

February 2002

MODIFICATION REPORT
MODIFICATION PROPOSAL P44 -
'Correction of Notification Errors
where Parties are able to satisfy a
Reasonable and Prudent Operator
test'

Prepared by ELEXON on behalf of the Balancing
and Settlement Code Panel

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1 SUMMARY AND RECOMMENDATIONS

1.1 Recommendation

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Assessment Phase, and the resultant findings of this report, the BSC Panel recommends that:

The Alternative Modification as set out in Section 6 of this Modification Report be approved with an Implementation Date of 5 Business Days after the Authority's determination.

Furthermore, the BSC Panel recommends that:

The Proposed Modification, as set out in Section 6 of this Modification Report be rejected.

Should however the Panel prefer the Proposed Modification, as set out in Section 6 of this Modification Report, it is recommended that the Implementation Date should be 5 Business Days after the Authority's determination.

1.2 Background

P44 'Correction of Notification Errors where Parties are able to satisfy a Reasonable and Prudent Operator test' (the Proposed Modification) was raised by Powergen on 8 October 2001. It seeks to modify the Code so that Parties will be able to apply to the Panel requesting the ex post creation of new Energy Contract Volume Notifications (ECVNs) / Metered Volume Reallocation Notifications (MVRNs) or amendment of a previously submitted ECVN / MVRN; there was no proposal to include an Error Correction Payment (ECP) mechanism¹. It seeks to address the increased risks faced by Parties that have no alternative but to notify their Volume Notifications close to Gate Closure and requires that the process by which a claim can be submitted and determined are defined under the Code and is prospective and not retrospective.

The Proposed Modification and the Alternative Modification P44 'Correction of Notification Errors and the application of an Error Correction Payment (Alternative Modification)' has been progressed by the Error Processing Modification Group (the Group). The Group has considered all responses provided during the two consultations and various impact assessments. The Assessment Report documents the process followed, the responses received to the two consultations and various impact assessments and the decisions reached by the Group.

A consultation was undertaken with Parties in November 2001 to establish if there was support for introducing the principles proposed in the Proposed Modification and also to establish what Parties' views were on the refinements proposed by the Group, in order to deliver the requirements. In summary, the majority of Parties (9 responses representing 34 Parties) agreed with the principles together with the proposed refinements. Parties were specifically asked to comment on whether an ECP mechanism should be included and there was some support to include this mechanism.

Although the hurdles proposed, which are now reflected in the legal text, were high for a Party as far as being able to demonstrate to the Panel's reasonable satisfaction that their claim was genuine and therefore a correction should be applied, the Group felt that adding an ECP mechanism would act as an additional incentive on Parties to ensure that they correctly submitted Volume Notifications. On the basis that this mechanism introduced a principle change to the Proposed Modification, the Group

¹ This mechanism has been proposed for Modification Proposal P37 'The remedy of past errors in ECVNs and MVRNs'.

agreed that the Alternative Modification should be progressed. The only difference between the Proposed Modification and the Alternative Modification is the ECP.

Consequently Parties undertook a second consultation on the Alternative Modification in December 2001 to establish:

- a) what the level of ECP should be, with a level of 10%² being proposed; and
- b) whether there should be a cap on the ECP.

A diversity of views was received in relation to the second consultation, with a majority of Parties supporting a level of 10% for the ECP, uncapped. 5 responses (representing 13 Parties) agreed that the level of ECP should be set at 10% and 7 responses (representing 22 Parties) stated that there should be no cap on the ECP. Other responses were received including proposals that an alternative ECP level should be introduced, that the ECP level should be variable and relate to the cost of investigating and correcting the consequences of a Volume Notification error, or that instead a substantially higher administration fee should apply.

Following analysis of the results of the second consultation, the Group agreed that it was appropriate that an ECP should be introduced but there should be no associated cap. The Group noted the Authority's determination of Modification Proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications'; the Authority reiterated this determination at the Group meetings.

A number of impact assessments (one High Level Impact Assessment (HLIA) and two Detailed Level Impact Assessments (DLIAs) have been undertaken by Parties and Party Agents. In addition the NETA Central Services Agent has provided a number of assessments (one HLIA and four DLIAs) and the FAA has provided one DLIA.

The Group took account of the Authority's determination on Modification Proposal P19 and was aware of the work done on Modification Proposal P37. The Group was aware of the work underway on Modification Proposal P35 'Qualified ECVNAs', but noted that the triggering events, scope, tests and implementation approach envisaged for P44 were different from those for Modification Proposal P35. Modification Proposal P44 and Modification Proposal P35 were therefore pursued independently.

The Assessment Report forms Attachment 1 to this Modification Report.

The Panel considered the Assessment Report at their meeting of 17 January 2002, and agreed that Modification Proposal P44 be submitted to the Report Phase, with the Modification Report containing a provisional recommendation to the Authority to approve the Alternative Modification, and reject the Proposed Modification. Therefore a draft Modification Report was prepared on this basis and submitted for industry consultation on 21 January 2002.

The draft Modification Report, containing the consultation responses made against the draft Modification Report, was submitted to the Panel for consideration at their meeting of 14 February 2002. The Panel considered the consultation responses, and noted that all respondents supported the Alternative Modification (noting that two of the responses provided a caveat to their support). Therefore the Panel agreed to confirm their original recommendation to the Authority to approve the Alternative Modification.

² The Group agreed that an ECP level of 10% was reasonable on the basis that it would ensure that there was an incentive on Parties to provide correct and timely Volume Notifications to the ECVAA. The Group discussed the level of ECP of 20% proposed for Modification Proposal P37 and agreed that this level was too severe for the Alternative Modification on the basis that the scope and triggering events were different.

The Panel was advised that a respondent had requested that ELEXON initiate the work on the guidance notes (as referred to in Section P, 6.2.8 of the legal text for the Alternative Modification). The Panel noted that ELEXON would initiate this work in due course.

1.3 Rationale for Recommendations

The Panel supported the views of the Group and concluded that Applicable Code Objective (c) as set out in paragraph 3 of Condition C3 of the Transmission Licence 'Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity' is better achieved.

The rationale for this recommendation is that the Alternative Modification would maintain the incentive on Parties to ensure that they had robust systems in order to reduce the risks of erroneously / failing to submit Volume Notifications by Gate Closure and that claims would only be considered if they met the stringent criteria defined in the Code. In addition, within day market liquidity would potentially increase as Parties may choose to submit Volume Notifications near to Gate Closure.

On the basis of the costs and timescales quoted by the NETA Central Service Agent and the FAA and those quoted by ELEXON (for managing and developing the necessary changes via the BSC Systems Delivery Programme), the Panel supported the views of the Group, that the implementation approach that should be progressed was that of a manual development. The rationale for this recommendation is that the system development costs (estimated at £346,000 with an elapsed development timescale of 5 months) would outweigh the benefits that would be achieved on the basis that the number of claims would be small. The Panel noted however that should the Alternative Modification be approved and implemented, any significant increase in volume of claims would require this recommendation, for a manual process, to be revisited.

The Panel further concluded that the Alternative Modification should be implemented within 5 Business Days of the Authority determination. The rationale for this recommendation is that this would enable claims to be made within a short time after the Authority determination, which is the key requirement. It would then be a matter for the Panel (or a Panel Committee) to process the claim within a reasonable timescale³. This implementation approach has been previously proposed for other Modification Proposals.

2 INTRODUCTION

This Report has been prepared by ELEXON Ltd., on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the BSC.

This Modification Report is addressed and furnished to the Gas and Electricity Markets Authority ('the Authority') and none of the facts, opinions or statements contained herein may be relied upon by any other person.

An electronic copy of this document can be found on the BSC website, at www.elexon.co.uk

³ This timescale will allow for the necessary changes to be developed to the BSC Systems.

3 HISTORY OF PROPOSED MODIFICATION

The full history of the events that have taken place are included in Section 4 of the Assessment Report.

Below is a summary of the events which have taken place.

Following the presentation of the Proposed Modification and the Initial Written Assessment to the Panel on 31 October 2001, a Group meeting was held on 12 November 2001. The Group produced a consultation document on the Proposed Modification. This consultation paper was issued to Parties for consideration on 14 November 2001. A HLIA was undertaken in parallel with the first consultation.

A requirement specification was produced by the Group which was issued to Parties and Party Agents on 28 November 2001 and to the NETA Central Service Agent on 29 November 2001 for a DLIA.

Following analysis of the results of the first consultation and HLIA, along with a consideration of the Authority's views on the ex-post adjustment of erroneous notifications, as described in their determination of Modification Proposal P19, the Group concluded at their second meeting on 5 December 2001 that an ECP mechanism should be included and on this basis, that an Alternative Modification should be progressed. Consequently the Group agreed that a further consultation and DLIA should be undertaken outlining the progress of the Group and outlining the reasons for the Alternative Modification. This second consultation also requested views from Parties as to what the level of ECP should be (with a level of 10% being proposed) and whether there should be a cap on the ECP. The second consultation and DLIA was issued to Parties for consideration on 10 December 2001. In addition, the NETA Central Service Agent was requested to undertake a DLIA on 11 December 2001.

The only difference between the Proposed Modification and the Alternative Modification is the ECP.

On 19 December 2001 the Group, at their third meeting, reviewed the results received to the second consultation and the two DLIA's, including the verbal response provided by the NETA Central Service Agent.

In view of the fact that the Group was keen to develop a solution which could be implemented as quickly as possible, once approval was obtained from the Authority, the Group requested that ELEXON establish with the NETA Central Service Agent the costs associated with developing a manual and system solution for calculating the ECP. The basis for this request was so that potentially a manual solution could be developed as a short term workaround with a long term aim of developing a system solution.

Subsequent to the meeting, the Group was advised of the costs quoted by the NETA Central Service Agent and the FAA. In view of the costs which would be associated with developing a system solution, estimated at £346,000, the Group concluded that in fact only a manual solution should be recommended for progression on the basis that it was envisaged that the number of claims submitted would be small.

Results of the two consultations and the various impact assessments received from Parties, Party Agents, the NETA Central Service Agent and the FAA are presented in the Assessment Report.

On the basis that a manual development would take in the region of three months (recognising that both ELEXON and the BSC Central Service Agent would be impacted), the Group agreed that to enable the prompt implementation of the Alternative Modification, the Implementation Date proposed would be 5 Business Days after the date of the determination by the Authority. This approach allows claims to be submitted within a short timescale after the Authority determination, which is a key requirement. The Panel (or Panel Committee) would then determine on any claim raised in a timely fashion, allowing for the necessary changes to be developed to the BSC Systems (as part of a subsequent BSC Systems

Delivery Programme release). This implementation approach is in line with proposals made on other Modification Proposals.

The Group concluded that the Panel be requested to agree that the Alternative Modification be progressed to the Report Phase, with a draft Modification Report being presented to the Panel meeting on 14 February 2002.

Following approval of the Assessment Report by the Panel on 17 January 2002, the Group produced this Modification Report. On 21 January 2002, the Modification Report was issued for consultation.

8 responses (representing 43 Parties) were received to the consultation. 6 of these responses (representing 31 Parties) supported implementation of the Alternative Modification. 2 of these responses (representing 12 Parties) provided a caveated support to the implementation of the Alternative Modification. Of the two responses who provided a caveated support to the Alternative Modification, the responses provided were as follows:

- one response indicated that they were disappointed that an increased administration fee had not been accepted as an alternative deterrent against frivolous claims, however they had recognised that there was support from both the Group and the Panel in introducing an error correction payment. On the basis that they would like to see the Alternative Modification implemented, they reluctantly agreed with the Panel's recommendation to support the Alternative Modification; and
- the remaining response reiterated that although their primary stance was to support the Proposed Modification, they did believe that the Alternative Modification, in absolute terms, better met achievement of the applicable BSC Objectives.

