

24 October 2001

URGENT MODIFICATION FURTHER CONSULTATION

MODIFICATION PROPOSAL P37

**To provide for the remedy of past errors in Energy
Contract Notifications and in Metered Volume
Reallocation Notifications**

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

Document Reference P37_UMR_CON

Version no. 1.0

Issue Draft

Date of Issue 24 October 2001

Reason for Issue For Consultation

Author ELEXON

I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
1.0	23/10/01	ELEXON - Trading Strategy		Report for Consultation

Version	Date	Reviewer	Signature	Responsibility
1.0	23/10/01	ELEXON - Chris Rowell		Head of Trading ,ELEXON
		ELEXON –Cathy Woods		ELEXON, Legal Department

Version	Date	Approver	Signature	Responsibility

Version	Date	Authorisation	Signature	Responsibility
1.0	23/09/01	David Warner		P37 Modification Group Chairman

b Distribution

Name	Organisation
BSC Parties	
BSC Panel Members	
The Authority	
BSC Agents	
Core Industry Document Holders	
energywatch	

c Intellectual Property Rights and Copyright

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1 INTRODUCTION

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

An electronic copy of this document can be found on the BSC website, at WWW.ELEXON.CO.UK.

An early consultation on the original Proposal P37 has already been conducted. Subsequently, the P37 Modifications Group have identified a number of clarifications to the original Proposal, and have also formulated an Alternative Proposal.

This document seeks views on the resulting "P37 Clarified" and the Alternative Proposal. For convenience, respondents may wish simply to indicate where their views on these differ from those originally submitted in respect of the original Proposal.

Legal drafting for P37 Clarified and the Alternative has also been produced, and views on this are also invited.

Electronic responses should be sent to: Modifications@elexon.co.uk by 3pm on the 26th of October, 2001 and responses by post should be addressed to the Modifications Department, ELEXON Ltd., 10th floor, 338, Euston Rd., NW1 3BP, again to arrive by 3pm on the 26th of October, 2001. Responses should be marked 'Response to the P37 Further Consultation'.

If you have any queries about the issues raised in this consultation paper, please contact either David Warner, or Neil Cohen, at ELEXON (tel. (0207)-380-4100).

2 BACKGROUND AND TIMESCALES

Modification proposal P37 was submitted by London Electricity, on the 11th of September, 2001. The proposal provides for the remedy of past notification errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications. The proposal seeks to enable this facility on a retrospective basis and hence the facility would be available for a fixed period, after which no further remedy for notification errors would be provided.

A copy of the Modification proposal is available on the ELEXON Website (www.ELEXON.co.uk) and is appended in Annex 1.

Two previous Modification proposals (Modification Proposal P9 and Modification Proposal P19) were concerned with a similar perceived defect, although neither was accepted by the Authority. However, in its determination rejecting Modification Proposal P19, the Authority provided some views as to certain features associated with the general concept of remedying errors in Energy Contract Volume Notifications and Meter Volume Reallocation Notifications. The P37 Proposal refers to the P19 determination.

On the 13th of September 2001, The Authority agreed that this Modification proposal should be progressed as an Urgent Modification and the following timescales were also agreed:

- Initial meeting of the P37 Modification Group; 18/9/01
- Issue Consultation; 21/9/01
- Closing date for responses to consultation; 27/9/01
- Second meeting of the P37 Modification Group; 1/10/01
- Further Consultation 2/10/01
- Issue draft Urgent Modification Report to the Panel; 5/10/01
- Consideration of draft Report by the Panel; 9/10/01
- Issue final Urgent Modification Report to the Authority; 12/10/01

Relevant impact assessments have also been undertaken.

Subsequent changes have been made to the timescales above due to a decision taken following the second Modification Group meeting to request preliminary thinking from the Authority (which was received on the 12th October 2001) and also to accommodate a third Modification Group meeting which was held on the 19th October 2001. The revised timetable is as follows:

- Further consultation 23/10/01
- Issue draft Urgent Modification Report to the Panel; 29/10/01
- Consideration of draft Report by the Panel; 31/10/01

- Issue final Urgent Modification Report to the Authority; 05/11/01

The Modification Group identified a number of clarifications to the original proposal and also formulated an alternative proposal. Section 4 of this document describes the conclusions of the Modifications Group in these regards.

