

Modification Proposal	MP No: 115 <i>(mandatory by BSCCo)</i>
Title of Modification Proposal <i>(mandatory by proposer):</i> Disapplication Of Supplier Charges Under Certain Circumstances	
Submission Date <i>(mandatory by proposer):</i> 24 December 2002	
Description of Proposed Modification <i>(mandatory by proposer):</i> Modify Section S, Paragraph 3.2.1 and Annex S-1 to say that Supplier Charges should not be applied where it is demonstrated to the Panel's (or PAB's) reasonable satisfaction (subject to clearly defined criteria) that this would not be reasonable in all the circumstances.	
Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by proposer):</i> There are a number of circumstances under which the application of Supplier Charges (in accordance with Annex S-1 of the Code) may be inconsistent with the status of these charges as "liquidated damages", i.e. "a genuine pre-estimate of the loss likely to be suffered by other Parties as a result of a failure by a Supplier to meet the applicable Performance Level", as referred to in Annex S-1 paragraph 1.3.1, or it may be otherwise unreasonable to apply them. These circumstances may include where: a) There is a known defect in the mechanism for calculating the Charges and/or their re-distribution and/or b) The Standards in respect of which the charges are applied do not take account of a recognised defect in industry process or arrangements which may, for example, have resulted in Suppliers not being provided with information they need to identify required corrective action or a restriction on their ability to obtain corrections with or without disproportionate cost and/or c) Performance has been significantly impacted by a failure of a previous Supplier or Suppliers to comply with obligations under the Code (or Code Subsidiary Documents) - for example, where such other Supplier has not correctly updated SMRS, and this has resulted in significant delay or difficulty in the process of transferring standing data or consumption history to the Agents appointed by the new Supplier, affecting their performance. Note that such circumstances may fall outside the strict definition of Supplier Force Majeure (BSC Section S, paragraph 3.3), and the Supplier may not in fact be able to identify that they have occurred until some time after the event. BSCP536 (3.1.2) appears to provide for "extenuating circumstances" other than Supplier Force Majeure to be taken into account, and we understand it was the intent that they should be, but it is not currently clear how any adjustment should be applied within the terms of Annex S-1. Under such circumstances the Panel (or PAB) should have the ability to disapply part or all of the Charges for the relevant period(s), where not to do so would otherwise be inconsistent with the Panel objectives as set out in Section B paragraph 1.2.1. This should reduce the risk of legal challenge to the principle of the Charges, which could have far more serious implications for the integrity of the Performance Assurance Framework and the integrity of the Balancing and Settlement Code arrangements more generally.	
Impact on Code <i>(optional by proposer):</i>	
Impact on Core Industry Documents <i>(optional by proposer):</i>	
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by proposer):</i>	

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

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

The proposal would better facilitate the following Applicable BSC Objectives:

(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 - e.g. because Suppliers (particularly smaller ones) may not be aware of all the additional things they may have to do, which are not stated in the Code Subsidiary Documents or elsewhere, in order to meet the Performance Standards in practice.

(d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements - Because the Modification will incentivise Suppliers to investigate and identify the causes of problems and rectify those which are due to their failure, leading to a better understanding of the SVA arrangements and ultimately better performance. Also, removal of 'generic' problems will raise performance to a level where the effect of caps is avoided and therefore there is a positive incentive for further improvement.

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Attachments: NO

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