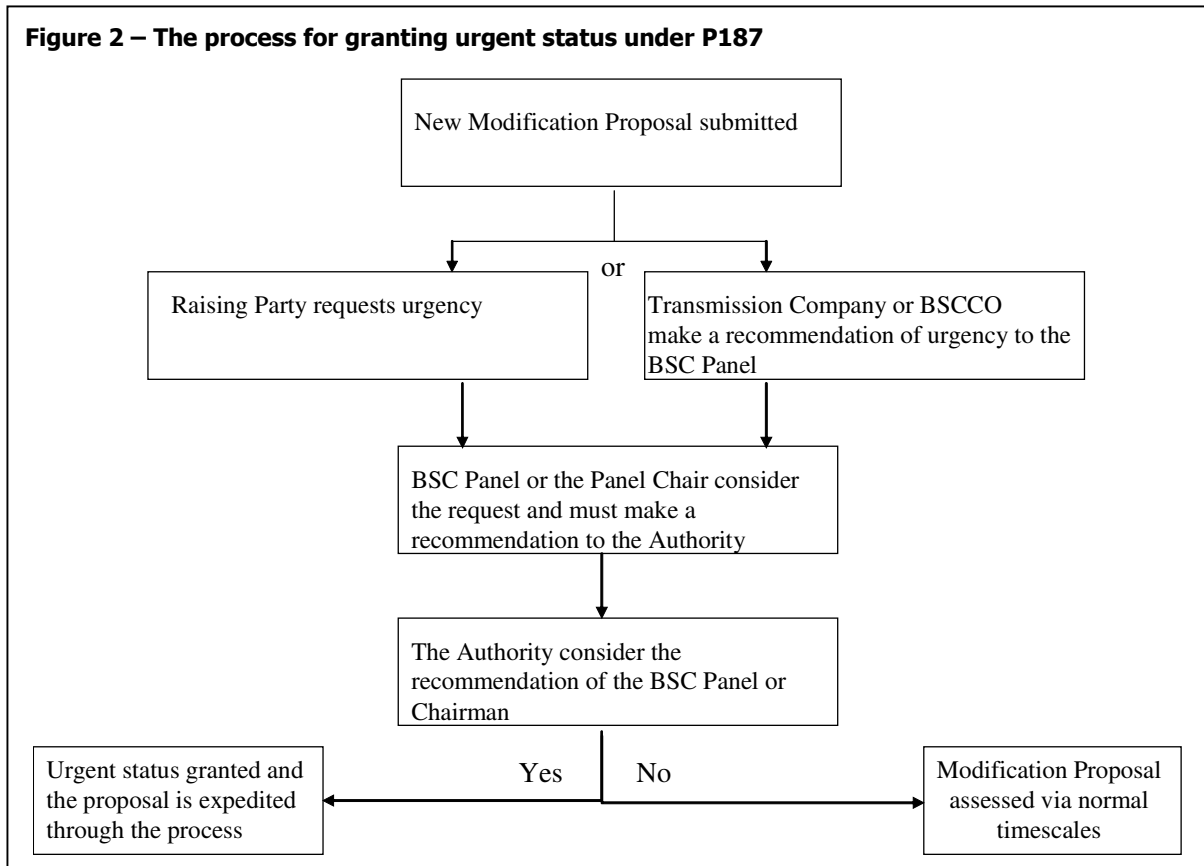
The P187 Initial Written Assessment (IWA, Reference 1) was presented to the Panel on 14 April 2005, where the Panel determined that P187 should be submitted to a two-month Assessment Procedure by a new Modification Group formed from members of the Governance Standing Modification Group. The areas for discussion raised by BSCCo and the Panel during the IWA formed the basis of the Modification Group's Terms of Reference for P187, and can be found in Annex 2 along with details of the Group's membership.

During the two-month Assessment Procedure the P187 Modification Group ('the Group') held two meetings, on 20 April and 18 May 2005. The Group also issued an industry consultation (on 4 May 2005, Reference 2) and commissioned impact assessments from BSCCo and the Transmission Company. Summaries of the responses received can be found in Sections 4-7, whilst full copies of the responses are included as Annexes 6 and 7.

Draft legal text for the Proposed Modification has been developed, and is included as Annex 1 along with a 'plain English' explanation of the text. The Modification Group has reviewed this text and agreed that it delivers the solution developed by the Group.

### 1.3 Proposed Modification

Figure 2 (provided by the Proposer as an attachment to the Modification Proposal) gives a high-level overview of the amended request for urgency process under the Proposed Modification.



A step-by-step description of the P187 process, as developed by the Modification Group, is provided below. The Group’s discussions in developing these solution requirements are summarised in Section 1.4.

#### 1) Proposer requests urgency for new Modification Proposal

A new process would be introduced in Section F under which the Proposer of a Modification Proposal could request that it be treated urgently (note that this could include the Panel or the Transmission Company as Proposer). The urgency request would be made via the completion of a new field within the Modification Proposal form. It would be a Code requirement for the Proposer to provide the supporting rationale for any urgency request within this field.

Guidance on completion of this area of the Modification Proposal form would be provided in BSCP40 ‘Change Management’, including advice regarding the basis on which urgency has tended to be historically granted. Note that this would not represent ‘criteria’ for granting urgency, but merely an optional aid to the Proposer in formulating an urgency request.

A Modification Proposal form in which the Proposer requested urgency, but did not provide the rationale for the request, would be refused by the Modification Secretary as ‘incomplete’ under existing paragraph F2.1.3 of the Code. In such circumstances, the Proposer would be requested to resubmit the proposal with the missing rationale supplied.

Where a Proposer submitted a new Modification Proposal with a request for urgency and supporting rationale, this would be passed to the Panel under step 2 below.

Where a Proposer did not request urgency within the Modification Proposal form, the Modification Proposal would be progressed via the normal Modification Procedures (i.e. an IWA would be presented to the next Panel Meeting) *unless* BSCCo and/or the Transmission Company chose to recommend urgency to the Panel under step 3.

## **2) BSCCo receives Proposer request for urgency**

Where a Proposer submitted a new Modification Proposal with a request for urgency and supporting rationale, P187 would introduce a mandatory requirement for BSCCo to pass this request directly to the Panel for consideration.

Although BSCCo and the Transmission Company would no longer have the ability to choose whether to make a formal recommendation of urgency to the Panel following a Proposer's request, they would continue to offer advice and support to the Panel regarding the potential implications for the market of not expediting the proposal as an Urgent Modification Proposal. In formulating this advice, BSCCo and the Transmission Company could consider the guidance set out in BSCP40 – but this would be optional, and they would not be constrained by these considerations. BSCCo would also offer advice to the Panel regarding the urgent timetable which would be recommended to the Authority.

## **3) BSCCo and/or the Transmission Company requests urgency for new Modification Proposal**

Where the Proposer of a new Modification Proposal did not request urgency, BSCCo and the Transmission Company would have the opportunity to independently recommend urgent treatment of the proposal to the Panel if either or both believed this to be required. In making such a recommendation, BSCCo and/or the Transmission Company could consider the guidance set out in BSCP40 – but this would be optional, and BSCCo and the Transmission Company would not be constrained by these considerations.

If BSCCo and/or the Transmission Company chose to make a recommendation of urgency, this would be considered by the Panel under step 4 below.

If a recommendation for urgency was not made by the Proposer, BSCCo or the Transmission Company, the new Modification Proposal would be progressed via the normal Modification Procedures (i.e. an IWA would be presented to the next Panel Meeting).

## **4) Panel considers request for urgency**

The Panel would consider the request for urgency and make a recommendation to the Authority as to whether urgency should be granted or denied. Under the existing provisions of Section B of the Code, the Panel could consider the request for urgency at a full meeting, by teleconference, or by resolution. In formulating its recommendation, the Panel could consider the guidance set out in BSCP40 – but this would be optional, and it would not be constrained by these considerations.

P187 would introduce a mandatory requirement for the Panel to pass all recommendations to the Authority. Note that a Panel decision not to recommend urgency would therefore no longer represent the final decision in the request for urgency process.

The Panel would be required to submit a proposed urgent timetable for progression of the proposal in all cases, even where it was not recommending urgency. This would enable the Authority to approve the timetable, should it decide to grant the urgency request.



As under the existing urgency process, working practice would be to publish a copy of the Panel's recommendation to the Authority on the BSC Website in order that it would be visible to all Parties. However, as currently, there would be no Code requirement for the Panel's recommendation to be published.

## **5) Authority considers request for urgency**

The Authority would consider the request for urgency, and would either grant or deny urgent status to the proposal. The Authority's decision on urgent status would be final and binding.

If granting urgency, as currently the Authority would either approve the proposed timetable for the urgent progression of the proposal, or make any changes to the timetable which it considered necessary. The proposal would subsequently be progressed in accordance with this timetable. Under the existing provisions of Section F2.9 of the Code, the procedure and timetable in respect of an Urgent Modification Proposal could deviate from all or part of the usual Modification Procedures.

If the Authority determined that urgent status should not be granted, the Modification Proposal would be progressed via the normal Modification Procedures (i.e. an IWA would be presented to the next Panel Meeting).

In making its decision regarding urgency, the Authority could choose to consider the guidance set out in BSCP40. However, this would be optional and the Authority would not be constrained by these considerations.

## **1.4 Modification Group's consideration of areas raised by the Terms of Reference**

This section outlines the conclusions of the Modification Group regarding the following areas of discussion relating to the Proposed Modification, as set out in the P187 Terms of Reference:

- The background of the different urgency provisions of the industry codes;
- The background of the Authority's provisional thinking on Modification Proposal P28 'Review of Governance and Modification Procedures' (P28);
- The governance principles raised by P187;
- The detail of the new request for urgency process;
- The development of guidance regarding the framing and consideration of urgency requests;
- The potential interaction between P187 and the appeals process planned by the Department of Trade and Industry (DTI); and
- The timetable for requests for urgency.

