

P163 - comments on opinion

1 Interpretation of 6.5.2

- 1.1 A key part of Counsel's Opinion is that there can only be one $CAEI_{aj}$ per Settlement Period j and Energy Account a (para 36).
- 1.2 In relation to any given settlement determination there can only be one such value. However for any actual or theoretical settlement determination there can be different values. In a trivial sense, that is true in respect of each actual settlement/reconciliation run.
- 1.3 The Opinion addresses whether the 'gateway' (precondition in 6.5.2) to the application of 6.5.3 applies. However it is constructive also to consider 6.5.3:
 - (a) It is clear from 6.5.3 that a hypothetical settlement determination is required to calculate $NCAEI_{aj}$. (That is, the value that 'would have been the value of $CAEI_{aj}$ ' in a counterfactual – ie absent rectification of the particular PNE.)
 - (b) Thus 6.5.3 does appear expressly to require a separate determination of ECP for each Volume Notification (possibly under more than one claims of Past Notification Error).
 - (c) (I do not think that Counsel argues, separately to his argument on $CAEI_{aj}$, that Volume Notification should be interpreted plurally in 6.5.3.)
 - (d) If this is correct, then a curious outcome would result if Counsel's opinion in relation to 6.5.2 is correct. The 'gateway' in 6.5.2 might be satisfied by a small net reduced debit/increased credit; but then larger individual ECPs would be calculated (for the Volume Notifications for which the correction was in the relevant direction) under 6.5.3. (This might of course equally be framed as a reason to interpret 6.5.3 consistent with Counsel's view of 6.5.2).
- 1.4 Should 6.5.2 be interpreted as calling for (more than one) theoretical settlement determination to determine Relevant Account Energy Imbalance Cashflow? Or, as Counsel contends, does it refer only to one actual value, namely that resulting from the Settlement Run under 6.5.1(b)? The position is not very clear.
 - (a) 6.5.2 states that it applies in relation to a claim for PNE or, if claims for more than one PNE in respect of the same Volume Notification are made, the sum of such claims. That does imply that it relates to a particular Volume Notification; (the 'adjustments in the data' are adjustments in data referring to a particular PNE).
 - (b) The term used is Relevant Account Energy Imbalance Cashflow, which is defined in 6.1.1(g). That can be (if more than one claim for PNE is made in relation to one Volume Notification) the net aggregate amounts of $CAEI_{aj}$ for the relevant Settlement Periods. In other words, there could be different values of Relevant Account Energy Imbalance Cashflow, relating to different Volume Notifications, each relating to periods of a number of different Settlement Periods. These different periods could overlap (in other words the same Settlement Period could be counted in more than one Relevant Account Energy Imbalance Cashflow).
 - (c) However (if (c) above is correct) it does not necessarily follow that the values of $CAEI_{aj}$ used (for each SP counted in a Relevant Account Energy Imbalance Cashflow) can be hypothetical.

- (d) The argument does appear to be circular. If it is accepted that 6.5.1 and 6.5.2 are to be applied per PNE (or Volume Notification), then it is necessary to construe 'result in' in 6.5.2 as including 'would result in' (ie in the case of a settlement determination based only on correction of that PNE). On the other hand, if 'result in' must refer to the outcome of the (actual) settlement run referred to in 6.5.1(b), then it is necessary to construe 6.5.1 and 6.5.2 as applying to all relevant PNEs/Volume Notifications.
- (e) However a different argument can be made which opposes Counsel's view. It is possible that (in the settlement run referred to in 6.5.1(b)), other adjustments might have been made, unrelated to the correction of PNEs (eg for some meter error), which would affect the value of $CAEI_{aj}$ for a relevant Settlement Period. In order to interpret 'the adjustments to the data result in' in 6.5.2, it must be necessary to disregard such adjustments. In other words 6.5.2 must be read as saying 'would (absent non-PNE-related changes) result in'. In which case it is clear that a hypothetical determination of $CAEI_{aj}$ is required, rather than the actual value resulting from the settlement run. The foundation for Counsel's argument is then lost.

2 What is an individual claim?

- 2.1 The Opinion suggests that there is no requirement to treat each Volume Notification as being subject to a separate claim (or claims grouped and treated as a claim).
- 2.2 The opposite position seems very arguable. It is clear that the question what counts as a single claim is addressed in the Code (given the number of references to 'a single claim' and 'two or more claims'), and that it is an important question (since it is the base for charging the £5,000 fee). Any interpretation of 'claim' must give a clear and specific answer to this question.
- 2.3 If the Code states that for certain purposes, a number of claims are to be treated as a single claim, it must follow that (except for those purposes) they are not to be so treated. In order to be aggregated and treated as one, they must (before such aggregation) be several.
- 2.4 The starting point is 6.2.1 which says that if a Party considers there has been a PNE it may make a claim. It is clear from 6.2.2 that what would otherwise be several claims (ie one per PNE) are to be aggregated and treated as a single claim.
- 2.5 Similarly, 6.2.6 does not work unless claims are treated (prior to the aggregation by relevant cause) as one-per-PNE.
- 2.6 As Counsel points out, other provisions imply one claim per PNE: reference to 'other Contract Trading Party' in 6.2.3, but also 6.3.1.