

### **Guidance for this Attachment to BSCPXX**

In accordance with **BSC Section B 3.5.1**, the BSC Panel, or a Claims Committee established by the Panel, has the authority to make determinations on claims for compensation resulting from either a Black Start Period or Fuel Security Code event under the BSC. In that situation, this document is to act as a guideline as to what the Terms of Reference for that Claims Committee could be. Please note this is a Draft only, and the BSC Panel has the authority to determine what the Terms of Reference for such a Claims Committee shall be at the time.

### **Draft Terms of Reference for the Claims Committee (Version 0.1)**

Unless otherwise stated or the context otherwise requires, words and expressions and general rules as to interpretation that are used in these Terms of Reference shall have the same meanings and application attributed to them under the Balancing and Settlement Code (the Code). In particular, references to Sections in these Terms of Reference are to Sections of the Code and a reference to the Claims Committee (Claims Committee and/or Committee) shall, unless the context otherwise requires, include a Claims Committee Member (Member) and any duly appointed alternate.

## **1. ESTABLISHMENT AND ROLE**

### **1.1 Establishment**

1.1.1 The BSC Panel has, in accordance with Section B5.1.1, established a BSC Panel Committee with such Committee to be called the "Claims Committee" and such Claims Committee shall continue until such time it is dissolved by the BSC Panel.

### **1.2 Role**

1.2.1 The BSC Panel has, in accordance with Section B5.1.3, delegated certain of its powers, functions and responsibilities under Section G3 (Contingencies) to the Claims Committee. Therefore, it is the role of the Claims Committee to consider, investigate and determine claims made by BSC Parties for compensation in respect of Avoidable Costs incurred in relation to Black Start periods and/ or Exceptional Costs incurred in relation to a Fuel Security Code event.

## **2. COMPOSITION OF THE CLAIMS COMMITTEE AND APPOINTMENT OF MEMBERS**

### **2.1 Members**

2.1.1 The Claims Committee shall be composed (as the BSC Panel shall decide) of not less than [XX] and not more than [XX] members (each a Member) having such experience and expertise in the electricity industry (and other relevant as the BSC Panel decides is appropriate).

2.1.2 The BSC Panel shall appoint Members to the Claims Committee and a Member of the Claims Committee shall remain in office until the Claims Committee is dissolved or until their resignation has been submitted in writing to the Secretary (as that person is described in paragraph 2.6) or their removal by the BSC Panel in accordance with paragraph 2.1.3 below (whichever is earlier).

2.1.3 Without prejudice to paragraph 2.1.2 above, the BSC Panel may remove and replace such Members of the Claims Committee from time to time if:

- (i) in the BSC Panel's opinion they are unwilling, unable, unfit or otherwise are incapable for any reason to carry out their duties as a Member in accordance with the Code, Code Subsidiary Documents (CSDs) or these Terms of Reference; or
- (ii) any of the matters stated in Sections B2.7.4(b) or B2.7.4(d) occurs and/or applies with such sections being read as if a BSC Panel Member was a Claims Committee Member.

2.1.4 Without prejudice to the generality of paragraphs 2.1.2 and 2.1.3 above, the BSC Panel may review and alter the membership of the Claims Committee at any time.

## **2.2 Independence and Confidentiality**

2.2.1 Each Claims Committee Member shall act independently, impartially and shall not be representative of, and shall act without undue regard to, the particular interests of any particular body, person or class of persons or any Related Person.

2.2.2 The BSC Panel shall require from any Claims Committee Member such applicable statements equivalent to those set out in Sections B2.8.2 and B2.8.4 with such sections being read as if a BSC Panel Member was a Member.

2.2.3 Claims Committee Members acknowledge that in carrying out their duties and functions as a Claims Committee Member that they may during the course of their business be in receipt of confidential information and as such each Claims Committee Member will be required to sign a confidentiality agreement. For the avoidance of doubt each Claims Committee Member shall not disclose any confidential information received in their capacity as Claims Committee Member to any person except where:

- (i) expressly required under the Code, CSDs and/or these Terms of Reference;
- (ii) the disclosure of data is to the Secretary of State, the Authority, the BSC Panel and/or any other BSC Panel Committee as may be directed by the BSC Panel;
- (iii) the data is in the public domain;
- (iv) required to do so in order to comply with any dispute resolution process, Legal Requirement and/or any Approved Modification.

