

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Stage 01: Initial Written Assessment

P250: Prevention of “Timing Out” of Authority decisions on Modification Proposals

P250 would oblige the BSC Panel to construct Modification Proposal Implementation Dates in such a way that the Authority cannot be ‘timed out’ from making a decision.

P250 would also give the BSC Panel a formal mechanism to:

- ask the Authority for a likely decision date on a Modification Proposal
- advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date.



ELEXON recommends
A 2 month Assessment Procedure



Medium Impact:
BSC Panel, the Authority, Modification Groups and ELEXON



Low Impact:
All participants affected by Modification Proposal Implementation Dates

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About this document:

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 14 January 2010. The Panel will consider the recommendations and agree how to progress P250.

Further information is available in the P250 Modification Proposal which is an appendix to this document.



Any questions?

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1 Why Change?

How do we currently construct BSC Modification Implementation Dates?

The BSC requires ELEXON (in consultation with any Modification Group) to provide “the proposed steps, timetable and programme plan for such implementation consistent with the proposed Implementation Date”.

The BSC itself does not set out a specific construction for Implementation Dates, but just refers to a ‘proposed Implementation Date’. It obliges:

- Modification Groups to provide a ‘proposed Implementation Date’ to the Panel in its Assessment Report;
- The Panel to provisionally recommend a ‘proposed Implementation Date’, and consult Parties on that recommendation as part of its Draft Modification Report; and
- The Panel to provide its final ‘proposed Implementation Date’ to the Authority in the Final Modification Report.

Each Modification requires a lead time to implement, i.e. the time to make the necessary system, process and/or document changes. This lead time can range from days to months, depending on the implementation activities involved. As such, each proposed Implementation Date comes with a ‘decision by date’. This is the date by which the Authority needs to make a decision in order to implement the Modification Proposal on the relevant Implementation Date.

The Modification Group and ELEXON initially create the Implementation Dates and ‘decision by’ dates taking account of the implementation lead times provided as part of the impact assessments from Parties, Party Agents, ELEXON, BSC Agents and any other affected participants. In developing these dates, we also estimate (using any advice provided by the Authority during the Modification Proposal’s progression) how long the Authority is likely to require to make its decision. This includes considering whether the Authority may need to undertake a Regulatory Impact Assessment (RIA).

Implementation Dates usually (though not always) takes the form of one of the following two constructions:

Example 1 – Two set decision dates with linked Implementation Dates

“The recommended Implementation Date for PXXX is:

- **[Implementation Date A]** if an Authority decision is received on or before **[‘decision by’ date 1]**; or
- **[Implementation Date B]** if an Authority decision is received after **[‘decision by’ date 1]** but on or before **[‘decision by’ date 2]**.

We use this Implementation Date construction when there is significant work required by either the industry or ELEXON. This provides ELEXON and the industry with certainty for planning implementation activities and associated resources. These types of Implementation Dates are often aligned with the dates of standard BSC Releases (usually for system changes). However, there may be other reasons for aligning implementation with a fixed date – for example, annual contract rounds, implementation of primary legislation, a change to another industry code, or the start of a BSC/financial year.

Where this date construction is used, it is current working practice to provide the Authority with two Implementation Dates.

Example 2 – Set number of Working Days after an Authority decision

The recommended Implementation Date for PXXX is:

- **[X] Working Days** following an Authority decision.

We use this Implementation Date construction where there are documentation only changes that do not need to be tied to a particular fixed date, or, potentially, if it is an urgent Modification where a quick Implementation Date is required.

Other constructions may occasionally be used (e.g. in exceptional circumstances some changes may have a retrospective Implementation Date).

The implementation approach that is put forward in the Final Modification Report depends on what the industry, Modification Groups and the Panel believe to be the most appropriate and efficient.

What's 'timing out' of Authority Decisions and why is it a problem?

In 2007/08 the Authority was unable to make a decision on Modification Proposals P198, P200, P203 and P204 by the final 'decision by' date provided in the Final Modification Report. A subsequent Judicial Review ruled that if the Authority did not make a decision by the final date in the report then it lost its ability to make a decision on the Modification Proposals (such that they were effectively 'timed out').

