



April 2003

ASSESSMENT REPORT

Modification Proposal P115 – Disapplication of Supplier Charges Under Certain Circumstances

**Prepared by the Volume Allocation Standing Modification Group
on behalf of the Balancing and Settlement Code Panel**

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I DOCUMENT CONTROL

a Authorities

Version	Date	Author	Signature	Change Reference
0.1	28/03/03	Change Delivery		Initial review by VASMG
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Version	Date	Reviewer	Signature	Responsibility
0.1	28/03/03	Change Delivery		Initial review by VASMG
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b Distribution

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

c Related Documents

- 1 P115 Interim Report – Panel Paper 59/016 – 13 March 2003
- 2 Letter requesting Authority's Provisional Thinking – 27 March 2003
- 3 SVG Paper 25/351 – 4 March 2003 – P115 Feedback from the VASMG on generic SVA issues identified.
- 4 Modification Proposal P115 Assessment Consultation – P115AC – 5 March 2003

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendations

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal P115 during the Assessment Procedure, the Volume Allocation Standing Modification Group ('the Group') recommends that the Balancing and Settlement Code Panel ('the Panel') is invited to:

- a) **NOTE the P115 Assessment Report and the recommendations of the Volume Allocation Standing Modification Group**
- b) **NOTE that the Group are unable to identify a viable solution to the reported defect and that no legal text has been provided;**
- c) **NOTE that the Group believe further work is required, outside of this Modification Proposal, to clarify the existing obligations for Supplier Force Majeure;**
- d) **AGREE that the Proposed Modification P115 should not be made;**
- e) **In the event that the Authority determines that the Proposed Modification P115 should be made AGREE an Implementation Date of 01 January 2005, if a decision is received by 1 September 2003, and an Implementation Date of 1 May 2005, if a decision is received by 1 January 2004;**
- f) **CONSULT with the Authority to determine if they would like the draft Modification Report to contain Legal Text;**
- g) **If the Authority do not require Legal Text then:**
 - i) **AGREE that Modification Proposal P115 be submitted to the Report Phase in accordance with Section F2.7 of the Code;**
 - ii) **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel Meeting on 8 May 2003;**
 - iii) **NOTE ELEXON's recommendation that SVG should be actioned, in conjunction with PAB, to further investigate the existing provisions for Supplier Force Majeure and provide recommendations on how to address any deficiencies;**
- h) **Alternatively if the Authority require Legal Text then:**
 - i) **AGREE that P115 should remain in the Assessment Procedure and a new timetable of 6 months be defined.**

1.2 Background

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

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

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

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

1.3 Rationale for Recommendations

P115 raises a number of difficult assessment issues. When P115 was first presented to the Panel it was noted that there were aspects of the definition of P115 that were unclear, which would have supported the initial use of the Definition Procedure. However, it was believed that in order to gain a good understanding of the underlying issues, it was necessary to start activities associated with the Assessment Procedure and to start assessing some aspects of the Modification Proposal. This approach has proved very beneficial to the Group and also explains the range of issues considered by the Group and the progress made.

There is widespread support, within both the Group and also the consultation responses, for the principle of being able to disapply charges under certain circumstances. The Group recognise that the combination of Performance Levels already set to less than 100%, and the potential to use the provisions for claiming Supplier Force Majeure (SFM), also provides a degree of protection to Suppliers for the problems that Modification Proposal P115 claims to address.

Provisions for claiming SFM (S3.3) are included in the performance section of the Code and it was clarified during the Assessment Procedure that these provision were intended to apply to Supplier Charges. However, as detailed in Annex A these provisions are not precisely specified and require interpretation.

The Group recognise the importance of Supplier Charges in compensating Suppliers for the poor performance of other Suppliers and the incentives these deliver to all Suppliers to improve performance and data quality. However, they also recognised this must be done both fairly and accurately.

The Group have explored a number of scenarios for events that may be considered outside a Supplier's control. The Group experienced difficulty in determining whether the key factors were justifiably within the control of the Supplier. For many cases that appear outside a Supplier's control, arguments can also be proposed for why the Supplier could have addressed this issue earlier, or that it is not sufficiently material to be disapplied. In

this respect the Group note that Supplier Charges are themselves an estimate and that if an amount is to be disappplied, then ideally it should be more significant than the accepted error in the original estimate.

The Group also believed the root cause of each generic problem should be resolved, and have submitted a number of potential problem areas to the Supplier Volume Allocation Group (SVG) for their further consideration (Reference 3). However, the Group recognised some of these problems are more fundamental and relate to the Change of Supplier (CoS) / Change of Agent (CoA) initiative. The Group also recognised that even if some of the "generic problems" are removed, then it will take a significant period of time for the benefit to be realised, and that in the meantime Supplier Charges are being applied.

The Group favoured a solution based on extending the current provisions for SFM. This would give the Performance Assurance Board (PAB) the discretion to disapply some Supplier Charges where it was shown that conditions, such as those described in the Modification Proposal, were shown to exist and have affected a Supplier's performance.

However, the Group noted two major issues with the approach, which have themselves become clearer during the Assessment Procedure as the existing provisions for SFM have been investigated:

- it is not clear as to the extent of the current SFM provisions, and the degree to which they may already be applicable to the sort of issue raised in the Modification Proposal. Legal advice is that this is unlikely to become clearer until tested for real with specific cases;
- it is not clear how any disapplication of charges could be achieved (for either SFM or P115) in a manner that is defined, non-arbitrary and transparent. The complex rules and supporting systems are defined by a precise set of algebraic rules in Annex S-1 of the Code, which do not themselves provide an explicit facility to disapply charges.

As a result the Group do not believe they have been able to identify a viable solution to the Modification Proposal, or indeed the extent to which a Modification Proposal is required, with the existing provisions for SFM.

As a consequence of the above, the majority view of the Group is that they have little choice but to complete the Assessment Procedure with a recommendation to reject the Modification Proposal, on the grounds that no solution (other than SFM) could be identified, and so no legal text can be provided. In addition there may already be sufficient provisions within the Code (based on SFM), although as noted above no mechanism for processing SFM claims is specified.

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

The need for a further Modification Proposal to extend the range of explicit criteria for claiming SFM could be considered once this is complete, and also once further experience has been gained in assessing the materiality of Supplier Charges.

2 INTRODUCTION

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

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

3 MODIFICATION GROUP DETAILS

The P115 Assessment Report has been prepared by the Group, and the membership is detailed in the table below.

Member	Organisation	Role
Mike Downing	ELEXON	Chairman
Richard Harrison	Innogy	Proposer
Clare Talbot	National Grid	Member
Colin Prestwich	Smartest Energy	Member
Andy Sutton	TXU Europe	Member
Paul Chesterman	London Electricity	Member
Margaret Brunton	Npower	Member
Robert Brown	Cornwall Consulting	Member
Afroze Miah	Powergen	Member
Andrew Latham	Centrica	Member
Jonathan Purdy	SEEBOARD	Member
Gwilym Rowlands	ELEXON	Lead Analyst
David Jones	ELEXON	Technical Expert
Melanie Henry	ELEXON	Legal Expert

In addition the following attendees have attended one or more meetings during the Assessment Procedure:

Member	Organisation
Jerome Williams	Ofgem
Paul O'Donovan	Ofgem
Ian Anthony	Ofgem
Caroline Ainslie	SAIC for ScottishPower
Andrew Neves	EME
Stephen Field	SAIC for ScottishPower

The Group met three times during the Assessment Procedure for P115.