Legal drafting for both P37 Clarified and the alternative proposal has been produced and is included in Annex 2 of this document.

The full Modifications Group Report will be sent to the Panel; the outcomes of this further consultation will also be reported to the Panel.

3 MODIFICATION GROUP CONCLUSIONS

The Modification Group agreed that the following clarifications should be incorporated into proposal P37 to form P37 Clarified:

- **Test for erroneous notifications arising from causes directly attributable to BSC systems** The clause will be modified to exclude any aspects of central system functions where performance is covered by other clauses in the BSC (excluding the 7 day report).
- **Test for erroneous notifications arising from the loss incurred being disproportionate** Reference will be made to the loss being disproportionate to an incentive signal where such a signal relates to a sum that would have been reasonable as an incentive to make correct notifications.
- **Discretion of Panel in rectification** The Panel will be obliged to decline to rectify a claim if prudent systems and processes were not in place, or if prompt action was not taken following an error.
- **Discretion of Panel in rectification** The burden of proof will be explicitly placed on the claimant.
- **Discretion of Panel in rectification** The Panel will retain the discretion as to whether or not to rectify, in the event that an error was directly attributable to BSC Systems, unforeseeable, or disproportionate to an incentive signal.
- **Decision making** An appeals process will be incorporated, whereby any Party can raise an appeal within five working days of a Panel determination, for a fee of £5k, on grounds of new evidence coming to light which could not reasonably have been adduced at the claim hearing, or a perceived defect in due process. The Authority will be the appeals body.
- **Credit checking** No correction to indebtedness will be made in the event of a notification being corrected.

A further point was not included in Modification Group discussions but emerged during legal drafting:

- **Discretion of Panel in rectification** To make explicit that the Panel will decline to rectify in the event that prompt action to mitigate an error was not taken, when such action ought reasonably to have been taken.

The Modification Group also concluded that an alternative proposal should be formulated that would be as per the original proposal, including all the above mentioned clarifications, but which would not incorporate a cap on the "error correction payment" (in the original the error correction payment was set as 20% with a cap of £200,000)

There was a view in the Group that the alternative proposal might better achieve BSC objectives, relative to the original proposal.

There were differing views within the Group as to whether P37 Clarified better met BSC Objectives; there were also differing views as to whether the alternative better achieved BSC objectives, relative to the BSC as currently drafted.

4 CONSULTATION QUESTIONS

4.1 Purpose of and Basis for the Further Consultation

The earlier consultation (P37_UMR_CON) posed a number of questions so as to elicit views on the original proposal P37: responses have been published on the ELEXON website (www.ELEXON.co.uk). Subsequent to that consultation the Modifications Group have formulated:

- Clarifications to the original proposal P37 (See Section 3)
- An Alternative Modification Proposal (See Section 3)

Legal drafting has been produced to reflect both “P37 Clarified” and the Alternative Proposal P37 (See Annexes 2.1 and 2.2).

Views are now invited on P37 Clarified and the Alternative Proposal P37.

In providing these views, respondents may for convenience wish to refer to the questions and their responses in the earlier P37 consultation document. In that case, you may wish to answer the following:

- QF1. Considering P37 Clarified, are your views different from those expressed regarding the original P37? If so, how?
- QF2. Considering the Alternative Proposal P37, are your views different from those expressed regarding the original P37? If so, how?

Alternatively, respondents may if they wish provide a full set of responses to the questions used for the earlier P37 consultation.

Please refer to Section 4.2 below regarding licence condition 7A.2

Views are also now invited on the legal drafting for P37 Clarified and the Alternative Proposal P37

Respondents may wish in particular to answer the following:

- QF3. Does the legal drafting for P37 Clarified fully express the requirements and principles of that proposal?
- QF4. Does the legal drafting for the Alternative Proposal P37 fully express the requirements and principles of that proposal?

The drafting in Annex 2 includes some text in square brackets: respondents may wish to provide views on the inclusion of this text.

