MODIFICATION P256 – PROPOSED DRAFT LEGAL TEXT

SECTION U: PROVISIONS RELATING TO SETTLEMENT (version 12.0)

2. SETTLEMENT

2.2 Post-Final Settlement Runs and Extra-Settlement Determinations

Amend paragraph 2.2.2 as follows:

2.2.2 Subject to paragraph 2.2.2A and paragraph 2.2.4 the ~~Panel~~Trading Disputes Committee may determine~~, upon the recommendation of the Trading Disputes Committee~~ following resolution of a Trading Dispute~~, or following the award of an arbitrator, or otherwise in its discretion~~:

(a) that, after the Final Reconciliation Settlement Run and related Final Reconciliation Volume Allocation Run, a Post-Final Settlement Run should be carried out in relation to a Settlement Day or part thereof; provided that no more than one Post-Final Settlement Run may be carried out in respect of any one Settlement Day;

(b) that, at any time, an Extra-Settlement Determination should be carried out in accordance with paragraph 2.2.3 in relation to a Settlement Day or part thereof.

Insert new paragraph 2.2.2A as follows:

2.2.2A The provisions of paragraph 2.2.2 shall apply mutatis mutandis to the Panel as if the reference therein to:

(a) the Trading Disputes Committee were a reference to the Panel; and

(b) the resolution of a Trading Dispute were a reference to the award of an arbitrator or otherwise in the Panel's discretion.

Amend paragraph 2.2.3 as follows:

2.2.3 Subject to paragraph 2.2.3C, ~~W~~where an Extra-Settlement Determination is to be carried out:

(a) there shall be determined amounts

(i) by reference to the differences between the amounts of Trading Charges determined pursuant to the Extra-Settlement Determination and such amounts as determined in the Settlement Run (for the relevant Settlement Day) preceding such Extra-Settlement Determination, or

(ii) otherwise by way of adjustment and apportionment in respect of Trading Charges as the ~~Panel~~Trading Disputes Committee shall determine

which each Trading Party and the Transmission Company shall be entitled to be paid by or liable to pay to the BSC Clearer;

(b) such entitlements and liabilities shall be Ad-Hoc Trading Charges for the purposes of Section N6.9;

(c) the ~~Panel~~Trading Disputes Committee shall determine the method by which Trading Charges, or adjustment and apportionment in respect thereof, are to be determined;

(d) each Party and each BSC Agent shall comply with the reasonable requests of the ~~Panel~~Trading Disputes Committee in connection with such method of determination;

(e) such determination may be made on such estimated or approximate basis as the ~~Panel~~Trading Disputes Committee may decide is appropriate in the circumstances (having regard, without limitation, to whether any further Timetabled Reconciliation Settlement Run in relation to the relevant Settlement Day is to take place after the Extra-Settlement Determination);

(f) without prejudice to the generality of paragraph (e), subject to paragraph (g), unless the Final Reconciliation Settlement Run and related Final Reconciliation Volume Allocation Run for the relevant Settlement Day have already taken place, such determination may (where appropriate in the ~~Panel~~Trading Disputes Committee's opinion) be made so that:

(i) extra-settlement amount(s), so far as being amounts payable to Trading Parties or the Transmission Company, are determined and payable only as to a proportion (the "**interim proportion**") of the amounts that would be payable on the basis of an exact determination of the relevant Trading Charge(s) in accordance with the Code; and

(ii) extra settlement amounts so far as relating to Daily Party residual Settlement Cashflow payable by Trading Parties, are determined for and payable by or to some Trading Parties only (each an "**included**" Trading Party)

where "**extra-settlement amounts**" means the amounts payable pursuant to paragraph (b) by way of Ad-Hoc Trading Charges pursuant to an Extra-Settlement Determination;

(g) where a determination is made in accordance with paragraph (f), so far as relating to Daily Party Residual Settlement Cashflow:

(i) the interim proportion shall be determined (for the relevant Extra-Settlement Determination) by the ~~Panel~~Trading Disputes Committee;

(ii) the included Trading Parties shall be selected as follows, unless the ~~Panel~~Trading Disputes Committee decides that there are exceptional circumstances which justify a different method of selection:

(1) all Trading Parties shall be ranked in order of the magnitude of $RCRC_p$ payable to them in respect of the relevant Settlement Day, largest first;