'Timing out' of a Modification Proposal may cause additional work for the Panel, the industry and ELEXON. If a Party wants to progress a 'timed out' Modification (i.e. it is still seen as a good idea) then a new Modification Proposal must be raised. This requires ELEXON and the industry to repeat some of the work of the original Modification Proposal.

'Timing out' can only occur where an Implementation Date includes a 'decision by' date as in Example 1. Other constructions such as that in Example 2 are 'open-ended' dates in the sense that they cannot 'time out'.

Can 'timing out' only affect changes on which the Authority has not yet made a decision?

Yes. In 2005, Approved Modification P180 introduced BSC provisions to deal with circumstances where an approved or Rejected Modification Proposal could be 'timed out' as a consequence of a legal challenge (a Judicial Review to the High Court, or an appeal to the Competition Commission).

This occurred in 2004 for Modification Proposal P82. P82 had been approved by the Authority, but subsequently became the subject of a Judicial Review which resulted in the modification being remitted to the Authority for it to re-make its decision (effectively quashing the Authority's earlier approval). Because the original 'decision by' dates had gone past, P82 was 'timed out' and the implementation work which the industry had already completed was lost (with an associated cost).

The P180 BSC provisions oblige the Panel, where an approved or Rejected modification is subject to a legal challenge, to propose 'extra' Implementation Dates ('Conditional Implementation Dates') to the Authority if needed to stop the possibility of 'timing out'. The Panel proposes these dates after consultation with the industry, and they effectively overwrite either the approved Implementation Date (for an Approved Modification) or the proposed dates in the Final Modification Report (for a Rejected Modification Proposal).

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The trigger for these provisions is a legal challenge being brought against a modification on which the Authority has already made a decision. The P180 provisions therefore cannot be used for pending Modification Proposals on which the Authority has not made a decision. This is the case even if the pending Modification Proposal is subject to a legal challenge through a Judicial Review (as was the case for P198, P200, P203 and P204).¹ If the Authority is unable to make its decision on a Pending Modification Proposal by the last 'decision by' date in the Final Modification Report, then, under the ruling of the High Court in 2008, the Modification Proposal would be 'timed out'.

Previous industry discussion

The industry has previously discussed the possibility of adopting a different date construction which cannot 'time out'. These discussions have either considered changes using a working practice change, a BSC Modification Proposal, or a new Transmission Licence requirement

Details of these discussions can be found in:

- Panel paper 80/004 (August 2004);²
- The Standing [Issue 10](#) Group's report to the Panel (October 2004);
- Panel paper 144/08 (September 2008);
- The BSC Panel's and ELEXON's [responses](#) to Ofgem's November 2008 open letter (January 2009); and
- The BSC Panel's and ELEXON's [responses](#) to Ofgem's May 2009 consultation.

Ofgem has previously consulted on draft Transmission Licence changes designed to remove the possibility of 'timing out' under the BSC, Connection and Use of System Code and Uniform Network Code (see the May 2009 consultation referred to above). However, the Proposer of P250 considers that it is preferable if any obligations are developed and introduced through the industry code change processes.

Industry concerns about removing time constraints on Authority decisions

During the previous industry discussion, concerns were raised about removing time constraints on the Authority's decision-making ability. Participants in favour of retaining 'decision by' dates noted that:

- they provide certainty regarding potential Implementation Dates; and
- that the original analysis in the Final Modification Report could become out of date if a long period of time elapses between the submission of the report and the Authority's decision

P250 seeks to address some of these concerns by introducing a formal process for the Panel to request for an indication of the likely decision date, and also for the Panel to advise the Authority if any analysis has become (or is likely to become) out of date.

¹ A Party can only appeal Approved or Rejected Modification Proposals to the Competition Commission, because the criteria for an appeal are that the Authority's decision was contrary to the Panel's recommendation. However, the ability to bring a Judicial Review is not limited in this way.

² Historic Panel papers have been archived from the BSC Website, but you can request a copy of these through the Lead Analyst or the BSC Helpdesk.

Related changes

Modification Proposal P247 'Proposer 'ownership' of Modification Proposals' was raised by E.ON UK on 1 December 2009. P247 would allow the Proposer of a BSC Modification Proposal to keep ownership of their change (i.e. to continue to shape and control the evolution of their original proposal) during its assessment. Consistent with this principle, the Proposer would be able to withdraw their change at any time before it is submitted to the Authority.