4 BACKGROUND

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

P115 proposes to allow the Panel to disapply part, or all, of the Menu of Supplier Charges for those periods where the application of such charges may be inconsistent with the status

of the charges as "liquidated damages", or it may be otherwise unreasonable to apply them.

P115 suggests that such circumstances would include where:

- there is a known defect in the mechanism for calculating the charges and/or their re-distribution;
- the Performance Levels and Serials in respect of which the charges are applied do not take account of a recognised defect in industry process or arrangements;
- performance has been significantly impacted by a failure of a previous Supplier(s) to comply with obligations under the Code.

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

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

During the Assessment Procedure a consultation was held between 5 March 2003 and 14 March 2003. In addition an Interim Report (Reference 1) was sent to the Panel for their meeting 13 March 2003.

As a result of the Interim Report, and the concern that the Group may request an extension to the Assessment Procedure, the Panel requested the Authority's provisional thinking regarding P115 (Reference 2).

5 DESCRIPTION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

Following detailed discussions on a number of possible approaches, the Group favoured a solution based on extending the current provisions for SFM. This would give the PAB the discretion to disapply some Supplier Charges where it was shown that conditions, such as those described in the Modification Proposal, were shown to exist and have affected a Supplier's performance.

However, the Group noted two major issues with the approach, which have themselves become clearer during the Assessment Procedure as the existing provisions for SFM have been investigated:

- it is not clear as to the extent of the current SFM provisions, and the degree to which they may already be applicable to the sort of issue raised in the Modification Proposal. Legal advice is that this is unlikely to become clearer until tested for real with specific cases;
- it is not clear how any disapplication of charges could be achieved (for either SFM or P115) in a manner that is defined, non-arbitrary and transparent. The complex rules

and supporting systems are defined by a precise set of algebraic rules in Annex S-1 of the Code, which do not themselves provide an explicit facility to disapply charges.

As a result the Group has not been able to identify a viable solution to the Modification Proposal, or indeed the extent to which a Modification Proposal is required, with the existing provisions for SFM.

Without a solution, or clear baseline, it has not been possible for the Group to consider whether the Proposed Modification could better facilitate the achievement of the Applicable BSC Objectives.

As a consequence of the above, the majority view of the Group is to complete the Assessment Procedure with a recommendation to reject the Modification Proposal, on the grounds that no solution (other than SFM) could be identified, and so no legal text can be provided. In addition there may already be sufficient provisions within the Code (based on SFM) although as noted above no mechanism for processing SFM claims is specified.

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

The need for a further Modification Proposal to extend the range of explicit criteria for claiming SFM could be considered once this process is complete, and also further experience has been gained in assessing the materiality of Supplier Charges.

The Assessment Procedure is being completed primarily due to matters relating to the existing provisions for SFM, and that a mechanism to address the main aspect of the reported defect may already exist. However, it should be noted that there will be no changes to the levied Supplier Charges unless specific claims are raised and are subsequently successful.

The Group recognised that when Serial 1 (RF) charges are introduced, it is expected that a significant number of Suppliers will reach the caps, and that the resulting incentives will be weakened, as suggested in the original Modification Proposal. The Group could not quantify the degree to which this will occur, or its materiality. The Group also recognised that the provisions for SFM will not in themselves alter the likelihood of this occurring.

Should this be found to be material, then some of the "statistical" solutions discussed by the Group (i.e. changing Performance Levels, increasing the caps, or introducing a floor and ceiling approach to applying caps) may become more appropriate. Such approaches may also reduce the likelihood of Supplier's resorting to SFM claims, on the grounds that "there is a known defect in the mechanism for calculating the charges and/or their redistribution".

In light of these findings the Group believe the Authority's provisional thinking would still help the Panel determine how to progress the Modification Proposal and whether the identified issues should be progressed.

6 MODIFICATION GROUP INITIAL DISCUSSIONS

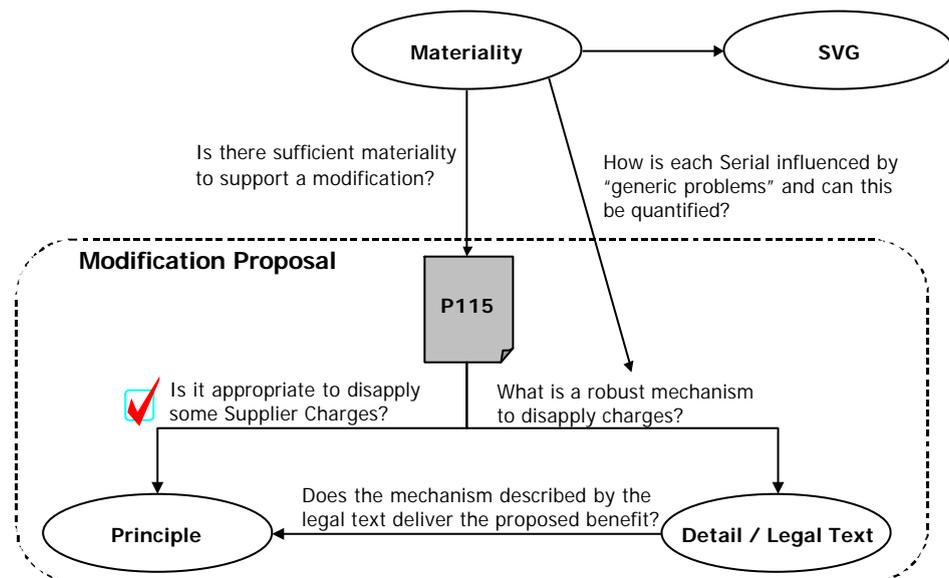
6.1 Introduction

The Group recognised this would be a difficult Modification Proposal to assess in that it proposes a generic facility to disapply charges and does not include specific causes, which would help in defining the materiality and whether any identified solution would better facilitate the achievement of the Applicable BSC Objectives. In addition the existing rules defined in Annex S-1 are complex and do not recognise the concept of being able to disapply a proportion of the calculated charges (See Annex A).

The Group recognise the importance of Supplier Charges in compensating Suppliers for the poor performance of other Suppliers and the incentives they deliver to all Suppliers to improve performance and data quality. However, they also recognised this must be done both fairly and accurately.

As a result of their early discussions the Group developed the representation in figure 6.1 of the issues relating to assessment of P115.

Figure 6.1 – P115 Assessment Model



The majority of the Group supported the principle that “it may appropriate to disapply some Supplier Charges under certain circumstances”. However, the Group also recognised that P115 required a robust mechanism to disapply charges, which could be described in legal text within the Code¹. It was against this text that the Group would need to consider whether P115 would better facilitate the achievement of the Applicable BSC Objectives.