Annex 1 includes the representations received.

The Panel were presented with the draft Modification Report on 14 February 2002. The outcome of the Panel decision is included in Section 6.

4 DESCRIPTION OF PROPOSED MODIFICATION

The Alternative Modification will enable Parties to submit claims for consideration by the Panel (or Panel Committee) relating to Volume Notifications which were submitted incorrectly or were not submitted by Gate Closure. A non-refundable administration fee of £5,000 will be payable by the claimant. The claimant will be required to prove to the Panel (or Panel Committee) that a Volume Notification error had occurred and must be able to demonstrate, to the Panel's reasonable satisfaction, that:

- steps were in place to prevent occurrences of errors;
- there was a minimal timescale for identifying errors;
- the impact of such errors was minimised;
- repetition of subsequent errors would be avoided; and
- the effect on subsequent Settlement Periods had been mitigated.

The claimant must also demonstrate, as a pre-requisite to the above consideration, that the Volume Notification in question could only reasonably have been made following the time when it could have been included in a report from the central service provider systems.

The other relevant Contract Trading Party, the Volume Notification Agent and the ECVAA will provide the necessary evidence in support of the claim. The Panel (or Panel Committee) will then take into

account all information and evidence provided to it, including the input from BSCCo (relating to the investigation which they will undertake), and make a determination.

If a claim is upheld, Settlement calculations (excluding those associated with credit checking) are amended accordingly. In addition, as a result of the Alternative Modification, an ECP is levied against those benefiting from the correction and the resultant cash-flow is disbursed to all other Parties, pro-rata on credited energy. The value of the ECP is set at 10% of the energy imbalance benefit of the claim.

The status and progress of claims will be published on the BSC Website.

Any Contract Trading Party may appeal to the Authority, on limited grounds, following the Panel determination, in which case a non-refundable administration fee of £5,000 will be payable by the Contract Trading Party.

The BSC changes are included in Section 6 of this Modification Report.

5 RATIONALE FOR PANEL RECOMMENDATIONS

On the basis of the analysis, consultation and assessment, the Panel recommends to the Authority that the Alternative Modification be approved.

The rationale for this recommendation is that implementing the Alternative Modification would ensure that Parties would have robust systems in place to prevent erroneous Volume Notifications and that claims would only be considered if they met the stringent criteria defined in the Code.

The Panel agreed that in light of the considerations above, the Alternative Modification would better achieve the Applicable BSC Objectives defined in Condition C3 of the Transmission Licence, particularly Condition 3C (c) 'Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity'.

Background

The Assessment Report was presented to the Panel at their meeting on 17 January 2002. The Panel:

1. NOTED the Assessment Report and the recommendations of the Group;
2. DETERMINED to support the recommendation of the Group and proceed to the Report Phase in accordance with BSC F2.7;
3. AGREED that a draft Modification Report should be prepared with a recommendation to the Authority that the Alternative Modification be accepted with an Implementation Date of 5 Business Days after the Authority determination;
4. AGREED that the draft Modification Report should contain a recommendation to the Authority that the Proposed Modification be rejected; and
5. AGREED that the draft Modification Report be consulted on and presented to the Panel meeting on 14 February 2002.

The Panel was presented with version 0.4 of the draft Modification Report on 14 February 2002 and were invited to confirm the recommendations in the draft Modification Report and to action ELEXON to finalise the report and submit it to the Authority for decision. The Panel:

- NOTED and CONSIDERED the responses to the consultation on the draft Modification Report;
- CONFIRMED the recommendation to the Authority contained in the draft Modification Report that the Alternative Modification be approved;
- ENDORSED that the Alternative Modification should be implemented with an Implementation Date of 5 Business Days after the Authority determination;
- CONFIRMED the recommendation to the Authority contained in the draft Modification Report that the Proposed Modification be rejected; and
- APPROVED the draft Modification Report.

6 LEGAL TEXT TO GIVE EFFECT TO THE PROPOSED MODIFICATION

The legal text below has undergone review by the Group, Parties and the ELEXON legal advisers. The legal text in Sections 6.1 and 6.2 is that proposed for the Alternative Modification; it is the legal text which is proposed for approval by the Authority. The legal text in Sections 6.3 and 6.4 is that proposed for the Proposed Modification; it is not proposed for approval by the Authority.

It should be noted that the original legal drafting (as issued for consultation) erroneously placed the required text into clause 7 of Section P of the Code. However, for the final issue of the Modification Report to the Authority, this has been corrected, and amended to place the same text into Section P, clause 6. There has been no change to the text other than this minor numbering alteration. However, it should be noted that consultation responses refer to the original number (eg. 7.4.8, which is now 6.4.8).

No further changes have been required to the legal text following the consultation on the draft Modification Report.

The clause numbering in the following sections of this Modification Report is based on the current baseline (as at the date of this Report) and correctly reflects the intent of the Proposed and the Alternative Modification.

However, it should be noted that the clause and paragraph numbering (only) may be altered on implementation if the baseline has changed by that time, but any numbering amendments required for implementation will be documented at the time of implementation.

6.1 Conformed Version – Alternative Modification

Section P

The following text shall be inserted in Section P:

6. NOTIFICATION ERRORS

6.1 Meaning of Notification Error

6.1.1 For the purposes of this Section P:

- (a) a "Notification Error" occurs in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was an error in the submission of a Volume Notification on the part of the Volume***

Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period;

- (b) *references in this paragraph 6 to the submission of a Volume Notification:*

 - (i) *mean the submission of a particular Volume Notification; and*
 - (ii) *include a failure to submit a Volume Notification,*

and the provisions of this paragraph 6 shall be construed accordingly;
- (c) *for the purposes of paragraph (a), an error in the submission of a Volume Notification will be considered to have occurred only where:*

 - (i) *the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and*
 - (ii) *it is clear that a mistake occurred in giving effect to that commitment;*
- (d) *in relation to a claim of Notification Error:*

 - (i) *the "relevant" Volume Notification is the Volume Notification in respect of which the Notification Error occurred;*
 - (ii) *the "relevant" Volume Notification Agent is the Volume Notification Agent which submitted or failed to submit (as the case may be) the relevant Volume Notification;*
 - (iii) *the "relevant" Settlement Period is the Settlement Period in respect of which the Notification Error occurred;*
 - (iv) *a "relevant" Contract Trading Party is a Contract Trading Party in relation to which the Notification Error occurred;*
 - (v) *the "rectified Volume Notification" is the Volume Notification which would have been made had the Notification Error not occurred; and*
 - (vi) *the "relevant" Settlement Run, in relation to a claim or claims for Notification Error, is the next Settlement Run as referred to in paragraph 6.5.1(b);*
- (e) *in relation to a relevant Contract Trading Party, references to a Notification Error are to the Notification Error which has (or is alleged to have) occurred in respect of such Party;*
- (f) *"Volume Data" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be;*
- (g) *"Relevant Account Energy Imbalance Cashflow" means the Account Energy Imbalance Cashflow of an Energy Account of a relevant Contract Trading Party in relation to a relevant Settlement Period or, if claims for more than one Notification Error in respect of the same Volume Notification are made, the net aggregate amount of such Account Energy Imbalance Cashflows for all relevant Settlement Periods;*
- (h) *"Volume Notification Report" means a report generated under the Code for circulation to Trading Parties of a kind containing data sufficient, in the Panel's reasonable opinion, to enable a Contract Trading Party to check whether Volume Notifications have been submitted with respect to that Contract Trading Party and to check the information specified (pursuant to paragraph 2.3.2 or 3.3.2 as the case may be) in such Volume Notifications; and*

- (i) *"Claimant" means a Party making a claim for Notification Error under this paragraph 6.*

6.2 Claiming Notification Errors

6.2.1 *Where a relevant Contract Trading Party considers that there has been a Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo in accordance with the relevant BSCP, identifying the Notification Error and the relevant Settlement Period, provided that no claim of Notification Error may be made after 17:00 hours on the Business Day next following the Settlement Day in which Gate Closure for the relevant Settlement Period occurs.*

6.2.2 *Where a relevant Contract Trading Party makes a claim of Notification Error, such Party shall pay a fee to BSCCo for each such claim:*

- (a) *the amount of which (for each such claim, provided that, for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4, claims of Notification Error made by a Party in respect of the same Volume Notification shall be treated as a single claim) shall be £5,000 or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority; and*

- (b) *which shall not be reimbursed in any circumstances.*

6.2.3 *Where a relevant Contract Trading Party makes a claim of Notification Error, the claim shall be accompanied by a statement in writing from:*

- (a) *in the case of a claim to which paragraph 1.4.1 applies, a board director (or equivalent) of the relevant Contract Trading Party; or*

- (b) *in all other cases, the other relevant Contract Trading Party; and*

- (c) *where the relevant Volume Notification Agent is not the relevant Contract Trading Party (or either of the relevant Contract Trading Parties), the relevant Volume Notification Agent,*

addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties and confirming that it considers that the Notification Error has occurred.

6.2.4 *A claim of Notification Error may not be made:*

- (a) *in relation to a Volume Notification in respect of which a previous claim has been made (and, accordingly, if a relevant Contract Trading Party wishes to claim Notification Errors in relation to more than one Settlement Period in respect of a single Volume Notification, all such errors must be claimed at the same time);*

- (b) *in relation to a Settlement Period for which Gate Closure occurs after the time at which the claim is made.*

6.2.5 *A claim of Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if submitted as described in paragraph 6.4.6) would not have been so treated, but without prejudice to paragraph 6.6.2.*

6.2.6 *The fee referred to in paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the Claimant for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph 6.4.4(c), and shall be paid accordingly.*

6.3 Flagging Notification Errors

6.3.1 *Where a Party gives notice of a claim of Notification Error under paragraph 6.2.1, BSCCo shall within one Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties, and the relevant Volume Notification Agent, and shall publish such notice as soon as practicable on the BSC Website.*

6.4 *Determination of Notification Errors*

6.4.1 *The Panel shall consider claims of Notification Error in accordance with this paragraph 6.4.*

6.4.2 *For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6 (and, in so doing, shall have regard to the level of expertise which the Panel considers appropriate for these purposes), and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, which (if so appointed) shall have the ability and competence, to discharge such functions.*

6.4.3 *Claims of Notification Error will be considered in a timely fashion, but having regard (among other things) to the need first to establish appropriate central systems and processes to give effect to the requirements of this paragraph 6, the overall number of claims made and the time reasonably required to investigate each claim.*

6.4.4 *Where a claim of Notification Error is made:*

(a) *the Panel Secretary shall request:*

- (i)** *the Claimant to provide evidence and information supporting its claim;*
- (ii)** *the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and*
- (iii)** *the relevant Volume Notification Agent and the ECVAA to provide comments in relation to the claim;*

(b) *BSCCo shall:*

- (i)** *investigate the matters referred to in paragraph 6.4.7 (and each Trading Party shall provide BSCCo with such information as BSCCo may reasonably request for these purposes); and*
- (ii)** *provide the Panel with a report of its findings, a copy of which shall be made available to the Claimant;*

(c) *the Panel shall determine in its opinion:*

- (i)** *whether the Claimant has demonstrated that there was a Notification Error in relation to the relevant Settlement Period;*
- (ii)** *if so, what the Notification Error was;*
- (iii)** *whether it considers the requirements referred to in paragraph 6.4.7(a) and (b) are satisfied; and*
- (iv)** *if they are so satisfied, whether the Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraph 6.4.6,*

and the Panel shall indicate its reasons for each of those determinations;

(d) *the relevant Contract Trading Parties and the relevant Volume Notification Agent shall:*