(2) the Trading Parties to be included shall be selected in the order ranked, until such Trading Parties have been selected that:

$$\sum^{ps} RCRC_p = IP * \sum^{p} RCRC_p$$

where:

$RCRC_p$	is the Daily Party Residual Settlement Cashflow for a Trading Party for the relevant Settlement Day as determined under the Settlement Run preceding the Extra-Settlement Determination;
IP	is the interim proportion;
$\sum^{ps}$	is the sum over all selected Trading Parties;
$\sum^{p}$	is the sum over all Trading Parties;

(h) each Party shall be bound by the Extra-Settlement Determination, but without prejudice to paragraph 2.6.1; and

(i) where a relevant Settlement Run in relation to a Settlement Day is carried out after an Extra-Settlement Determination has been carried out in relation to that day:

(i) each Trading Party and the Transmission Company shall be entitled to be paid by or liable to pay to the BSC Clearer, on or as near as practicable to the Payment Date in respect of such Settlement Run, an amount calculated as:

(1) an amount equal and opposite to the extra-settlement amount paid by or to such Party, plus

(2) interest on the amount in paragraph (1)calculated on a compound basis in accordance with paragraph 2.2.3A; and

(ii) such entitlements and liabilities shall be Ad-Hoc Trading Charges for the purposes of Section N6.9.

A relevant Settlement Run for the purposes of this paragraph 2.2.3(i) is a Settlement Run (or, where relevant, the first Settlement Run) in which the ~~s~~Settlement ~~e~~Error in respect of which the Extra – Settlement Determination was carried out has been corrected.

Insert new paragraph 2.2.3C as follows:

2.2.3C The provisions of paragraph 2.2.3 shall apply mutatis mutandis to the Panel where, pursuant to paragraphs 2.2.2 and 2.2.2A the Panel determines that an Extra Settlement Determination should be carried out, as if references to the Trading Disputes Committee in paragraph 2.2.3 were references to the Panel.

Amend paragraph 2.2.5 as follows:

2.2.5 Where the Trading Disputes Committee or the Panel (as the case may be) decides that a Post-Final Settlement Run and Post-Final Volume Allocation Runs or an Extra-Settlement Determination should be carried out:

(a) the Panel shall set, after discussion with the SAA, FAA, CDCA and SVAA (and, where applicable, the CRA, ECVAA, Transmission

Company and/or any Interconnector Administrator and/ or any Market Index Data Provider), a timetable for the carrying out of such runs;

(b) the Notification Date for such Settlement Run shall be specified in such timetable;

(c) BSCCo shall inform all Parties and BSC Agents of the decision to carry out such runs and the timetable set by the Panel for such runs.

2.5 Data used in Settlement

Amend paragraphs 2.5.2 and 2.5.3 as follows:

2.5.2 Up to the date of the relevant initial run in relation to a Settlement Day, a relevant BSC Agent or relevant Party may adjust or revise any settlement data, subject to paragraph 2.5.3, where it appears to the relevant BSC Agent or relevant Party that there is a ~~s~~Settlement ~~e~~Error (as defined in Section W).

2.5.3 For the purposes of paragraph 2.5.2, a relevant BSC Agent or relevant Party shall not adjust or revise any settlement data after such data has first been provided or reported to Parties (including pursuant to an Interim Information Settlement Run or Interim Information Volume Allocation Run), except:

(a) where it appears to the relevant BSC Agent or relevant Party that there is a ~~s~~Settlement ~~e~~Error (as defined in Section W) and:

(i) if the data was provided by or on behalf of or otherwise relates to a particular Party, with the consent of that Party; or

(ii) where paragraph (i) does not apply, with the consent of BSCCo;

(b) pursuant to the resolution of a Trading Query or Trading Dispute.

2.6 Effect of Settlement Runs and Extra-Settlement Determinations

Amend paragraph 2.6.3 as follows:

2.6.3 For the avoidance of doubt:

(a) a Party may not dispute or challenge (as provided in paragraph 2.6.1) an Extra-Settlement Determination on the grounds that such determination was made on an estimated or approximate basis pursuant to paragraph 2.2.3(e);

(b) the reference in Section W1.3.2(a) to the provisions of the Code shall be treated as including any basis of estimation or approximation decided by the Trading Disputes Committee or the Panel (as the case may be) pursuant to paragraph 2.2.3(e).