## **2.3 Alternates**

2.3.1 A Claims Committee Member shall be entitled to appoint an alternate (subject to such appointment and such alternate being first approved by the BSC Panel for that purpose) and further may remove such person as his alternate from time to time by giving written notice to the Secretary. The appointment and removal of an alternate shall be effective from the time specified in such notice given to the Secretary.

2.3.2 These Terms of Reference shall apply in respect of the appointment of an alternate as though references to the Member in any paragraph were to such alternate.

2.3.3 Sections B2.10.6 and B2.10.7 shall apply in respect of any alternate as though references to the BSC Panel Member alternate were to such a Claims Committee Members alternate.

## **2.4 Indemnification**

2.4.1 BSCCo shall indemnify all Claims Committee Members and their duly appointed alternates in accordance with Section B2.9.

## **2.5 Chairman**

2.5.1 There shall be a chairman to the Claims Committee ("Claims Committee Chairman" or "Chairman") who shall be a person appointed (and removed) by the BSC Panel from time to time.

2.5.2 The Claims Committee Chairman shall select a Claims Committee Vice Chairman. In the Chairman's absence, the Claims Committee Vice Chairman will fulfil the role of Claims Committee Chairman and exercise such powers, functions and responsibilities as the Claims Committee Chairman. In the event the Claims Committee Vice Chairman is unable to attend Sections B4.2.3 (b) and B4.2.4 shall apply.

2.5.3 The Claims Committee Chairman and Claims Committee Vice Chairman shall not be members of the Claims Committee and shall not cast votes as Claims Committee Members.

2.5.4 The principal powers, functions and responsibilities of the Claims Committee Chairman shall include but not be limited to:

- (i) chair and regulate the conduct of meetings of the Claims Committee;
- (ii) set the agenda for the meetings of the Claims Committee;
- (iii) use reasonable endeavours to ensure a quorum is present at a meeting of the Claims Committee;
- (iv) authorise any applicable documentation within the timescales required by the Code or any relevant CSD that relate to the business or operation of the Claims Committee; and
- (v) any other functions in connection with the business or operation of the Claims Committee as appropriate.

2.5.5 There shall be a BSC Panel Sponsor to the Claims Committee who shall be a person appointed (and removed) by the BSC Panel Chairman from time to time.

## **2.6 Secretary**

2.6.1 There shall be a secretary to the Claims Committee ("Secretary") who shall be a person (or persons) appointed (and removed) by BSCCo from time to time.

2.6.2 The Secretary shall not be a member of the Claims Committee and shall not cast a vote as a Claims Committee Member.

2.6.3 The principal powers, functions and responsibilities of the Secretary shall include but not be limited to:

- (i) schedule and notify Members of meetings of the Claims Committee;
- (ii) use reasonable endeavours to ensure a quorum is present at meetings of the Claims Committee;
- (iii) circulate the agenda and any relevant papers before a scheduled meeting of the Claims Committee;
- (iv) produce the minutes of Claims Committee meetings;
- (v) produce any applicable documentation as requested within the timescales required by Code or any relevant CSD that relate to the business or operation of the Claims Committee;
- (vi) ensure that prior to the attendance of any invitees at a Claims Committee meeting they execute an approved confidentiality undertaking or such other undertaking as may be required by the Claims Committee;
- (vii) record the expenditure associated with the Claims Committee and account for such amounts to the Claims Committee Chairman;
- (viii) advising all relevant parties of the appointment, re-appointment and/or resignation of the Claims Committee Chairmen and/or any Claims Committee Members or their alternates;
- (ix) provide training for new Claims Committee Members and ongoing Members as necessary; and
- (x) any other functions in connection with the business or operation of the Claims Committee as appropriate.

## **2.7 Expenses**

2.7.1 The reasonable costs and expenses, and all other amounts incurred on behalf of the Claims Committee in association with its functions and responsibilities, shall be paid by BSCCo and for the avoidance of doubt any payments paid by BSCCo shall be BSC Costs.

2.7.2 Section B2.11.2 shall apply to each Claims Committee Member save for circumstances where their attendance is required for other BSC Panel Committee business for which they are already receiving reimbursement for the same reasonable expenses.

## **2.8 The Authority**

2.8.1 The Authority reserves the right to disapprove of the establishment and make-up thereof of the Claims Committee as established in accordance with paragraph 2.1 above.