4.2 Licence condition 7A.2

As you will be aware, London Electricity (LE) have raised a particular legal issue concerning the definition of 'balancing and settlement arrangements' in NGC's transmission licence. LE contend that the reference to 'contracted' in that definition means 'actually contracted' and it is therefore incumbent on the Panel to recommend, and the Authority to approve, P37 in order better to facilitate achievement of the objective relating to the efficient discharge by NGC of its licence obligations (namely the obligation to have in force a BSC which sets out the terms of the balancing and settlement arrangements). LE have published a legal opinion from James Goudie QC on this issue. ELEXON and the Panel have been advised that there are good arguments which oppose LE's conclusion. In particular, in the context in which the licence condition was put in place, it is very unlikely that it was intended only to mean 'actually contracted' and therefore the existing provisions of the BSC are not inconsistent with the definition of 'balancing and settlement arrangements'. Moreover, the Panel is required to consider proposals by reference to all the Applicable BSC Objectives overall, and is not compelled per se, on the basis of one Objective only, to recommend a modification. The Panel is not required (or equipped) to form a definitive legal view on this issue. However, it needs to be clear on what assumptions and by reference to what factors it is making its recommendations.

Therefore, in giving your views as to whether you think P37 Clarified and/or the Alternative Proposal P37 better facilitate achievement of the Applicable BSC Objectives, you are asked to indicate what assumptions you have made about the legal issue referred to above, and whether your conclusions about the proposals would be different if those assumptions were reversed.

ANNEX 1 APPLICABLE BSC OBJECTIVES

The Applicable BSC Objectives are set out in paragraph 3 of Condition 7A of the NGC Transmission Licence, as follows:

- (a) The efficient discharge by the Transmission Company of the obligations imposed under the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation by the Transmission Company of the Transmission System;
- (c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity; and
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

ANNEX 2 LEGAL DRAFTING

Annex 2.1. Modification P37

The following text shall be inserted in Section P:

6. PAST NOTIFICATION ERRORS

6.1 Meaning of Past Notification Error

6.1.1 For the purposes of this Section P:

- (a) a "**Past Notification Error**" occurred in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was an error in the submission of a Volume Notification on the part of the Volume Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period and where Gate Closure for such Settlement Period occurred prior to the date on which this paragraph 6 comes into effect;
- (b) references in this paragraph 6 to the submission of a Volume Notification:
 - (i) mean the submission of a particular Volume Notification; and
 - (ii) include a failure to submit a Volume Notificationand the provisions of this paragraph 6 shall be construed accordingly;
- (c) for the purposes of paragraph (a), an error in the submission of a Volume Notification will be considered to have occurred only where:
 - (i) the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and
 - (ii) it is clear that a mistake occurred in giving effect to that commitment;
- (d) in relation to a claim of Past Notification Error:
 - (i) the "**relevant**" Volume Notification is the Volume Notification in respect of which the Past Notification Error occurred;
 - (ii) the "**relevant**" Volume Notification Agent is the Volume Notification Agent which submitted or failed to submit (as the case may be) the relevant Volume Notification;
 - (iii) the "**relevant**" Settlement Period is the Settlement Period in respect of which the Past Notification Error occurred;
 - (iv) a "**relevant**" Contract Trading Party is a Contract Trading Party in relation to which the Past Notification Error occurred; and
 - (v) the "**rectified Volume Notification**" is the Volume Notification which would have been made had the Past Notification Error not occurred;

- (vi) the "**relevant**" Settlement Run, in relation to a claim or claims for Past Notification Error, is the next Settlement Run as referred to in paragraph 6.5.1(b);
- (e) in relation to a relevant Contract Trading Party, references to a Past Notification Error are to the Past Notification Error which has (or is alleged to have) occurred in respect of such Party;
- (f) "**Volume Data**" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be;
- (g) "**Relevant Account Energy Imbalance Cashflow**" means the Account Energy Imbalance Cashflow of an Energy Account of a relevant Contract Trading Party in relation to a relevant Settlement Period or, if claims for more than one Past Notification Error in respect of the same Volume Notification are made, the net aggregate amount of such Account Energy Imbalance Cashflows for all relevant Settlement Periods.