SECTION W: TRADING QUERIES AND TRADING DISPUTES (version 11.0)

1.2 Resolution of Trading Disputes

Amend paragraph 1.2.6 as follows:

1.2.6 The Query Deadline shall not, in any event, be later than:

(a) subject to paragraph (b), the day which is 20 months after the Settlement Day in which the affected Settlement Period occurred; or

(b) if later, where the alleged ~~s~~Settlement ~~e~~Error is an error in a Post-Final Settlement Run or an Extra-Settlement Determination the date 1 month after the date of the Post-Final Settlement Run or Extra-Settlement Determination in which the ~~s~~Settlement ~~e~~Error first occurred.

1.3 Trading Disputes

Amend paragraph 1.3.1 as follows:

1.3.1 For the purposes of the Code:

(a) subject to paragraph 1.3.2, a "**Trading Dispute**" is any query, difference or dispute of whatsoever nature and howsoever arising under the Code as to:

(i) the existence, nature or effect of errors in:

(1) the data and/or processes used for the purposes of Settlement; or

(2) the application of the rules for Settlement (whether generally or in relation to a particular Party or class of Parties),

to the extent such errors affect or may affect the allocation and/or determination of Trading Charges or the determination and settlement of amounts payable pursuant to Section N by reference to Trading Charges;

(ii) the existence, nature or effect of errors in the data and/or processes used for the purposes of, or in the application (whether generally or in relation to a particular Party or class of Parties) of the rules as to whether and when a Trading Party is in Credit Default under, Section M;

~~(b) a "**settlement error**" is such an error as is referred to in paragraph (a)(i) or (ii);~~

(~~c~~b) a "**Trading Query**" is a query as to a matter which, if not resolved in accordance with the query resolution process set out in the relevant BSC Procedure(s) as provided in paragraph 3.2, will be a Trading Dispute;

(~~d~~c) a Trading Query or Trading Dispute or ~~s~~Settlement ~~e~~Error may, without prejudice to paragraph 3.2.2, refer to one or more Settlement Period(s) and to Settlement Period(s) in one or more Settlement Day(s); and

(~~e~~d) an "**affected Settlement Period**" in relation to a Trading Query or Trading Dispute shall mean a Settlement Period in respect of which a ~~s~~Settlement ~~e~~Error has, or is alleged to have, occurred.

1.4 Duties of BSC Agents

Amend paragraph 1.4.1 as follows:

1.4.1 Section U sets out the circumstances in which a BSC Agent may correct a ~~s~~Settlement ~~e~~Error without the application of the procedures in this Section W relating to Trading Queries and Trading Disputes.

Amend paragraph 1.4.3 as follows:

1.4.3 For the avoidance of doubt, the provisions of this Section W in relation to the resolution of Trading Disputes and the rectification (or otherwise) of ~~s~~Settlement ~~e~~Errors following such resolution are without prejudice to the rights and obligations of BSCCo and BSC Agents under the BSC Agent Contracts.

1.5 Duties of BSCCo

Amend paragraph 1.5.2 as follows:

1.5.2 For the avoidance of doubt, the requirements of paragraph 1.5.1 shall not apply:

(a) in relation to a ~~s~~Settlement ~~e~~Error in respect of which a relevant Trading Query has already been raised; or

(b) in relation to an affected Settlement Period, after the Query Deadline pursuant to paragraph 3.2.2(a).

1.6 Duties of Parties

Amend paragraph 1.6.3 as follows:

1.6.3 Each Party (including for the avoidance of doubt the Transmission Company in relation to matters subject to Section Q) shall take, and shall procure that its Party Agents take, such steps as are necessary or requisite to correct or give effect to the correction (in any Settlement Run or otherwise) of a ~~s~~Settlement ~~e~~Error:

(a) in accordance with the instructions of BSCCo (in accordance with paragraph 3.2.7(d)) in relation to a Trading Query; or

(b) in accordance with any decision of the Trading Disputes Committee or the Panel pursuant to paragraph 3 or 4 in relation to a Trading Dispute.