## **3. CONFLICT OF INTEREST**

3.1.1 It shall be each Claims Committee Member's responsibility to disclose to the Claims Committee Chairman from time to time any interests of such Member which constitute, in such Member's reasonable opinion, an actual or perceived conflict of interest with their functions as a Claims Committee Member and in such circumstances such Member may absent themselves from voting. If

the Claims Committee Chairman decides (after consultation with the other Claims Committee Members (if necessary) including but not limited to circumstances where a Claims Committee Member does not volunteer to absent themselves from voting on such matters) that a Member has an actual or perceived conflict of interest then the Claims Committee Chairman may determine that the Claims Committee Member in question should be required to absent themselves from particular Claims Committee business and/or whether a recommendation should be made to the BSC Panel that such Member be removed as a Claims Committee Member. Any decision of the Claims Committee Chairman (and/or the BSC Panel) in this regard shall be final and binding.

## **4. POWERS AND FUNCTIONS OF THE CLAIMS COMMITTEE**

### **4.1 General Powers and Functions**

4.1.1 The Claims Committee shall act in accordance with the Code, any relevant CSDs and these Terms of Reference.

4.1.2 The Claims Committee shall have the powers, functions and responsibilities as are detailed in Section G, any relevant CSD that relate to that Section and/or any other matter so delegated to it by the BSC Panel.

4.1.3 Notwithstanding paragraph 4.1.2 the Claims Committee shall have the powers, functions and responsibilities to:

- (i) consider whether an Application for Compensation has been validly submitted under Section **GX.X.X**;
- (ii) validate what are considered to be 'Avoidable Costs' in accordance with Section G2 of the BSC and 'Exceptional Costs' in accordance with the FSC Section 5B;
- (iii) where appropriate, request further information from the claimant, the Transmission Company, the Authority and/or other Industry members in accordance with Section **GX.X.X**;
- (iv) where appropriate, enlist the services of an expert/technical resource/specialist or a sub-group thereof, for the purposes of advisement, assessment, validation and/or determination of Applications for Compensation and/or individual parts or sections of Applications for Compensation as required by the Claims Committee, on an individual Application for Compensation basis in accordance with Section **GX.X.X**;
- (v) consider and determine the process to undertaken by the Claims Committee in the validation of Applications for Compensation in accordance with Section **GX.X.X**;
- (vi) where appropriate, determine the amount (£) of compensation in accordance with Section **GX.X.X** having regard to the factors in accordance with Section **GX.X.X**, to be paid to each claimant for their submitted Application(s) for Compensation claim(s); and
- (vii) determine the Application for Compensation information which is to be published, in accordance with 6.2.

### **4.2 Delegation**

4.2.1 The Claims Committee shall not delegate to any person any of its powers, functions and responsibilities unless the BSC Panel expressly permits such delegation in advance.

## **5. PROCEEDINGS OF THE CLAIMS COMMITTEE**

### **5.1 Meetings**

5.1.1 Meetings of the Claims Committee shall be held as and when an Application for Compensation as a result of an emergency instruction during a Black Start period, a Fuel Security Code event or in anticipation of a Fuel Security Code event is made and such meetings shall be at such a time and place as notified to the Claims Committee Members by the Secretary in accordance with these Terms of Reference.

5.1.2 The Secretary shall, at the request of the Claims Committee Chairman, convene Claims Committee meetings by giving notice, at least 4 Working Days prior to the proposed meeting (or such other period so determined by the Claims Committee Chairman), to each Claims Committee Member, approved alternates, the Claims Committee Panel Sponsor, BSC Auditor and the Authority. Such notice shall set out:

- (i) the date, time and place of the meeting; and
- (ii) an agenda of the matters for consideration at the meeting and any supporting papers available to the Secretary at the time the notice is given (and the Secretary shall, if necessary, circulate to Claims Committee Members any late papers, as approved by the Claims Committee Chairman, as and when they are received by him).

5.1.3 The Secretary shall ensure that details of forthcoming Claims Committee meetings shall be notified on the BSCCo website. Such notification shall not include agendas, papers or minutes.