The Group also considered that, although the Modification Proposal did not relate to any specific problems, materiality was still an important aspect of the Modification Proposal. The Group used the phrase “generic problems” to represent any potential problems that may in the future be considered by any provisions introduced by P115. The Group also recognised that, as the Modification Proposal contained an element of retrospection, this could include problems currently being experienced by Suppliers.

¹ See current issues relating to SFM identified in Annex A

In considering the types of “generic problem” that maybe applicable to P115, the Group believed that the materiality could be considered from two perspectives:

- how is each Serial influenced by potential “generic problems” and can this be quantified;
- what is the expected level of Supplier Charges when they are initially applied and, based on estimated charges, is there sufficient materiality to support a Modification Proposal.

The Group also recognised that the Modification Proposal was not about resolving the root causes of any “generic problems”, but that the Group should ensure any findings were not lost and hence keep the SVG informed on any potential “generic problems” it found.

Lastly the Group recognised that some Performance Levels were already set to less than 100%, such as 97% for Serial 1 (RF) and 99% for Serial 5 (R1) as shown in table 6.1, and these would compensate for a certain level of “generic problem”. In addition there are also the existing provisions for SFM, should a specific claim be made by a Supplier that they have been unable to meet the defined Performance Levels due to circumstances outside their direct control. The Group recognised that it was not clear how SFM was expected to operate and, although not known at the outset, this became a key aspect of the Assessment Procedure as the Group’s understanding of SFM and P115 increased.

Table 6.1 – Current Serials and Performance Levels

Serial	Run	Description	Standard	Charge Apr 02–Mar 03 (£)	P99 Equivalent
1	R3	NHH Energy settled on Actual Data	78%	0.14	SP08
	RF		97%	1.49	SP08
2	SF	Provision of HH Energy Data (> 100kW)	100%	0.14	
3	SF	HH Energy settled on Actual Data (> 100kW)	98%	0.14	SP08
4	R1	Provision of HH Energy Data (> 100kW)	100%	1.49	
5	R1	HH Energy settled on Actual Data (> 100kW)	99%	1.49	SP08
6	SF	Provision of HH Energy Data (< 100kW)	100%	0.14	
7	RF	HH Energy settled on Actual Data (< 100kW)	99%	1.49	SP08
9	-	Installation of HH Metering		2.79	SP04
10	-	Provision of PARMS Reports		26.53	SP01
11	-	Provision of Drill Down Data		26.53	SP02

Table 6.1 also identifies the Serials that remain in Section S-1 after the introduction of P99 ‘Changes to Accreditation and the Performance Assurance Reporting And Monitoring Service (PARMS) Serials and Standards, resulting from the Performance Assurance Framework (PAF) Review (Phase 1)’ is introduced. This shows that the main Serials that attract Suppliers Charges will remain.

6.2 Consultation Document and Questions

In preparing a consultation document for P115 the Group recognised a series of important factors and questions:

- **Principle** - assuming a viable solution could be identified was there support for the principle of disapplying Supplier Charges in certain circumstances. The Group recognised that there were also variants of this question that should be considered,

such as whether industry thought there was sufficient materiality to address the Modification Proposal, or whether it was possible for a viable solution to better facilitate the Applicable BSC Objectives;

- **Impact of HH and NHH Serials** - the Group also recognised that Supplier Charges affected HH Suppliers differently to NHH Suppliers. In particular, as 90% of collected charges are redistributed to NHH Suppliers, any incentive from Serial 1 would be related to the net charge (i.e. less any amount redistributed) and hence proportional to their relative performance against other NHH Suppliers. Whereas for HH Suppliers any incentive from Serials 3, 5 & 7 would be related to the gross level of the charge and would not be dependent on any other Supplier's Performance. The Group further noted that the remaining Serials (e.g. 2, 4, 6, 9, 10 and 11) were measuring the performance of the Supplier and its agents in submitting data to SVAA and BSCCo in a timely manner, rather than the underlying quality of that data. Generic industry problems, or the performance of a previous Supplier, would have less effect on these Serials. The Group believed that if a solution was proposed as part of P115, it would most likely need to be different for each category of Serial;
- **Impact of Supplier's Month Cap** - the Group also considered whether any incentive would be reduced when a Supplier's Monthly Cap was reached, as was suggested within the Modification Proposal. It was clear that this would be the case, as a small improvement, or degradation, in performance would not be reflected in the Supplier Charge, until the Supplier reached a level of performance where the cap did not operate. This would apply to both HH and NHH Suppliers. However, the Group also noted that if a significant number of NHH Suppliers all reached their caps, then the incentives on NHH Suppliers would be further reduced, as both the collected charges, and redistributed amounts, would be largely controlled by each Supplier's NHH energy for that GSP Group, and would tend towards similar values;
- **Addressing the Supplier's Monthly Cap issue** - the Group recognised there were a number of ways of addressing these problems, in particular the second one. It is possible to alter the way in which caps operate so that a floor and ceiling approach is used to apply the caps, rather than just a ceiling. This would move the point at which Supplier Charges start, and could better target the capped Supplier Charges, without increasing the maximum liability faced by each Supplier. The Group also recognised alternative schemes such as changing some Performance Levels, or simply increasing the level of the caps. Each of these would have its own advantages and disadvantages and would need to be considered in light of any findings on materiality;
- **Categories of solution** - the Group explored potential solutions and recognised any solution should ideally be linked to an underlying cause. Potentially the easiest style of solution would be what the Group categorised as "statistical" solutions, where the calculations have a generic factor to automatically take into account any underlying problems. Performance Levels of other than 100% fit into this category, as would introducing a floor and ceiling approach to caps. The Group recognised such solutions may be considered arbitrary and that a "measured" solution may be considered more appropriate, where the definition of one, or more, Serials is changed so that it would automatically reduce the reported difference between the actual and target performance. The Group recognised this would be hard to achieve, with "generic problems" that were themselves hard to identify and quantify. Lastly the Group

recognised "justified" solutions. which would be manual and justified on a case by case basis. These would obviously be flexible, but would also be harder to administer and remain transparent. The existing measures for SFM would fit into this category;

- **Types of Claim** - the Group were also concerned about the process of making a claim. They recognised that Suppliers would need to be responsible for raising claims in the first place. However it was also important to understand the types of claims, ranging from short term single Supplier claims, to long term claims affecting all Suppliers. The Group recognised that it may be relatively easy to show a long term problem for all Suppliers was material, but were concerned as to whether it would be cost-effective to process short term or single Supplier claims;
- **Identification of solutions** - although the Group could identify some characteristics of a solution, they did not identify any potential solutions prior to consultation, and believed respondents should be asked to comment on the approaches and suggest potential approaches they would support;
- **Identification of "Generic Problems"** - in considering some of the underlying causes of "generic problems" the Group identified twelve² potential problem areas within the current Trading Arrangements. The Group wished to see whether it was possible to quantify how the current Serials may be affected. The Group could not achieve this themselves and believed that it should be part of the consultation. However, the Group also recognised that the root cause of these potential problems should be considered further, and resolved, if they were found to be material. This was the sort of action the Group felt the CoS / CoA initiative may resolve. However, the Group believed it was important to do something in the short term and informed SVG (Reference 3) of the issues, such that SVG could investigate the root causes and potentially instigate Change Proposals to address these³;
- **Materiality** - the Group also considered the materiality in terms of the overall Supplier Charges. They recognised this would be difficult to estimate, as the charges that had accumulated since Go Live were only now being applied. However they identified that once Serial 1 (RF) is introduced (included within Supplier Charges for May 2002) that with the current level of performance a significant number of Suppliers could reach their caps⁴. They recognised that this would start to reduce the incentive on Suppliers, but could not determine whether it was material;
- **Anomalies associated with caps** - the Group also identified a number of potential anomalies that may occur when a significant number of Suppliers are capped. The Group recognised that this was due to the complex interactions between different factors that influence how caps are applied, and that they would be hard to address without a more sophisticated approach to caps.