3.2 Raising a Trading Query

Amend paragraphs 3.2.2 and 3.2.3 as follows:

3.2.2 Subject to paragraph 1.2.6, with respect to a Trading Query, the Query Deadline in relation to an affected Settlement Period is:

(a) subject to paragraphs (b) and (c), the 20th Business Day following the day on which the relevant Settlement Run was carried out; or

(b) where the Trading Query is:

(i) an SVA Non Half Hourly Query;

(ii) a Trading Query concerning data relating to profile coefficient; or

(iii) a Trading Query relating to Market Domain data,

the applicable deadline specified in BSCP11 in relation to Trading Queries of such kind; or

(c) where the Trading Query is an SVA Half Hourly Query it is the applicable deadline specified in BSCP11~~ in relation to Trading Queries of such kind or, if later, the 20th Business Day following the day on which the relevant Timetabled Reconciliation Settlement Run was carried out~~.

3.2.3 For the purposes of paragraph 3.2.2, the "**relevant Settlement Run**" is the Initial Settlement Run or Timetabled Reconciliation Settlement Run in which the ~~s~~Settlement ~~e~~Error first occurred in respect of the affected Settlement Period.

Amend paragraphs 3.2.7 and 3.2.8 as follows:

3.2.7 Following the treatment of a Trading Query raised by a Party under paragraph 3.2.1:

(a) BSCCo may decide to address the questions in paragraph (b);

(b) if it so decides, BSCCo will determine, and notify to each affected Party, whether or not it is satisfied that:

(i) the Trading Query was raised, as to all affected Settlement Periods no later than the applicable Query Deadline;

(ii) a ~~s~~Settlement ~~e~~Error exists; and

(iii) the materiality of the Trading Query is not less than the amount specified in BSCP11;

(c) if:

(i) BSCCo is not satisfied as to the matters in paragraph (b), but

(ii) by the time specified in BSCP11, no affected Party has notified BSCCo that it objects to the Trading Query proceeding no further

then, subject to paragraph 3.2.8, BSCCo shall give notice to that effect to all affected Parties, whereupon the Trading Query shall lapse;

(d) if:

(i) BSCCo is satisfied as to the matters in paragraph (b); and

(ii) by the time specified in BSCP11, no affected Party has notified BSCCo that it objects to the Trading Query being so corrected;

then, subject to paragraph 3.2.8, BSCCo shall instruct the relevant BSC Agent(s) to adjust Settlement to correct the ~~s~~Settlement ~~e~~Error in respect of each affected Settlement Period in the next Settlement Run (if any), and shall notify such adjustment to each affected Party.

3.2.8 Where BSCCo proposes to give notice pursuant to paragraph 3.2.7(c) or issue an instruction pursuant to paragraph 3.2.7(d):

(a) BSCCo shall, in accordance with BSCP11:

(i) before giving such notice or issuing such instruction, report its determination (under paragraph 3.1.1(d)) as to which Parties it considers are affected Parties; and (as applicable)

(ii) before issuing such instruction, report its findings pursuant to paragraph 3.2.7(b)(i) and (ii)

to the Trading Disputes Committee at its next meeting; and

(b) if at such meeting the Trading Disputes Committee determines (with reasons):

(i) (in a case within paragraph 3.2.8(a)(i) or (ii)) that it considers that any other Party was an affected Party, BSCCo shall not give such notice or issue such instruction (as applicable);

(ii) (in a case within paragraph 3.2.8(a)(ii)):

(1) that it disagrees with such findings, BSCCo shall not issue such instruction;

(2) that it agrees with some but not all of such findings, BSCCo shall issue such instruction as will correct the ~~s~~Settlement ~~e~~Error insofar as (and in respect of those Settlement Periods in relation to which) the Trading Disputes Committee agreed with BSCCo's findings.

3.4 Consideration and Determination by the Trading Disputes Committee

Amend paragraph 3.4.1 as follows:

3.4.1 In considering a Trading Dispute, the Trading Disputes Committee may (subject to and in accordance with the relevant BSC Procedure(s)):

(a) make such enquiries as it sees fit;

(b) request BSCCo to procure such additional information or data as it reasonably requires to enable it to determine the Trading Dispute~~.~~; and/or

(c) amend the last occurring affected Settlement Period (if any) relating to a Trading Dispute notified by a Party in accordance with paragraph 3.2.1 to a later affected Settlement Period when the Trading Disputes Committee considers that the Settlement Error in respect of such Trading Dispute last occurred.