A summary of the Group's views regarding the merits of the Proposed Modification against the Applicable BSC Objectives can be found in Section 1.5.

### **1.4.1 Provisions of other industry codes**

The Modification Group noted that other electricity industry codes such as the Connection and Use of System Code (CUSC, Reference 3) and the System Operator-Transmission Owner Code (STC, Reference 4) utilise different processes to the BSC when considering requests for urgency. As under the BSC, a CUSC Amendment Proposal or STC Proposed Amendment cannot be treated as urgent without the express agreement of the Authority. Moreover, like the BSC, the CUSC Panel's decision not to grant urgency to an Amendment Proposal is final and does not require Authority agreement.

However, the CUSC and STC urgency provisions differ from the BSC in the following ways:

- Both the CUSC and the STC contain formal processes whereby Parties may request urgency;
- Under the CUSC and the STC *any* Party may request urgency – not just the Proposer; and
- Although the STC Committee's decision not to grant urgency does not require prior Authority agreement, any Party may appeal this decision to the Authority.

The Modification Group therefore noted that the ability proposed by P187 would be *narrower* than the current CUSC and STC provisions in that only the Proposer of a Modification Proposal, BSCCo or the Transmission Company would be able to recommend urgency. However, the Group noted that the proposed P187 process would go further than the current BSC, CUSC and STC in mandating that all requests for urgency must be passed by the Panel to the Authority. The Group noted that the STC represented a potential alternative model to P187 in that the Committee's urgency decisions can be appealed to the Authority, rather than requiring the Authority to automatically consider all requests. The Proposer commented that the STC, although a multi-party contract, is slightly different to the BSC and the CUSC in that there are only three STC signatories (the Transmission Company and the two Scottish transmission owners). The Proposer argued that P187 would be consistent with the Network Code in the gas market (Reference 5) – where all requests for urgency are passed to the Authority for final decision, and the right to recommend urgency is limited to either the Proposer of a Modification Proposal or Transco.

The Modification Group noted that the various industry codes operate (and have evolved) independently of each other, and that the provisions of other codes fall outside the Applicable BSC Objectives and therefore the scope of the Group. BSCCo clarified that they had been included within the Terms of Reference in order to provide useful background to the P187 discussions, rather than as an issue for assessment. However, the Group considered that, although there was no necessary driver for consistency in the precise provisions of the industry codes, there might be benefits in such consistency. Moreover, the Group argued that there should be an aim for consistency in the governance and regulatory *principles* underlining the different code amendment processes. The Group therefore agreed that it was appropriate to bear in mind the urgency provisions of other codes during its discussions regarding P187.

In addition, it was noted that the Proposer of P187 had raised a complementary CUSC Amendment Proposal (CAP087, Reference 6), which seeks to address a similar defect to P187.<sup>3</sup> It was therefore agreed that it would be appropriate for the P187 Modification Group to remain informed of the progress of CAP087 under the CUSC, and vice versa. BSCCo and the Transmission Company confirmed that there would be ongoing dialogue regarding the progress of the two proposals, and that any updates would be fed back to the respective governance bodies. At its meeting of 22 April 2005, the CUSC Panel agreed that CAP087 did not require assessment by a Working Group and should proceed directly to industry consultation. This consultation was issued on 27 April 2005 (Reference 7), with responses requested by 1 June 2005. All of the five respondents to the CUSC consultation unanimously supported CAP087, and no Alternative Amendments or substantive issues were raised.

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<sup>3</sup> Please note that CAP087 does not seek to introduce a process for a Proposer to request urgency (since this is already included in the CUSC), and therefore only proposes that all requests for urgency must be passed to the Authority by the CUSC Panel. In contrast to P187, CAP087 does not suggest the development of guidance regarding requests for urgency.

### 1.4.2 Previous Authority view under P28

The Modification Group noted that changes to the BSC urgency procedures had previously been considered during the progression of P28. Under P28, it was suggested that a formal Code process should be introduced for a Proposer to request urgency – and that the Code should be amended so that all such requests would be sent directly to the Authority. The provisional view of the Authority at that time (see 'Ofgem's provisional thinking on Modification Proposal P28', Reference 8) was that such a change would not be in keeping with the rationale behind the Code, and could be construed as in effect by-passing the Panel and distancing industry from the proposal development process.

The Modification Group noted that P28 was considered only shortly after NETA Go-Live, and that the Authority's provisional thinking at that time may therefore not reflect subsequent operational experience of the Modification Procedures. The Group also noted that P187 is different to P28, in that it does not propose to remove the Panel's involvement in urgency requests.

### 1.4.3 Governance principles raised by P187

The Modification Group noted that there were three main governance principles raised by P187, as follows:

- Whether it would be appropriate to introduce a formal process whereby the Proposer of a Modification Proposal may request that it be expedited as an Urgent Modification Proposal;
- Whether it would be appropriate for BSCCo and the Transmission Company to retain the ability to independently recommend urgency; and
- Whether it would be appropriate for all urgency requests to be decided by the Authority.

The Group's views regarding these principles are outlined below.

#### a) Process for Proposer to request urgency

The Modification Group unanimously agreed that a formal process for a Proposer to request urgency should be introduced within the Code. Some members of the Group expressed surprise that such a provision did not already exist, noting that the other industry codes already provide for Parties to request urgent treatment of a proposal. BSCCo clarified that existing practice is that a Proposer may request urgency when submitting a new Modification Proposal, but that this is not explicitly provided for by the Code. The Group agreed that this ability is a crucial first step in the request for urgency process, and plays a key role in promoting competition and efficiency. The Group therefore agreed that the ability of a Proposer to request urgency should be formalised via a Code provision.

The Modification Group considered whether only the Proposer of the Modification Proposal concerned should be able to request urgency, or whether this ability should be given to any Party (as under the CUSC or STC) – noting that this could be a potential Alternative Modification to P187. Some members of the Group considered that it was unlikely that a Party would not raise a Modification Proposal itself if it believed an issue to be urgent. Other members noted that BSCCo and/or the Transmission Company could choose to independently recommend urgency where this had not been requested by the Proposer (see below), and might choose to do so if became aware that other Parties considered the issue to be urgent. The Group noted that there were potential inefficiencies in allowing any Party to request urgency – for example, the window for allowing such requests could impact the deadline for submitting new Modification Proposals to a particular Panel Meeting. The Group also noted that another Party could always submit its own version of the Modification Proposal with a request for urgency – leaving the option for the Proposer of the non-urgent proposal to withdraw it prior to its first consideration by the Panel. Moreover, the Group agreed that the Party requesting urgency should be required to provide the rationale for their request, and that it was most appropriate for this to be included within

the Modification Proposal form (see Section 1.4.4). The Modification Group therefore agreed that only the Proposer, BSCCo or the Transmission Company should be able to recommend urgency to the Panel under P187.

### **b) Ability for BSCCo and/or Transmission Company to recommend urgency**

The Modification Group agreed that BSCCo and the Transmission Company should retain the ability to independently recommend urgency where this had not already been requested by the Proposer, since BSCCo and the Transmission Company might have knowledge of factors of which the Proposer was unaware. The Group noted that this would not represent a new governance principle, since it would simply retain an existing ability under the Code. The Group also noted that the retention of this ability would not go further than the governance principles of other industry Codes, since NGC and Transco are able to independently recommend urgency for a proposal under the CUSC/STC and Network Code respectively (noting that the CUSC and STC allow *any* Party to independently recommend urgency).

### **c) Requirement for Authority to consider all urgency requests**

The Modification Group unanimously agreed that only the Authority should determine that a Modification Proposal should or should not be treated as an Urgent Modification Proposal. The Group considered that the current ability for BSCCo/the Transmission Company or the Panel not to recommend urgency is inappropriate, since there may be factors in the case for urgency which fall outside of the vires of the BSC and which can therefore only be properly considered under the 'wider remit' of the Authority. Members of the Group argued that BSCCo's role is to facilitate the operation of the Modification Procedures, and that it is therefore inappropriate that its decision not to recommend urgency should in effect determine the non-urgent status of a proposal. The Group also believed that the current urgency arrangements are inconsistent with the regulatory process for approving or rejecting Modification Proposals (where the Panel makes only a provisional recommendation, and the final determination is undertaken by the Authority). The Group argued that the fact that only the Authority may approve or reject a proposal reflects the wider statutory duties which the Authority must consider – and therefore supports the argument that all requests for urgency should only be decided by the Authority under its 'wider remit'. However, an attendee suggested that the current requirement for the Panel to pass recommendations in favour of urgency to the Authority may reflect the fact that the Authority is required to approve any deviation from the normal Modification Procedures, rather than any 'wider remit' regarding the case for urgency.

The Modification Group noted that the requirement for all urgency requests to pass to the Authority would remove the current 'filter' of such requests by BSCCo/the Transmission Company and the Panel. The Group acknowledged that this could lead to an increase in the amount of urgency requests passed to the Panel and the Authority, and noted BSCCo's analysis of the number of past requests for urgency which had been refused before reaching the Panel and/or the Authority (see Annex 5). However, the Group considered that this was unlikely to have a negative impact on efficiency, and overall did not believe that P187 would lead to an increase in the number of urgency requests *submitted* by Proposers. The Proposer commented that the provisions of the Network Code, under which the Authority considers all requests for urgency, had not resulted in the receipt of inefficient numbers of requests.

One member of the Group suggested that Parties could be limited to submitting a certain number of urgency requests in a given year. However, the other members of the Group believed that this could constrain Parties' ability to propose solutions to urgent operational issues or, conversely, could encourage Parties to submit their full 'quota' of urgency requests for a year. The Group noted that the majority of respondents to the Assessment Procedure consultation had agreed that P187 would not lead to an increase in Proposer requests for urgency, whilst the minority of respondents who considered this to be a possibility did not believe it to be a negative aspect of P187 (see Section 6). Notwithstanding its view that P187 would not create an increase in urgency requests, the Modification

Group agreed that it was important that the request for urgency process should be used responsibly by Parties. The Group therefore agreed that the request for urgency should form part of the Modification Proposal form – and that the Proposer should be required to provide supporting rationale for the request, in order to guard against vexatious or frivolous use of the process (see Section 1.4.4 below).