Although P247 and P250 are separate changes, and have no direct interaction, they are both seeking to amend the BSC change process and require similar industry expertise. As such it makes sense to hold the Modification Group meetings for P247 and P250 on the same days where possible.

2 Solution

How will P250 fix the problems

P250 would introduce a BSC obligation on the Panel to propose Implementation Dates in such a way that "timing out" can be avoided in future.

In practice, there are several different ways in which the Panel could construct Implementation Dates to avoid 'timing out' while continuing to reflect the need for an implementation lead time. Some of these have previously been discussed by the industry in the papers referred to above. The Proposer does not want to hard-wire a specific Implementation Date construction into the BSC, to retain flexibility for the industry to develop the most appropriate constructions for individual changes. Instead, the Proposer wants to place an obligation on the Panel to ensure that, whatever the construction in practice, 'timing out' cannot occur. It would then be for the Panel to make sure that its working practices are consistent with this obligation.

P250 would also give the Panel a formal mechanism to:

- ask the Authority for a likely decision date on a Modification Proposal; and
- advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date.

P250 does not in itself introduce the ability for the Panel to revise analysis or its original recommendation in the Final Modification Report. This is because, as part of the ongoing Governance Review, Ofgem is already proposing to introduce an ability for it to 'send back' Modification Proposals to the Panel for further analysis where it feels that the original analysis in a Final Modification Report is deficient. P250 therefore simply seeks to give the Panel a formal mechanism for it to alert the Authority that the analysis may be out of date.

How will these changes better facilitate the Applicable BSC Objectives?

P250 argues that these changes will better facilitate Applicable BSC Objective (d) by:

- Preventing a potential waste of industry resources by reducing/removing the potential for Authority decisions on Modification Proposals to 'time out'; and
- Ensuring that the validity of underlying assumptions and analysis which support a Panel recommendation can be questioned should circumstances surrounding the Modification Proposal change after a period of time has elapsed.



How would P250 interact with the Authority?

It should be noted that the BSC cannot place obligations on the Authority, as the Authority is not a BSC signatory.

P250 would provide a formal route for the Panel to request likely decision dates and inform the Authority of out of date analysis. However, P250 could not oblige the Authority to respond.

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3 Proposed Progression

We recommend forming the P250 Modification Group from members of the Governance Standing Modification Group (GSMG), from which we have already drawn members for the P247 Modification Group.

Terms of Reference

We believe that the Group will need to consider the following areas:

P250 Terms of Reference	
Ref	Area
1	Determine the best wording for the obligation on the BSC Panel to construct Modification Proposal Implementation Dates in such a way that the Authority would not be timed out from making a decision. We agree with the Proposer that the precise way of constructing the Implementation Date should not be hard-wired into the BSC. Different Modification Proposals may require different approaches and a single method could be inflexible and constrain the Modification Group and the Panel.
2	Consider whether the new obligation would supersede the existing 'Conditional Implementation Date' provisions for Approved/Rejected Modification Proposals in BSC F2.11 (or whether P250 should be kept separate and only apply to Pending Modification Proposals).
3	Consider the process and determine the BSC wording for the Panel to write to the Authority to: <ul style="list-style-type: none"> ask the Authority for a likely decision date on a Modification Proposal advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date. This includes considering whether these new processes should be additionally reported in the Monthly Progress Report to the Authority (BSC F1.4).
4	Consider the effect of P250 on Applicable BSC Objective (d) and any other relevant BSC Objective(s).
5	Consider whether an Alternative Modification is required.
6	Identify the most effective implementation approach for P250.

Timetable and costs

Estimated progression costs based on proposed timetable	
Meeting costs (including Modification Group member expenses)	£750 (assuming 3 meetings with the meeting costs shared between P247 and P250)
Non-ELEXON legal and expert costs	£0
Service Provider impact assessment costs	£0
ELEXON resource	37 man days, equating to £8,880

The timetable on the following page is based on sharing meetings with P247 as far as possible (noting that P247 is already one month into its 3-month Assessment Procedure).