- (i) *provide the Panel with such further information as it may reasonably request to assist it in making its determination; and*
 - (ii) *confirm to the Panel that the evidence and information provided to the Panel are complete and not misleading;*
 - (e) *the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent, together with the reasons indicated by the Panel for each of its determinations under paragraph 6.4.4(c) and a brief description of the process followed by the Panel in making its determinations;*
 - (f) *BSCCo shall give such instructions to the ECVA, SAA and FAA as are necessary to give effect to any such rectification; and*
 - (g) *BSCCo may publish details of the progress and status of each claim made under this paragraph 6 on the BSC Website.*
- 6.4.5 *The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to each of the matters referred to in paragraph 6.4.4(c) shall be final and binding on all Parties, subject to paragraph 6.7.*
- 6.4.6 *Rectification of a Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:*
- (a) *at the time at which the relevant Volume Notification was submitted; or*
 - (b) *where the Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.*
- 6.4.7 *The Panel may determine that a Notification Error should be rectified if (and only if) it considers that:*
- (a) *either:*
 - (i) *the relevant Volume Notification could not reasonably be expected (having regard to any binding agreement to submit that Volume Notification by a particular time and otherwise having regard to good industry practice) to have been submitted prior to the time by which a Volume Notification would need to have been submitted if it was to be included in the last Volume Notification Report sent to the Claimant prior to Gate Closure for the relevant Settlement Period; or*
 - (ii) *the last Volume Notification Report which, under the Code, was due to be sent prior to Gate Closure for the relevant Settlement Period was not sent to the Claimant;*
 - and*
 - (b) *the Claimant has demonstrated to the Panel's reasonable satisfaction that it and, where relevant, its Volume Notification Agent took all reasonable and prudent steps (in accordance with good industry practice as applicable in all the circumstances):*
 - (i) *to prevent the occurrence of errors in the submission of Volume Notifications;*
 - (ii) *to minimise the risk that such errors, should they occur, are not noticed by it in a reasonable time;*
 - (iii) *to minimise, or be able to minimise, the impact on it of such errors, should they occur;*

- (iv) *where such errors occur, to avoid a repetition of those errors; and*
- (v) *in relation to the error in question, promptly to rectify, reverse or otherwise mitigate the effect of such error (giving rise to one or more such Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became aware of such error.*

6.4.8 *The Panel shall establish and from time to time review, following consultation with Parties and with the approval of the Authority, and publish guidance as to the factors which it would expect to take into account and the assumptions which it would expect to make in considering the matters referred to in paragraph 6.4.7.*

6.4.9 *For the avoidance of doubt, no claim may be made under this paragraph 6 in respect of a Volume Notification to which the provisions of paragraph 5 apply.*

6.4.10 *Subject and without prejudice to paragraph 6.4.9, in relation to a Volume Notification and a Settlement Period:*

- (a) *to the extent that any other provision of the Code provides an Adjustment Mechanism, a claim may not be made in respect of that Volume Notification under more than one Adjustment Mechanism and, accordingly, if a claim is made under one Adjustment Mechanism in respect of that Volume Notification, no claim may be made in respect of that Volume Notification under any other Adjustment Mechanism (regardless of the outcome of such claim);*
- (b) *this paragraph 6.4.10 applies:*
 - (i) *irrespective of whether such other provision of the Code is introduced into the Code before or after the date when this paragraph 6 comes into effect; and*
 - (ii) *unless otherwise expressly stated in such other provision;*
- (c) *for the purposes of this paragraph 6.4.10, an "Adjustment Mechanism" means, in relation to a Volume Notification and a Settlement Period, arrangements established under the Code providing for the possible submission, resubmission, rectification or adjustment of that Volume Notification after Gate Closure for that Settlement Period (whether or not subject to any restrictions and/or the satisfaction of any requirements and/or the exercise of any discretion as set out in the relevant provisions of the Code), and, for the avoidance of doubt, the arrangements established under this paragraph 6 are an Adjustment Mechanism.*

6.4.11 *The provisions of this paragraph 6 are without prejudice to Section VI.1.4.*

6.5 *Rectification of Notification Errors*

6.5.1 *Where the Panel determines that a Notification Error occurred and should, in accordance with paragraph 6.4, be rectified:*

- (a) *the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Notification Error as determined by the Panel;*
- (b) *such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made.*

6.5.2 *Where, in relation to a claim for Notification Error (or, if claims for more than one Notification Error in respect of the same Volume Notification are made, in relation to the sum of all such claims in aggregate), the adjustments to the data as determined pursuant to paragraph 6.5.1 result in a reduced*

debit or increased credit in the Relevant Account Energy Imbalance Cashflow of the relevant Contract Trading Parties (or either of them individually), such Party or Parties shall be liable to pay to the BSC Clearer the Error Correction Payment(s) applicable to its or their Energy Account(s) in accordance with the further provisions of this paragraph 6.5.

6.5.3 *BSCCo or the SAA (where so instructed by BSCCo) shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:*

$$ECP_a = 0.1 * \max \{ \sum (NCAEI_{aj} - CAEI_{aj}), 0 \}$$

where:

- (a) \sum is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
- (b) $CAEI_{aj}$ is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j ;
- (c) $NCAEI_{aj}$ (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of $CAEI_{aj}$ for Energy Account a and relevant Settlement Period j , had the Notification Error not been rectified.

6.5.4 *In relation to Notification Errors, the amount of the Error Correction Payment(s) made by the relevant Contract Trading Parties shall be paid by the BSC Clearer to Trading Parties by way of Error Correction Payment Reallocation in accordance with this paragraph 6.5.*

6.5.5 *Where an Error Correction Payment is payable, BSCCo or the SAA (where so instructed by BSCCo) shall calculate the Error Correction Payment Reallocation ($ECPR_a$) for each Energy Account of each Trading Party as follows:*

- (a) *if rectification of the relevant Notification Error(s) in respect of which the Error Correction Payment is payable results in a reduced debit or increased credit (or net reduced debit or increased credit) in the Account Energy Imbalance Cashflow for Energy Account a , then:*
 $ECPR_a = 0$
- (b) *otherwise:*
 $ECPR_a = ECP_a * \sum RCRP_{aj} / \sum \sum_a RCRP_{aj}$
where:
 - (i) \sum is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
 - (ii) \sum_a is the sum over all Energy Accounts a other than those referred to in paragraph (a).

6.5.6 *The amounts of the entitlements and liabilities under paragraphs 6.5.3 and 6.5.5 shall be Ad Hoc Trading Charges for the purposes of Section N6.9.*

6.5.7 *Unless the Panel otherwise determines, claims in respect of Volume Notifications will be determined, and (where applicable) rectification and adjustments will be made and Error Correction Payments will be calculated, in the order chronologically in which claims in respect of Volume Notifications are received by BSCCo.*

6.6 Credit Arrangements

6.6.1 *Where a Notification Error is rectified, the rectification shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time of the rectification).*

6.6.2 *In accordance with paragraph 6.6.1:*

(a) *where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted:*

(i) *Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and*

(ii) *to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Notification Error and Section M4 shall not apply in relation thereto;*

(b) *where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the rectified Volume Notification been submitted, and is or was not so treated, the rectification of the Notification Error shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.*

6.6.3 *For the purposes of this paragraph 6.6, the time of the rectification of a Notification Error is the time with effect from which the ECVA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.*

6.7 Appeal to Authority

6.7.1 *Where the Panel (or Panel Committee) makes a determination pursuant to paragraph 6.4.4(c), any Contract Trading Party may refer such determination to the Authority subject to the further provisions of this paragraph 6.7.*

6.7.2 *A reference to the Authority pursuant to paragraph 6.7.1 shall be made:*

(a) *no later than five Business Days after the relevant determination is notified to all Contract Trading Parties under paragraph 6.4.4(e);*

(b) *solely on one of the grounds set out in paragraph 6.7.3;*

(c) *by notice in writing to the Authority, copied to the Panel Chairman, setting out the grounds upon which the reference is made and the reasons why the Party making such reference believes that the determination should be overturned or remitted to the Panel (as the case may be); and*

(d) *subject to payment by the Party making such reference of a fee of £5000, or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority, in respect of each such reference or, where more than one reference is made at the same time in relation to the same Volume Notification, in respect of all such references together, such fee to be invoiced and paid in accordance with the provisions, mutatis mutandis, of paragraph 6.2.6.*

6.7.3 *The grounds referred to in paragraph 6.7.2 are either:*

- (a) *the procedures set out in this paragraph 6 have not been followed in relation to the claim of Notification Error(s) forming the subject of the relevant determination; or*
- (b) *new information has emerged since the relevant determination was made, which is or is likely to be of relevance to the determination.*

6.7.4 *BSCCo shall assist the Authority in the administration and determination of references made under this paragraph 6.7 and shall provide the Authority with such data and information as the Authority may require in order to make its determination.*

6.7.5 *Where a determination of the Panel (or Panel Committee) is referred to the Authority pursuant to paragraph 6.7.1, and provided the Authority is satisfied that one of the grounds referred to in paragraph 6.7.3 applies, the Authority may:*

- (a) *substitute for the Panel's (or Panel Committee's) determination its own determination of the matter(s) forming the subject of such determination; or*
- (b) *remit the matter(s) back to the Panel (or Panel Committee) to be decided again in accordance with the procedures of this paragraph 6 or in the light of the new information which has emerged (as the case may be); or*
- (c) *uphold the relevant determination.*

6.7.6 *The decision of the Authority shall be final and binding.*

6.7.7 *The Panel (or Panel Committee) and the Authority shall not act as an expert or an arbitrator in making any decisions pursuant to this paragraph 6 and the Arbitration Act 1996 shall not apply in respect of any such decisions.*

6.8 *Application*

6.8.1 *This paragraph 6 shall apply in respect of relevant Settlement Periods occurring at any time on or after the date when this paragraph 6 comes into effect.*

Section D

The following text shall be inserted in Section D4.1(a)(v):

- (v) any amounts paid to BSCCO by way of fee pursuant to *Section P6.2.2, Section P6.7.2 or* Section Q7.2.3;

Section G

The following text shall be inserted as a new Section G1.1.2(b) and the existing Section G1.1.2(b) and remaining paragraphs of Sections G1.1.2 shall be renumbered accordingly:

- (b) *Section P6, which addresses the possibility of notification errors in the submission of Volume Notifications;*

Section M

The following text shall be inserted as a new Section M3.5.2 and the title Section M3.5 shall be amended to read "Result of Trading Dispute, etc":

3.5.2 *This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.*

Annex X-1

The following new definitions shall be inserted in Annex X-1:

"Notification Error" has the meaning given to that term in Section P6.1.1(a);

"Volume Data" has the meaning given to that term in Section P6.1.1(f);

Annex X-2

The following new terms and acronyms shall be inserted in Table X-2 of Annex X-2:

Defined Term	Acronym	Units	Definition/Explanatory Text
<i>Error Correction Payment</i>	<i>ECP_a</i>		<i>The payment amount calculated in accordance with Section P6.5.3.</i>
<i>Error Correction Payment Reallocation</i>	<i>ECPR_a</i>		<i>The payment reallocation amount calculated in accordance with Section P6.5.5.</i>
<i>Non-corrected Account Energy Imbalance Cashflow</i>	<i>NCAEI_{aj}</i>	£	<i>The value defined in Section P6.5.3.</i>

6.2 Clean Version – Alternative Modification

Section P

The following text shall be inserted in Section P:

6. NOTIFICATION ERRORS

6.1 Meaning of Notification Error

6.1.1 For the purposes of this Section P:

- (a) a "**Notification Error**" occurs in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was an error in the submission of a Volume Notification on the part of the Volume Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period;
- (b) references in this paragraph 6 to the submission of a Volume Notification:
 - (i) mean the submission of a particular Volume Notification; and
 - (ii) include a failure to submit a Volume Notification,
 and the provisions of this paragraph 6 shall be construed accordingly;
- (c) for the purposes of paragraph (a), an error in the submission of a Volume Notification will be considered to have occurred only where:
 - (i) the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and