5.1.4 A scheduled meeting of the Claims Committee may be cancelled if:

- (i) the Claims Committee Chairman determines that there is no business for the Claims Committee to conduct, and so requests the Secretary to cancel the meeting; and
- (ii) the Secretary notifies all Claims Committee Members in writing of the proposal to cancel it, not less than 4 Working Days prior to the date that the meeting is or is to be convened; and
- (iii) if 2 Working Days before the date for which the meeting is or is to be convened, no Claims Committee Member has notified the Secretary that he objects to such cancellation.

5.1.5 Sections B4.1.9 and B4.1.10 shall apply in respect of a meeting of the Claims Committee with such sections being read as if a meeting of the BSC Panel were to a meeting of the Committee

5.1.6 Where any matter not contained in the agenda is put before a meeting of the Claims Committee that is in the opinion of the Claims Committee Chairman necessary (in view of the urgency of the matter or otherwise) to consider then the Claims Committee may determine upon such matter.

### **5.2 Urgent/Special Claims Committee meetings**

5.2.1 Notwithstanding anything contrary in paragraph 5.1 if, in the opinion of the Claims Committee Chairman, any matter arises which is of a sufficiently urgent nature so as to require a decision earlier than is possible under the next convened Claims Committee meeting:

- (i) the Secretary shall, at the request of the Claims Committee Chairman, convene such a meeting and distribute an agenda and any papers in accordance with such notice as the Claims Committee Chairman considers appropriate; and
- (ii) each Claims Committee Member shall be deemed to have consented to the convening of such a meeting and distribution of the agenda and papers in the manner and on such notice as the Claims Committee Chairman determines.

5.2.2 In respect of an urgent/special meeting if after 1 hour a quorum is not present, then at the election of the Claims Committee Chairman (with such consideration being given to the nature of the business), those Claims Committee Members present shall constitute quorum provided that at least 2 Claims Committee Members are present and provided further that the Claims Committee Chairman shall endeavour to contact each Claims Committee Member individually in order to ascertain each Claims Committee Members vote and any matter decided shall be decided by a majority of those Members voted. Where the Claims Committee Chairman is unable to contact the correct quorum number of Claims Committee Members within 1 Working Day of the meeting the Claims Committee Chairman may decide the matter in consultation with the BSC Panel and/or BSC Panel Chairman.

### **5.3 Quorum**

5.3.1 Subject to paragraph 5.2.2, no business shall be transacted at any meeting of the Claims Committee unless a quorum is present. A quorum shall comprise of at least [X] Claims Committee Members (or by their duly appointed alternates).

5.3.2 Any Claims Committee meeting at which a quorum is not in attendance after a period of 30 mins of its commencement shall be adjourned and re-scheduled with the Secretary giving notice of the adjourned hearing and re-scheduling in such manner as requested by the Claims Committee Chairman.

### **5.4 Voting**

5.4.1 At any meeting of the Claims Committee all matters to be decided shall be put to a vote of all quorum Claims Committee Members (or by their duly appointed alternate).

5.4.2 In deciding any matter, each Claims Committee Member shall cast one vote. All matters shall be decided by a simple majority of votes cast.

5.4.3 For the avoidance of doubt and for the purposes of paragraphs 5.4.1 and 5.4.2, abstentions shall not be classed as votes and will therefore not prevent unanimous agreement of a matter.

5.4.4 A resolution in writing signed by or on behalf of all Claims Committee Members entitled to vote in respect of the matter the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the Claims Committee.

### **5.5 Teleconference and/or Correspondence Meetings**

- 5.5.1 Where the Claims Committee Chairman considers it appropriate (noting that it shall be only in exceptional circumstances), a meeting of the Claims Committee may be validly held by telephone conference call (or such other similar means) or by correspondence.
- 5.5.2 A quorum is obtained in respect of a teleconference call (or such other similar means) as per these Terms of Reference but in addition all present Claims Committee Members at the telephone conference call must confirm that they can speak and hear each other.
- 5.5.3 A quorum is obtained in respect of a correspondence meeting where at least a quorum (as per these Terms of Reference) shall provide a response (which shall include their vote) to correspondence the subject of determination provided that the Claims Committee Members have at least 4 Working Days to consider and respond to such correspondence received.
- 5.5.4 Paragraph 5.4 shall apply to any meetings outlined in this paragraph.