The Modification Group considered that efficiency was not only about workload, but was also dependent on the overall effectiveness of a process. The Group agreed that, whilst P187 might introduce a longer decision-making process for some urgency requests which might not have proceeded to the Authority under the existing process, it would deliver the best regulatory decision more often and therefore be more efficient. The Group agreed that P187 would enhance the existing request for urgency process by ensuring that:

- All requests for urgency received consistent treatment;
- All the issues relevant to the request received due consideration by the Authority; and
- The final decision on urgency (via the Authority's decision letter) was fully transparent to the industry.

The Group agreed that this would promote both competition and efficiency in the BSC arrangements.

#### **d) Potential Alternative Modification**

The Modification Group considered whether there could be a potential Alternative Modification which:

- Retained the P187 requirement for the introduction of a formal process for a Proposer to request urgency;
- Retained the P187 requirement for BSCCo to pass all urgency requests to the Panel; but
- Removed the P187 requirement for the Panel to pass all urgency requests to the Authority (i.e. retained the existing process whereby the Panel is only required to pass recommendations in favour of urgency to the Authority).

The Modification Group did not believe that such an Alternative would better facilitate the achievement of the Applicable BSC Objectives when compared to the Proposed Modification, and therefore agreed that they were unlikely to recommend its approval to the Panel. However, the Group believed that it would better facilitate the achievement of the Applicable BSC Objectives when compared to the current Code baseline, and might represent an acceptable compromise if the Proposed Modification was rejected by the Authority. The Group therefore suggested that the Alternative could be submitted to the Panel with a recommendation to reject, in order to provide the Authority with the option to approve the Alternative if it believed the Proposed Modification to be too much of a departure from the current governance process. The Proposer clarified that they believed the areas proposed by P187 to be a package. However, the other members of the Group requested that BSCCo provide legal advice as to whether such an Alternative would constitute a valid Alternative Modification to P187. This advice was circulated to the Group on 27 April 2005, and is attached as Annex 3. A summary of the advice is provided below.

BSCCo advised that the purpose of an Assessment Procedure, as set out in paragraph F2.6.2 of the Code, is:

'to evaluate whether the Proposed Modification identified in a Modification Proposal better facilitates the achievement of the Applicable BSC Objective(s) and whether any alternative modification would, as compared with the Proposed Modification, better facilitate achievement of the Applicable BSC Objective(s) *in relation to the issue or defect identified in the Modification Proposal*' [emphasis added].

BSCCo's legal advice is that Modification Proposal P187 identifies three distinct perceived defects in the Code:

- a) The lack of a formal Code route for the Proposer of a Modification Proposal to request urgency;
- b) The current ability for BSCCo and/or the Transmission Company not to recommend urgency without referring the request to the Panel; and
- c) The current ability for the Panel to refuse urgency without referring the request to the Authority.

BSCCo's legal view is that an Alternative Modification which addressed a) and b), but not c), would not address the full defect identified in the Modification Proposal – and would therefore not constitute a valid Alternative Modification to P187. The Modification Group noted this advice.

#### **1.4.4 Detail of new process**

The Proposer clarified that one of the main aims of P187 is to increase the transparency of the request for urgency process. The Modification Group agreed that under P187 a Proposer's request for urgency (including its supporting rationale) should form part of the Modification Proposal form, in order that it would be visible to industry from the point the proposal was raised. The Group agreed that making the inclusion of rationale mandatory would ensure that a reasoned case for urgency was put forward, and would aid the Panel in considering the request. The Group considered that the process for obtaining urgency should be transparent and accessible, but stringent enough to avoid potential abuse of the process by vexatious or frivolous requests. The Group agreed that the onus should be on the Proposer to persuade the Panel and the Authority, through its rationale, that urgency was necessary – and that urgency should not be used as a 'quick route' to a decision or as a substitute for fully developing a proposal.<sup>4</sup>

The Modification Group agreed that although a formal recommendation by BSCCo and the Transmission Company would no longer represent a determining factor in the outcome of a request for urgency, BSCCo and the Transmission Company should continue to provide advice to the Panel – in order to inform the Panel in formulating its recommendation to the Authority. The areas covered by this advice would be driven by the Proposer's own rationale for the urgency request, plus any other considerations which BSCCo or the Transmission Company believed to be relevant (for example, any interaction between the proposal and the progression of other industry changes). The Group noted that the Transmission Company would be able to offer such advice through its representation on the Panel, and agreed that the provision of advice by BSCCo would be consistent with its responsibility under paragraph C3.1.1(b) of the Code to 'advise the Panel and keep it advised as to and in respect of the matters which it is necessary or appropriate that the Panel should consider in order to discharge the Panel's functions and responsibilities in accordance with the Code'.

The Modification Group noted that existing practice is to publish the Panel's recommendation to the Authority on the BSC Website, and that this would continue under P187. The Group agreed that it was not necessarily to formalise this working practice via a specific Code obligation.

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<sup>4</sup> Please note that the P187 Assessment Procedure consultation document originally contained the suggestion that it would also be mandatory for a Proposer to indicate within the Modification Proposal form whether they were requesting urgency (i.e. Proposers would be required to record a 'No' where urgency was not requested, rather than simply leave the form's urgency field blank). However, following consideration of the consultation responses, the Group agreed that this aspect of the solution should be altered such that only the supporting rationale for an urgency request would be mandatory (see Section 6).

### **1.4.5 Development of guidance for urgency requests**

#### **a) Appropriateness of criteria versus guidance**

The Modification Group noted the suggestion of the Modification Proposal that a Modification Group might wish to clarify the basis on which urgency requests are considered. The Proposer stated that they envisaged this to take the form of guidance, potentially provided in a Code Subsidiary Document such as BSCP40, rather than strict 'criteria' for urgency which would have to be considered by the Panel. The other members of the Group agreed that absolute, prescriptive criteria would not be appropriate, as these could constrain the Panel's ability to consider each request for urgency on its own merits. The Group considered that Urgent Modification Proposals, by their nature, are likely to arise from unique situations – and should therefore be considered on a case-by-case basis. Members also suggested that urgency is a subjective judgement, since an urgent matter for one Party may not be urgent to another. The Group therefore agreed that it would not be possible or appropriate to develop a list of 'definitive' criteria. The Group also noted that, even if definitive criteria were developed for use by the Panel, the Code cannot place obligations on the Authority since it is not a party to the Code. Moreover, the considerations of the Authority are not limited to the BSC arrangements, but take into account its wider statutory duties. Any Panel criteria would therefore not fetter the Authority's discretion in deciding whether to grant or refuse urgent status to a proposal.

However, the Modification Group agreed that it would be useful to provide advice to the industry regarding the types of factors that have historically been taken into account when considering urgency requests. The Group agreed that this would aid a Proposer in submitting a reasoned case for urgency, and could also aid the Panel in structuring its consideration of a request. The Group agreed that (although the Proposer would be required to provide the rationale for an urgency request) such guidance would represent an optional aid, and would not constrain the Proposer or the Panel from considering alternative or additional relevant matters.

#### **b) Proposed location of guidance**

The Modification Group agreed that the Code would not be the appropriate location for the P187 urgency guidance, since the purpose of the Code is to set out obligations rather than advice. The Group suggested that the guidance should be added to BSCP40, which contains existing advice on completing the Modification Proposal form as well as the proposal form itself.<sup>5</sup> The Group noted that the existing BSCP40 guidance and Modification Proposal form are also provided on the BSC Website, and that the website would therefore additionally need to be updated under P187. The Group considered publishing the P187 guidance outside of a BSCP (potentially on the BSC Website), but agreed that it would be more appropriate to locate it alongside the proposal form within BSCP40. Respondents to the Assessment Procedure consultation unanimously agreed that BSCP40 was the most appropriate location for the P187 guidance on requests for urgency (see Section 6).

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<sup>5</sup> Please note that the Modification Proposal form and guidance were previously included in BSCP76 'Submission of, and communications relating to, Modification Proposals'. However, the contents of BSCP76 was incorporated into BSCP40 following the implementation of CP1076 in February 2005.

### c) Proposed content of guidance

The Modification Group noted that advice had previously been provided by the Authority in its decision letters regarding urgency requests. This advice had stated that:

- a) A modification should only be treated as urgent if the modification could not appropriately be treated as non-urgent; and
- b) Urgent modifications are likely to exhibit at least one of the following characteristics:
  - i) There is a very real likelihood of significant commercial impact upon NGC, industry parties, or customers if a proposed modification is not urgent;
  - ii) Safety and security of the network is likely to be impacted if a proposed modification is not urgent; and/or
  - iii) The proposal is linked to an imminent date-related event.<sup>6</sup>

The Modification Group also noted that the questions considered by BSCCo in the past, when deciding whether to make a recommendation of urgency, have tended to include the following:

- a) Is it likely that the identified defect will result in disproportionate costs to impacted parties if the proposal is not treated urgently?
- b) Is it likely that the identified defect will compromise the integrity of the Settlement process if the proposal is not treated urgently?
- c) Is it likely that any failure to expedite resolving the issue via urgent treatment will introduce uncertainty into the market?

The Modification Group noted that the decision as to whether a Modification Proposal should be treated as urgent was linked to the perceived urgency of the issue or defect identified by the proposal, and not to the merits of the proposal against the Applicable BSC Objectives. The Group believed that the key factors in deciding whether an issue or defect is 'urgent' are the extent and timing of its potential impact. The Group considered that both the Authority's and BSCCo's guidance covered this area, but in potentially different ways – for example, the Authority's guidance refers to 'significant commercial impact' (not necessarily financial) whilst BSCCo's refers to 'disproportionate costs'. The Group also noted that BSCCo's questions were specific to the BSC (for example the security of Settlement), whilst the Authority's took into account broader factors reflecting its wider statutory duties (for example the impact on customers). The Group noted that ensuring the safety and security of the network falls outside of BSCCo's remit under the BSC, but is the subject of a licence obligation on the Transmission Company. This area would therefore be considered by the Transmission Company when deciding whether to make a recommendation of urgency under the current process.