- (ii) it is clear that a mistake occurred in giving effect to that commitment;
- (d) in relation to a claim of Notification Error:
 - (i) the "**relevant**" Volume Notification is the Volume Notification in respect of which the Notification Error occurred;
 - (ii) the "**relevant**" Volume Notification Agent is the Volume Notification Agent which submitted or failed to submit (as the case may be) the relevant Volume Notification;
 - (iii) the "**relevant**" Settlement Period is the Settlement Period in respect of which the Notification Error occurred;
 - (iv) a "**relevant**" Contract Trading Party is a Contract Trading Party in relation to which the Notification Error occurred;
 - (v) the "**rectified Volume Notification**" is the Volume Notification which would have been made had the Notification Error not occurred; and
 - (vi) the "**relevant**" Settlement Run, in relation to a claim or claims for Notification Error, is the next Settlement Run as referred to in paragraph 6.5.1(b);
- (e) in relation to a relevant Contract Trading Party, references to a Notification Error are to the Notification Error which has (or is alleged to have) occurred in respect of such Party;
- (f) "**Volume Data**" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be;
- (g) "**Relevant Account Energy Imbalance Cashflow**" means the Account Energy Imbalance Cashflow of an Energy Account of a relevant Contract Trading Party in relation to a relevant Settlement Period or, if claims for more than one Notification Error in respect of the same Volume Notification are made, the net aggregate amount of such Account Energy Imbalance Cashflows for all relevant Settlement Periods;
- (h) "**Volume Notification Report**" means a report generated under the Code for circulation to Trading Parties of a kind containing data sufficient, in the Panel's reasonable opinion, to enable a Contract Trading Party to check whether Volume Notifications have been submitted with respect to that Contract Trading Party and to check the information specified (pursuant to paragraph 2.3.2 or 3.3.2 as the case may be) in such Volume Notifications; and
- (i) "**Claimant**" means a Party making a claim for Notification Error under this paragraph 6.

6.2 Claiming Notification Errors

- 6.2.1 Where a relevant Contract Trading Party considers that there has been a Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo in accordance with the relevant BSCP, identifying the Notification Error and the relevant Settlement Period, provided that no claim of Notification Error may be made after 17:00 hours on the Business Day next following the Settlement Day in which Gate Closure for the relevant Settlement Period occurs.
- 6.2.2 Where a relevant Contract Trading Party makes a claim of Notification Error, such Party shall pay a fee to BSCCo for each such claim:
 - (a) the amount of which (for each such claim, provided that, for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4, claims of Notification Error made by a Party in respect of the same Volume Notification shall be treated as a single claim) shall be £5,000 or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority; and

- (b) which shall not be reimbursed in any circumstances.
- 6.2.3 Where a relevant Contract Trading Party makes a claim of Notification Error, the claim shall be accompanied by a statement in writing from:
- (a) in the case of a claim to which paragraph 1.4.1 applies, a board director (or equivalent) of the relevant Contract Trading Party; or
 - (b) in all other cases, the other relevant Contract Trading Party; and
 - (c) where the relevant Volume Notification Agent is not the relevant Contract Trading Party (or either of the relevant Contract Trading Parties), the relevant Volume Notification Agent,
- addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties and confirming that it considers that the Notification Error has occurred.
- 6.2.4 A claim of Notification Error may not be made:
- (a) in relation to a Volume Notification in respect of which a previous claim has been made (and, accordingly, if a relevant Contract Trading Party wishes to claim Notification Errors in relation to more than one Settlement Period in respect of a single Volume Notification, all such errors must be claimed at the same time);
 - (b) in relation to a Settlement Period for which Gate Closure occurs after the time at which the claim is made.
- 6.2.5 A claim of Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if submitted as described in paragraph 6.4.6) would not have been so treated, but without prejudice to paragraph 6.6.2.
- 6.2.6 The fee referred to in paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the Claimant for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph 6.4.4(c), and shall be paid accordingly.

6.3 Flagging Notification Errors

- 6.3.1 Where a Party gives notice of a claim of Notification Error under paragraph 6.2.1, BSCCo shall within one Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties, and the relevant Volume Notification Agent, and shall publish such notice as soon as practicable on the BSC Website.

6.4 Determination of Notification Errors

- 6.4.1 The Panel shall consider claims of Notification Error in accordance with this paragraph 6.4.
- 6.4.2 For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6 (and, in so doing, shall have regard to the level of expertise which the Panel considers appropriate for these purposes), and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, which (if so appointed) shall have the ability and competence, to discharge such functions.
- 6.4.3 Claims of Notification Error will be considered in a timely fashion, but having regard (among other things) to the need first to establish appropriate central systems and processes to give effect to the requirements of this paragraph 6, the overall number of claims made and the time reasonably required to investigate each claim.
- 6.4.4 Where a claim of Notification Error is made:

- (a) the Panel Secretary shall request:
 - (i) the Claimant to provide evidence and information supporting its claim;
 - (ii) the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and
 - (iii) the relevant Volume Notification Agent and the ECVAA to provide comments in relation to the claim;
- (b) BSCCo shall:
 - (i) investigate the matters referred to in paragraph 6.4.7 (and each Trading Party shall provide BSCCo with such information as BSCCo may reasonably request for these purposes); and
 - (ii) provide the Panel with a report of its findings, a copy of which shall be made available to the Claimant;
- (c) the Panel shall determine in its opinion:
 - (i) whether the Claimant has demonstrated that there was a Notification Error in relation to the relevant Settlement Period;
 - (ii) if so, what the Notification Error was;
 - (iii) whether it considers the requirements referred to in paragraph 6.4.7(a) and (b) are satisfied; and
 - (iv) if they are so satisfied, whether the Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraph 6.4.6,and the Panel shall indicate its reasons for each of those determinations;
- (d) the relevant Contract Trading Parties and the relevant Volume Notification Agent shall:
 - (i) provide the Panel with such further information as it may reasonably request to assist it in making its determination; and
 - (ii) confirm to the Panel that the evidence and information provided to the Panel are complete and not misleading;
- (e) the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent, together with the reasons indicated by the Panel for each of its determinations under paragraph 6.4.4(c) and a brief description of the process followed by the Panel in making its determinations;
- (f) BSCCo shall give such instructions to the ECVAA, SAA and FAA as are necessary to give effect to any such rectification; and
- (g) BSCCo may publish details of the progress and status of each claim made under this paragraph 6 on the BSC Website.

6.4.5 The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to each of the matters referred to in paragraph 6.4.4(c) shall be final and binding on all Parties, subject to paragraph 6.7.

- 6.4.6 Rectification of a Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:
- (a) at the time at which the relevant Volume Notification was submitted; or
 - (b) where the Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.
- 6.4.7 The Panel may determine that a Notification Error should be rectified if (and only if) it considers that:
- (a) either:
 - (i) the relevant Volume Notification could not reasonably be expected (having regard to any binding agreement to submit that Volume Notification by a particular time and otherwise having regard to good industry practice) to have been submitted prior to the time by which a Volume Notification would need to have been submitted if it was to be included in the last Volume Notification Report sent to the Claimant prior to Gate Closure for the relevant Settlement Period; or
 - (ii) the last Volume Notification Report which, under the Code, was due to be sent prior to Gate Closure for the relevant Settlement Period was not sent to the Claimant;and
 - (b) the Claimant has demonstrated to the Panel's reasonable satisfaction that it and, where relevant, its Volume Notification Agent took all reasonable and prudent steps (in accordance with good industry practice as applicable in all the circumstances):
 - (i) to prevent the occurrence of errors in the submission of Volume Notifications;
 - (ii) to minimise the risk that such errors, should they occur, are not noticed by it in a reasonable time;
 - (iii) to minimise, or be able to minimise, the impact on it of such errors, should they occur;
 - (iv) where such errors occur, to avoid a repetition of those errors; and
 - (v) in relation to the error in question, promptly to rectify, reverse or otherwise mitigate the effect of such error (giving rise to one or more such Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became aware of such error.
- 6.4.8 The Panel shall establish and from time to time review, following consultation with Parties and with the approval of the Authority, and publish guidance as to the factors which it would expect to take into account and the assumptions which it would expect to make in considering the matters referred to in paragraph 6.4.7.
- 6.4.9 For the avoidance of doubt, no claim may be made under this paragraph 6 in respect of a Volume Notification to which the provisions of paragraph 5 apply.
- 6.4.10 Subject and without prejudice to paragraph 6.4.9, in relation to a Volume Notification and a Settlement Period:
- (a) to the extent that any other provision of the Code provides an Adjustment Mechanism, a claim may not be made in respect of that Volume Notification under more than one Adjustment Mechanism and, accordingly, if a claim is made under one Adjustment Mechanism in respect of

that Volume Notification, no claim may be made in respect of that Volume Notification under any other Adjustment Mechanism (regardless of the outcome of such claim);

- (b) this paragraph 6.4.10 applies:
 - (i) irrespective of whether such other provision of the Code is introduced into the Code before or after the date when this paragraph 6 comes into effect; and
 - (ii) unless otherwise expressly stated in such other provision;
- (c) for the purposes of this paragraph 6.4.10, an "**Adjustment Mechanism**" means, in relation to a Volume Notification and a Settlement Period, arrangements established under the Code providing for the possible submission, resubmission, rectification or adjustment of that Volume Notification after Gate Closure for that Settlement Period (whether or not subject to any restrictions and/or the satisfaction of any requirements and/or the exercise of any discretion as set out in the relevant provisions of the Code), and, for the avoidance of doubt, the arrangements established under this paragraph 6 are an Adjustment Mechanism.

6.4.11 The provisions of this paragraph 6 are without prejudice to Section VI.1.4.

6.5 Rectification of Notification Errors

6.5.1 Where the Panel determines that a Notification Error occurred and should, in accordance with paragraph 6.4, be rectified:

- (a) the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Notification Error as determined by the Panel;
- (b) such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made.

6.5.2 Where, in relation to a claim for Notification Error (or, if claims for more than one Notification Error in respect of the same Volume Notification are made, in relation to the sum of all such claims in aggregate), the adjustments to the data as determined pursuant to paragraph 6.5.1 result in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow of the relevant Contract Trading Parties (or either of them individually), such Party or Parties shall be liable to pay to the BSC Clearer the Error Correction Payment(s) applicable to its or their Energy Account(s) in accordance with the further provisions of this paragraph 6.5.

6.5.3 BSCCo or the SAA (where so instructed by BSCCo) shall calculate the Error Correction Payment (ECP_a) for those Energy Account(s) of the relevant Contract Trading Party(ies) for which adjustment of the data as determined pursuant to paragraph 6.5.1 results in a reduced debit or increased credit in the Relevant Account Energy Imbalance Cashflow as follows:

$$ECP_a = 0.1 * \max \{ \sum_j (NCAEI_{aj} - CAEI_{aj}), 0 \}$$

where:

- (a) \sum_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
- (b) $CAEI_{aj}$ is the Account Energy Imbalance Cashflow determined by the relevant Settlement Run for Energy Account a and relevant Settlement Period j ;
- (c) $NCAEI_{aj}$ (the non-corrected Account Energy Imbalance Cashflow) is the value which would have been the value of $CAEI_{aj}$ for Energy Account a and relevant Settlement Period j , had the Notification Error not been rectified.