These points are explained in more detail in the consultation document (Reference 4) and formed the basis of the consultation questions.

² This included an additional problem identified directly to SVG by British Gas Trading;

³ These are currently being investigated by SVG and a workshop was held on 2 April 2003.

⁴ The consultation document identified that the average level of Serial 1 (RF) performance during the last six months of 2001 was 92%. It also identified that a Serial 1 (RF) performance of 93% for the peak winter month was sufficient to cause Suppliers to reach their caps.

7 ASSESSMENT CONSULTATION RESPONSES AND MODIFICATION GROUP ANALYSIS

This section summarises the results of the consultation and impact assessments that took place between 5 March 2003 and 14 March 2003, and the resulting Group analysis.

7.1 Summary of Assessment Consultation Responses

9 Responses were received from 46 Parties and 1 response was received from one non-Party. Of these 1 response, representing 1 Party, provided no comments. A summary of those responses requesting a Yes/No answer is provided in Table 7.1. Full details of the question and responses are contained in Annex B.

Table 7.1 – Summary of Consultation Responses

Q	Topic	Yes	No	Neutral
1a	Do you support the principle of P115	6	1	1
1b	Is there sufficient materiality to progress P115	3	3	2
1c	Could P115 better facilitate the BSC Objectives	7	1	0
2a	Should this facility be available for Serial 1	5	2	1
2b	Should this facility be available for Serial 3,5 & 7	4	3	1
2c	Should this facility be available for other Serials	4	2	2
5	Should retrospective changes be allowed	6	2	0

The majority of respondents supported the principle behind P115, but were less clear on whether they believed there was sufficient materiality, or whether a viable solution could better facilitate the achievement of the Applicable BSC Objectives. The majority of respondents indicated that they believed further work was required, that the problem was too difficult to define a cost-effective solution, or that it was not the correct approach.

Although some respondents managed to form an opinion on the materiality contained within the consultation document. Two respondents believed they required further information in order to respond to question 1b, with one respondent believing further work should be undertaken to ensure that the current arrangements are themselves delivering to the desired objectives.

The consultation document had indicated there was less need for a solution that covered Serials 2, 4, 6, 9, 10 and 11, as these really measured the performance of the Supplier submitting data on time, rather than the quality of that data. However, the majority of respondents believe a solution should include all Serials. Those that justified their choice did so on the grounds of the principle rather than practical considerations.

The majority of respondents believed a solution should ideally be based on a “justified” approach. A number indicated that though they supported the principle of a “justified” approach, they believed on practical grounds that a “measured” approach maybe more realistic. No respondents provided any suggestions for potential solutions.

The respondents had been asked to indicate whether they thought any of the potential problems that had been identified to SVG (Reference 3) should be covered by P115. The respondents provided a variable level of response, with some respondents indicating specific concerns for some of the problems⁵. The majority of respondents acknowledged

⁵ These have been passed onto the SVG group responsible for investigating the issues in Reference 3.

the list as representing real problems that affected Suppliers and that there was a need to resolve the root problems. Only a couple of respondents provided answers to the confidential question, and apart from indicating these cause real problems for Suppliers, the most that could be done to quantify the effect was to indicate that in some segments of the market some 5-10% of Change of Supplier registrations could be affected. The responses were not unexpected and reflected the difficulty in identifying, and then quantifying, the effect of "generic problems".

The respondents were also asked to comment on whether they believed that a degree of retrospection should be supported. The majority of respondents supported this, giving a number of reasons related to the fact that the Supplier Charges that have accrued since Go Live are only now being applied. Two respondents did not support an element of retrospection. Although both gave examples of the limited retrospection they may support, neither went as far as allowing charges to be queried, and disappplied, after the original month when they were due to be applied, and hence would not address any charges levied during the catch up process that is currently underway.

7.2 Further Modification Group Discussions and Potential Solutions

In discussing the consultation responses the Group recognised there was support for the principle of the Modification Proposal, but that it would be difficult to identify a way in which this could be done in a non-arbitrary manner. The Group recognised that they had not identified any viable solutions prior to the consultation, and none had been identified as part of the consultation process. However, the Group did recognise that the consultation document already identified three approaches that could be considered as solutions:

- allow the PAB to exercise discretion in determining whether, and how much, of a set of Supplier Charges could be disappplied on a case by case basis. This would be an extension of SFM and a "justified" approach;
- lower one or more Performance Levels to accommodate any identified "generic problems". This would be a "statistical" approach;
- increase the level of the Supplier Caps, such that only a minority of Suppliers would reach them. This would also be a "statistical" approach.

The Group discussed each of these but failed to identify any of them as being viable. Further details are given in the following sections.

At this stage the Group did not consider the floor and ceiling approach of implementing caps further. Although the concept was discussed in the consultation document, it would require further definition before it could be considered as a potential solution. In addition it was a "statistical" approach and the Group did not generally favour such approaches, on the grounds of being considered arbitrary and not directly related to a specific problem.

7.2.1 Extension to SFM

This represented the approach of simply extending the current provisions for SFM. This would be based on giving the PAB the discretion to disapply some Supplier Charges where conditions, such as those described in the Modification Proposal, were shown to exist and have affected a Supplier's performance.

For the purposes of this particular solution it was assumed that the legal text would be a simple extension of the existing provisions, and would not codify further provisions to address the issues described in Annex A. The Group believed that including more explicit provisions should be treated as another solution.

The Group recognised this as a “justified” mechanism and believed this could be considered as the Proposed Modification. However, the Group noted two major issues with the approach, which themselves have become clearer during the Assessment Procedure as the existing provisions for SFM have themselves been investigated:

- it is not clear as to the extent of the current SFM provisions, and the degree to which they may already be applicable to the sort of issue raised in the Modification Proposal. Legal advice is that this is unlikely to become clearer until tested for real with specific cases;
- it is not clear how any disapplication of charges could be achieved (for either SFM or P115) in a manner that is defined, non-arbitrary and transparent. The complex rules and supporting systems are defined by a precise set of algebraic rules in Annex S-1 of the Code, which do not themselves provide an explicit facility to disapply charges.