The Modification Group agreed that it would be most appropriate for the P187 guidance to be based on the advice previously provided by the Authority, since the Authority would make the final decision on whether a proposal should be treated as an Urgent Modification Proposal. The Group also agreed that, although the vires of the Panel would be limited to the BSC arrangements, all arguments and factors which the Proposer believed to be relevant to the urgency request should be identified within the Modification Proposal form so that these could receive due consideration by the Authority under its 'wider remit'. Respondents to the P187 Assessment Procedure consultation unanimously agreed with these views.

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<sup>6</sup> See, for example, the Authority's decision on urgency for Modification Proposal P170 'Amendments to the Balancing and Settlement Code, and to the systems and processes that support it, to allow compliance with the changed application of VAT to Trading Charges' (Reference 8).



The Modification Group considered that it was not necessary to include BSCCo's additional consideration of integrity of Settlement within the P187 guidance, since it believed that any Settlement errors would lead to 'significant commercial impact' and were thus already satisfactorily covered. The Group also agreed that 'security of supply' would be covered by the existing reference to 'safety and security of the network'. It was initially suggested by some members of the group that the previous Authority guidance should be slightly amended to read 'significant *disproportionate* commercial impact' – since these members believed that significant commercial impact on a Party would only be an appropriate consideration for an urgency request if it was disproportionate to the actions of that Party. However, the Group subsequently agreed that this addition should be removed from the guidance, following the suggestion of one consultation respondent that it was superfluous (see Section 6). The Group agreed that it was most appropriate for the P187 guidance to directly match that previously provided by the Authority, since the Authority would make the final decision regarding urgency. No other changes or additions to the guidance were proposed by respondents. The full guidance agreed by the Group can be found in Annex 4.

The Modification Group noted that the areas covered by the P187 guidance would not represent 'definitive' criteria, and would not constrain the Authority in determining the outcome of a request for urgency. There might therefore be occasions where a request for urgency is deemed valid by the Authority even where it does not exhibit these characteristics (or, conversely, be deemed inappropriate where one or more of the characteristics is exhibited).

#### **1.4.6 Timetable for requests for urgency**

The Modification Group noted the request of a Panel Member that the Group consider whether it might be appropriate for a Modification Proposal to become urgent at a later stage in its progression (for example, during an Assessment Procedure). This Panel Member suggested that the issue identified by a Modification Proposal might not be considered to be urgent at the time the proposal was raised, but might subsequently become urgent due to unforeseen external events. Although the Panel Member noted that this situation had never arisen under NETA, they believed that the potential for such circumstances should be considered by the Group.

The Modification Group agreed that this appeared to be a separate issue or defect, and therefore outside the scope of P187. The Group considered that a proposal for 'late' requests for urgency raised questions beyond the areas covered by the P187 IWA, and believed that it would require a separate initial assessment by BSCCo and additional Terms of Reference. The Proposer of P187 clarified that they believed the issues raised by such a proposal to be distinct from P187. BSCCo confirmed that its legal view was that the issue was outside the scope of P187. The Group therefore agreed that a process for 'late' urgency requests should not be progressed as part of P187.

The Modification Group noted that a 'late' urgency process could be put forward by a Party via a separate Modification Proposal if it believed that such a process would be appropriate. The Group noted that it was currently possible to expedite the progression of non-urgent Modification Proposals through the normal Modification Procedures by completing a procedure ahead of schedule and taking reports back to the Panel earlier than originally targeted. The Group noted that paragraph B4.1.3 of the Code provides for Panel to convene 'ad-hoc' meetings, between its regular monthly meetings, in order to consider Modification Business. Potentially, the procedures for a non-urgent Modification Proposal could therefore be completed in a timetable of weeks rather than months, if such exceptional circumstances occurred (although noting that the Authority has the right to amend any timetable agreed by the Panel for non-urgent Modification Proposals under F1.4.3(d)). However, the Group noted that this route for expedition of non-urgent Modification Proposals was limited to shortening the timescale for individual procedures and did not include the ability to skip whole procedures completely on grounds of 'urgency' (e.g. it would not be possible to skip the Report Phase, or to proceed directly

to the Report Phase from a Definition Procedure unless the proposal was considered to be 'self-evident').

#### 1.4.7 Potential interaction with appeals process

The Modification Group noted the planned introduction of the right to appeal Authority decisions to approve or reject Modification Proposals, and that the DTI's most recent consultation document on the appeals process (Reference 10) contained the suggestion that Modification Proposals with an impact on security of supply would be exempt from the right of appeal. The Group considered that it was possible that the definition of such an impact might be narrowed to an exemption for Urgent Modification Proposals.

The Modification Group noted that the final details of the appeals process have yet to be published. However, the Group considered whether the planned appeals process could have a potential interaction with P187 in the following ways:

- If Authority decisions to approve or reject Urgent Modification Proposals were not appealable, whether this might lead to an increase in requests for urgency under P187; or
- If Authority decisions to approve or reject Modification Proposals with an impact on security of supply were not appealable, whether this could interact with the 'urgency guidance' developed under P187 (i.e. whether the Panel's recommendation regarding urgency could be seen as 'prejudging' whether a proposal was to be subsequently appealable).

The view of the Group was that an exemption for Urgent Modification Proposals from the right of appeal would be unlikely to lead to an increase in urgency requests under P187 – since the Authority would make the final decision as to whether to grant urgency, and this (coupled with the requirement for a Proposer to justify their request for urgency within the proposal form) would guard against abuse of the urgency process.

Regarding the possibility of exemption for proposals impacting security of supply, the Group noted that a request for urgency is concerned with the timescales in which the perceived defect identified by a Modification Proposal may occur (in other words, the speed with which an assessment of the potential defect is required). A proposal with a possible impact on security of supply would therefore not necessarily be viewed as urgent, if the timing of that impact was sufficiently far in the future as to allow the proposal to be assessed via the normal Modification Procedure timescales. Moreover, at the request for urgency stage it is only possible to consider the *potential* repercussions of non-urgent treatment for security of supply. The actual impact of the defect identified by the proposal would be a matter for consideration during the assessment of the proposal (whether urgent or otherwise). It is possible that a non-urgent proposal might be exempted from appeal due to an impact on security of supply.

BSCCo suggested that there is therefore a distinction between security of supply as a factor in granting urgency and in the Authority's final decision whether to approve or reject a Modification Proposal. The Modification Group agreed that any views expressed by the Panel regarding security of supply during consideration of an urgency request would not 'prejudge' the right to appeal – since these views would be concerned with the potential impact on security of supply if a proposal was not treated urgently, and not the actual impact of the proposal on security of supply. BSCCo suggested that if any statement of the Panel could be viewed as 'prejudging' the right to appeal, it would be the Panel's final assessment of a proposal against the Applicable BSC Objectives as contained within the Modification Report. This would not be specific to Urgent Modification Proposals (and therefore to P187), since the Panel's assessment of any proposal must include consideration of its impact on security of supply.

Finally, the Group noted that any views expressed by the Panel regarding security of supply (whether as part of its consideration of urgency or a Modification Report) would represent provisional

recommendations only – since the final decision would be made by the Authority, whose ‘wider remit’ could take into account factors outside the immediate vires of the Panel. The Group therefore agreed that P187 would actually reduce any risk of ‘prejudgement’ by ensuring that the final outcome of each urgency request was only determined by the Authority.

The Modification Group therefore concluded that it would not be necessary to extend its assessment of P187 in order to allow consideration of the final draft of the appeals process.

## **1.5 Modification Group’s assessment of whether the Proposed Modification would better facilitate the Applicable BSC Objectives**

In summary, the unanimous view of the Modification Group is that the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives (c) and (d), when compared to the current Code baseline, for the following reasons:

### **Applicable BSC Objective (c)**

- The Proposed Modification would promote competition by formalising the right of a Proposer to request that a Modification Proposal be expedited as an Urgent Modification Proposal;
- The Proposed Modification would also promote competition by ensuring that all requests for urgency received consistent and equitable treatment, and that all factors relevant to the case for urgency received due consideration by the Authority under its ‘wider remit’;
- The Proposed Modification would increase the transparency of the request for urgency process by making the Proposer’s rationale for requesting, and the Authority’s rationale for determining, urgency fully visible to the industry (via the Modification Proposal form and Authority decision letter); and
- The Proposed Modification would have no detrimental impact on competition, since it would retain the right of BSCCo and the Transmission Company to recommend urgency where this had not been requested by the Proposer.

### **Applicable BSC Objective (d)**

- Although the decision-making process for some urgency requests might be longer under P187, the Proposed Modification would deliver the best regulatory decision more often and would therefore be more efficient overall; and
- Although more requests for urgency might be considered by the Panel and the Authority, the Proposed Modification would have no detrimental impact on efficiency - since the requirement for a Proposer to provide the rationale for an urgency request would guard against the submission of vexatious or frivolous requests.

## **1.6 Governance and regulatory framework assessment**

The Modification Group noted the urgency provisions of the other industry codes, and that a similar (non-contingent) proposal to P187 is being progressed under the CUSC as CAP087 (see Section 1.4.1).

The Group noted the planned introduction of the right to appeal Authority decisions to approve or reject Modification Proposals, and the possible exemption from appeal for proposals impacting security of supply. However, the Group did not believe that such an exemption would give rise to any issues related to P187 (see Section 1.4.7).