- 6.5.4 In relation to Notification Errors, the amount of the Error Correction Payment(s) made by the relevant Contract Trading Parties shall be paid by the BSC Clearer to Trading Parties by way of Error Correction Payment Reallocation in accordance with this paragraph 6.5.
- 6.5.5 Where an Error Correction Payment is payable, BSCCo or the SAA (where so instructed by BSCCo) shall calculate the Error Correction Payment Reallocation (ECPR_a) for each Energy Account of each Trading Party as follows:
- (a) if rectification of the relevant Notification Error(s) in respect of which the Error Correction Payment is payable results in a reduced debit or increased credit (or net reduced debit or increased credit) in the Account Energy Imbalance Cashflow for Energy Account a, then:
$$ECPR_a = 0$$
 - (b) otherwise:
$$ECPR_a = ECP_a * \sum_j RCRP_{aj} / \sum_j \sum_a RCRP_{aj}$$

where:

 - (i) \sum_j is the sum over all relevant Settlement Periods j relating to the relevant Volume Notification;
 - (ii) \sum_a is the sum over all Energy Accounts a other than those referred to in paragraph (a).
- 6.5.6 The amounts of the entitlements and liabilities under paragraphs 6.5.3 and 6.5.5 shall be Ad Hoc Trading Charges for the purposes of Section N6.9.
- 6.5.7 Unless the Panel otherwise determines, claims in respect of Volume Notifications will be determined, and (where applicable) rectification and adjustments will be made and Error Correction Payments will be calculated, in the order chronologically in which claims in respect of Volume Notifications are received by BSCCo.

6.6 Credit Arrangements

- 6.6.1 Where a Notification Error is rectified, the rectification shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time of the rectification).
- 6.6.2 In accordance with paragraph 6.6.1:
- (a) where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted:
 - (i) Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and
 - (ii) to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Notification Error and Section M4 shall not apply in relation thereto;
 - (b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the rectified Volume Notification been submitted, and is or was not so treated, the rectification of the Notification Error shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.
- 6.6.3 For the purposes of this paragraph 6.6, the time of the rectification of a Notification Error is the time with effect from which the ECVAA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.

6.7 Appeal to Authority

6.7.1 Where the Panel (or Panel Committee) makes a determination pursuant to paragraph 6.4.4(c), any Contract Trading Party may refer such determination to the Authority subject to the further provisions of this paragraph 6.7.

6.7.2 A reference to the Authority pursuant to paragraph 6.7.1 shall be made:

- (a) no later than five Business Days after the relevant determination is notified to all Contract Trading Parties under paragraph 6.4.4(e);
- (b) solely on one of the grounds set out in paragraph 6.7.3;
- (c) by notice in writing to the Authority, copied to the Panel Chairman, setting out the grounds upon which the reference is made and the reasons why the Party making such reference believes that the determination should be overturned or remitted to the Panel (as the case may be); and
- (d) subject to payment by the Party making such reference of a fee of £5000, or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority, in respect of each such reference or, where more than one reference is made at the same time in relation to the same Volume Notification, in respect of all such references together, such fee to be invoiced and paid in accordance with the provisions, mutatis mutandis, of paragraph 6.2.6.

6.7.3 The grounds referred to in paragraph 6.7.2 are either:

- (a) the procedures set out in this paragraph 6 have not been followed in relation to the claim of Notification Error(s) forming the subject of the relevant determination; or
- (b) new information has emerged since the relevant determination was made, which is or is likely to be of relevance to the determination.

6.7.4 BSCCo shall assist the Authority in the administration and determination of references made under this paragraph 6.7 and shall provide the Authority with such data and information as the Authority may require in order to make its determination.

6.7.5 Where a determination of the Panel (or Panel Committee) is referred to the Authority pursuant to paragraph 6.7.1, and provided the Authority is satisfied that one of the grounds referred to in paragraph 6.7.3 applies, the Authority may:

- (a) substitute for the Panel's (or Panel Committee's) determination its own determination of the matter(s) forming the subject of such determination; or
- (b) remit the matter(s) back to the Panel (or Panel Committee) to be decided again in accordance with the procedures of this paragraph 6 or in the light of the new information which has emerged (as the case may be); or
- (c) uphold the relevant determination.

6.7.6 The decision of the Authority shall be final and binding.

6.7.7 The Panel (or Panel Committee) and the Authority shall not act as an expert or an arbitrator in making any decisions pursuant to this paragraph 6 and the Arbitration Act 1996 shall not apply in respect of any such decisions.

6.8 Application

6.8.1 This paragraph 6 shall apply in respect of relevant Settlement Periods occurring at any time on or after the date when this paragraph 6 comes into effect.

Section D

The following text shall be inserted in Section D4.1(a)(v):

(v) any amounts paid to BSCCO by way of fee pursuant to Section P6.2.2, Section P6.7.2 or Section Q7.2.3;

Section G

The following text shall be inserted as a new Section G1.1.2(b) and the existing Section G1.1.2(b) and remaining paragraphs of Sections G1.1.2 shall be renumbered accordingly:

(b) Section P6, which addresses the possibility of notification errors in the submission of Volume Notifications;

Section M

The following text shall be inserted as a new Section M3.5.2 and the title Section M3.5 shall be amended to read "Result of Trading Dispute, etc":

3.5.2 This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.

Annex X-1

The following new definitions shall be inserted in Annex X-1:

"**Notification Error**" has the meaning given to that term in Section P6.1.1(a);

"**Volume Data**" has the meaning given to that term in Section P6.1.1(f);

Annex X-2

The following new terms and acronyms shall be inserted in Table X-2 of Annex X-2:

Defined Term	Acronym	Units	Definition/Explanatory Text
Error Correction Payment	ECP _a		The payment amount calculated in accordance with Section P6.5.3.
Error Correction Payment Reallocation	ECPR _a		The payment reallocation amount calculated in accordance with Section P6.5.5.
Non-corrected Account Energy Imbalance Cashflow	NCAEI _{aj}	£	The value defined in Section P6.5.3.

6.3 Conformed Version – Proposed Modification

Section P

The following text shall be inserted in Section P:

6. NOTIFICATION ERRORS

6.1 Meaning of Notification Error

6.1.1 For the purposes of this Section P:

- (a) *a "Notification Error" occurs in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was an error in the submission of a Volume Notification on the part of the Volume Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period;*
- (b) *references in this paragraph 6 to the submission of a Volume Notification:*
 - (i) *mean the submission of a particular Volume Notification; and*
 - (ii) *include a failure to submit a Volume Notification,**and the provisions of this paragraph 6 shall be construed accordingly;*
- (c) *for the purposes of paragraph (a), an error in the submission of a Volume Notification will be considered to have occurred only where:*
 - (i) *the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and*
 - (ii) *it is clear that a mistake occurred in giving effect to that commitment;*
- (d) *in relation to a claim of Notification Error:*
 - (i) *the "relevant" Volume Notification is the Volume Notification in respect of which the Notification Error occurred;*
 - (ii) *the "relevant" Volume Notification Agent is the Volume Notification Agent which submitted or failed to submit (as the case may be) the relevant Volume Notification;*
 - (iii) *the "relevant" Settlement Period is the Settlement Period in respect of which the Notification Error occurred;*
 - (iv) *a "relevant" Contract Trading Party is a Contract Trading Party in relation to which the Notification Error occurred;*
 - (v) *the "rectified Volume Notification" is the Volume Notification which would have been made had the Notification Error not occurred; and*
 - (vi) *the "relevant" Settlement Run, in relation to a claim or claims for Notification Error, is the next Settlement Run as referred to in paragraph 6.5.1(b);*
- (e) *in relation to a relevant Contract Trading Party, references to a Notification Error are to the Notification Error which has (or is alleged to have) occurred in respect of such Party;*

- (f) *"Volume Data" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be;*
- (g) *"Volume Notification Report" means a report generated under the Code for circulation to Trading Parties of a kind containing data sufficient, in the Panel's reasonable opinion, to enable a Contract Trading Party to check whether Volume Notifications have been submitted with respect to that Contract Trading Party and to check the information specified (pursuant to paragraph 2.3.2 or 3.3.2 as the case may be) in such Volume Notifications; and*
- (h) *"Claimant" means a Party making a claim for Notification Error under this paragraph 6.*

6.2 Claiming Notification Errors

6.2.1 *Where a relevant Contract Trading Party considers that there has been a Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo in accordance with the relevant BSCP, identifying the Notification Error and the relevant Settlement Period, provided that no claim of Notification Error may be made after 17:00 hours on the Business Day next following the Settlement Day in which Gate Closure for the relevant Settlement Period occurs.*

6.2.2 *Where a relevant Contract Trading Party makes a claim of Notification Error, such Party shall pay a fee to BSCCo for each such claim:*

- (a) *the amount of which (for each such claim, provided that, for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4, claims of Notification Error made by a Party in respect of the same Volume Notification shall be treated as a single claim) shall be £5,000 or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority; and*
- (b) *which shall not be reimbursed in any circumstances.*

6.2.3 *Where a relevant Contract Trading Party makes a claim of Notification Error, the claim shall be accompanied by a statement in writing from:*

- (a) *in the case of a claim to which paragraph 1.4.1 applies, a board director (or equivalent) of the relevant Contract Trading Party; or*
- (b) *in all other cases, the other relevant Contract Trading Party; and*
- (c) *where the relevant Volume Notification Agent is not the relevant Contract Trading Party (or either of the relevant Contract Trading Parties), the relevant Volume Notification Agent,*

addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties and confirming that it considers that the Notification Error has occurred.

6.2.4 *A claim of Notification Error may not be made:*

- (a) *in relation to a Volume Notification in respect of which a previous claim has been made (and, accordingly, if a relevant Contract Trading Party wishes to claim Notification Errors in relation to more than one Settlement Period in respect of a single Volume Notification, all such errors must be claimed at the same time);*
- (b) *in relation to a Settlement Period for which Gate Closure occurs after the time at which the claim is made.*

6.2.5 *A claim of Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if*

submitted as described in paragraph 6.4.6) would not have been so treated, but without prejudice to paragraph 6.6.2.

6.2.6 The fee referred to in paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the Claimant for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph 6.4.4(c), and shall be paid accordingly.

6.3 Flagging Notification Errors

6.3.1 Where a Party gives notice of a claim of Notification Error under paragraph 6.2.1, BSCCo shall within one Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties, and the relevant Volume Notification Agent, and shall publish such notice as soon as practicable on the BSC Website.

6.4 Determination of Notification Errors

6.4.1 The Panel shall consider claims of Notification Error in accordance with this paragraph 6.4.

6.4.2 For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6 (and, in so doing, shall have regard to the level of expertise which the Panel considers appropriate for these purposes), and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, which (if so appointed) shall have the ability and competence, to discharge such functions.

6.4.3 Claims of Notification Error will be considered in a timely fashion, but having regard (among other things) to the need first to establish appropriate central systems and processes to give effect to the requirements of this paragraph 6, the overall number of claims made and the time reasonably required to investigate each claim.