In discussing this approach further the Group noted the following:

- in order to justify each claim, more detailed PARMS reporting may be required, potentially identifying individual MPANs;
- that Supplier Charges are a “genuine pre-estimate of the loss likely to be suffered by other Parties as a result of a failure by a Supplier to meet the application Performance Levels”, as a result the existing calculations are already an estimate, and ideally any amount to be disappplied should be more significant than the accepted error in the original estimate;
- in assessing any claim it must also be recognised that any Performance Level, already set to a value of less than 100%, may already be expected to contain a degree of compensation for the problem concerned;
- how to ensure any claims process would be cost-effective, given that Suppliers will be required to justify claims on a case by case basis. This process would also need to recognise that some claims may be common to a number of Suppliers;
- during the assessment of Modification Proposal P80, the Modification Group concerned had experienced problems defining how to establish a causal link between the failure of a Transmission System Grid Supply Point (GSP) and a resulting effect experienced within a connected Distribution System. Although it was possible to see a relationship, it was hard to establish a legally robust cause and effect, especially when the resulting effect may have been more than the original energy flowing through the GSP. One suggested approach had been to allow the Panel to determine the outcome. However, the P80 Modification Group experienced difficulty constructing robust legal text, based on the legal advice that it was alright to ask the Panel a hard question, but you should avoid asking them a bad question. The Group recognised parallels with P115 and the problems with asking the Panel/PAB to consider the merits of a claim and determine if charges should be disappplied or not;

For the reasons above the Group did not believe this approach (i.e. in the form of a new modification) could be progressed further at this stage, until the existing provisions and mechanisms were clarified and defined. Without a well defined baseline it is not possible to determine the precise nature of the change, if one is required at all, and whether it would better facilitate the achievement of the Applicable BSC Objectives.

It should also be noted that some of the points considered by the Group also indicated this would be a difficult task.

7.2.2 Reduced Performance Levels

Reducing one or more Performance Levels is a simple and flexible way of taking into account any “generic problem”. This would be a “statistical” solution, as it would not be directly linked to any individual problem, simply representative of the average level problem. In addition, as some of the levels are already less than 100%, the principle has been previously accepted. However, to make a change in the defined level would require a Modification, as all the levels, and their associated charges, are defined in the Code. The Group recognised that to be accepted as a generic solution (i.e. without being linked to specific cases) would require the introduction of a flexible approach. One such approach may be to keep the existing levels as targets, and introduce a variable factor to adjust the target, and define the effective level against which to issue charges. This adjustment factor could be determined by the Panel and varied from time to time, based on a defined methodology. It would be possible that if this was sophisticated enough it could also be seen as a “measured” approach.

In discussing an approach based on reducing Performance Levels the Group noted:

- it would be an arbitrary solution and the Group were not clear on how you could link and justify individual “generic problems” to define Performance Levels;
- in assessing any claim it must also be recognised that any Performance Level already set to a value of less than 100% may already be expected to contain a degree of compensation for the problem concerned;
- it would be difficult to ensure that the level used to calculate charges did not become the defacto target;
- any Supplier performing at this new level, or above, would not be incentivised to improve to the true Performance Level. However, it should also be noted that capped Suppliers currently do not experience a change in charges for a small improvement, or degradation, in performance, and this raises the question as to which group would be best targeted with the incentive;
- such an approach may not result in improved data quality;
- the PAF Review, which considered all aspects of the Performance Assurance Framework, confirmed the existing levels were appropriate and achievable;
- one respondent noted that levels could be set lower and increased as Performance improved. The Group were concerned as to whether such an approach would result in the levels permanently remaining low;

- it is not clear whether it would be appropriate for the Code to support a general mechanism to allow the Panel to vary these levels, without requiring further Modification Proposals.

The Group did not believe this represented the Proposed Modification and if progressed it would be an Alternative Modification.

The Group noted that should a Supplier already know of cases where a change in specific Serial would address a specific problem, then they could already raise a Modification Proposal to “change Serial X to Y% to compensate for reasons A, B and C”. However, the Group did not believe it was appropriate to introduce a general mechanism to allow these levels to be changed without a Modification Proposal, and so this approach was not considered viable solution.

7.2.3 Raise Supplier Caps

The raising of the Supplier Monthly Caps could lessen the issue, identified in both the Modification Proposal and also the consultation document, that when Suppliers are capped the resulting incentives to improve performance are lessened. The Group recognised this was another “statistical” solution in that it was not linked to any underlying issue.

In discussing this approach the Group noted:

- simply raising the caps may improve the way in which charges for Serial (RF) were collected and redistributed, but would also increase the maximum liability for HH Suppliers and it was not equitable to both groups as a mechanism to address the reported defect;
- this was already being considered by PAB/BSCCo, as an outcome of the PAF Review, and such consideration would be in a wider context;
- the Group recognised that to be flexible enough to address the different concerns of the NHH Suppliers and HH Suppliers may require more fundamental changes and the introduction of a more sophisticated approach to capping with different caps for each side of the market.

The Group did not believe this represented the Proposed Modification and were concerned as to whether it could be classed as an Alternative Modification. Given their views on the approach they did not believe it should be progressed further within this Modification Proposal.

8 IMPACT ON BSC, BSC SYSTEMS AND PARTIES

As the Assessment Procedure for P115 has not identified a viable solution for the Proposed Modification or identified an Alternative Modification (and is therefore recommending that the Proposed Modification should not be made), there are no impacts on the Code, BSC Systems or Parties.

However, any initiative to resolve the issues identified with the existing provisions for SFM, may result in changes to BSC Systems and potentially clarifications or interpretations that should be reflected in the Code.

ANNEX A – SUPPLIER FORCE MAJEURE AND SUPPLIER CHARGES

The Code already provides provision for a Supplier to claim Supplier Force Majeure (SFM) in Section S3.3. These provisions were originally included in the Pooling and Settlement Agreement (PSA) with the intention that they could be used to avoid Supplier's being required to pay Supplier Charges for matters that were shown to be outside their direct control. These were copied into the Code with only minor changes. Legal advice received during the assessment of P115 suggests that under the Code these provisions can still be used to support a claim that a Supplier should not be liable for a proportion of their Supplier Charges.

However, although the grounds and process for claiming SFM are included in the Code, there are no explicit provisions for how to process a claim:

- the grounds for claiming SFM are “such delay or failure results from or is caused directly by any event or circumstance beyond the reasonable control of the Supplier including”, the last word of which indicates they are not limited to those defined in S3.3.1(a)-(h) (See table A.1, which shows these grounds for both the Code and PSA). It should be noted this list already contains some events related to the operation of BSC or Supplier Agent systems;
- although a Supplier should give immediate notice to BSCCo of being affected by SFM, no time limit is defined and it is possible a legitimate claim could be made after Supplier Charges are calculated and notified to the Supplier. It would however be expected that in taking “all reasonable endeavours to mitigate the impact of SFM” a Supplier would have noticed any problems prior to Supplier Charges being calculated;
- it is believed that it would be the PAB who would be responsible for assessing a claim, however, this is not explicitly stated. In addition there are no provisions for how the merits of any claim should be assessed, and what level of appeal is possible. It is normally expected that the standard to be applied with force majeure would be high, to reflect its association with extraordinary events. However, it should be noted that some of the events included in S3.3.1(a)-(h) may be more frequent than is normally associated with force majeure;
- there are no rules for how to quantify the effect on the collected Serials. In addition there are no provisions to alter data or charges in the series of calculations that lead to the eventual Supplier Charge.

