

## Modification Proposal

**MP No: P145**

*(mandatory by BSCCo)*

### **Title of Modification Proposal** *(mandatory by proposer):*

Cost reflective mechanism to allocate any deficit arising from the application of the PNE claims fee

**Submission Date** *(mandatory by proposer):* 17 October 2003

### **Description of Proposed Modification** *(mandatory by proposer):*

Elxon have recently published indicative figures outlining the cost of the PNE claims process, as part of a Past Notification Error (PNE) claim fee consultation. It now appears highly likely that there will be a significant discrepancy between the administration fee revenue and the cost of the PNE claims process. With a fee remaining at £5,000 the most likely outcome is a £1.4M deficit.

The PNE claims process was established for the benefit of parties seeking to rectify their past notification errors, and thus the cost of that process should be borne by such parties. Furthermore the PNE claims process costs should be fairly allocated amongst claimants according to the degree to which they contribute to these costs.

This proposal sets out a relatively straight forward and hence cost effective mechanism to ensure any deficit arising from the application of the PNE claims fee is allocated in such a way as to ensure the costs of the PNE process are both fully and fairly allocated amongst PNE claimants:

Each claimant shall pay its share of any deficit in accordance with the following formula:

$$C_{PNE} = D \times V_C / V_{TOT}$$

#### Where:

$C_{PNE}$  = Cash payment to be paid by a particular claimant in respect of a single claim<sup>1</sup>.

$D$  = Deficit, i.e. the cost of the PNE claims process less the income generated from the PNE claims fee.

$V_C$  = Net value of each individual claim<sup>1</sup> obtained by adding together the energy imbalance values of all the parties associated with a particular claim<sup>1</sup>. Such energy imbalance values have already been published by Elxon under the title of "Past Notification Error Materiality".

$V_{TOT}$  = Total net value of all PNE claims (i.e. a sum total of individual claim<sup>1</sup> net energy imbalance values using data from Elxon's document entitled "Past Notification Error Materiality").

Please note claims having a negative net energy balancing value shall be ignored for the purpose of calculating  $V_C$  or  $V_{TOT}$ , as such claims would otherwise result in payment to the claimant.

### **Description of Issue or Defect that Modification Proposal Seeks to Address** *(mandatory by proposer):*

Parties that have not made any PNE claims can not by definition be considered to have 'caused' PNE costs. It is therefore unreasonable to expect such parties to fund a proportion of the PNE claims process cost. For example, should the deficit be as high as £1.4M it will place an unnecessary cost burden in excess of £250,000 on one party.

This proposal also seeks to ensure any deficit is fairly allocated amongst claimants something that may not in practice be possible under the limited powers the Panel has to recommend a revision to the existing 'flat' claim fee under P6.2.2. Broadly speaking the larger the value of claims, the larger the costs likely to be incurred in respect of such claims. It is therefore right and proper that such claimants pay a larger share of the overall PNE claims process cost. Please also refer to the second paragraph under 'Justification for proposed

<sup>1</sup> This is subject to the establishment of single cause claims by the PNE Committee under P6.2.6.

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Modification proposal' below.

There can be no doubt that the original claim fee under P6.2.2 sought to spread the cost of the claims process amongst those who wished to make a claim. Furthermore the Code specifically reserves the right of the Panel (with approval of the Authority) to amend this fee where appropriate. This provision could only have been included for a circumstance of over or under recovery. This confirms the assertion that those responsible for PNE process costs must pay for the process. To expose non-claimants to an unforeseen cost represents a perverse shift from the original intent of P37.

**Impact on Code** *(optional by proposer):*

Section P6

**Impact on Core Industry Documents** *(optional by proposer):*

Relevant BSCPs.

**Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties** *(optional by proposer):*

Ad hoc systems for billing administration fees will have to be changed. It should be possible to first invoice claimants for the claims fee under existing procedures, and invoice any additional charges to cover any anticipated deficit envisaged under this proposal at a later date.

**Impact on other Configurable Items** *(optional by proposer):*

**Justification for Proposed Modification with Reference to Applicable BSC Objectives** *(mandatory by proposer):*

Placing an unreasonable cost burden on non-claimants or a disproportionate cost burden on claimants with relatively small value claims (i.e. claims that have tended to generate lower PNE claims process costs), will tend to undermine those parties ability to compete in the market. Targeting costs at those that to a greater or lesser extent contribute to those costs will thus help promote competition in the generation and supply of electricity.

Under B1.2.1(c) the "Panel shall conduct its business under the Code" so "that the Code is given effect without undue discrimination between Parties or classes of Party. In the absence of this proposal the Panel will have difficulty fulfilling this objective with respect to any review of the claims fees set out in P6.2.2. In our view the Panel should recommend the raising of the claims fee to a level sufficient to cover the cost of the PNE claims process, to ensure there is not undue discrimination between classes of party (namely claimants who should pay and non-claimants who should not). In doing this however, the Panel may unduly discriminate against parties that have submitted small claims by setting a disproportionately high claims fee. This proposal in conjunction with the review of the PNE claim fee will allow the Panel to consider how best to apportion the cost of the PNE claims process.

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**Attachments: NO**

**If Yes, Title and No. of Pages of Each Attachment:**