6.4.4 Where a claim of Notification Error is made:

(a) the Panel Secretary shall request:

- (i) the Claimant to provide evidence and information supporting its claim;*
- (ii) the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and*
- (iii) the relevant Volume Notification Agent and the ECVAA to provide comments in relation to the claim;*

(b) BSCCo shall:

- (i) investigate the matters referred to in paragraph 6.4.7 (and each Trading Party shall provide BSCCo with such information as BSCCo may reasonably request for these purposes); and*
- (ii) provide the Panel with a report of its findings, a copy of which shall be made available to the Claimant;*

(c) the Panel shall determine in its opinion:

- (i) whether the Claimant has demonstrated that there was a Notification Error in relation to the relevant Settlement Period;*
- (ii) if so, what the Notification Error was;*

- (iii) *whether it considers the requirements referred to in paragraph 6.4.7(a) and (b) are satisfied; and*
- (iv) *if they are so satisfied, whether the Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraph 6.4.6,*

and the Panel shall indicate its reasons for each of those determinations;

- (d) *the relevant Contract Trading Parties and the relevant Volume Notification Agent shall:*
 - (i) *provide the Panel with such further information as it may reasonably request to assist it in making its determination; and*
 - (ii) *confirm to the Panel that the evidence and information provided to the Panel are complete and not misleading;*
- (e) *the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent, together with the reasons indicated by the Panel for each of its determinations under paragraph 6.4.4(c) and a brief description of the process followed by the Panel in making its determinations;*
- (f) *BSCCo shall give such instructions to the ECVAA, SAA and FAA as are necessary to give effect to any such rectification; and*
- (g) *BSCCo may publish details of the progress and status of each claim made under this paragraph 6 on the BSC Website.*

6.4.5 *The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to each of the matters referred to in paragraph 6.4.4(c) shall be final and binding on all Parties, subject to paragraph 6.7.*

6.4.6 *Rectification of a Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:*

- (a) *at the time at which the relevant Volume Notification was submitted; or*
- (b) *where the Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.*

6.4.7 *The Panel may determine that a Notification Error should be rectified if (and only if) it considers that:*

- (a) *either:*
 - (i) *the relevant Volume Notification could not reasonably be expected (having regard to any binding agreement to submit that Volume Notification by a particular time and otherwise having regard to good industry practice) to have been submitted prior to the time by which a Volume Notification would need to have been submitted if it was to be included in the last Volume Notification Report sent to the Claimant prior to Gate Closure for the relevant Settlement Period; or*
 - (ii) *the last Volume Notification Report which, under the Code, was due to be sent prior to Gate Closure for the relevant Settlement Period was not sent to the Claimant;*

and

- (b) *the Claimant has demonstrated to the Panel's reasonable satisfaction that it and, where relevant, its Volume Notification Agent took all reasonable and prudent steps (in accordance with good industry practice as applicable in all the circumstances):*
- (i) *to prevent the occurrence of errors in the submission of Volume Notifications;*
 - (ii) *to minimise the risk that such errors, should they occur, are not noticed by it in a reasonable time;*
 - (iii) *to minimise, or be able to minimise, the impact on it of such errors, should they occur;*
 - (iv) *where such errors occur, to avoid a repetition of those errors; and*
 - (v) *in relation to the error in question, promptly to rectify, reverse or otherwise mitigate the effect of such error (giving rise to one or more such Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became aware of such error.*

6.4.8 *The Panel shall establish and from time to time review, following consultation with Parties and with the approval of the Authority, and publish guidance as to the factors which it would expect to take into account and the assumptions which it would expect to make in considering the matters referred to in paragraph 6.4.7.*

6.4.9 *For the avoidance of doubt, no claim may be made under this paragraph 6 in respect of a Volume Notification to which the provisions of paragraph 5 apply.*

6.4.10 *Subject and without prejudice to paragraph 6.4.9, in relation to a Volume Notification and a Settlement Period:*

- (a) *to the extent that any other provision of the Code provides an Adjustment Mechanism, a claim may not be made in respect of that Volume Notification under more than one Adjustment Mechanism and, accordingly, if a claim is made under one Adjustment Mechanism in respect of that Volume Notification, no claim may be made in respect of that Volume Notification under any other Adjustment Mechanism (regardless of the outcome of such claim);*
- (b) *this paragraph 6.4.10 applies:*
 - (i) *irrespective of whether such other provision of the Code is introduced into the Code before or after the date when this paragraph 6 comes into effect; and*
 - (ii) *unless otherwise expressly stated in such other provision;*
- (c) *for the purposes of this paragraph 6.4.10, an "Adjustment Mechanism" means, in relation to a Volume Notification and a Settlement Period, arrangements established under the Code providing for the possible submission, resubmission, rectification or adjustment of that Volume Notification after Gate Closure for that Settlement Period (whether or not subject to any restrictions and/or the satisfaction of any requirements and/or the exercise of any discretion as set out in the relevant provisions of the Code), and, for the avoidance of doubt, the arrangements established under this paragraph 6 are an Adjustment Mechanism.*

6.4.11 *The provisions of this paragraph 6 are without prejudice to Section VI.1.4.*

6.5 *Rectification of Notification Errors*

6.5.1 *Where the Panel determines that a Notification Error occurred and should, in accordance with paragraph 6.4, be rectified:*

- (a) *the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Notification Error as determined by the Panel;*
 - (b) *such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made.*
- 6.5.2 *Unless the Panel otherwise determines, claims in respect of Volume Notifications will be determined, and (where applicable) rectification and adjustments will be made, in the order chronologically in which claims in respect of Volume Notifications are received by BSCCo.*
- 6.6 *Credit Arrangements*
- 6.6.1 *Where a Notification Error is rectified, the rectification shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time of the rectification).*
- 6.6.2 *In accordance with paragraph 6.6.1:*
 - (a) *where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted:*
 - (i) *Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and*
 - (ii) *to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Notification Error and Section M4 shall not apply in relation thereto;*
 - (b) *where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the rectified Volume Notification been submitted, and is or was not so treated, the rectification of the Notification Error shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.*
- 6.6.3 *For the purposes of this paragraph 6.6, the time of the rectification of a Notification Error is the time with effect from which the ECVA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.*
- 6.7 *Appeal to Authority*
- 6.7.1 *Where the Panel (or Panel Committee) makes a determination pursuant to paragraph 6.4.4(c), any Contract Trading Party may refer such determination to the Authority subject to the further provisions of this paragraph 6.7.*
- 6.7.2 *A reference to the Authority pursuant to paragraph 6.7.1 shall be made:*
 - (a) *no later than five Business Days after the relevant determination is notified to all Contract Trading Parties under paragraph 6.4.4(e);*
 - (b) *solely on one of the grounds set out in paragraph 6.7.3;*

- (c) *by notice in writing to the Authority, copied to the Panel Chairman, setting out the grounds upon which the reference is made and the reasons why the Party making such reference believes that the determination should be overturned or remitted to the Panel (as the case may be); and*
- (d) *subject to payment by the Party making such reference of a fee of £5000, or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority, in respect of each such reference or, where more than one reference is made at the same time in relation to the same Volume Notification, in respect of all such references together, such fee to be invoiced and paid in accordance with the provisions, mutatis mutandis, of paragraph 6.2.6.*

6.7.3 *The grounds referred to in paragraph 6.7.2 are either:*

- (a) *the procedures set out in this paragraph 6 have not been followed in relation to the claim of Notification Error(s) forming the subject of the relevant determination; or*
- (b) *new information has emerged since the relevant determination was made, which is or is likely to be of relevance to the determination.*

6.7.4 *BSCCo shall assist the Authority in the administration and determination of references made under this paragraph 6.7 and shall provide the Authority with such data and information as the Authority may require in order to make its determination.*

6.7.5 *Where a determination of the Panel (or Panel Committee) is referred to the Authority pursuant to paragraph 6.7.1, and provided the Authority is satisfied that one of the grounds referred to in paragraph 6.7.3 applies, the Authority may:*

- (a) *substitute for the Panel's (or Panel Committee's) determination its own determination of the matter(s) forming the subject of such determination; or*
- (b) *remit the matter(s) back to the Panel (or Panel Committee) to be decided again in accordance with the procedures of this paragraph 6 or in the light of the new information which has emerged (as the case may be); or*
- (c) *uphold the relevant determination.*

6.7.6 *The decision of the Authority shall be final and binding.*

6.7.7 *The Panel (or Panel Committee) and the Authority shall not act as an expert or an arbitrator in making any decisions pursuant to this paragraph 6 and the Arbitration Act 1996 shall not apply in respect of any such decisions.*

6.8 *Application*

6.8.1 *This paragraph 6 shall apply in respect of relevant Settlement Periods occurring at any time on or after the date when this paragraph 6 comes into effect.*

Section D

The following text shall be inserted in Section D4.1(a)(v):

- (v) any amounts paid to BSCCO by way of fee pursuant to Section P6.2.2, Section P6.7.2 or Section Q7.2.3;

Section G

The following text shall be inserted as a new Section G1.1.2(b) and the existing Section G1.1.2(b) and remaining paragraphs of Sections G1.1.2 shall be renumbered accordingly:

(b) Section P6, which addresses the possibility of notification errors in the submission of Volume Notifications;

Section M

The following text shall be inserted as a new Section M3.5.2 and the title Section M3.5 shall be amended to read "Result of Trading Dispute, etc":

3.5.2 This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.

Annex X-1

The following new definitions shall be inserted in Annex X-1:

"Notification Error" has the meaning given to that term in Section P6.1.1(a);

"Volume Data" has the meaning given to that term in Section P6.1.1(f);

6.4 Clean Version – Proposed Modification

Section P

The following text shall be inserted in Section P:

6. NOTIFICATION ERRORS

6.1 Meaning of Notification Error

6.1.1 For the purposes of this Section P:

- (a) a "Notification Error" occurs in relation to the notification of Energy Contract Volume Data or Metered Volume Reallocation Data for a Settlement Period where and only where there was an error in the submission of a Volume Notification on the part of the Volume Notification Agent and/or the relevant Contract Trading Parties which was not rectified prior to Gate Closure for the relevant Settlement Period;
- (b) references in this paragraph 6 to the submission of a Volume Notification:
 - (i) mean the submission of a particular Volume Notification; and
 - (ii) include a failure to submit a Volume Notification,and the provisions of this paragraph 6 shall be construed accordingly;
- (c) for the purposes of paragraph (a), an error in the submission of a Volume Notification will be considered to have occurred only where:
 - (i) the relevant Contract Trading Parties had, at the time of such submission, a demonstrably settled and (save in the case of paragraph 1.4.1) shared commitment to notify particular ascertained Volume Data for the Settlement Period in question; and
 - (ii) it is clear that a mistake occurred in giving effect to that commitment;
- (d) in relation to a claim of Notification Error:
 - (i) the "relevant" Volume Notification is the Volume Notification in respect of which the Notification Error occurred;
 - (ii) the "relevant" Volume Notification Agent is the Volume Notification Agent which submitted or failed to submit (as the case may be) the relevant Volume Notification;
 - (iii) the "relevant" Settlement Period is the Settlement Period in respect of which the Notification Error occurred;
 - (iv) a "relevant" Contract Trading Party is a Contract Trading Party in relation to which the Notification Error occurred;
 - (v) the "rectified Volume Notification" is the Volume Notification which would have been made had the Notification Error not occurred; and
 - (vi) the "relevant" Settlement Run, in relation to a claim or claims for Notification Error, is the next Settlement Run as referred to in paragraph 6.5.1(b);
- (e) in relation to a relevant Contract Trading Party, references to a Notification Error are to the Notification Error which has (or is alleged to have) occurred in respect of such Party;

- (f) "Volume Data" means Energy Contract Volume Data or Metered Volume Reallocation Data, as the case may be;
- (g) "Volume Notification Report" means a report generated under the Code for circulation to Trading Parties of a kind containing data sufficient, in the Panel's reasonable opinion, to enable a Contract Trading Party to check whether Volume Notifications have been submitted with respect to that Contract Trading Party and to check the information specified (pursuant to paragraph 2.3.2 or 3.3.2 as the case may be) in such Volume Notifications; and
- (h) "Claimant" means a Party making a claim for Notification Error under this paragraph 6.

6.2 Claiming Notification Errors

6.2.1 Where a relevant Contract Trading Party considers that there has been a Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo in accordance with the relevant BSCP, identifying the Notification Error and the relevant Settlement Period, provided that no claim of Notification Error may be made after 17:00 hours on the Business Day next following the Settlement Day in which Gate Closure for the relevant Settlement Period occurs.