The first three of these relate to the difficulty an appointed body may experience in considering a claim, whereas the last one identifies that it is not explicitly defined how to implement a claim if it is upheld.

The Menu of Supplier Charges, and how to calculate the Supplier Charges, are defined as algebraic rules in Annex S-1 of the Code. There are precise rules for each stage in the process, and these include how the Supplier's Monthly Caps are applied and the collected charges are redistributed. These are the rules used by the PARMS system and, in common with the Code, there is no mechanism to disapply a proportion of the calculated charges.

Ideally any disapplication of charges should be made prior to performing these later two stages, and this would involve making changes to the PARMS system. Attempting to disapply charges after these steps have been performed could create further issues, such as manually recovering a proportion of the redistributed charges. Alternatively, attempting to change the data before it is entered into PARMS would require a detailed methodology describing how to amend the low level input data.

This redistribution is an integral feature of Supplier Charges, as it compensates the NHH Suppliers for any error in Supplier Volume Allocation. Therefore, if the collected charges are reduced, and yet the same level (possibly more) of error occurs, then how the redistribution is affected would need to be considered in the evaluation of any claim.

The issues described in this Annex are related to the current provisions for SFM, but also provide the baseline against which to consider P115. The materiality of these issues will be determined by the expected level of claims, and whether they are only for extraordinary events. The probability of claims may increase should a modification be made to extend these provisions, or simply as a result of Suppliers recognising the provisions and believing an event is worth pursuing.

Table A.1 – Criteria for SFM

Description	Code	PSA
act of public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage or act of vandalism;	Yes	Yes
strikes, lockouts or other industrial disturbances;	Yes	Yes
lightning, storm, accumulation of snow or ice, earthquake, fire, flood or act of God;	Yes	Yes
explosion, fault or failure of plant or machinery which (in each case) could not have been prevented by Good Industry Practice;	Yes	Yes
governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 or 35 of the Act);	Yes	Yes
a failure by the SVAA to provide Daily Profile Coefficients to a Data Collector for which the Supplier is responsible or to distribute Market Domain Data in accordance with the relevant BSC Procedures;	Yes	Yes
the provision to the Supplier or any Supplier Agent for which it is responsible by the SVAA of Daily Profile Coefficients or Market Domain Data which is incorrect in any material respect;	Yes	Yes
until 31st March, 2000, a design fault or error in the NHH Data Aggregation System or the EAC/AA System	No	Yes
a failure in the communication network or method used by the Supplier's Supplier Agent in accordance with the relevant Party Service Lines and BSC Procedures provided the Supplier has first used reasonable endeavours to ensure that its Supplier Agent has used any reasonable alternative method of communication available,	Yes	Yes

ANNEX B – P115 CONSULTATION RESPONSES

Responses from P115 Assessment Consultation

Consultation issued 5 March 2003

Representations were received from the following parties:

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

The following questions were asked (all references are to the original consultation document):

- 1a Assuming a viable solution was proposed, would you support the principle of disapplying Supplier Charges in certain circumstances?
- 1b Do you believe the materiality of the reported defect represents sufficient materiality to support a modification to the Code?
- 1c Assuming a viable solution was proposed, do you believe disapplying Supplier Charges in certain circumstances could better facilitate the achievement of the Applicable BSC Objectives?
- 2a Do you believe it is feasible to disapply Supplier Charges for Serial 1?
- 2b Do you believe it is feasible to disapply Supplier Charges for Serials 3, 5 and 7?
- 2c Do you believe any other chargeable Serials (i.e. 2, 4, 6, 9, 10, and 11) should be included in the Modification Proposal?
- 3 Which of the approaches suggested in Section 3.1 and 5.2 (statistical / measured / justified) would you support? Are there any mechanisms you would propose?
- 4a Which of the specific problems identified in Annex B (or any others – please identify) do you think the Modification Proposal should address?
- 5 Would you support an element of retrospection in the disapplication of Supplier Charges, as referred to in Sections 4.1 and 5.3?
- 6 Does P115 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?
- 7 Are there any further comments on P115 that you wish to make?

9 Responses were received from 46 Parties and 1 response was received from one non-Party. Of these 1 response, representing 1 Party, provided no comments. A summary of those responses requesting a Yes/No answer is provided in the following table.

Q	Topic	Yes	No	Neutral
1a	Do you support the principle of P115	6	1	1
1b	Is there sufficient materiality to progress P115	3	3	2
1c	Could P115 better facilitate the BSC Objectives	7	1	0
2a	Should this facility be available for Serial 1	5	2	1
2b	Should this facility be available for Serial 3,5 & 7	4	3	1
2c	Should this facility be available for other Serials	4	2	2
5	Should retrospective changes be allowed	6	2	0

P115_ASS_001 - IMServ

Respondent:	Name Tom Cook
No. of BSC Parties Represented	Nil
BSC Parties Represented	Nil
No. of Non BSC Parties Represented	1
Non BSC Parties represented	IMServ Ltd
Role of Respondent	Party Agent

Q	Response	Rationale
1a	Yes	Suppliers should be held liable for those matters which they can directly affect. If they are held liable for matters outside their control the System itself is brought into disrepute.
1b	Yes	
1c	Yes	Fair application of a Rule engenders respect for the Process.
2a	Yes	
2b	Yes	
2c	No	The measures and requirements are fair.
3	n/a	Measured is perceived as fairest method. None identified.
4a	n/a	All shown in Appendix B except Ref 4 & 11. Reason: they are within ultimate control of Supplier.
5	Yes	It is inequitable at present so any retrospective application that is economically viable to implement would be welcome.
6	No	
7	No	

P115_ASS_002 – Aquila Networks

Please find that Aquila Networks Plc response to P115 Assessment Consultation is 'No Comment'.

regards
Rachael Gardener

Deregulation Control Group &
Distribution Support Office
AQUILA NETWORKS

P115_ASS_003 – British Gas Trading

Respondent:	Andrew Latham
No. of BSC Parties Represented	One
BSC Parties Represented	British Gas
Role of Respondent	Supplier

Q	Response	Rationale
1a	Yes	During the VASMG there was support for this modification and British Gas also support the principle. However with current software and the inability to track route causes of the problem across the Change of Supplier (CoS) and more so the Change of Agent (CoA) process, it will be difficult to disapply Supplier Charges. The work that Elexon carried out on CoS & CoA would have helped to identify route causes and this will be further helped by the adoption of the universal record.
1b	Yes	As detailed in 1a
1c	Yes	This would enable poorly performing Suppliers with poor Agent controls to be penalised whilst it would clearly identify better performing Suppliers.
2a	No	Not in the current situation as it is difficult to clearly identify the causes. Currently BGT track and monitor all our Serials however having had the first Supplier Charges from Elexon it is difficult to have visibility of the charges being received from other Suppliers.
2b	No	As in 2a however there may be a possibility to track some of the charges through Group Correction Factor in the Half Hourly market.
2c	Yes	Although not all Serials have been included in this modification if a tracking facility was to be made available in the future it should be applied to all Serials.
3	n/a	All 3 have merits although the justified approach would be the most logical to enable the flexibility of applying such charges. However it needs to be stressed that as with the acceptance of P99 these would change and a more robust process would be required.
4a	n/a	All items should be addressed. The industry has been looking at minor tweaks to problems for many years. The CoS & CoA paper by Elexon highlighted many of these problems.
5	Yes	
6	No	

Q	Response	Rationale
7	Yes	The modification is sound in its application unfortunately BGT believe that many of the problems associated with CoS & CoA result from the inability of the industry to track the process from start to end. This would make it difficult to apply the intent of the proposal Hopefully the work Ofgem and Energywatch have taken on from Exelon will lead to improvements in the process.