6.2 Claiming Past Notification Errors

- 6.2.1 Where a relevant Contract Trading Party considers that there has been a Past Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo, identifying the Past Notification Error and the relevant Settlement Period, provided that no claim of Past Notification Error may be made after the expiry of five days after the date on which this paragraph 6 comes into effect.
- 6.2.2 Where a relevant Contract Trading Party makes a claim of Past Notification Error, such Party shall pay a fee to BSCCo for each such claim, the amount of which (for each such claim, provided that, for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4, claims of Past Notification Error made by a Party in respect of the same Volume Notification shall be treated as a single claim) shall be £5,000 and which shall not be reimbursed in any circumstances. *[Note: on the assumption that the Implementation Date will be 5 days after the date of the Authority's direction to modify, there would be no time for revisions to the fee before the clock starts ticking for submission of claims]*
- 6.2.3 Where a relevant Contract Trading Party makes a claim of Past Notification Error (other than one to which paragraph 1.4.1 applies), the claim shall be accompanied by a statement in writing from the other relevant Contract Trading Party and, where the relevant Volume Notification Agent is not one of the relevant Contract Trading Parties, from the relevant Volume Notification Agent (addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties) confirming that it considers that the Past Notification Error has occurred.
- 6.2.4 A claim of Past Notification Error may not be made in relation to a Volume Notification in respect of which a previous claim has been made (and, accordingly, if a relevant Contract Trading party wishes to claim Past Notification Errors in relation to more than one Settlement Period, a single claim must be made for all such errors).
- 6.2.5 A claim of Past Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if submitted as described in paragraph 6.4.5) would not have been so treated, but without prejudice to paragraph 6.6.2.

6.3 Flagging Past Notification Errors

6.3.1 Where a Party gives notice of a claim of Past Notification Error under paragraph 6.2.1, BSCCo shall within one Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties, and the relevant Volume Notification Agent.

6.4 **Determination of Past Notification Errors**

6.4.1 The Panel shall consider claims of Past Notification Error in accordance with this paragraph 6.4.

6.4.2 For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6, and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so.

6.4.3 Claims of Past Notification Error will be considered in a timely fashion, but having regard (among other things) to the need first to establish appropriate central systems and processes to give effect to the requirements of this paragraph 6, the overall number of claims made and the time reasonably required to investigate each claim.

6.4.4 Where a claim of Past Notification Error is made:

(a) the Panel Secretary shall request:

- (i) the Party claiming the Past Notification Error to provide evidence and information supporting its claim;
- (ii) the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and
- (iii) the relevant Volume Notification Agent and the ECVAAs to provide comments in relation to the claim;

(b) BSCCo shall:

- (i) investigate the matters referred to in paragraph 6.4.7 (and each Trading Party shall provide BSCCo with such information as BSCCo may reasonably request for these purposes); and
- (ii) provide the Panel with a report of its findings, a copy of which shall be made available to the Party claiming the Past Notification Error;

(c) the Panel shall determine in its opinion:

- (i) whether [the Party claiming the Past Notification Error has demonstrated that] there was a Past Notification Error in relation to the relevant Settlement Period;
- (ii) if so, what the Past Notification Error was; and
- (iii) whether the Past Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraphs 6.4.6 and 6.4.7,

and the Panel shall indicate its reasons for its determination;

- (d) the relevant Contract Trading Parties and the relevant Volume Notification Agent shall:
 - (i) provide the Panel with such further information as it may reasonably request to assist it in making its determination; and
 - (ii) confirm to the Panel that the evidence and information provided to the Panel are complete and not misleading;
 - (e) the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent, together with the reasons indicated by the Panel for its determinations and a brief description of the process followed by the Panel in making its determinations;
 - (f) BSCCo shall give such instructions to the ECVA, SAA and FAA as are necessary to give effect to any such rectification;
 - (g) the fee under paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph (d), and shall be paid accordingly.
- 6.4.5 The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to each of the matters referred to in paragraph 6.4.4(c) shall be final and binding on all Parties, subject to paragraph 6.7.
- 6.4.6 Rectification of a Past Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:
- (a) at the time at which the relevant Volume Notification was submitted; or
 - (b) where the Past Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.
- 6.4.7 The Panel shall decline to rectify a Past Notification Error where it considers that the relevant Contract Trading Party and/or the relevant Volume Notification Agent did not (or the relevant Contract Trading Party has failed to demonstrate that it and/or the relevant Volume Notification Agent did):
- (a) at the time that the Past Notification Error occurred, [have in place] [and take all reasonable care to operate] prudent systems and processes in connection with Volume Notifications (including in connection with the submitting and checking of such Notifications), having regard to the circumstances then prevailing; and/or
 - (b) promptly take all appropriate steps:
 - (i) to rectify, reverse or otherwise mitigate the effect of the error (giving rise to one or more such Past Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became [or ought reasonably to have become] aware of such error; and
 - (ii) to avoid a repetition of the said error, following discovery of the error.