6.2.2 Where a relevant Contract Trading Party makes a claim of Notification Error, such Party shall pay a fee to BSCCo for each such claim:

- (a) the amount of which (for each such claim, provided that, for the purposes of this paragraph 6.2.2 and subject to paragraph 6.2.4, claims of Notification Error made by a Party in respect of the same Volume Notification shall be treated as a single claim) shall be £5,000 or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to time after consultation with Parties and with the approval of the Authority; and
- (b) which shall not be reimbursed in any circumstances.

6.2.3 Where a relevant Contract Trading Party makes a claim of Notification Error, the claim shall be accompanied by a statement in writing from:

- (a) in the case of a claim to which paragraph 1.4.1 applies, a board director (or equivalent) of the relevant Contract Trading Party; or
- (b) in all other cases, the other relevant Contract Trading Party; and
- (c) where the relevant Volume Notification Agent is not the relevant Contract Trading Party (or either of the relevant Contract Trading Parties), the relevant Volume Notification Agent,

addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties and confirming that it considers that the Notification Error has occurred.

6.2.4 A claim of Notification Error may not be made:

- (a) in relation to a Volume Notification in respect of which a previous claim has been made (and, accordingly, if a relevant Contract Trading Party wishes to claim Notification Errors in relation to more than one Settlement Period in respect of a single Volume Notification, all such errors must be claimed at the same time);
- (b) in relation to a Settlement Period for which Gate Closure occurs after the time at which the claim is made.

6.2.5 A claim of Notification Error may be made in relation to a Volume Notification, notwithstanding that the Volume Notification was treated as rejected (in relation to the relevant Settlement Period) or refused, in accordance with paragraph 2.4 or 3.4, where the rectified Volume Notification (if submitted as described in paragraph 6.4.6) would not have been so treated, but without prejudice to paragraph 6.6.2.

6.2.6 The fee referred to in paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the Claimant for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph 6.4.4(c), and shall be paid accordingly.

6.3 Flagging Notification Errors

6.3.1 Where a Party gives notice of a claim of Notification Error under paragraph 6.2.1, BSCCo shall within one Business Day after receiving such notice notify the claim to the Energy Contract Volume Aggregation Agent, all Contract Trading Parties, and the relevant Volume Notification Agent, and shall publish such notice as soon as practicable on the BSC Website.

6.4 Determination of Notification Errors

6.4.1 The Panel shall consider claims of Notification Error in accordance with this paragraph 6.4.

6.4.2 For the avoidance of doubt, the Panel may establish or appoint a Panel Committee to discharge its functions under this paragraph 6 (and, in so doing, shall have regard to the level of expertise which the Panel considers appropriate for these purposes), and (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, which (if so appointed) shall have the ability and competence, to discharge such functions.

6.4.3 Claims of Notification Error will be considered in a timely fashion, but having regard (among other things) to the need first to establish appropriate central systems and processes to give effect to the requirements of this paragraph 6, the overall number of claims made and the time reasonably required to investigate each claim.

6.4.4 Where a claim of Notification Error is made:

(a) the Panel Secretary shall request:

- (i) the Claimant to provide evidence and information supporting its claim;
- (ii) the other relevant Contract Trading Party (if any) to provide evidence and information supporting the claim; and
- (iii) the relevant Volume Notification Agent and the ECVAA to provide comments in relation to the claim;

(b) BSCCo shall:

- (i) investigate the matters referred to in paragraph 6.4.7 (and each Trading Party shall provide BSCCo with such information as BSCCo may reasonably request for these purposes); and
- (ii) provide the Panel with a report of its findings, a copy of which shall be made available to the Claimant;

(c) the Panel shall determine in its opinion:

- (i) whether the Claimant has demonstrated that there was a Notification Error in relation to the relevant Settlement Period;
- (ii) if so, what the Notification Error was;
- (iii) whether it considers the requirements referred to in paragraph 6.4.7(a) and (b) are satisfied; and

- (iv) if they are so satisfied, whether the Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraph 6.4.6, and the Panel shall indicate its reasons for each of those determinations;
 - (d) the relevant Contract Trading Parties and the relevant Volume Notification Agent shall:
 - (i) provide the Panel with such further information as it may reasonably request to assist it in making its determination; and
 - (ii) confirm to the Panel that the evidence and information provided to the Panel are complete and not misleading;
 - (e) the Panel Secretary shall notify the Panel's determinations to all Contract Trading Parties and the relevant Volume Notification Agent, together with the reasons indicated by the Panel for each of its determinations under paragraph 6.4.4(c) and a brief description of the process followed by the Panel in making its determinations;
 - (f) BSCCo shall give such instructions to the ECVA, SAA and FAA as are necessary to give effect to any such rectification; and
 - (g) BSCCo may publish details of the progress and status of each claim made under this paragraph 6 on the BSC Website.
- 6.4.5 The determination of the Panel (or any Panel Committee established or appointed under paragraph 6.4.2) as to each of the matters referred to in paragraph 6.4.4(c) shall be final and binding on all Parties, subject to paragraph 6.7.
- 6.4.6 Rectification of a Notification Error shall not be made if the rectified Volume Notification would have been invalid (pursuant to paragraph 2.3.4 or 3.3.4) or treated as rejected (in relation to the relevant Settlement Period) or refused (pursuant to paragraph 2.4 or 3.4) if such rectified Volume Notification had been submitted:
- (a) at the time at which the relevant Volume Notification was submitted; or
 - (b) where the Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.
- 6.4.7 The Panel may determine that a Notification Error should be rectified if (and only if) it considers that:
- (a) either:
 - (i) the relevant Volume Notification could not reasonably be expected (having regard to any binding agreement to submit that Volume Notification by a particular time and otherwise having regard to good industry practice) to have been submitted prior to the time by which a Volume Notification would need to have been submitted if it was to be included in the last Volume Notification Report sent to the Claimant prior to Gate Closure for the relevant Settlement Period; or
 - (ii) the last Volume Notification Report which, under the Code, was due to be sent prior to Gate Closure for the relevant Settlement Period was not sent to the Claimant;
 - and
 - (b) the Claimant has demonstrated to the Panel's reasonable satisfaction that it and, where relevant, its Volume Notification Agent took all reasonable and prudent steps (in accordance with good industry practice as applicable in all the circumstances):

- (i) to prevent the occurrence of errors in the submission of Volume Notifications;
- (ii) to minimise the risk that such errors, should they occur, are not noticed by it in a reasonable time;
- (iii) to minimise, or be able to minimise, the impact on it of such errors, should they occur;
- (iv) where such errors occur, to avoid a repetition of those errors; and
- (v) in relation to the error in question, promptly to rectify, reverse or otherwise mitigate the effect of such error (giving rise to one or more such Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became aware of such error.

6.4.8 The Panel shall establish and from time to time review, following consultation with Parties and with the approval of the Authority, and publish guidance as to the factors which it would expect to take into account and the assumptions which it would expect to make in considering the matters referred to in paragraph 6.4.7.

6.4.9 For the avoidance of doubt, no claim may be made under this paragraph 6 in respect of a Volume Notification to which the provisions of paragraph 5 apply.

6.4.10 Subject and without prejudice to paragraph 6.4.9, in relation to a Volume Notification and a Settlement Period:

- (a) to the extent that any other provision of the Code provides an Adjustment Mechanism, a claim may not be made in respect of that Volume Notification under more than one Adjustment Mechanism and, accordingly, if a claim is made under one Adjustment Mechanism in respect of that Volume Notification, no claim may be made in respect of that Volume Notification under any other Adjustment Mechanism (regardless of the outcome of such claim);
- (b) this paragraph 6.4.10 applies:
 - (i) irrespective of whether such other provision of the Code is introduced into the Code before or after the date when this paragraph 6 comes into effect; and
 - (ii) unless otherwise expressly stated in such other provision;
- (c) for the purposes of this paragraph 6.4.10, an "Adjustment Mechanism" means, in relation to a Volume Notification and a Settlement Period, arrangements established under the Code providing for the possible submission, resubmission, rectification or adjustment of that Volume Notification after Gate Closure for that Settlement Period (whether or not subject to any restrictions and/or the satisfaction of any requirements and/or the exercise of any discretion as set out in the relevant provisions of the Code), and, for the avoidance of doubt, the arrangements established under this paragraph 6 are an Adjustment Mechanism.

6.4.11 The provisions of this paragraph 6 are without prejudice to Section V1.1.4.

6.5 Rectification of Notification Errors

6.5.1 Where the Panel determines that a Notification Error occurred and should, in accordance with paragraph 6.4, be rectified:

- (a) the Panel shall determine what adjustments are required to the relevant Account Bilateral Contract Volumes, Metered Volume Fixed Reallocations and/or Metered Volume Percentage Reallocations (as the case may be) in order to rectify the Notification Error as determined by the Panel;

- (b) such adjustments shall be made as soon as is practicable, and shall be taken into account in the next Settlement Run for the relevant Settlement Period after such adjustments have been made.

6.5.2 Unless the Panel otherwise determines, claims in respect of Volume Notifications will be determined, and (where applicable) rectification and adjustments will be made, in the order chronologically in which claims in respect of Volume Notifications are received by BSCCo.

6.6 Credit Arrangements

6.6.1 Where a Notification Error is rectified, the rectification shall not be taken into account for the purposes of the determination of the relevant Contract Trading Parties' Credit Cover Percentages in relation to any Settlement Periods (whether occurring, or for which Gate Closure occurs, before, on or after the time of the rectification).

6.6.2 In accordance with paragraph 6.6.1:

- (a) where, in accordance with Section M, a relevant Contract Trading Party is or was treated as being in Credit Default and would not have been so treated had the rectified Volume Notification been submitted:

- (i) Section M3.5 shall not apply, and such Party shall not be entitled to any right or remedy in respect of being so treated; and
- (ii) to the extent that, as a result of such Party being so treated, any other Volume Notification is or was treated as rejected (in relation to any Settlement Period) or refused in accordance with paragraph 2.4 or 3.4, such refusal or rejection shall not be affected or prejudiced by the rectification of the Notification Error and Section M4 shall not apply in relation thereto;

- (b) where, in accordance with Section M, a relevant Contract Trading Party would have been treated as being in Level 2 Credit Default if the rectified Volume Notification been submitted, and is or was not so treated, the rectification of the Notification Error shall not affect or prejudice any other Volume Notification which is or was not treated as refused or rejected as a result.

6.6.3 For the purposes of this paragraph 6.6, the time of the rectification of a Notification Error is the time with effect from which the ECVA enters into its BSC Agent System the adjustments determined under paragraph 6.5.1.

6.7 Appeal to Authority

6.7.1 Where the Panel (or Panel Committee) makes a determination pursuant to paragraph 6.4.4(c), any Contract Trading Party may refer such determination to the Authority subject to the further provisions of this paragraph 6.7.

6.7.2 A reference to the Authority pursuant to paragraph 6.7.1 shall be made:

- (a) no later than five Business Days after the relevant determination is notified to all Contract Trading Parties under paragraph 6.4.4(e);
- (b) solely on one of the grounds set out in paragraph 6.7.3;
- (c) by notice in writing to the Authority, copied to the Panel Chairman, setting out the grounds upon which the reference is made and the reasons why the Party making such reference believes that the determination should be overturned or remitted to the Panel (as the case may be); and
- (d) subject to payment by the Party making such reference of a fee of £5000, or such other fee (to take effect upon no less than 30 days' notice to Parties) as the Panel may determine from time to

time after consultation with Parties and with the approval of the Authority, in respect of each such reference or, where more than one reference is made at the same time in relation to the same Volume Notification, in respect of all such references together, such fee to be invoiced and paid in accordance with the provisions, mutatis mutandis, of paragraph 6.2.6.