P115_ASS_004 – LE Group

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

Q	Response	Rationale
1a		We have some sympathy with the principle of disapplying Supplier Charges. However, we consider that Supplier Charges are an important aspect of the Performance Assurance Framework. A challenge, such as P115, to the Charges being appropriate would be better addressed through the PAF Review.
1b	No	We consider that the calculation of Supplier Charges is still in its infancy and so good estimates of materiality will be hard to achieve. We doubt that the materiality in question warrants consideration of the complex issues raised by this Mod.
1c	Yes	We would agree that if disapplying certain charges had the effect of sharpening incentives on Suppliers to improve their performance, then this could be considered to better facilitate the achievement of the Applicable BSC Objectives.
2a	Yes	Yes, it would seem feasible
2b	Yes	Yes, it would seem feasible
2c	Yes / No	We have no strong views on this
3	n/a	
4a	n/a	
5	Yes	As the calculation of Supplier Charges has only recently commenced, then if the basis upon which they are to be calculated were to be changed, it would seem sensible to re-cut the calculations from the beginning.
6	Yes / No	
7	Yes	On the whole we have some sympathy with the issues raised by P115. However, we do not believe that progressing P115 is the correct way forward. This is because P99 has only recently achieved Authority decision to implement Phase 1 of the PAF Review. We believe that the PAF Review route would be the best way to address the issues raised in this Modification.

P115_ASS_005 – NGC

Respondent:	Clare Talbot
No. of BSC Parties Represented	One
BSC Parties Represented	National Grid
No. of Non BSC Parties Represented	One
Non BSC Parties represented	
Role of Respondent	BSC Party

Q	Response	Rationale
1a	Yes	We would in principle support the option for the disapplication of Supplier Charges in certain circumstances, as a number of market problems have been identified. However, we recognise the difficulties identified by the Mod Group in defining a robust and cost effective mechanism to deliver the intent of the Modification Proposal.
1b	Neutral	We have no specific view at this time. The responses received to question 4b) should assist the decision making process of the Mod Group going forward.
1c	Yes	Assuming a viable solution could be provided, we believe that the proposal meets applicable objectives c) and d). Addressing the identified defects could lead to a strengthening of the potential incentives delivered by the relevant Serials adding to the efficiency, effectiveness and also the perception of fairness of the process.
2a	Yes / No	No specific view.
2b	Yes / No	No specific view.
2c	Yes / No	No specific view.
3	n/a	We would generally support a justified approach to provide for more flexible arrangements in dealing with any potential new issues which may arise.
4a	n/a	
5	No	As outlined in the Assessment Consultation, we would support an implementation approach as adopted for P68, providing a limited ability to include Settlement Days prior to the implementation date if required.
6	No	
7	No	

P115_ASS_006 – Scottish Power

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

Q	Response	Rationale
1a	Yes	ScottishPower supports a Supplier Charges framework that provides appropriate incentives for poorly performing Suppliers to improve, and compensates Suppliers for any potential losses they might incur. We agree that the current

Q	Response	Rationale
		framework does not necessarily deliver this, considering the current market performance. If a suitable mechanism could be identified to disapply appropriate Supplier Charges, ScottishPower believes this would improve the efficiency of the current arrangements.
1b	No	At this point in time, ScottishPower has insufficient evidence to support a Code modification. Section 4.2.3 of the Assessment consultation states that the current framework does maintain the positive incentive for improvement in performance, and that the question of materiality has not been proven (also stated in section 5.4). ScottishPower requires further guidance from ELEXON in order to answer the question of materiality.
1c	Yes	It seems clear that some form of amendment to Supplier Charges is required in order for them to fulfil the role they are designed for. If the current mechanisms do not penalise poor performers, or provide appropriate compensation for impacted Suppliers, then a change is required. The problem P115 appears to be addressing is not related to a fundamental flaw in the Supplier Charges framework, but arises due to the current level of under-performance of most Suppliers. ScottishPower believes that a change is therefore required in order to enable Supplier Charges to meet the BSC Applicable Objectives.
2a	Yes	ScottishPower believes that Serial 1 should be considered for the disapplication of Supplier Charges, but we would wish to see further evidence of materiality in order to justify the approach taken.
2b	No	We would prefer to see additional analysis before determining whether the disapplication of Supplier Charges for the HH Serials would better facilitate the BSC Applicable Objectives.
2c	Yes	We consider that Serials 9 and 10 should be included for consideration at this stage. Without further research into the materiality of the full set of Supplier Charges, we cannot see the justification for excluding these Serials at this time.
3	n/a	<p>ScottishPower would like to see further analysis of the options being considered for P115 before committing to a particular approach. With that caveat, of the approaches outlined in section 3.1/5.2, our preference would be towards the measured approach, as this provides the best compromise between purely statistical / arbitrary and overly complex / subjective. However, we would also like to see analysis undertaken of the option to reduce the Serial 1 targets (in particular). If there are genuine problems in the market preventing suppliers meeting the targets, it may be better to lower the target, perhaps just temporarily until the problem can be addressed. It may also be worthwhile looking at the feasibility of allowing individual suppliers to have a lower target for a particular serial than other suppliers, if there is a justifiable reason for which a corrective plan of action is in place.</p> <p>We would also like consideration to be given to the applicability of the Supplier Force Majeure provisions to allow for appropriate relaxation in Supplier Charges. Whilst we accept that this might not apply to the examples provided in Annex B, there may be scenarios where the existing Supplier Force Majeure provisions do apply which would address the material defects in the current arrangements.</p>
4a	n/a	We do not believe it is appropriate to consider specific problems at this stage.