## 2 COSTS<sup>7</sup>

### 2.1 Costs of progressing P187 through the Modification Procedures

#### PROGRESSING MODIFICATION PROPOSAL

|                               |                       |
|-------------------------------|-----------------------|
| <b>Meeting Cost</b>           | £1,000                |
| <b>Legal/Expert Cost</b>      | £0                    |
| <b>Impact Assessment Cost</b> | £0                    |
| <b>ELEXON Resource</b>        | 30 man days<br>£5,580 |

### 2.2 P187 implementation costs

#### IMPLEMENTATION COSTS

|   | <b>Stand Alone Cost</b> | <b>P187 Incremental Cost</b> | <b>Tolerance</b> |
|---|-------------------------|------------------------------|------------------|
| <b>Total Demand Led Implementation Cost</b> | £0                      | £0                           | N/A              |
| <b>ELEXON Implementation Resource Cost</b>  | 63 man days<br>£13,860  | 13 man days<br>£2,860        | +/- 5%           |
| <b>Total Implementation Cost</b>            | £13,860                 | £2,860                       | +/- 5%           |

#### ONGOING SUPPORT AND MAINTENANCE COSTS

|  | <b>Stand Alone Cost</b> | <b>P187 Incremental Cost</b> | <b>Tolerance</b> |
|--|-------------------------|------------------------------|------------------|
| <b>Service Provider Operation Cost</b>   | £0                      | £0                           | N/A              |
| <b>Service Provider Maintenance Cost</b> | £0                      | £0                           | N/A              |
| <b>ELEXON Operational Cost</b>           | See below*              | See below*                   | See below*       |

\*The estimated operational costs of P187 for BSCCo are difficult to quantify, for the reasons set out in Section 4.1. Assuming that the number of Proposer requests for urgency remains at a similar level to

<sup>7</sup> Clarification of the meanings of the cost terms in this section can be found in Annex 8 of this report.

currently, BSCCo anticipates a small increase in operational activities which would be subsumed within its existing resource. However, if the number of Proposer requests was to significantly increase under P187, this could require BSCCo to put in place additional resources to manage the resulting increased workload.

### **3 RATIONALE FOR MODIFICATION GROUP'S RECOMMENDATIONS TO THE PANEL**

The unanimous recommendation of the Modification Group is that the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives (c) and (d), and should therefore be made.

The Group recommends an Implementation Date for the Proposed Modification of 10 Working Days following an Authority decision.

More detail regarding the Group's recommendations is contained in Section 1.5, whilst the rationale for the proposed Implementation Date can be found in Section 8.

## **4 IMPACT ON BSC SYSTEMS AND PARTIES**

### **4.1 BSCCo**

#### **4.1.1 Implementation effort**

The BSCCo effort which would be required to implement P187 is shown in the table below.

| <b>Area of business</b>                     | <b>Impact of Proposed Modification</b>  |
|---|---|
| Administration of Code                      | Management of P187 Code changes.  |
| Administration of Code Subsidiary Documents | Management of P187 changes to BSCP40.   |
| Administration of BSC Website               | Management of changes to contents of Modifications section (overview of Modification Process, Modification Proposal form and guidance on completion of form). |
| Administration of Modification Process      | Management of changes to working procedures to reflect the new obligation for BSCCo to directly pass all requests for urgency to the Panel.                   |
| Administration of Panel                     | No implementation effort required.  |

#### **4.1.2 Operational effort**

Please note that the operational costs of P187 for BSCCo are difficult to quantify, as they would be dependent on the following:

- The number of Proposer requests for urgency submitted in the future;
- The number of requests where BSCCo/the Transmission Company would not have recommended urgency under the existing arrangements, but which would be passed to the Panel under P187; and

- The number of requests where the Panel would not have recommended urgency under the existing arrangements, but which would be passed to the Authority under P187.

Assuming that the number of Proposer requests remains at a similar level to currently, BSCCo anticipates a small increase in the operational activities required to support the P187 process. This would include convening additional urgent Panel Meetings, and supporting the Panel in formulating and drafting its recommendation to the Authority (including the recommended urgent timetable for progressing the proposal). There may also be an increase in the uncertainty surrounding the progression of proposals whilst urgency is under consideration (for example, BSCCo might be required to begin work on an IWA prior to the Authority's decision on urgency). BSCCo anticipates that these activities would be subsumed within its existing resources without incurring any significant operational costs. However, if the number of Proposer requests for urgency was to materially increase under P187, this could require BSCCo to put in place additional resources to manage the resulting increased workload.

## **4.2 The Transmission Company**

P187 would have minimal impact on the existing processes of the Transmission Company for the following reasons:

- The Transmission Company would retain the ability to independently recommend urgency to the Panel where this has not been requested by the Proposer; and
- As a Panel Member, the Transmission Company would retain the ability to advise the Panel regarding a Proposer's request for urgency (although, as currently, it would not be able to vote on the Panel's recommendation regarding urgency – since it is prevented from voting on Modification Proposals under paragraph B4.4.5 of the Code).

## **4.3 The Panel**

P187 would impact the Panel in the following ways:

- The introduction of a requirement for the Panel to pass all recommendations regarding urgency to the Authority, regardless of whether its recommendation is to grant or refuse urgent status;
- The introduction of a requirement to submit a draft urgent timetable to the Authority for all requests for urgency, and not just where urgency is recommended by the Panel; and
- A potential increase in the amount of urgent Modification Business considered by the Panel, and therefore in the number of urgent Panel Meetings.

## **4.4 The Authority**

P187 could result in an increase in the number of urgency requests received by the Authority, and therefore in an increase in the number of urgency decision letters issued by the Authority.

## **4.5 BSC Systems**

P187 would have no impact on any BSC Systems.

## **4.6 Parties and Party Agents**

### **4.6.1 Parties**

P187 would introduce a formal process by which the Proposer of a Modification Proposal may request its urgent treatment. P187 would make such a request part of the Modification Proposal form itself.

P187 would also extend the existing informal ability for the Proposer to request urgency, such that all requests for urgency would pass to the Authority for final decision.

P187 would have no impact on any Party systems.

#### 4.6.2 Party Agents

P187 would have no impact on any Party Agents.

## 5 IMPACT ON CODE AND DOCUMENTATION

### 5.1 Balancing and Settlement Code

| Section                                | Potential impact of Proposed Modification   |
|--|---|
| Section B<br>'The Panel'               | Changes to B4.6 – which covers the convening of Panel Meetings to discuss Urgent Modification Proposals – to include meetings to consider a Proposer's request for urgency (the existing drafting in B4.6.1 refers to consideration of recommendations for urgency made by BSCCo or the Transmission Company).  |
| Section F<br>'Modification Procedures' | <p>Changes to:</p> <ul style="list-style-type: none"> <li>Introduce a process for the Proposer to request urgency when submitting a Modification Proposal to BSCCo;</li> <li>Mandate that, where the Proposer requests urgency, the rationale for the urgency request must be provided within the Modification Proposal form;</li> <li>Mandate that BSCCo must pass all Proposer requests for urgency to the Panel;</li> <li>Retain the ability for BSCCo and/or the Transmission Company to make a request for urgency to the Panel, but clarify that this is independent of a Proposer's request;</li> <li>Mandate that all urgency requests must be passed by the Panel to the Authority, with the Panel's recommendation as to whether the request should be granted;</li> <li>Provide for BSCCo and the Transmission Company to advise the Panel in the formulation of its recommendation to the Authority; and</li> <li>Mandate that only the Authority may make the final determination as to whether a Modification Proposal should be treated urgently.</li> </ul> |

### 5.2 Code Subsidiary Documents

| Document                      | Potential impact of Proposed Modification   |
|-------------------------------|---|
| BSCP40<br>'Change Management' | <p>Changes to the Modification Proposal form (Form 40/06) to add a new field for the Proposer to include a request for urgency (including mandatory rationale).</p> <p>Provision of additional guidance in Section 4.12 regarding the completion of the Modification Proposal form, to clarify that a Proposer must provide the rationale for any request for urgency. Guidance would also be provided regarding the areas that may be considered by the Panel when making its recommendation to the Authority regarding urgency.</p> |

### 5.3 Core Industry Documents and supporting arrangements

No impact identified; however P187 would present a departure from the existing urgency provisions of the other electricity codes in that all requests for urgency would automatically be passed to the Authority, regardless of the Panel's recommendation (see Section 1.4.1).

## 6 SUMMARY OF CONSULTATION RESPONSES

| Q  | Consultation question  | Yes     | No      |
|----|--|---------|---------|
| 1. | Do you believe that the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives?                        | 10 (57) | 0       |
| 2. | Do you believe that the Proposed Modification would lead to an increase in the number of urgency requests submitted by Parties?                | 2 (6)   | 6 (29)  |
| 3. | Do you believe that the guidance developed by the Modification Group regarding requests for urgency is appropriate?                            | 10 (57) | 0       |
| 4. | If yes, do you agree with the view of the Modification Group that this guidance should be provided within BSCP40 'Change Management'?          | 10 (57) | 0       |
| 5. | Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?               | 0       | 10 (57) |
| 6. | Does P187 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? | 0       | 10 (57) |

### 6.1 Modification Group's summary of the consultation responses

#### 6.1.1 Applicable BSC Objectives

All respondents agreed with the view of the Modification Group that the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives (c) and (d).

The arguments expressed by respondents were that:

- The Proposed Modification would address a clear deficiency in the current Code baseline regarding requests for urgency;
- The Proposed Modification would ensure that all requests for urgency receive consistent and equitable treatment in that all such requests would be considered by the Authority;
- Formalising the existing informal ability for a Proposer to request urgency would further competition and efficiency;
- Ensuring that the Authority makes the final decision on urgency (rather than those bodies whose vires is limited to the BSC) would allow all relevant factors in the case for urgency to be considered under the Authority's 'wider remit'; and
- Improved understanding and transparency of the request for urgency process would promote competition and efficiency.



