

CP1483 'Changes to BSCP550 – Shared Metering Arrangements' CP2



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About This Document

CP1483 was first issued for consultation on 6 February 2017, with a response deadline of 3 March 2017.

These views were considered at the SVG meeting on 4 April 2017 however the SVG made a change to the redlined changes. Due the material nature of the change, the SVG deferred their decision, pending the responses to a second consultation.

The purpose of this CP1483 Change Proposal (CP) Consultation is to invite BSC Parties, Party Agents and other interested parties to provide their views on the impacts and merits of CP1483, in light of the amended legal text. The Supplier Volume Allocation Group (SVG) will then consider the consultation responses before making a decision on whether or not to approve CP1483.

There are six parts to this document:

- This is the main document. It summarises the SVG's initial views on the proposed changes, and a summary of the SVG's discussion on deferring their decision, pending the responses from a second consultation.
- Attachment A contains the specific questions for the second CP Consultation on which we seek your views. Please use this form to provide your response to these questions, and to record any further views or comments you wish to be considered.
- Attachment B contains the amended redlined changes to deliver the CP1483 solution.
- Attachment C contains the CP1483 proposal form.
- Attachment D contains SVG193_03_CP1483_Assessment Report
- Attachment E contains the consultation responses from the first CP Consultation

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1 Initial SVG Views

SVG's initial views

The CP progression paper for CP1483 was presented to the SVG at its meeting on 31 January 2017 ([SVG192/04](#)).

The SVG acknowledged the issue with the current process and a number of further points were discussed:

- Firstly, an SVG member asked about the scale and origin of the issue. The answer given stated that CP1483 originated as a concern discussed at the Performance Assurance Board (PAB) regarding Settlement Risks for new potential sites, particularly as errors occurring after Gate Closure are difficult to correct. The scale of the issue is small as there are less than 10 known shared metering arrangement sites in the UK.¹ However, these numbers may increase and hence it is important to rectify the issue before it becomes more prevalent.
- Secondly, an SVG member expressed support for the proposal and noted that their company had experienced the issue identified and will be providing examples during the consultation phase in order to provide more clarity on the issue.
- Lastly, the SVG member noted that an early implementation date would be preferable so potential issues can be avoided sooner. ELEXON welcomes Parties' views on the feasibility of an earlier implementation date, on 29 June 2017, and the priority they would assign to this.

¹ Results of a request for information from HHDC to ELEXON in August 2016

SVG's decision to defer

'Best' and 'Reasonable' Endeavours

An SVG observer queried the use of 'best endeavours' in the original redlining, noting that in a legal sense there is a difference between 'best' and 'reasonable' endeavours. A 'best endeavours' obligation may present a larger burden on the MOA, HHDC and HHDA than a 'reasonable endeavours' obligation. Therefore a member proposed to use the term 'reasonable' instead. The SVG considered the legal interpretation of both terms. A SVG member noted that one respondent to the CP Consultation believed that 'best endeavours' was not strong enough, which is the opposite of what the SVG is now proposing. An SVG member queried the materiality of the issue, in terms of whether a 'best endeavours' obligation posed more of a material impact on Parties, than a 'reasonable endeavours' obligation.

Following discussion, the SVG unanimously agreed to amend the redlining to change 'best endeavours' to 'reasonable endeavours', as it was viewed as a more proportionate obligation in the context of the change being proposed.

The SVG agreed that the change to the draft redlining was material as 'reasonable endeavours' and 'best endeavours' requirements have different legal connotations. Consequently the SVG agreed that CP1483 should go out for a second CP Consultation.

Legal interpretation

The terms 'best endeavours' and 'reasonable endeavours' differ in what is required of a Party to achieve their various contractual obligations.

Although there is no fixed meaning for these terms; when litigated the Courts have interpreted these terms based on the facts of specific cases. ELEXON has identified the following guidance from case law.

Best endeavours require the party to take **all** reasonable courses of action to achieve the desired result.

- This includes taking those courses of action within its power which can achieve the desired result, and which a prudent, determined and reasonable person, acting in his or her own interests, and desiring to achieve that result, would take.
- It is likely to involve spending money, although there is no rule on how much. However, the party is not expected to spend money that would result in its financial ruin or disregard its shareholders' interests or breach its duties to them.

Reasonable endeavours requires a person to take a reasonable course of action to achieve the desired result.

- In deciding which course to take, the party is permitted to balance its contractual obligation against all relevant commercial considerations. These considerations could include its relationships with third parties, its reputation, likely costs and the chances of achieving the desired result.
- The party is entitled to consider its own financial interests in deciding how best to comply with this obligation.

- If a reasonable endeavours obligation is coupled with specific steps that the party must take, that party must take those steps irrespective of the cost of doing so

Amended redlining

Attachment B contains the amended redlined changes to BSCP550 to deliver the CP1483 proposed solution.

CP Consultation Question

Do you agree that the amended draft redlining delivers the CP1483 proposed solution?

If 'No', please provide your rationale.

We invite you to give your views using the response form in Attachment A