

Modification Proposal

MP No: 149
(mandatory by BSCCo)

Title of Modification Proposal (mandatory by proposer):

Delay to the invoicing of the Past Notification Error (PNE) claims fee

Submission Date (mandatory by proposer): 25 November 2003

Description of Proposed Modification (mandatory by proposer):

Circumstances have dictated that insufficient time is available for the industry, the BSC Panel and the Authority to properly consider whether the level of the PNE claims fee should be revised. This proposal advocates a one month delay in the invoicing of the PNE claims fee.

It is suggested that clause P6.4.4 (g) should be amended as follows;

"the fee under paragraph 6.2.2 shall be invoiced and included in determining BSCCo Charges for the relevant Party for the month after the next month for which BSCCo Charges are invoiced following the Panel's determination under paragraph (e), and shall be paid accordingly."

Description of Issue or Defect that Modification Proposal Seeks to Address (mandatory by proposer):

Failure to increase the claims fee under P6.2.2, results in non-claimants and new entrants having to fund a disproportionate share of the cost of the PNE process. It is unclear whether the Panel did in fact act lawfully in making its decision not recommend a change to the PNE claims fee at the Panel meeting on 13 November 2003. Please refer to the opinion of counsel which is attached.

Counsel considers it necessary for the Panel to revisit its decision on the claims fee. This can be done either through another review of the claims fee under P6.2.2 or through an urgent modification proposal specifying a particular claims fee. For either approach more time will be required. Failure to allow such additional time could result in the Panel's decision on agenda item 60/017 being challenged.

Please note a modification proposal to set the claims fee at a level that yields sufficient revenue to cover 50% of the cost of the PNE claims process has been submitted at the same time as this proposal.

Impact on Code (optional by proposer):

Section P

Impact on Core Industry Documents (optional by proposer):

Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties (optional by proposer):

Impact on other Configurable Items (optional by proposer):

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

Delaying the invoicing of the Past Notification Error (PNE) claims fee by one month will allow the Panel to consider an appropriate level of claims fee in accordance with its objectives, including those that relate to non discrimination set out in B1.2.1(c) of the Code. It will effectively allow an earlier defective decision to be reconsidered, which might otherwise not be feasible given the anticipated timetable constraints. By allowing the Panel the opportunity to recommend (and the Authority to decide) on a new higher level of claims fee it will ensure that non claimants and new entrants do not have to fund a disproportionate share of the cost of the PNE process, thereby promoting competition in the generation and supply of electricity (Applicable BSC Objective (c)).

Avoiding a legal challenge to a Panel decision is desirable as any costs associated with defending such a challenge may have to be met by BSC Parties as a whole. The modification therefore fulfils Applicable BSC objective (d) by promoting efficiency in the implementation and administration of the balancing and settlement code. In addition,

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Attachments: Yes

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

PNE Claims Fee Opinion, 25 November 2003