In addition, one respondent noted the analysis provided by BSCCo in Annex 5, and commented that the Transmission Company had only recommended urgency on a small number of occasions since NETA Go-Live. The respondent stated their view that the Transmission Company therefore appeared not to have exercised its ability to recommend urgency in an appropriate manner, since the respondent perceived the analysis to show that it had refused urgency in the majority of cases. BSCCo contacted the respondent to clarify that the existing Code provisions do not provide BSCCo or the Transmission Company with the ability to *refuse* urgency, but simply with the ability to recommend urgency to the Panel (although where no such recommendation is made, this implicitly means that the proposal is not treated as urgent). BSCCo clarified that, where BSCCo had made a recommendation of urgency but the Transmission Company had not, this did not necessarily mean that the Transmission Company disagreed with BSCCo's view – but simply that the Transmission Company had chosen not to make its own recommendation to the Panel. Similarly, where the Transmission Company, rather than BSCCo, had made a recommendation of urgency this did not necessarily imply that BSCCo had disagreed with the Transmission Company's view. The respondent accepted this clarification, but remained of the view that (in the majority of cases) the Transmission Company had implicitly allowed BSCCo's decision whether or not to recommend urgency to determine the outcome of an urgency request. The respondent considered that the existing ability for BSCCo and the Transmission Company not to recommend urgency is inappropriate, and stated that they therefore supported the intention of P187.<sup>8</sup>

The same respondent noted that some proposals whose request for urgency had not been progressed as far as the Authority had ultimately been approved for implementation. The respondent suggested that this could imply that the 'delay' in implementation caused by progressing these proposals via the normal Modification Procedures had been detrimental. BSCCo clarified that the decision whether to approve or reject a Modification Proposal (based on the assessment of the identified defect against the Applicable BSC Objectives) was separate to the decision of whether to grant urgency (based on the perceived urgency of the timescales required for such assessment, and not on the merits of the proposal itself). It is therefore possible that an Urgent Modification Proposal might ultimately be rejected by the Authority, whilst a proposal which had been refused urgency by the Authority might be approved for implementation. The respondent accepted this clarification, but remained of the view that it was not appropriate for a body other than the Authority to determine the outcome of a request for urgency, since the Authority takes the final decision on whether to approve or reject a proposal. The respondent therefore believed that P187 would better facilitate the achievement of the Applicable BSC Objectives.

### **6.1.2 Number of urgency requests under P187**

#### **a) Majority view**

The majority of respondents did not believe that the Proposed Modification would result in an increase in the number of urgency requests submitted by Parties. These respondents believed that the guidance proposed under P187 would ensure that requests would only be submitted where there was reasonable grounds for urgency. One respondent suggested that provision of this guidance might actually result in fewer requests for urgency. Another respondent considered that the number of urgency requests made since NETA Go-Live has been low, and that there would be no logical reason for this to increase in future.

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<sup>8</sup> Please note that Annex 5 of v1.0 of the Assessment Report incorrectly identified the recommendation of urgency in respect of Modification Proposal P144 'Removal of CADL from the BSC' (proposed by First Hydro) as having been made by BSCCo, rather than by the Transmission Company. This has been corrected in v2.0 of the report. The respondent subsequently clarified to BSCCo that identification of this error did not alter the views expressed in their response to the Assessment Procedure consultation.

One respondent, whilst believing that the number of Proposer requests for urgency would not increase under P187, stated that any increase which did occur should not be viewed as a negative – as they believed that P187 would deliver the best regulatory process overall.

#### **b) Minority view**

A minority of respondents considered that the Proposed Modification could lead to an increase in the number of Proposer requests for urgency. However, these respondents considered that any such increase would be limited by the proposed P187 guidance, which would deter vexatious requests and ensure that a robust justification was put forward.

Two of these respondents were undecided as to whether the Proposed Modification would lead to an increase in the number of requests submitted by Parties. One stated that it is difficult to predict the future level of urgency requests, since there is usually a significant but unforeseen event which necessitates the submission of such requests. The other respondent considered that it might be the case that more urgency requests were submitted in the future, since they believed that the current arrangements might discourage Proposer requests for urgency. The respondent suggested that, by ensuring that all requests received due consideration by the Authority, P187 might remove this perceived disincentive and lead to an increase in urgency requests. The respondent believed that such an increase would not be negative, but would better facilitate the achievement of the Applicable BSC Objectives by ensuring that each request was considered on its own merits by the Authority.

### **6.1.3 P187 guidance regarding urgency requests**

#### **a) Contents of guidance**

All respondents agreed that the urgency guidance developed by the Modification Group was appropriate. Respondents unanimously agreed with the view of the Group that definitive 'criteria' for urgency would not be appropriate, since these would be too inflexible.

Arguments expressed by respondents were that the proposed guidance would provide a Proposer with a basis for constructing a request for urgency, and could provide the Panel with a useful tool for considering the request. Respondents believed that the guidance would help to ensure that only Modification Proposals with a genuine chance of being given urgent status are submitted with a request for urgency. One respondent commented that the proposed guidance had the advantage of being based on previous experience without being prescriptive. Another respondent considered that the guidance was succinct, but would provide a clear steer to a Proposer as to whether they had a genuine case for urgency. Some respondents noted that the guidance developed by the Modification Group was based on guidelines previously provided by the Authority. These respondents argued that it was appropriate for raising Parties to consider the same factors, given that the Authority would make the final decision regarding urgency.

One respondent queried whether the proposed guidance would offer any significant benefit, given the need to consider each urgency request on a 'case by case' basis. However, this respondent stated that they were comfortable with the guidance developed by the Modification Group, were such guidance deemed to be necessary.

One respondent, although supportive of the guidance developed by the Modification Group, queried whether the inclusion of the word 'disproportionate' within 'significant commercial impact' was necessary – as they considered this insertion to be superfluous.

## b) Location of guidance

Respondents unanimously agreed with the suggestion of the Modification Group that any guidance regarding requests for urgency under P187 should be provided within BSCP40.

The arguments made by respondents were that:

- Since BSCP40 is the existing location for guidance on completing the Modification Proposal form, it would be the logical location for the P187 guidance on requesting urgency;
- As the guidance will represent advice rather than definitive criteria, it is not appropriate for it to be located in the Code; and
- Placing the guidance in a BSCP would have the benefit of less onerous governance, in that it could be amended in the future via a Change Proposal.

### 6.1.4 Additional comments

No respondents believed there to be any issues that the Modification Group had not identified and which should be considered as part of the P187 Assessment Procedure.

However, three respondents made further comments on P187 as follows:

- One respondent disagreed with the suggestion of the Assessment Procedure consultation document that it should be mandatory for a Proposer to state within the Modification Proposal form whether or not they were requesting urgency. This respondent argued that if this field was left blank then it should be assumed that urgency was not being sought. However, the respondent argued that, where urgency *was* requested, the supporting rationale for the request should be a mandatory field within the Modification Proposal form.
- One respondent argued that there are merits in having consistency in the change management approaches adopted under the various industry codes, and believed that P187 and CAP087 would introduce such a level of consistency.
- One respondent welcomed any early indication by the Authority of the timescales within which it would issue its decision letter in respect of P187.

## 6.2 Comments and views of the Modification Group

The Modification Group considered the Assessment Procedure consultation responses at its final meeting on 18 May 2005.

The Group noted the comments of one respondent regarding the Transmission Company's past recommendations of urgency, and that these comments appeared to have been based on a misunderstanding of the analysis table. The Group noted that the respondent was in support of its recommendation that P187 should be made.

Following its consideration of the consultation responses, the Modification Group agreed to make minor amendments to its solution such that:

- Only the supporting rationale for urgency, and not the statement as to whether urgency was being requested, would be a mandatory requirement within the Modification Proposal form (see Section 1.4.1); and
- The word 'disproportionate' in 'significant disproportionate commercial impact' would be removed from the guidance so that the Authority's original wording was retained (see Section 1.4.5).

## 7 SUMMARY OF TRANSMISSION COMPANY ANALYSIS

### 7.1 Analysis

The Transmission Company did not believe that P187 would have any impact on its ability to discharge its responsibilities under the Transmission Licence, its systems or processes, or any Core Industry Document.

The Transmission Company supported the view of the Modification Group that the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives (c) and (d). The Transmission Company considered that P187 would enhance the industry's understanding of the request for urgency process, and would improve the transparency of the process. The Transmission Company considered the reference to 'safety and security of the network' within the proposed urgency guidance to be a favourable aspect of P187, since the Transmission Company believed this reference to be relevant to any issues associated with the security of supply.

The Transmission Company noted the separate progression of CAP087 under the CUSC.

A copy of the Transmission Company's analysis and impact assessment is contained in Annex 7.

### 7.2 Comments and views of the Modification Group

The Modification Group noted the views of the Transmission Company.

## 8 IMPLEMENTATION APPROACH

Three possible implementation approaches were considered by the Modification Group as follows:

#### a) Implementation of P187 Code and BSCP40 changes outside a standard release

The advantage of this approach is that all P187 changes would be implemented together and that the benefit of the new process would not be delayed until the delivery of a scheduled release.

The disadvantage of this approach is that it would incur the full 'stand-alone' costs of implementing P187 outside the normal release strategy (see cost tables in Section 2), including the overheads of managing the P187 implementation as an independent project.

#### b) Implementation of P187 Code and BSCP40 changes as part of a standard release

The advantage of this approach is that all P187 changes would be implemented together, and implementation costs would be minimised by utilising BSCCo's existing release strategy (see Section 2).

The disadvantage of this approach is that the benefit of P187 would be delayed until the delivery of a scheduled release.

#### c) A 10 Working Day Implementation Date for P187 Code changes, with BSCP40 changes to follow in a subsequent standard release

The costs of this approach would be identical to those of implementing all the P187 changes within a standard release (see Section 2). However, this approach would have the additional advantage of the ability to implement the new P187 process with a minimum lead time, rather than delay its benefit until the delivery of a scheduled release.