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We believe that less meetings will be needed for P250 than P247, such that it will be possible to progress P250 in two months – aligning the consultation and Assessment Report timescales for the two modifications.

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4 Likely Impacts

Impact on BSC Systems and process

BSC System/Process	Potential impact
BSC Systems	None

Impact on BSC Agent/service provider contractual arrangements

BSC Agent/service provider contract	Potential impact
BSC Agent/service providers	None

Impact on BSC Parties and Party Agents

All Parties and Party Agents would be impacted to the extent that they are affected by Implementation Dates.

Impact on Transmission Company

The Transmission Company would be impacted to the extent that it is affected by Implementation Dates.

Impact on ELEXON

Area of ELEXON's business	Potential impact
Change Delivery (including the Modification Secretary)	<p>ELEXON would be required to assist the Modification Group and the Panel in formulating Implementation Dates that prevent Modification Proposals being timed out.</p> <p>The Modification Secretary would be required to write to the Authority on behalf of the Panel in order to:</p> <ul style="list-style-type: none"> ask the Authority for a likely decision date on a Modification Proposal; or advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date.

Impact on Code

Code section	Potential impact
Section F	Additional obligations would need to be inserted into Section F.

Impact on Code Subsidiary Documents

CSD	Potential impact
BSCP40	At this time no impact is expected on BSCP40 'Change Management' or any other Code Subsidiary Documents

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Impact on Core Industry Documents and other documents	
Document	Potential impact
Connection and Use of System Code (CUSC) / Uniform Network Code (UNC)	National Grid has noted its intention to raise similar proposals to amend the CUSC/UNC to prevent 'timing out' occurring under their change processes.

Other Impacts	
Item impacted	Potential impact
BSC Panel	<p>The Panel would have a new obligation to construct Implementation Dates that prevented Modification Proposals being timed out.</p> <p>The Panel would also have a formal mechanism to:</p> <ul style="list-style-type: none"> ask the Authority for a likely decision date on a Modification Proposal advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date.
Authority	<p>The Authority's decision making process would be impacted as:</p> <ul style="list-style-type: none"> Implementation Dates would be constructed to prevent Modification Proposals being timed out; and The Panel could write to the Authority to ask the Authority for a likely decision date on a Modification Proposal, or advise the Authority if the analysis contained in the Final Modification Report has become (or will shortly become) out of date. <p>The BSC could not oblige the Authority to take any action as a result of this letter. However, the Authority may wish to update the analysis itself under its existing RIA process, or (if its proposed 'send back' process is introduced) send the Modification Proposal back to the Panel for further analysis.</p>

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5 Recommendations



On the basis of the initial written assessment, ELEXON invites the Panel to:

- DETERMINE that Modification Proposal P250 progresses to the Assessment Procedure;
- AGREE the Assessment Procedure timetable such that an Assessment Report should be completed and submitted to the Panel at its meeting on 11 March 2010;
- DETERMINE that the P250 Modification Group should be formed from members of the Governance Standing Modification Group; and
- AGREE the Modification Group's Terms of Reference.

Recommendation

We recommend a 2 month Assessment Procedure.

6 Further Information

Further information is included in the P250 Modification Proposal form, Attachment A.