6.4.8 For the purposes of paragraph 6.4.4(c), in determining whether or not, subject to paragraphs 6.4.6 and 6.4.7, a Past Notification Error should in all the circumstances be rectified, the Panel may have regard, among other things, to the following factors, where the Panel considers such factors to be relevant:

- (a) the extent to which, in the Panel's view, the Past Notification Error was directly attributable to a failure of BSC Systems, subject to paragraph 6.4.9;
- (b) the extent to which, in the Panel's view, the Past Notification Error was directly attributable to an inaccuracy in or the non-availability of the Forward Notification Summary as referred to in Table 3 of Annex V-1 but otherwise without prejudice to the provisions of Section V1.1.4;
- (c) the extent to which, in the Panel's view, the Past Notification Error and/or the magnitude of the loss suffered by the relevant Contract Trading Parties in respect of Trading Charges as a result of the error was attributable to a combination of circumstances which could not reasonably have been foreseen; or
- (d) the extent to which, in the Panel's view, the magnitude of the loss suffered by one or both of the relevant Contract Trading Parties in respect of Trading Charges as a result of the Past Notification Error was wholly disproportionate, due weight being given to the desirability of incentivising Contract Trading Parties to avoid mistakes in the submission of Volume Notifications.

6.4.9 For the avoidance of doubt, no claim may be made under this paragraph 6 in respect of a Volume Notification to which the provisions of paragraph 5 apply.

6.5 Rectification of Past Notification Errors

6.5.1 Where the Panel determines that a Past Notification Error occurred:

- (a) the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Past Notification Error as determined by the Panel;
- (b) such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made.

6.5.2 Where, in relation to a claim for Past Notification Error (or, if claims for more than one Past Notification Error in respect of the same Volume Notification are made, in relation to the sum of all such claims in aggregate), the adjustments to the data as determined pursuant to paragraph 6.5.1 result in a [reduced debit or increased credit] in the Relevant Account Energy Imbalance Cashflow of the relevant Contract Trading Parties (or either of them individually), such Party or Parties shall be liable to pay to the BSC Clearer the Error Correction Payment(s) applicable to its or their Energy Account(s) in accordance with the further provisions of this paragraph 6.5.

6.5.3 BSCCo shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:

$$ECP_a = \min\{0.2 * \max(\sum_j (NQAEI_{aj} - QAEI_{aj}), 0), MECP\}$$

where:

- (a) Σ_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
 - (b) $QAEI_{aj}$ is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j ;
 - (c) $NQAEI_{aj}$ (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of $QAEI_{aj}$ for Energy Account a and relevant Settlement Period j , had the Past Notification Error not been rectified; and
 - (d) MECP is £200,000.
- 6.5.4 In relation to Past Notification Errors, the amount of the Error Correction Payment(s) made by the relevant Contract Trading Parties shall be paid by the BSC Clearer to Trading Parties by way of Error Correction Payment Reallocation in accordance with this paragraph 6.5.
- 6.5.5 Where an Error Correction Payment is payable, BSCCo shall calculate the Error Correction Payment Reallocation ($ECPR_a$) for each Energy Account of each Trading Party as follows:
- (a) if rectification of the relevant Past Notification Error(s) in respect of which the Error Correction Payment is payable results in a [reduced debit or increased credit] (or net reduced debit or increased credit) in the Account Energy Imbalance Cashflow for Energy Account a , then:
 $ECPR_a = 0$
 - (b) otherwise:
 $ECPR_a = ECP_a * \Sigma_j RCRP_{aj} / \Sigma_j \Sigma_a RCRP_{aj}$
 where:
 - (i) Σ_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
 - (iii) Σ_a is the sum over all Energy Accounts a other than [those referred to in paragraph (a)].
- 6.5.6 The amounts of the entitlements and liabilities under paragraphs 6.5.3 and 6.5.5 shall be Ad Hoc Trading Charges for the purposes of Section N6.9.

6.6 Credit Arrangements

- 6.6.1 Where a Past Notification Error is rectified, the rectification shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time of the rectification).
- 6.6.2 In accordance with paragraph 6.6.1:
- (a) where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted:
 - (i) Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and
 - (ii) to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Past Notification Error and Section M4 shall not apply in relation thereto;
 - (b) where, in accordance with Section M, a relevant Contract Trading Party would be or would have been treated as being in Level 2 Credit Default if the rectified Volume Notification had been submitted, and is or was not so treated, the rectification of the Past Notification Error shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.