## **5.6 Attendance by other persons**

- 5.6.1 All meetings of the Claims Committee shall be held in closed confidential session.
- 5.6.2 The following Non Claims Committee Member Representatives may attend any meeting of the Claims Committee and shall be entitled to receive all notices and documentation relating to such meetings:
- (i) the BSC Panel Sponsor of the Claims Committee;
  - (ii) a representative from the BSC Auditor;
  - (iii) a representative from the Authority; and
  - (iv) a representative from the Department of Energy and Climate Change.
- provided that in the case of paragraph (ii), and prior to the receipt of any notices or documentation, notification is given to the Secretary and confidentiality undertaking is executed by such representative.
- 5.6.3 The individuals referred to in paragraph 5.6.2 shall be entitled to speak at any of the meetings they attend but shall have no vote and shall not be members of the Claims Committee.
- 5.6.4 After consultation with Claims Committee Members, the Claims Committee Chairman may invite such individuals as he sees fit (including but not limited to representatives of a BSC Agent, BSC Party or the Transmission Company) to attend a meeting (or part of a meeting) of the Claims Committee provided that prior to their attendance a confidentiality undertaking is executed by such invitee. Any such individual shall be entitled to receive from the Secretary (with approval from the Claims Committee Chairman) such part of the agenda and/or any papers that may concern the invitee.
- 5.6.5 Any person in attendance at a Claims Committee meeting by virtue of paragraph 5.6.4 shall:
- (i) have no vote and shall not be a member of the Claims Committee;
  - (ii) address the meeting where invited to do so by the Claims Committee Chairman; and
  - (iii) leave the meeting when requested to do so by the Claims Committee Chairman.



## **5.7 Minutes of Meetings**

- 5.7.1 The Secretary shall ensure that as soon as is reasonably practicable after each Claims Committee meeting that all discussions are minuted (including determinations and the failure to make a determination) and such minutes are to be distributed to the meeting attendees for approval.

## **5.8 Papers**

- 5.8.1 The Secretary shall circulate to Claims Committee Members any papers (including any late papers) as and when is appropriate, save that such circulation, unless otherwise agreed by the Claims Committee Chairman, shall not be less than 4 Working Days before the proposed meeting.
- 5.8.2 If any Claims Committee Member wishes to notify additional matters to be considered at a meeting of the Claims Committee, they shall give notice to the Secretary no less than 3 Working Days before the meeting (or such lesser period as the Claims Committee Chairman may from time to time determine). The Secretary will circulate such notice to all other persons entitled to attend that meeting.
- 5.8.3 On receipt of any paper by the Claims Committee Chairman, the Claims Committee Chairman shall after consultation with Claims Committee Members determine whether the subject of the paper is within the remit of the Claims Committee. Any papers deemed to be outside the remit of the Claims Committee will, where practicable, be forwarded by the Secretary to the appropriate body and in all events be reported to the BSC Panel.

## **6. DECISIONS OF THE CLAIMS COMMITTEE**

- 6.1.1 Any determination (including, if applicable, any adjustments and/or error compensation determinations) of the Claims Committee (when carrying out its powers, functions and responsibilities under **BSC Section B 3.5.1**) made under these Terms of Reference shall be final and binding on the BSC Parties and no such decision shall be capable of being referred to for the purposes of an appeal or otherwise to the BSC Panel.
- 6.1.2 Any determination made by the Claims Committee under paragraph 6.1.1 shall take account of any guidance issued, for that specific purpose, by the Authority.

### **6.2 Notification of Claims Committee Decisions in respect of Applications for Compensation**

- 6.2.1 Without prejudice to paragraph 6.2.1, all BSC Parties shall be notified of the amount (£) of a Claims Committee determination by the Claims Committee in such manner as determined by the Claims Committee Chairman from time to time.
- 6.2.2 Without prejudice to paragraph 6.2.1, all BSC Parties shall be notified of details of any Application for Compensation providing the Claims Committee determine the relevant information is not commercially sensitive, by the Claims Committee in such manner as determined by the Claims Committee Chairman from time to time.

### **6.3 Register of Decisions in respect of Approved Compensation Applications**

- 6.3.1 The Committee shall maintain a Register of Decisions (which shall also be known as a Precedent of Determinations) in respect of an Application for Compensation.

6.3.2 The Committee shall have regard, where relevant, to the Precedent of Determinations but it shall decide in all the circumstances whether or to what extent it shall be bound by a precedent in respect of an Application for Compensation.