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Modification Proposal – BSCP40/03	MP No: P250 <i>(mandatory by BSCCo)</i>
<p>Title of Modification Proposal <i>(mandatory by originator):</i></p> <p>Prevention of "Timing Out" of Authority decisions on Modification Proposals</p>	
<p>Submission Date <i>(mandatory by originator):</i></p> <p>4 January 2010</p>	
<p>Description of Proposed Modification <i>(mandatory by originator)</i></p> <p>This Modification Proposal intends to remove the potential for an Authority decision on a Modification Proposal to "time out". "Timing out" occurred in 2007 when the Authority was unable to provide its decision on Modification Proposals P198, P200, P203 and P204 before the final date allotted for such a decision in the Final Modification Report. A subsequent Judicial Review ruled that when the Authority did not make its decision by the latest date included in the Final Modification Reports, it lost the ability to make any decision on those Proposals.</p> <p>Following the Judgement, Ofgem issued a number of industry consultations, the most recent of which, in May 2009, included indicative modifications to National Grid's Transmission/Transporter licences to try and prevent "timing out" reoccurring. National Grid recognises the issues raised during the industry consultations and considers that raising a Modification Proposal is the most efficient way to address these. We also intend to raise proposals to amend the CUSC and UNC to ensure consistency across the industry codes.</p> <p>This Modification Proposal has two elements:</p> <p>1) A proposal to introduce a code obligation on the BSC Panel to propose Implementation Dates in such a way that "timing out" can be avoided in future. For example, for some proposals, it is working practice for Modification Groups and the Panel, in consultation with ELEXON and the industry, to provide two sets of proposed Implementation Dates in the following format:</p> <p>Implementation date of AA, based on Authority decision received on or before BB; or Implementation date of CC, based on Authority decision received after BB, but on or before DD.</p> <p>Our proposal is to place an obligation on the Panel that, however it constructs Implementation Dates, the construction of these dates must not put the Authority in a position where it can "time out" from being able to make a decision.</p> <p>We recognise that there are potentially several different ways in which this could be achieved in practice, and that different Modification Proposals may require different Implementation Date constructions. For example, documentation-only changes often use an 'X Working Days after an Authority decision' construction, and some modifications occasionally have retrospective Implementation Dates. We therefore do not suggest 'hard-wiring' a specific Implementation Date construction in the Code, but simply to place an obligation on the Panel to ensure that (whatever the construction) "timing out" cannot occur.</p>	

Modification Proposal – BSCP40/03	MP No: P250 <i>(mandatory by BSCCo)</i>
<p>2) In recognition of industry concerns regarding timely decisions and "shelf-life" of analysis which supports a Panel recommendation for a Modification Proposal, the second part of this proposal seeks to incorporate provisions for the Panel to inform the Authority that the analysis contained in a Final Modification Report may be out of date. Specifically we note that 'decide by' dates, as it the present practice for some Proposals, may offer a way of ensuring analysis does not become out of date. Our Proposal is therefore to introduce a mechanism, to allow the Panel to:</p> <ul style="list-style-type: none"> • Where it is reasonable and prudent to do so, request the Authority to give an indication of the likely date by which the Authority's decision shall be made, for example if the Panel feel there is a reasonable risk that analysis may soon become out of date; • Should the circumstance occur, provide the Authority of any detail of why analysis has become out of date. The purpose of such information would be, for example, to allow the Authority to undertake additional analysis as part of a Regulatory Impact Assessment. <p>Similar provisions to these exist within the UNC Modification Rules. The relevant section of the Modification Rules is included as an attachment to this Proposal.</p> <p>We note that, as part of Ofgem's Governance Review, Ofgem is proposing to introduce an ability for it to 'send back' Modification Proposals to the Panel for further analysis where it feels that the original analysis in a Final Modification Report is deficient. Our Modification Proposal does not in itself seek to introduce the ability for the Panel to revise analysis, but simply to give the Panel a mechanism (which could be through a letter from the Modification Secretary on behalf of the Panel) for it to alert the Authority that the analysis may be out of date. If Ofgem decides to separately introduce its proposed 'send back' process, this will allow the Panel (if requested by Ofgem) to also update the analysis.</p>	
<p>Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by originator)</i></p> <p>This Modification Proposal seeks to address two issues:</p> <p>a) "Timing Out" of Authority decisions on Modification Proposals. A description of the circumstances which can cause "timing out" is included in the section above. The result of "timing out" is to cause uncertainty among the industry as to the future of a Modification Proposal, as well as the timescales surrounding that proposal. It also has the potential to waste resources in terms of the costs incurred by industry participants in raising and considering a Modification Proposal which may then "time out".</p> <p>b) Ongoing validity of industry analysis supporting a Panel recommendation. There is a concern that, where a significant period of time has elapsed between a recommendation being provided to the Authority and the Authority making a decision, the underlying circumstances will have changed. Such a change could effectively render any supporting analysis "invalid" and therefore bring into question the validity of the recommendation under consideration. This issue was raised in the Judgment published after the hearing on P198, P200, P203 & P204 in May 2008 (see</p>	