The potential disadvantage of this approach is, although the new P187 Code obligations would be implemented 10 Working Days following Authority approval, the changes to BSCP40 and the BSC Website underpinning these obligations (including the new Modification Proposal form urgency field and guidance) would not be delivered until a subsequent scheduled release.

The Modification Group agreed that c) represented its preferred approach on grounds of cost-efficiency, and in order to achieve the benefits of the new P187 urgency process as soon as possible. The Group agreed that delaying the delivery of the new Modification Proposal field and urgency guidance until a subsequent release would not give rise to any risk, since the Code obligation for a Proposer to provide rationale for an urgency request would be effective and enforced during the interim period.

The Modification Group therefore unanimously agreed a recommended Implementation Date for P187 of 10 Working Days following an Authority decision.

## 9 DOCUMENT CONTROL

### 9.1 Authorities

| Version | Date     | Author          | Reviewer                | Change Reference  |
|---------|----------|-----------------|-------------------------|---|
| 0.1     | 24/05/05 | Kathryn Coffin  | Tom Bowcutt             | For peer review   |
| 0.2     | 25/05/05 | Kathryn Coffin  | P187 Modification Group | For Modification Group review                           |
| 0.2     | 25/05/05 | Kathryn Coffin  | Sarah Jones             | For technical review                                    |
| 0.3     | 01/06/05 | Kathryn Coffin  | Tom Bowcutt             | For technical review                                    |
| 0.4     | 02/06/05 | Kathryn Coffin  | Change Delivery         | For quality review                                      |
| 1.0     | 02/06/05 | Change Delivery | BSC Panel               | For Panel decision                                      |
| 2.0     | 14/06/05 | Kathryn Coffin  |                         | Reissued with corrections to Section 6.1.1 and Annex 5. |

### 9.2 References

| Ref | Document  | Owner   | Issue date | Version |
|-----|---|---------|------------|---------|
| 1   | Initial Written Assessment for Modification Proposal P187 'Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority'<br><a href="#">ELEXON - Modification Proposal 187</a> | BSCCo   | 08/04/05   | 1.0     |
| 2   | Assessment Consultation for Modification Proposal P187 'Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority'<br><a href="#">ELEXON - Modification Proposal 187</a>    | BSCCo   | 04/05/05   | 1.0     |
| 3   | Connection and Use of System Code: Section 8 'CUSC Amendment'<br><a href="http://www.nationalgridinfo.co.uk/cusc/pdfs/8_Amend_V1.2.pdf">http://www.nationalgridinfo.co.uk/cusc/pdfs/8_Amend_V1.2.pdf</a>                        | NGT     | 14/04/05   | 1.2     |
| 4   | System Operator-Transmission Owner Code: Section B 'Governance'<br><a href="http://www.nationalgridinfo.co.uk/stc/pdfs/STC_Section_B_v1.1.pdf">http://www.nationalgridinfo.co.uk/stc/pdfs/STC_Section_B_v1.1.pdf</a>            | NGT     | N/A        | 1.1     |
| 5   | Network Code: Section Y 'Modification Rules'<br><a href="http://www.transco.co.uk/NetworkCode/3_PrincipalDocument/masterdocument/30_y.pdf">http://www.transco.co.uk/NetworkCode/3_PrincipalDocument/masterdocument/30_y.pdf</a> | Transco | 01/07/04   | 3.08    |
| 6   | CUSC Amendment Proposal 87 'Revisions to request for urgency process'<br><a href="#">CUSC</a>   | NGT     | N/A        | 1.0     |

| Ref | Document   | Owner | Issue date | Version |
|-----|--|-------|------------|---------|
| 7   | Consultation document for CUSC Amendment Proposal 87 'Revisions to request for urgency process'<br><a href="#">CUSC</a>  | NGT   | 27/04/05   | 1.0     |
| 8   | Ofgem's provisional thinking on Modification Proposal P28 'Review of Governance and Modification Procedures'<br><a href="http://www.elexon.co.uk/documents/modifications/28/P28_OfgemPrelim.pdf">http://www.elexon.co.uk/documents/modifications/28/P28_OfgemPrelim.pdf</a>  | Ofgem | 13/11/01   | 1.0     |
| 9   | Authority rejection of urgency for Modification Proposal P170 'Amendments to the Balancing and Settlement Code, and to the systems and processes that support it, to allow compliance with the changed application of VAT to Trading Charges'<br><a href="http://www.elexon.co.uk/documents/modifications/170/P170_Urgency_letter2.pdf">http://www.elexon.co.uk/documents/modifications/170/P170_Urgency_letter2.pdf</a> | Ofgem | 13/08/04   | 1.0     |
| 10  | 'Appeals against Ofgem code modification decisions: Consultation on draft order'<br><a href="http://www.dti.gov.uk/energy/consultations/appeals_secondary_order.pdf">http://www.dti.gov.uk/energy/consultations/appeals_secondary_order.pdf</a>  | DTI   | 04/10/04   | 1.0     |

## ANNEX 1 DRAFT LEGAL TEXT

Draft legal text for the Proposed Modification is attached as separate document Annex 1A.

A 'plain English' explanation of the legal text is provided below.

### EXPLANATION OF P187 LEGAL TEXT

*NB: the phrase 'Proposer recommendation of urgency', rather than 'Proposer request for urgency' has been used throughout the legal text. The intention of this wording is to convey equality of status between a Proposer, BSCCo, or Transmission Company recommendation of urgency – and to give consistency with the wording of the CUSC and STC, which refer to a Party's 'recommendation' of urgency.*

#### B4.6.1

Section B4.6.1 of the Code covers the convening and proceedings of Panel Meetings held to consider Urgent Modification Business (including the provision for such meetings to be held by teleconference).

A reference to a Proposer recommendation of urgency has been added here to match the existing references to recommendations of urgency by BSCCo and/or the Transmission Company.

The 'and/or' has been added to be consistent with this existing usage in Section F (see for example, F2.9.1), and since it is possible that both BSCCo and the Transmission Company would make a recommendation of urgency.

#### F2.1.2

The existing reference to BSCP76 has been replaced with BSCP40, to reflect the fact that the contents of BSCP76 (including the Modification Proposal form and the guidance on its completion) was incorporated into BSCP40 in February 2005. BSCCo's legal view is that this change falls within the scope of P187, as it will remove any potential confusion regarding the location of the P187 guidance. Updating this reference as part of the P187 legal text will also negate the need to raise a future 'housekeeping' Modification Proposal to make this change.

**F2.1.2(i)**

The supporting rationale for a Proposer's recommendation of urgency has been added to the information required to be submitted within the Modification Proposal form. Under existing paragraph F2.1.3 this information will be mandatory.

**F2.9.1**

A reference to a Proposer recommendation of urgency has been added here to match the existing references to recommendations of urgency by BSCCo and/or the Transmission Company.

F2.9.1 (a) and (b) keep the intent of current Code clauses F2.9.2 (a) and (b) (with the exception of some changes described below), but this has been placed up front in F2.9.1 for clarity and conciseness. Existing clauses F2.9.2 (a) and (b) have therefore been deleted.

Changes have been made in (a) to reflect that the Panel will now make a recommendation to the Authority in all circumstances, and that this recommendation will be either to grant or deny urgent status.

(b) now reflects the fact that the Panel will be required to provide a recommended urgent timetable to the Authority in all circumstances, and not (as currently) only where it is recommending urgency. This will enable the Authority to approve the urgent timetable if it disagrees with the Panel's recommendation that a proposal should not be urgent.

The last line in F2.9.1 makes clear (for the avoidance of doubt) that BSCCo and/or the Transmission Company may still provide views/information to the Panel to aid it in formulating its recommendation.

**F2.9.2**

(a) and (b) have been deleted as these are now covered in F2.9.1.

The remainder of F2.9.2 is a rewording of existing Code paragraph 2.9.3, reflecting that a recommendation must be made by the Panel in all circumstances rather than only where the Panel believes urgency is appropriate. The new wording keeps the original ability for the Panel Chairman to make the recommendation to the Authority where the Chairman is unable to contact sufficient members of the Panel for it to be quorum, but reflects that this recommendation may now be to either grant or deny urgency.

**F2.9.3 (formerly F2.9.4)**

This paragraph has been renumbered to reflect the deletion of existing paragraph F2.9.3.

A change has been made to (c) to provide the counterbalance to (a). The rationale for this change is that the existing wording is unclear what happens if the Authority does not consent to urgent treatment under (a).

(d) is a rewording of original clause (c), reflecting the renumbering of previous paragraphs.

**F2.9.4 - F2.9.9**

These paragraphs have been renumbered to reflect the deletion of existing paragraph F2.9.3, but are otherwise unaltered with the exception of F2.9.5 (see below).

**F2.9.5 (formerly F2.9.6)**

The existing wording of this paragraph no longer functions correctly in the context of P187, since the Panel's recommendation will now not always have been in favour of urgency (since it will be required to pass all urgency requests to the Authority).

The reference to the Panel's view has therefore been replaced with a requirement to include any view provided by the Authority as to why the proposal should be treated urgently (in practice this is likely to be a copy of the Authority's decision letter regarding urgency).

**ANNEX 2 MODIFICATION GROUP DETAILS**

| <b>Member</b>  | <b>Organisation</b>            | <b>20/04/05</b> | <b>18/05/05</b> |
|----------------|--------------------------------|-----------------|-----------------|
| Tom Bowcutt    | ELEXON (chair)                 | ✓               | ✓               |
| Kathryn Coffin | ELEXON (lead analyst)          | ✓               | ✓               |
| Melanie Henry  | ELEXON (lawyer)                | ✓               | ✓               |
| Mark Manley    | British Gas Trading (Proposer) | ✓               | ✓               |
| James Kelly    | SAIC Ltd                       | ✓               | ✓               |
| John Sykes     | Scottish and Southern          | ✓               | ✓               |
| Neil Smith     | E.ON                           | ✓               | ✓               |
| Steve Drummond | EDF Trading                    | ✓               | ✓               |
| Steve Eyre     | British Energy                 | ✓               |                 |
| Terry Ballard  | RWEpower                       | ✓               |                 |

| <b>Attendee</b> | <b>Organisation</b>      | <b>20/04/05</b> | <b>18/05/05</b> |
|-----------------|--------------------------|-----------------|-----------------|
| David Edward    | Ofgem                    | ✓               |                 |
| Yvonne Naughton | Ofgem                    | ✓               | ✓               |
| Shafqat Ali     | NGT                      | ✓               | ✓               |
| Barbara Vest    | BSC Panel                | ✓               | ✓               |
| Laone Roscorla  | ELEXON technical support |                 | ✓               |

**P187 MODIFICATION GROUP TERMS OF REFERENCE**

Modification Proposal P187 will be considered by a new Modification Group, the 'P187 Modification Group' (formed from members of the Governance Standing Modification Group), in accordance with the following Terms of Reference.