Amend paragraph 3.4.3 as follows:

3.4.3 In relation to each Trading Dispute, having considered all relevant material available to them and any representations made (and evidence submitted) in

accordance with this Section W or where relevant the provisions of BSCP11, the Trading Disputes Committee shall:

(a) determine, in relation to each affected Settlement Period, whether the relevant Trading Query was raised by the Query Deadline or, if applicable, it should exercise its discretion under paragraph 3.2.4; and

(b) in relation to those affected Settlement Periods (if any) for which it determined that the Trading Query was raised by the Query Deadline, or exercised its discretion under paragraph 3.2.4, determine:

(i) whether there was a ~~s~~Settlement ~~e~~Error; and

(ii) if so, what changes in data, processes or the application of rules (as referred to in paragraph 1.3.1(a)) are appropriate to correct the ~~s~~Settlement ~~e~~Error; and

(iii) (to the extent to which the Trading Disputes Committee can determine such matters) the materiality of the error.

3.4A Determinations of Trading Disputes Committee

Amend paragraph 3.4A.1 as follows:

3.4A.1 The Disputes Secretary shall, promptly following:

(a) the making of a determination by the Trading Disputes Committee in respect of a Trading Query or a Trading Dispute in accordance with paragraph~~s~~ 3.2.8(b) and paragraph 3.4.3 respectively; or

(b) ~~notification of a determination by the Panel pursuant to paragraph 3.5.5~~ not used; or

(c) the making of a determination by the Trading Disputes Committee in accordance with paragraph 4.1.1.

notify each Party, each relevant BSC Agent and the BSC Auditor of the determination made (and the reasons given by the Trading Disputes Committee), or where the Trading Disputes Committee failed to reach a majority decision in relation to the Trading Dispute, of that fact.

Insert new paragraph 3.4A.3 as follows:

3.4A.3 Any determination of the Trading Disputes Committee pursuant to paragraph 4.1.1 shall be final and binding on all Parties and each Party shall comply with such determination until and unless such determination is referred under paragraph 3.5.

3.5 References to the Panel

Amend paragraph 3.5.1 as follows:

3.5.1 Subject to paragraphs 3.5.2~~,~~ and 3.5.3~~, and 3.5.5,~~ where:

(a) a Party disagrees with the determination of the Trading Disputes Committee pursuant to paragraphs 3.2.8(b) or 3.4.3; or

(b) the Trading Disputes Committee has sought but failed to reach a majority decision in respect of a Trading Dispute; or

(c) a Party disagrees with the determination of the Trading Disputes Committee pursuant to paragraph 4.1.1,

the Party or (as the case may be) the Trading Disputes Committee may (and in a case where the TDC Terms of Reference so require, the Trading Disputes Committee shall) refer the matter to the Panel for determination.

Amend paragraph 3.5.5 as follows:

3.5.5 ~~In circumstances where a Party has referred a determination of the Trading Disputes Committee pursuant to paragraph 3.5.1(a) and, in relation to an affected Settlement Period, the Panel determines that the Trading Query was raised within the Query Deadline or, where applicable, the Panel exercises its discretion in respect of the matters referred to in paragraph 3.2.4, the Panel Secretary shall notify the Panel's decision to the Disputes Secretary and remit the matter to the Trading Disputes Committee, in accordance with the provisions of BSCP11, for a determination under paragraph 3.4.3(b)~~ A decision by the Panel pursuant to paragraph 3.5.1(c) shall be final and binding on all Parties.

3.6 Arbitration

Amend paragraph 3.6.1 as follows:

3.6.1 Subject to paragraph 3.6.2, a Party may refer a matter that is the subject of a Trading Dispute to arbitration in accordance with the provisions of Section H7:

(a) where it disagrees with a decision of the Panel made under paragraph 3.5 (with the exception of paragraph ~~3.5.5~~3.5.1(c));

(b) after a decision has been made under paragraph 3.5.3 that the Trading Dispute should not be referred to the Panel.