6.6.3 For the purposes of this paragraph 6.6, the time of the rectification of a Past Notification Error is the time with effect from which the ECVAA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.

6.7 Appeal to Authority

6.7.1 Where the Panel (or Panel Committee) makes a determination pursuant to paragraph 6.4.4(c), any Party may refer such determination to the Authority subject to the further provisions of this paragraph 6.7.

6.7.2 A reference to the Authority pursuant to paragraph 6.7.1 shall be made:

- (a) no later than five Business Days after the relevant determination is notified to all Contract Trading Parties under paragraph 6.4.4(e);
- (b) solely on one of the grounds set out in paragraph 6.7.3;
- (c) by notice in writing to the Authority, copied to the Panel Chairman, setting out the grounds upon which the reference is made and the reasons why the Party making such reference believes that the determination should be overturned or remitted to the Panel (as the case may be); and
- (d) subject to payment by the Party making such reference of a fee of £5000 (in respect of each such reference or, where more than one reference is made at the same time in relation to the same Volume Notification, in respect of all such references together), such fee to be invoiced and paid in accordance with the provisions, mutatis mutandis, of paragraph 6.4.4(g).

6.7.3 The grounds referred to in paragraph 6.7.3 are either:

- (a) the procedures set out in this paragraph 6 have not been followed in relation to the claim of Past Notification Error(s) forming the subject of the relevant determination; or
- (b) new information has emerged since the relevant determination was made, which is or is likely to be of relevance to the determination.

6.7.4 Where a determination of the Panel (or Panel Committee) is referred to the Authority pursuant to paragraph 6.7.1, and provided the Authority is satisfied that one of the grounds referred to in paragraph 6.7.3 applies, the Authority may:

- (a) substitute for the Panel's (or Panel Committee's) determination its own determination of the matter(s) forming the subject of such determination; or
- (b) remit the matter(s) back to the Panel (or Panel Committee) to be decided again in accordance with the procedures of this paragraph 6 or in the light of the new information which has emerged (as the case may be); or
- (c) uphold the relevant determination.

6.7.5 The decision of the Authority shall be final and binding.

6.7.6 The Panel (or Panel Committee) and the Authority shall not act as an expert or an arbitrator in making any decisions pursuant to this paragraph 6 and the Arbitration Act 1996 shall not apply in respect of any such decisions.

Section D

The following text shall be inserted in Section D4.1(a)(v):

- (v) any amounts paid to BSCCO by way of fee pursuant to Section P6.2.2, Section P6.7.2 or Section A7.2.3;

Section G

The following text shall be inserted as a new Section G1.1.2(b) and the existing Section G1.1.2(b) and remaining paragraphs of Sections G1.1.2 shall be renumbered accordingly:

- (b) Section P6, which addresses the possibility of notification errors in the submission of Volume Notifications;

Section M

The following text shall be inserted as a new Section M3.5.2 and the title Section M3.5 shall be amended to read "Result of Trading Dispute, etc":

3.5.2 This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.

Annex X-1

The following new definitions shall be inserted in Annex X-1:

"**Past Notification Error**" has the meaning given to that term in Section P6.1.1(a);

"**Volume Data**" has the meaning given to that term in Section P6.1.1(f);

Annex X-2

The following new terms and acronyms shall be inserted in Table X-2 of Annex X-2:

Defined Term	Acronym	Units	Definition/Explanatory Text
Error Correction Payment	ECP _a		The payment amount calculated in accordance with Section P6.5.3.
Error Correction Payment Reallocation	ECPR _a		The payment reallocation amount calculated in accordance with Section P6.5.5.

Annex 2.2. Alternative Modification P37

As for P37 Clarified (Annex A2.1 above), subject to the following:

As above, subject to the following:

Section P6.5.3 shall instead read as follows:

6.5.3 BSCCo shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:

$$ECP_a = 0.2 * \max (\sum_j (NQAEI_{aj} - QAEI_{aj}), 0)$$

where:

- (a) \sum_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
- (b) $QAEI_{aj}$ is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j ;
- (c) $NQAEI_{aj}$ (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of $QAEI_{aj}$ for Energy Account a and relevant Settlement Period j , had the Past Notification Error not been rectified; and