P187 – Introducing the ability for a BSC Party to request urgent status and for it to be considered by the Authority'

**ASSESSMENT PROCEDURE**

The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P187 pursuant to section F2.6 of the Balancing and Settlement Code.

The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 9 June 2005.

The Modification Group shall consider and/or include in the Assessment Report as appropriate:



- **Governance principles raised by P187** – specifically, whether it would be appropriate to introduce a formal process for the Proposer of a Modification Proposal to request urgency, and/or for all urgency requests to be passed to the Authority.
- **Detail of new process** – specifically, the format of the urgency request and the extent of ELEXON and the Transmission Company’s input into the Panel’s recommendation. Also, whether the detail of the new process should be specified in the Code or a Code Subsidiary Document (e.g. BSCP40).
- **Potential development of ‘urgency criteria’** – specifically, whether these would be appropriate, and would provide sufficient flexibility to consider each request on a case-by-case basis.
- **Different urgency provisions of other industry codes** (e.g. the CUSC, STC and Network Code) as useful background to P187. Interaction with CUSC Amendment Proposal 87 ‘Revisions to request for urgency process’.
- **Previous Authority view under P28** – consideration of the differences between P28 (where the Authority’s provisional thinking stated that by-passing the Panel altogether would not be appropriate) and P187.
- **Potential interaction with appeals process** – either through relationship between ‘urgency criteria’ and exemption from right of appeal, or through any increase in the number of requests for urgency.
- **Timetable for requests for urgency** – whether it might be appropriate for a Modification Proposal to become urgent at a later stage in its progression (e.g. during the Assessment Procedure).

### **ANNEX 3 BSCCO LEGAL ADVICE REGARDING POTENTIAL ALTERNATIVE**

Attached as separate document Annex 3A.

### **ANNEX 4 MODIFICATION GROUP’S AGREED GUIDANCE REGARDING REQUESTS FOR URGENCY**

*The Modification Group agreed that the following guidance should be included in BSCP40 ‘Change Management’.*

The Authority has previously expressed the view that a Modification Proposal should only be treated as an Urgent Modification Proposal if it could not appropriately be treated as non-urgent.

The Authority has also expressed the view that Urgent Modification Proposals are likely to exhibit at least one of the following characteristics:

- a) There is a very real likelihood of significant commercial impact upon NGC, industry parties, or customers if a Modification Proposal is not urgent;
- b) Safety and security of the network is likely to be impacted if a Modification Proposal is not urgent; and/or
- c) The Modification Proposal is linked to an imminent date-related event.

Please note that the above areas represent guidance only, and are not definitive criteria. There may therefore be occasions where a Modification Proposal is deemed to be urgent by the Authority even where it does not exhibit these characteristics (or, conversely, be deemed non-urgent where one or more of the characteristics is exhibited).

## ANNEX 5 BSCCO ANALYSIS OF NUMBER OF PAST URGENCY REQUESTS

Attached as separate document Annex 5A.

## ANNEX 6 ASSESSMENT PROCEDURE CONSULTATION RESPONSES

Attached as separate document Annex 6A.

## ANNEX 7 TRANSMISSION COMPANY ANALYSIS

| Q | Question  | Response   |
|---|---|--|
| 1 | Please outline any impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the ability of the Transmission Company to discharge its obligations efficiently under the Transmission Licence and on its ability to operate an efficient, economical and co-ordinated transmission system.   | The Transmission Company does not envisage any impact of P187 on its ability to discharge its licence obligations or to operate the system in an efficient, economical and co-ordinated transmission.  |
| 2 | Please outline the views and rationale of the Transmission Company as to whether the Proposed Modification (and, if applicable, any Alternative Modification) would better facilitate achievement of the Applicable BSC Objectives.   | The transparency introduced by P187 will enhance industry's understanding of the BSC governance process with regard to requesting urgency status for a Modification Proposal. Improved process transparency will promote efficiency in the implementation and administration of the Balancing and Settlement arrangements (Applicable BSC Objective (d)), and improved market understanding will promote effective competition in the generation and supply of electricity (Applicable BSC Objective (c)). |
| 3 | Please outline the impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the computer systems and processes of the Transmission Company, including details of any changes to such systems and processes that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification). | The Transmission Company does not envisage any changes to its computer systems and processes as a result of implementation of P187.  |
| 4 | Please outline any potential issues relating to the security of supply arising from the Proposed Modification (and, if applicable, any Alternative Modification).   | <p>The Transmission Company does not envisage any issues that could adversely impact the security of its network or the wider security of supply.</p> <p>A favourable aspect of P187 is the guidelines on urgency criteria which explicitly refer to the safety and security of the network. The Transmission Company considers this reference to be relevant to any issues associated with the security of supply/network.</p>  |
| 5 | Please provide an estimate of the development, capital and operating costs (broken down in reasonable detail) which the Transmission Company anticipates that it would incur in, and as a result of, implementing the Proposed Modification (and, if applicable, any Alternative Modification).   | The Transmission Company does not anticipate that it would incur any development, capital and operating costs as a consequence of P187.  |

| Q | Question  | Response   |
|---|---|--|
| 6 | Please provide details of any consequential changes to Core Industry Documents and/or the System Operator Transmission Owner Code that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification). | The Transmission Company does not envisage any consequential changes to Core Industry Documents or to the STC. However, the Transmission Company notes that a similar proposal (CAP087) has been raised in the CUSC which proposes to amend the treatment of urgency requests for the CUSC Amendment Proposals.  |
| 7 | Any other comments on the Proposed Modification (and Alternative Modification if applicable).   | The Transmission Company notes that the Modification Group did consider an Alternative Modification which was similar to the Modification Proposal P187 but did not require the Panel to pass all urgency requests to the Authority. The Transmission Company notes that, in the Modification Group's view, the Alternative Modification did not constitute a valid Alternative Modification to P187 because it did not fully address the original defect which included a lack of a process for all urgency requests to be passed to the Authority. |

## ANNEX 8 CLARIFICATION OF COSTS

There are several different types of costs relating to the implementation of Modification Proposals. ELEXON implements the majority of Approved Modifications under its CVA or SVA Release Programmes. These Programmes incur a base overhead which is broadly stable whatever the content of the Release. On top of this each Approved Modification incurs an incremental implementation cost. The table of estimated costs of implementing the Proposed/Alternative Modification given in Section 2 of this report has three columns:

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

The cost breakdowns are shown on the following pages.

| <b>PROGRESSING MODIFICATION PROPOSAL</b> |   |
|--|---|
| <b>Meeting Cost</b>                      | This is the cost associated with holding Modification Group meetings and is based on an estimate of the travel expenses claimed by Modification Group members.  |
| <b>Legal/Expert Cost</b>                 | This is the cost associated with obtaining external expert advice, usually legal advice.  |
| <b>Impact Assessment Cost</b>            | Service Provider Impact Assessments are covered by a pre-determined monthly contractual charge. Therefore the cost included in this report is an estimate based on the level of impact assessment that the Modification is expected to require and may not reflect the actual cost attributed to the Modification, which will be based on a percentage of the contractual impact assessment costs for each month that it is assessed. |
| <b>ELEXON Resource</b>                   | This is the ELEXON Resource requirement to progress the Modification Proposal through the Modification Procedures. This is estimated using a standard formula based on the length of the Modification Procedures concerned.   |

| <b>TOTAL DEMAND LED IMPLEMENTATION COSTS</b>   |
|--|
| This is calculated as the sum of the total Service Provider(s) Cost and the total Implementation Cost. The tolerance associated with the Total Demand Led Implementation Cost is calculated as the weighted average of the individual Service Provider(s) Costs and Implementation Costs tolerances. This tolerance will be rounded to the nearest 5%. |

| <b>ELEXON IMPLEMENTATION RESOURCE COSTS</b>   |
|---|
| <p>Cost quoted in man days multiplied by project average daily rate, which represents the resources utilised by ELEXON in supporting the implementation of the Release. This cost is typically funded from the "ELEXON Operational" budget using existing staff, but there may be instances where the total resources required to deliver a Release exceeds the level of available ELEXON resources, in which case additional Demand Led Resources will be required.</p> <p>The ELEXON Implementation Resource Cost will typically have a tolerance of +/- 5% associated with it.</p> |

| <b>ONGOING SUPPORT AND MAINTENANCE COSTS</b> |   |
|--|---|
| <b>ELEXON Operational Cost</b>               | Cost, in man days per annum multiplied by project average daily rate, of operating the revised systems and processes post implementation.   |
| <b>Service Provider Operation Cost</b>       | Cost in £ per annum payable to the Service Provider(s) to cover staffing requirements, software or hardware licensing fees, communications charges or any hardware storage fees associated with the ongoing operation of the revised systems and processes.   |
| <b>Service Provider Maintenance Cost</b>     | Cost quoted in £ per annum payable to the Service Provider(s) to cover the maintenance of the amended BSC Systems. Note that from 1 January 2005, Service Provider Maintenance costs will be covered by a fixed contractual charge and so any Modification Proposals implemented after this date will not incur an ongoing Service Provider Maintenance cost. |