ADJUSTMENTS FOLLOWING RESOLUTION OF A TRADING DISPUTE

4.1 General

Amend paragraphs 4.1.1 and 4.1.1A as follows:

4.1.1 Subject to paragraphs 3.5.5 and 4.1.1A, following a decision of the Trading Disputes Committee~~, or (pursuant to a reference under paragraph 3.5) the Panel,~~ in respect of a Trading Dispute that there was a ~~s~~Settlement ~~e~~Error, the Trading Disputes Committee shall determine:

(a) ~~determine~~ that the error should be corrected in the next Settlement Run relating to the relevant Settlement Day; or

(b) where the period to the next Timetabled Reconciliation Settlement Run (considered together with the materiality of the Trading Dispute) is such that the Trading Disputes Committee believes that an Extra Settlement Determination is justified, ~~recommend to the Panel~~ that an Extra-Settlement Determination should be performed; or

(c) where a Trading Dispute is not resolved until after the relevant Final Reconciliation Settlement Run, ~~recommend to the Panel~~ that one of the following steps should be taken:

(i) that the error should not be corrected, having regard to all the circumstances (including the materiality of the Trading Dispute and the length of time which has elapsed since the occurrence of the event giving rise to the Trading Dispute);

(ii) that an Extra-Settlement Determination and/or Post-Final Settlement Run should be undertaken.

4.1.1A Following a decision of the Trading Disputes Committee, or (pursuant to a reference under paragraph 3.5) the Panel, in respect of a Trading Dispute that there was a ~~s~~Settlement ~~e~~Error, the Trading Disputes Committee shall determine the materiality of the Trading Dispute and in cases where it is less than the materiality threshold specified in BSCP11 they shall not correct the error.

Amend paragraph 4.1.3 as follows:

4.1.3 ~~The Panel shall determine any matter referred to it pursuant to paragraph 4.1.1, having regard to the recommendations of the Trading Disputes Committee and any other circumstances which it considers relevant~~ Not used.

Amend paragraph 4.1.4 as follows:

4.1.4 Each BSC Agent and (in accordance with paragraph 1.6.3) each Party shall take and procure its Party Agents to take such steps as may be necessary in order to give effect to a determination of the Trading Disputes Committee pursuant to paragraph 4.1.1~~(b) or of the Panel pursuant to paragraph 4.1.3~~.

4.2 Post-Final Settlement Runs and Extra-Settlement Determinations following a Trading Dispute

Amend paragraphs 4.2.1 and 4.2.2 as follows:

4.2.1 If the Trading Disputes Committee ~~recommends to the Panel~~ determines that a Post-Final Settlement Run or Extra-Settlement Determination should be performed, the Trading Disputes Committee may recommend to the Panel that a particular Party or Parties shall bear all or part of the cost of any such Post-Final Settlement Run or Extra-Settlement Determination, and if the Panel so decides such Party or Parties shall pay such amounts as were so recommended by the Trading Disputes Committee.

4.2.2 Following a ~~recommendation~~ determination of the Trading Disputes Committee pursuant to paragraph 4.1.1, ~~the Panel shall determine whether or not~~ that a Post-Final Settlement Run or Extra-Settlement Determination should be undertaken the Panel shall ~~and,~~ after consultation with the relevant BSC Agents~~, shall~~ specify the date when such Run or determination is to be undertaken.

Delete paragraph 5.6 as follows:

~~**5.6 Miscellaneous**~~

~~5.6.1 Notwithstanding the Trading Disputes Committee's determination dated 19 August 2004 in the matter of Trading Dispute DA223 (relating to an Emergency~~

~~Instruction issued by the Transmission Company to BM Unit T_DAMC-1 on 19 May 2004) ("**the DA 223 Decision**") and Section T1.4 and Section U2.1.2, the SAA shall include the Acceptance Data determined pursuant to the DA 223 Decision and submitted to it by the Transmission Company for use in, but not prior to, the Final Reconciliation Settlement Run associated with 19 May 2004, provided always that this clause 5.6.1 shall be subject to paragraph 5.6.2.~~

~~5.6.2 If, at the Relevant Implementation Date in relation to this paragraph 5.6, the settlement error identified in the DA 223 Decision has been corrected pursuant to paragraph 4, the provisions of paragraph 5.6.1 shall not take effect.~~

ANNEX X-1 (version 46.0)

Insert new definition as follows:

"Settlement Error": means an error as referred to in Section W 1.3.1(a)(i) or (ii);