Q	Response	Rationale
5	Yes	Retrospection would result in a level playing field for all Suppliers from the introduction of the new Serials.
6	No	
7	Yes	<p>We believe the timescales allowed for consultation on P115 have not been adequate. Given the complexity of the issues raised in this consultation, we would wish to see further supporting evidence provided by ELEXON and further time for Parties to consider their responses.</p> <p>We would not support the approach being considered in section 3.2.2 of the Assessment consultation to raise the Supplier Caps. These intended to represent the maximum pre-estimate of losses that could be incurred and to increase them might be to invalidate the status of the Supplier Charges as liquidated damages.</p> <p>Any disapplication off Supplier Charges resulting from Supplier Force Majeure should be clarified explicitly in the Code, and not as part of a separate “guidance note” (interpretation) from ELEXON which would have undetermined governance (section 5.6).</p>

P115_ASS_007 – Innogy

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

Q	Response	Rationale
1a	Yes	
1b	Yes	
1c	Yes	
2a	Yes	
2b	Yes	
2c	Yes	In principle there is no reason why the Modification should not apply to these other Serials as well. The impact of Mod P99 also needs to be taken into account. E.g. There are potential issues with penalising Suppliers for non-delivery of Performance Reports for segments of the market in which they are not active.
3	n/a	Either the measured or justified approach is potentially workable. The statistical approach will inevitably fail to reflect differences between Suppliers’ performance and portfolios.

Q	Response	Rationale
4a	n/a	Annex B is a good 'starter' list of problems that may apply to individual Suppliers to a greater or lesser extent. It will be interesting to see what information the responses to question 4b will provide on this. If the 'measured' approach is adopted, decisions will be needed on the cost/benefit of developing mechanisms for particular problems. A standing list of 'recognised problems' (and precedent as to how these have been dealt with) would be helpful if the 'justified' approach is used.
5	Yes	Since a large part of non-performance seems to relate to historic problems, of which the causes have only recently come to light, and the difficulty/impossibility of getting retrospective amendments, it would seem that an element of retrospection is essential if the impact is to be mitigated.
6	No	
7	Yes	We cannot see that raising the level of Caps, as suggested in 3.2.2, can be appropriate or equitable as an 'alternative', since it potentially increases the 'liquidated damages' charged to a Supplier rather than reducing them to take account of factors outside his responsibility and control.

P115_ASS_008 – Scottish and Southern

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

Q	Response	Rationale
1a	No	We are not persuaded of the need to disapply Supplier Charges in certain circumstances. Please note our following comments should not be construed to lend support whatsoever to this Modification.

Q	Response	Rationale
1b	No	<p>We fully agree with the comments in the Initial Written Assessment that:- "Supplier Charges seek to incentives Suppliers to improve performance and are an important aspect of the Performance Assurance Framework. Any change to the way these charges are applied would need to ensure the inventive is adequately maintained and also consider the wider aspects of the PAF."</p> <p>We are not persuaded that the materiality of the reported defect is sufficient to support this Modification proposal, particular in light of these IWA comments and the need to ensure that incentives, in regard to performance, are maintained on Suppliers.</p> <p>In addition we also note the comments in section 4.2 of the report concerning the ongoing CoS and CoA initiative and believe this casts further doubts on the materiality of the reported defect.</p> <p>We also refer you to our comments in the last paragraph of our answer to Q3 below.</p>
1c	No	<p>We believe that the incentive needs to be maintained on Suppliers to ensure performance and to reduce failures. We are also deeply concerned by the comments in section 2.3 of the report about the potential legal implications, of this proposed change, on Supplier Charges not being "consistent with the status of those charges as 'liquidated damages'".</p>
2a	No	None identified
2b	No	None identified
2c	No	
3	n/a	<p>We believe that only the "Justified" approach should used. We note the problems attributed to the "Statistical" and "Measured" approaches in section 3.1 of the report. We are mindful that this Modification is centered around a situation that may occurred called a "generic problem", which is not defined.</p> <p>We believe it could be open to abuse where a number of Suppliers (but not all the Suppliers in a GSP) facing a problem sought to 'engineer' a "generic problem" in terms of a "Statistical" or "Measured" definition.</p> <p>Given the fact that Supplier Charges, according to section 2.2 of the report, "are expected to represent a genuine pre-estimate of the loss likely to be suffered by other Parties as a result of a failure by a Supplier to meet the applicable Performance Level" we believe it would be wrong to allow these to be altered in some form of automatic way. In this respect we note the comments in section 5.2 in regard to "granularity", that the "Justified" approach is better able to target individual Suppliers whose "failure to meet the applicable Performance Level" has caused the problem for which they are being charged. To adopt either the "Statistical" or "Measured" approaches is likely to penalise disproportionately other Suppliers who have not failed "to meet the applicable Performance Level" and run counter to the BSC Objectives.</p> <p>The "Justified" approach allows the Panel, and other BSC Parties, to exercise</p>

Q	Response	Rationale
		more discretion in considering each problem, avoid the process being arbitrary (and open to potential 'gaming') and allows flexibility in dealing with new problems. In addition to this we believe that there should be a £ figure introduced that quantifies the materiality on Suppliers. Only claims above this figure should be considered by the Panel. All claims below this should be ignored to avoid the Panel considering frivolous claims.
4a	n/a	None - The objective should be to address the root causes instead.
5	No	<p>We do not support retrospective changes to the Code. This gives rise to serious Regulatory Risk for BSC Parties. In the normal course of business we proceed on the basis of the Code (and other industry documents) as they are currently written. If retrospective changes are to be allowed then this opens up serious dangers for all BSC Parties that having proceeded to carry out their business in accordance with the rules and obligations of the BSC, they find their actions to have been wasted. This cannot be said to meet the BSC Objectives.</p> <p>If we assume that the Authority approves this Modification, and the retrospective application where to be limited to that period from when the Authority gave its approval to the Implementation Date, then we would, reluctantly, agree with this very limited retrospective application.</p>
6	Yes	We are concerned to ensure, if this Modification is implemented, that a very clear definition of "generic problem" is established.
7	Yes	Given the lack of detail on many aspects of this Modification proposal we have no further comments to make on it at this time. If this Modification proposal proceeds further then we look forward to receiving more detailed information and providing comments in due course.

P115_ASS_009 – Powergen

Respondent:	Afroze Miah
No. of BSC Parties Represented	15
BSC Parties Represented	Powergen UK plc, Powergen Retail Limited, Diamond Power Generation Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy Limited
Role of Respondent	Supplier

Q	Response	Rationale
1a	Yes	The principle is sound.
1b	n/a	It is difficult, at this stage, to know the exact level of materiality. We need further details before we can comment further on this.

Q	Response	Rationale
1c	Yes	The solution needs to be strict in defining under what circumstances supplier charges should be disapplied. Otherwise there would be room for abuse of any disapplication process.
2a	Yes	
2b	Yes	
2c	Yes	
3	n/a	
4a	n/a	<p><u>Annex B REF 9</u></p> <p>The Proposal should NOT attempt to address one of the alleged "Possible Causes" of Problem 9 in Annex B. The fact that D0023 is not sent to Suppliers is NOT a defect in our view. This is the subject of a CP at the moment and our response in the past has always been that this is not the problem. The supplier would not know how to deal with the D0023, has no capability to affect it and does not want to receive the flow.</p> <p>Situations should also include where the charge is fundamentally wrong, e.g. where subsequent data shows it to be so.</p>
5	Yes	
6	Yes	Situations should also include where the charge is fundamentally wrong, e.g. where subsequent data shows it to be so.
7	No	