Modification Proposal – BSCP40/03	MP No: P250 <i>(mandatory by BSCCo)</i>
paragraph 83).	
<p>Impact on Code <i>(optional by originator)</i></p> <p>National Grid considers that amendments to Section F of the BSC will be required to effect this change.</p>	
<p>Impact on Core Industry Documents or System Operator-Transmission Owner Code <i>(optional by originator)</i></p> <p>National Grid is not aware of any impacts on Core Industry Documents or the STC.</p>	
<p>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by originator)</i></p> <p>This proposal may impact on the processes undertaken by ELEXON, Modification Groups and the Panel to provide proposed Implementation Dates.</p>	
<p>Impact on other Configurable Items <i>(optional by originator)</i></p> <p>National Grid is not aware of any impacts on other Configurable Items.</p>	
<p>Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by originator)</i></p> <p>National Grid considers that the Proposed Modification better facilitates achievement of Applicable BSC Objective (d) <i>"promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2"</i> by:</p> <ol style="list-style-type: none"> a) reducing/removing the potential for Authority decisions on Modification Proposals to "time out", thereby preventing a potential waste of industry resource and the associated costs incurred; b) ensuring that the validity of underlying assumptions/analysis which support a Panel recommendation can be questioned should circumstances surrounding the Modification Proposal change after a period of time has elapsed. 	

Modification Proposal – BSCP40/03	MP No: P250 <i>(mandatory by BSCCo)</i>
Urgency Recommended: No	
Justification for Urgency Recommendation <i>(mandatory by originator if recommending progression as an Urgent Modification Proposal)</i>	
N/A	
Details of Proposer:	
<i>Name: David Smith</i>	
<i>Organisation: National Grid Electricity Transmission plc</i>	
<i>Telephone Number: 01926 65534</i>	
<i>Email Address: david.m.smith@uk.ngrid.com</i>	
Details of Proposer’s Representative:	
<i>Name: Alex Thomason</i>	
<i>Organisation: National Grid Electricity Transmission plc</i>	
<i>Telephone Number: 01926 656379</i>	
<i>Email address: alex.thomason@uk.ngrid.com</i>	
Details of Representative’s Alternate:	
<i>Name</i>	
<i>Organisation</i>	
<i>Telephone Number</i>	
<i>Email address</i>	
Attachments: Yes	
If Yes, Title and No. of Pages of Each Attachment:	
Attachment A: Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009 (1 page)	

Attachment A: Paragraph 9.5 of the UNC Modification Rules, version 3.04, dated 17 April 2009**9.5 Further Consultation**

9.5.1 If, in respect of a Modification Proposal which is the subject of a Modification Report previously submitted to the Authority by the Transporters in accordance with paragraph 9.3.4 or 10.2:

(a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or

(b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to that Modification have materially changed,

the Secretary shall place that Modification Proposal on the Agenda for consideration at the next Modification Panel meeting.

9.5.2 Having considered the circumstances relating to the Modification Proposal which is subject to paragraph 9.5.1, the Modification Panel may determine that:

(a) the Secretary should request the Authority to give an indication of the likely date by which the Authority's decision shall be made; or

(b) the Transporters should within five (5) days of the date of the meeting prepare and circulate a notice to each Transporter, Users and Non-Code Parties outlining the change in circumstances or reasons for delay and inviting further representations within ten (10) days of the date of the notice; or

(c) the Secretary should place the Modification Proposal on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel.

9.5.3 If the Modification Panel makes a determination in accordance with 9.5.2(a) then the Secretary shall within five (5) Business Days formally request a response from the Authority and place the Modification Proposal on the Agenda for further consideration at the next Modification Panel meeting, it being recognised at all times that the Authority is not obliged, as a result of a request pursuant to 9.5.2(a), to provide any response or indication.

9.5.4 If the Modification Panel makes a determination in accordance with 9.5.2(b) the Transporters shall within five (5) Business Days of the date upon which the invitation for representations closed prepare, and submit to the Secretary a supplemental report (which need not be in the form of a Modification Report) and also procure that the Secretary submits that report and copies of any representations received to the Authority and circulates a copy to each Transporter, Users and Non-Code Parties.

9.5.5 Any Report submitted to the Authority under paragraph 9.5.4 shall be supplemental to the Modification Report. Supplemental reports may, but need not, express a view and recommendation which confirms those expressed in the Modification Report to which it refers.