

## LEGAL DRAFTING TO GIVE EFFECT TO PROPOSED MODIFICATION P221

### SECTION G (version 6)

*Paragraphs 1.5.1. – 1.5.3 (inclusive) shall be amended as follows:*

- 1.5.1 ~~It is acknowledged that~~If at any time the Secretary of State ~~has announced~~sd his intention to carry out a review of arrangements which apply or may apply in anticipation of or following the exercise of any of his powers under Sections 34 and 35 of the Act, Section 96 of the Act, and sections 1 to 4 of the Energy Act 1976 (including the arrangements provided for in the Fuel Security Code); ~~and (after such announcement) the Secretary of State modified the Fuel Security Code with effect from the Go-live Date~~ the provisions of this paragraph 1.5 shall apply.
- 1.5.2 BSCCo shall participate (as and to the extent requested by or on behalf of the Secretary of State) in ~~the any~~ review of the type referred to in paragraph 1.5.1.
- 1.5.3 Following any review of the type ~~the review~~ referred to in paragraph 1.5.1 (or during ~~the~~ such review if so requested by the Secretary of State), the Panel shall propose a modification of the Code (including the provisions in paragraph 4) which in the opinion of the Panel, on the recommendation of BSCCo, and after consultation with the Secretary of State and the Authority, is appropriate to support and/or to reflect any modifications of the arrangements referred to in that paragraph (including any modifications of the Fuel Security Code), or any new such arrangements, which may be made or established (by or on behalf of or at the behest of the Secretary of State) in consequence of such review.

*Paragraph 5 shall be deleted in its entirety and replaced with the following:*

## 5. RECOVERY OF EXCEPTIONAL COSTS BY GENERATORS.

### 5.1 Interpretation

- 5.1.1 In this paragraph the terms “Auditors”, “Exceptional Cost”, “Generation Business”, “Generator”, “Licence Holders” and “Security Period” shall have the meanings ascribed to those terms in the Fuel Security Code and the term “Claimant Customer” shall have the meaning ascribed to the term “Customer” in the Fuel Security Code.

### 5.2 Applications For Recovery Of Exceptional Costs

- 5.2.1 Where a Generator is or has been subject to a direction given by the Secretary of State under section 34 or section 35 of the Act and it considers that it has incurred Exceptional Costs in relation to a BM Unit in anticipation of or during a Security Period, the Lead Party in relation to that BM Unit may apply to the Panel for a determination that, in the opinion of the Panel:

(a) the Generator has incurred Exceptional Costs in carrying on its Generation Business as a result of a direction or directions given by the Secretary of State (whether in anticipation of or during a Security Period) under section 34 or section 35 of the Act; and

(b) the Generator should receive compensation in respect of those Exceptional Costs:

- (i) in the sum specified by the Generator in accordance with paragraph 5.4.1; or
- (ii) in such other sum as the Panel deems appropriate.

### **5.3 Timeframe For Applications**

5.3.1 An application under paragraph 5.2.1 must be made within sixty days (or such longer period as the Panel may in any case approve) after:

(a) the end of the period which begins with the date on which a direction under section 34(4)(b) of the Act is given by the Secretary of State and ends on:

(i) such later date of commencement of a Security Period as may be specified in that direction; or

(ii) in the case of an application for an interim payment of compensation in respect of Exceptional Costs incurred, such later date as is specified in that application where such application is made before the end of the Security Period; or

(b) the end of the Security Period;

as the case may be during which the Exceptional Costs which are the subject of the application were incurred.

5.3.2 Double recovery of costs by Generators is not permitted.

### **5.4 Statement to Accompany Application**

5.4.1 The Lead Party shall enclose with its application under paragraph 5.2.1 a written statement (signed by a director of the relevant Generator) of the circumstances in which that Generator considers that it has incurred Exceptional Costs and the amount of the Exceptional Costs which that Generator considers that it has incurred and the Lead Party shall provide a copy of any such application to the Authority.

### **5.5 Provision Of Assistance To The Panel**

5.5.1 The Lead Party shall obtain and supply to the Panel any information or explanation (and shall provide such other assistance) as the Panel may from time to time request for the purpose of disposing of an application under paragraph 5.2.1.

### **5.6 Auditor's Statement**

5.6.1 If required to do so by the Panel, the Lead Party shall, within such period as the Panel may reasonably stipulate, submit a statement signed by:

5.6.1.1 the Lead Party's Auditors; and

5.6.1.2 where the Exceptional Costs which are the subject of the application under paragraph 5.2.1 relate to a BM Unit comprising the premises of a Claimant Customer and include costs incurred by that Claimant Customer, the Claimant Customer's Auditors

to the effect that the Generator's estimate of Exceptional Costs has been prepared on a basis which is both fair, complete and reasonable and consistent with the definition of the term Exceptional Cost.

### **5.7 Discussions With The Authority**

5.7.1 If required to do so by the Authority, the Panel will discuss with the Authority any determinations to be made under paragraph 5.2.1 and, in making any such determinations, shall take account of any guidance given by the Authority.

## **5.8 Mechanism For Recovery**

**5.8.1** When the Panel has made a determination under paragraph 5.2.1, it shall notify the Lead Party of the determination, and that proportion of the Exceptional Costs allowed by the Panel shall be settled as a charge upon Suppliers in a manner to be determined by the Authority.

## **SECTION X ANNEX X-1 (version 36)**

*The definition of “Generator Compensation Instruction” shall be deleted in its entirety.*