6.7.3 The grounds referred to in paragraph 6.7.2 are either:

- (a) the procedures set out in this paragraph 6 have not been followed in relation to the claim of Notification Error(s) forming the subject of the relevant determination; or
- (b) new information has emerged since the relevant determination was made, which is or is likely to be of relevance to the determination.

6.7.4 BSCCo shall assist the Authority in the administration and determination of references made under this paragraph 6.7 and shall provide the Authority with such data and information as the Authority may require in order to make its determination.

6.7.5 Where a determination of the Panel (or Panel Committee) is referred to the Authority pursuant to paragraph 6.7.1, and provided the Authority is satisfied that one of the grounds referred to in paragraph 6.7.3 applies, the Authority may:

- (a) substitute for the Panel's (or Panel Committee's) determination its own determination of the matter(s) forming the subject of such determination; or
- (b) remit the matter(s) back to the Panel (or Panel Committee) to be decided again in accordance with the procedures of this paragraph 6 or in the light of the new information which has emerged (as the case may be); or
- (c) uphold the relevant determination.

6.7.6 The decision of the Authority shall be final and binding.

6.7.7 The Panel (or Panel Committee) and the Authority shall not act as an expert or an arbitrator in making any decisions pursuant to this paragraph 6 and the Arbitration Act 1996 shall not apply in respect of any such decisions.

6.8 Application

6.8.1 This paragraph 6 shall apply in respect of relevant Settlement Periods occurring at any time on or after the date when this paragraph 6 comes into effect.

Section D

The following text shall be inserted in Section D4.1(a)(v):

- (v) any amounts paid to BSCCO by way of fee pursuant to Section P6.2.2, Section P6.7.2 or Section Q7.2.3;

Section G

The following text shall be inserted as a new Section G1.1.2(b) and the existing Section G1.1.2(b) and remaining paragraphs of Sections G1.1.2 shall be renumbered accordingly:

- (b) Section P6, which addresses the possibility of notification errors in the submission of Volume Notifications;

Section M

The following text shall be inserted as a new Section M3.5.2 and the title Section M3.5 shall be amended to read "Result of Trading Dispute, etc":

3.5.3 This paragraph 3 and paragraph 4 are subject to the provisions of Section P6.

Annex X-1

The following new definitions shall be inserted in Annex X-1:

"Notification Error" has the meaning given to that term in Section P6.1.1(a);

"Volume Data" has the meaning given to that term in Section P6.1.1(f);

7 ASSESSMENT

The following is a summary of the impacts identified in the Assessment Report produced by the Group:

- (a) Amendments will be required to a number of Sections of the Code. The relevant legal drafting can be found at Section 6 of this Modification Report;
- (b) There will be impacts on the BSC Systems;
- (c) There will be impacts on a number of Code Subsidiary Documents and other configurable items;
- (d) There will be an impact on those Parties who choose to submit claims, support claims or those wishing to submit an appeal;
- (e) There will be an increase in the payments due under the NETA Central Service Agent; and
- (f) There will be an increase in BSC Costs as a result of ELEXON supporting the Panel in the administration and investigation of a claim.

There is no impact on the statutory, regulatory and contractual framework within which the Code sits.

8 SUMMARY OF REPRESENTATIONS

8.1 Consultation and High Level Impact Assessment

Copies of the original representations received under the first consultation and HLIA carried out in November 2001 and considered by the Group can be found in the Assessment Report.

8.2 Second Consultation and Detailed Level Impact Assessments

Copies of the representations received to the second consultation and DLIAs, carried out in December 2001 and considered by the Group can be found in the Assessment Report.

8.3 Consultation on Draft Modification Report

8 representations were received in response to the consultation on the draft Modification Report representing the views of 43 Parties.

The result of this consultation is as follows:

- 6 responses representing 31 Parties supported the implementation of the Alternative Modification; and
- 2 responses representing 12 Parties provided a caveated support to the Alternative Modification.

Below are the detailed responses which have been received.

No	Company	File Number	Accept	Reject	Qualified Acceptance	No. Parties Represented
1.	TXU Europe	P44_MR_001	✓			14
2.	British Gas Trading	P44_MR_002	✓			4
3.	Powergen	P44_MR_003	✓			4
4.	SEEBBOARD	P44_MR_004	✓			2
5.	British Energy	P44_MR_005	✓			3
6.	Scottish & Southern Energy plc	P44_MR_006	✓			4
7.	Scottish Power	P44_MR_007			✓	7
8.	LE Group	P44_MR_008			✓	5
Total						43

P44_MR_001 – TXU Europe

Thank you for the opportunity to comment on the P44 Modification Report. On behalf of 14 TXU Europe companies we would like to register our support for the recommendation that the alternative proposal be implemented. We agree with the proposed timescale for implementation.

Regards
Nicola Lea
Market Development Analyst
TXU Europe Energy Trading Ltd

P44_MR_002 – British Gas Trading

Modification Proposal 44: Correction of Notification Errors where Parties are able to satisfy a Reasonable and Prudent Operator Test

We welcome the opportunity to comment on this modification proposal. This response is on behalf of British Gas Trading, Accord Energy, Centrica King's Lynn and Centrica Peterborough. We note and support the view of the BSC Panel that the Alternative Modification should be implemented.

This modification would reduce the risk faced by all Parties and so would promote effective competition in the generation and supply of electricity. Whilst we maintain that it is inappropriate to make retrospective changes we recognise that there may be rare circumstances where it is appropriate to make such a change. The stringent criteria and tight timescales prescribed by the alternative proposal should ensure that any notification errors that are claimed and subsequently corrected will be assessed in a rigorous manner.

We support the inclusion of an Error Correction Payment (ECP) mechanism in the interest of cost recovery. We agree that this will act as an additional incentive on Parties to ensure that they correctly submit Volume Notifications.

Yours faithfully
Danielle Lane
Transportation Analyst

P44_MR_003 – Powergen

Thank you for giving us the opportunity to provide further comments on the above proposal. Our response is also made on behalf of the following BSC Parties; Powergen Retail Limited, Diamond Power Generation Limited and Cottam Development Centre Limited.

Powergen support the recommendations of the Panel set out in the P44 Draft Modification report. Nevertheless, as stated in our previous responses, we remain sceptical as to the value of an Error Correction Payment (ECP), given that this proposal is designed to allow only claims from parties that can demonstrate a high degree of prudence in managing their own systems and processes. In this context the additional incentive properties of an ECP to “get things right first time” must be questioned.

Clause 7.4.8 of the legal drafting requires the Panel to publish guidance as to the factors which it would expect to take and the assumptions which it would expect to make in relation to the tests outlined in 7.4.7. In line with the intent of P44 it is important that these guidelines are suitably robust and BSC parties have direct input into their content. This is because the guidelines essentially deal with good industry practice in the operation of participants’ system and not simply the operation or interface with the central systems. It is only market participants therefore that are in a position to realistically describe good industry practice.

We would suggest in the next few weeks Elexon reconvenes the P44 Modification Group specifically to compile a suitable set of P44 good industry practice guidelines.

P44_MR_004 – SEEBOARD

We accept the recommendation of this report that alternate modification should be approved. Modification report notes that new paragraph will become paragraph 7 of section P in BSC. If no other additions are due to be made to current version of section P, version 1.1, then this new paragraph should be paragraph 6.

Dave Morton
SEEBOARD Energy Limited
SEEBOARD Power Networks plc
0190 328 3465

P44_MR_005 – British Energy

BE support the principle that participant notification errors should be capable of correction, provided that

- a) appropriate financial incentives are in place to promote accurate and timely notification, initially,
- b) monitoring and control of error correction is in place to prevent the abuse of the facility,

- c) corrections should only be possible for errors arising from the time of implementation of relevant rule changes, which should not be retrospective.

The original proposal P44 only met conditions (b) and (c) and so was not supported by BE.

Alternative modification P44 now meets all the above conditions (now that an Error Correction Payment Mechanism has been included which satisfies (a) above) and this proposal has British Energy's support.

Rachel Ace
on behalf of
British Energy Generation
British Energy Power and Energy Trading
Eggborough Power Ltd

P44_MR_006 – Scottish & Southern Energy plc

This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.

Further to your note of 22nd January 2002, and the associated Modification Report, concerning Modification Proposal P44; we support the recommendation from the Panel; that the Alternative Modification as set out in Section 6 of the Modification Report for P44; be approved for implementation within five business days of the Authority's decision.

Regards
Garth Graham
Scottish & Southern Energy plc

P44_MR_007 – Scottish Power

In response to this DMR consultation, we would wish to indicate our disappointment that the view, which we expressed in a previous response relating to the need for an ECP as part of this proposal, has been considered but rejected. We had suggested a higher administrative fee of £20,000 as an adequate deterrent against frivolous claims being raised by Trading Parties in respect of their notifications rather than an ECP. We also note that the Panel had a robust debate about the need for an ECP before reaching its current recommendation.

In view of this rejection, we feel that, while we still consider our suggestion to be a worthy one, in the circumstances, we must recognise that there has been support from the Mod Group and the Panel for the introduction of an ECP. As we would like to see P44 introduced in some form rather than not at all, we would reluctantly agree with the Panel's recommendation to support the Alternative modification.

We have also considered the legal drafting required to implement this proposal and agree with these changes.

I trust that you will find these comments helpful. Nonetheless, should you require further clarification of any of the above, please do not hesitate to contact me.

Yours Sincerely,
Man Kwong Liu
Calanais Ltd.

For and on behalf of: - *ScottishPower UK Plc.; SP Manweb Plc.; ScottishPower Energy Trading Ltd.; ScottishPower Generation Ltd.; Scottish Power Energy Retail Ltd.; Emerald Power Generation Ltd.; SP Transmission Ltd.*

P44_MR_008 – LE Group

Thank you for the opportunity to comment on draft Modification Report on Modification Proposal P44.

We note the recommendation of the draft Modification Report that the original version of P44 be rejected, and that the Alternative version of P44 be approved, with a recommended implementation date of 5 days after an Authority decision.

We note that the modification in both guises requires Parties to be able to satisfy a 'Reasonable and Prudent operator test'

The alternative differs from the original proposal in that the original contained no error correction payment (ecp), which had been a feature of discussion and Ofgem guidance for P37, as well as being a feature of Ofgem's formal deliberations in its ruling on Modification P19.

There was strong support for the Modification overall in the consultation process and at the group. Consultation views on the ecp were mixed and we note that the recommendation to incorporate one of 10% was only made after discussion with Ofgem and a further consultation.

A manual solution is envisaged, at least initially.

We signalled in our previous consultation response that we supported the original modification, and this remains our primary stance. In respect of applicable objective 7A3(a), this is better facilitated in the context of 7A2(b)(ii) (see LE's legal Opinion, in the context of P37, from leading counsel James Goudie QC). P44 demonstrates effectiveness in dealing with unfairness and therefore better facilitates 7A3(c). P44 also reduces risk (and cost) to participants and therefore better facilitates 7A3(d).

We would comment that the criteria for a claim to succeed are extremely rigorous. The modification will only apply, if approved, prospectively, and parties will by now have considerable operating experience of NETA, so we would not expect the test to be the same as that in P37.

Our only adverse comment on the report's recommendation is that we believe that the original modification better meets the applicable BSC objectives to a greater extent than the alternative modification; this arises from the Opinion given by J Goudie QC in the context of mod 37, referred to above. In simple terms, there should not be an error correction payment. However, we do believe that the alternative modification does in absolute terms better meet the applicable BSC objectives than not having either version of P44 in place.

Yours sincerely
Liz Anderson

(London Electricity, South Western Electricity, Jade Power, Sutton Bridge Power and TXU West Burton Power Limited)