

## ANNEX 7 PROPOSED LEGAL DRAFTING

### Annex 7.1. P37 Clarified

*The following text shall be inserted in Section P:*

#### 6. PAST NOTIFICATION ERRORS

##### 6.1 Meaning of Past Notification Error

6.1.1 For the purposes of this Section P:

- (a) a "**Past Notification Error**" occurred 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 and where Gate Closure for such Settlement Period occurred prior to the date on which this paragraph 6 comes into effect;
- (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 Notificationand 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 Past Notification Error:
  - (i) the "**relevant**" Volume Notification is the Volume Notification in respect of which the Past 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 Past Notification Error occurred;
  - (iv) a "**relevant**" Contract Trading Party is a Contract Trading Party in relation to which the Past Notification Error occurred; and

- (v) the **'rectified Volume Notification'** is the Volume Notification which would have been made had the Past Notification Error not occurred;
- (vi) the **"relevant"** Settlement Run, in relation to a claim or claims for Past 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 Past Notification Error are to the Past 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 Past 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.

## 6.2 Claiming Past Notification Errors

- 6.2.1 Where a relevant Contract Trading Party considers that there has been a Past Notification Error, such Party may make a claim to that effect by giving written notice of such claim to BSCCo, identifying the Past Notification Error and the relevant Settlement Period, provided that no claim of Past Notification Error may be made after the expiry of five Business Days after the date on which this paragraph 6 comes into effect.
- 6.2.2 Where a relevant Contract Trading Party makes a claim of Past Notification Error, such Party shall pay a fee to BSCCo for each such claim, 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 Past 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 amount as the Panel may from time to time after consultation with Parties and the approval of the Authority, determine upon not less than 30 days notice to Parties, and which shall not be reimbursed in any circumstances
- 6.2.3 Where a relevant Contract Trading Party makes a claim of Past Notification Error (other than one to which paragraph 1.4.1 applies), the claim shall be accompanied by a statement in writing from the other relevant Contract Trading Party and, where the relevant Volume Notification Agent is not one of the relevant Contract Trading Parties, from the relevant Volume Notification Agent (addressed, in each case, to BSCCo for the benefit of all Contract Trading Parties) confirming that it considers that the Past Notification Error has occurred.
- 6.2.4 A claim of Past Notification Error may not be made 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 Past Notification Errors in relation to more than one Settlement Period, a single claim must be made for all such errors).
- 6.2.5 A claim of Past 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 6.4.5) would not have been so treated, but without prejudice to paragraph 6.6.2.

### **6.3 Flagging Past Notification Errors**

6.3.1 Where a Party gives notice of a claim of Past 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.

### **6.4 Determination of Past Notification Errors**

6.4.1 The Panel shall consider and determine claims of Past 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 (notwithstanding Section W2.2) the Panel may appoint the Trading Disputes Committee, and (if so appointed) that Committee shall have the ability and competence, to do so.

6.4.3 Claims of Past Notification Error will be considered and determined 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 Past Notification Error is made:

- (a) the Panel Secretary shall request:
  - (i) the Party claiming the Past Notification Error 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 ECVAAs 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 Party claiming the Past Notification Error;
- (c) 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;

- (d) the Panel shall determine in its opinion:
  - (i) whether the Party claiming the Past Notification Error has demonstrated that there was a Past Notification Error in relation to the relevant Settlement Period;
  - (ii) if so, what the Past Notification Error was; and
  - (iii) whether the Past Notification Error should in all the circumstances be rectified in relation to the relevant Settlement Period, subject to paragraphs 6.4.6 and 6.4.7,

and the Panel shall indicate its reasons for its determination;

- (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 its determinations 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;
- (g) the fee under paragraph 6.2.2 shall be invoiced as and included in determining BSCCo Charges for the relevant Party for the next month for which BSCCo Charges are invoiced following the notification of the Panel's determination under paragraph (e), and shall be paid accordingly.

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 Past 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 Past Notification Error is a failure to submit, immediately prior to Gate Closure for the relevant Settlement Period.

6.4.7 The Panel shall decline to rectify a Past Notification Error where it considers that the relevant Contract Trading Party and/or the relevant Volume Notification Agent did not (or the relevant Contract Trading Party has failed to demonstrate that it and/or the relevant Volume Notification Agent did):

- (a) at the time that the Past Notification Error occurred, have in place prudent systems and processes in connection with Volume Notifications, the question of whether such systems and processes were prudent to be judged in the light of the circumstances then prevailing; and/or
- (b) promptly take all appropriate steps:
  - (i) to rectify, reverse or otherwise mitigate the effect of the error (giving rise to one or more such Past Notification Errors) in respect of Settlement Periods for which Gate Closure occurred after it became aware of such error; and

- (ii) to avoid a repetition of the said error, following discovery of the error.

6.4.8 For the purposes of paragraph 6.4.4(c), in determining whether or not, subject to paragraphs 6.4.6 and 6.4.7, a Past Notification Error should in all the circumstances be rectified, the Panel may have regard, among other things, to the following factors, where the Panel considers such factors to be relevant:

- (a) the extent to which, in the Panel's view, the Past Notification Error was directly attributable to a failure of BSC Systems, subject to paragraph 6.4.9;
- (b) the extent to which, in the Panel's view, the Past Notification Error was directly attributable to an inaccuracy in or the non-availability of the Forward Notification Summary as referred to in Table 3 of Annex V-1 but otherwise without prejudice to the provisions of Section V1.1.4;
- (c) the extent to which, in the Panel's view, the Past Notification Error and/or the magnitude of the loss suffered by the relevant Contract Trading Parties in respect of Trading Charges as a result of the error was attributable to a combination of circumstances which could not reasonably have been foreseen; or
- (d) the extent to which, in the Panel's view, the magnitude of the loss suffered by one or both of the relevant Contract Trading Parties in respect of Trading Charges as a result of the Past Notification Error was wholly disproportionate, due weight being given to the desirability of incentivising Contract Trading Parties to avoid mistakes in the submission of Volume Notifications.

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.

## **6.5 Rectification of Past Notification Errors**

6.5.1 Where the Panel determines that a Past Notification Error occurred and should 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 Past 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.
- (c) if the Final Reconciliation Settlement Run for the relevant Settlement Period has already taken place before the Panel has made its determination under 6.5.1, such adjustments shall be made as soon as is practicable, and shall be taken into account in an Ad Hoc Settlement Run for the relevant Settlement Period after such adjustments have been made.

6.5.2 Where, in relation to a claim for Past Notification Error (or, if claims for more than one Past 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 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:

$$ECP_a = \min\{0.2 * \max(\sum_j (NCAEI_{aj} - CAEI_{aj}), 0), MECP\}$$

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 Past Notification Error not been rectified; and
- (d)  $MECP$  is £200,000.

6.5.4 In relation to Past 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 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 Past 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;
- (iii)  $\sum_a$  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.

## 6.6 Credit Arrangements

6.6.1 Where a Past 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 Past Notification Error and Section M4 shall not apply in relation thereto;
- (b) where, in accordance with Section M, a relevant Contract Trading Party would be or would have been treated as being in Level 2 Credit Default if the rectified Volume Notification had been submitted, and is or was not so treated, the rectification of the Past 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 Past Notification Error is the time with effect from which the ECVAAs enter 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(d), any 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 or both 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 Authority should exercise its powers set out in paragraph 6.7.4 (as the case may be); and
- (d) subject to payment by the Party making such reference of a fee of £5000 (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 6.4.4(g).

6.7.3 The grounds referred to in paragraph 6.7.2(b) are either:

- (a) the procedures set out in this paragraph 6 have not been followed in relation to the claim of Past 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 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.
- 6.7.5 The decision of the Authority shall be final and binding.
- 6.7.6 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 provisions of the Arbitration Act 1996 shall not apply in respect of any such decisions.

## **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:*

**"Past 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 <sub>a</sub>		The payment amount calculated in accordance with Section P6.5.3.
Error Correction Payment Reallocation	ECPR <sub>a</sub>		The payment reallocation amount calculated in accordance with Section P6.5.5.

## Annex 7.2. Alternative Modification P37

As above, *subject* to the following:

*Section P6.5.3 shall instead read as follows:*

6.5.3 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:

$$ECP_a = 0.2 * \max (\sum_j (NCAEI_{aj} - CAEI_{aj}), 0)$$

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 Past Notification Error not been rectified; and