

## SECTION G: CONTINGENCIES

### 1. GENERAL

#### 1.1 Provisions in Code

- 1.1.1 This Section G sets out or refers to provisions of the Code which are to apply in certain contingencies, and related provisions.
- 1.1.2 The following provisions of the Code address the possibility of certain emergencies and other unusual or unexpected events of various kinds:
- (a) Section P5, which addresses circumstances in which the ECVAA may be unable to receive Energy Contract Volume Notifications and Metered Volume Reallocation Notifications;
  - (b) Section Q7, which addresses the possibility of manifest errors in the submission or acceptance of Bids and Offers;
  - (c) Section Q8, which addresses circumstances in which the Transmission Company may be unable to receive Physical Notifications;
  - (d) paragraph 3, which addresses Black Start Periods; and
  - (e) paragraph 4, which applies where the Secretary of State exercises certain emergency powers.
- 1.1.3 For the avoidance of doubt, paragraph 1.1.2 is not intended to be an exclusive list of provisions of the Code which address failures or delays or other abnormalities in the implementation of the Code.
- 1.1.4 The provisions of the Code referred to in paragraph 1.1.2 are "**Contingency Provisions**".
- 1.1.5 Paragraph 5 sets out arrangements for giving effect to the recovery of Exceptional Costs pursuant to the Fuel Security Code.

#### 1.2 Exclusion of reconciliation

- 1.2.1 Where, pursuant to any Contingency Provision, any entitlement or liability by way of Ad-hoc Trading Charge is to be determined in relation to any Settlement Day:
- (a) the amount of such Ad-hoc Trading Charge shall be determined on the basis of data derived from the Initial Settlement Run (or if any Reconciliation Settlement Run has already been carried out at the time at which the amount of such charge is to be determined, the latest such Reconciliation Settlement Run);
  - (b) unless the Panel expressly otherwise decides, no adjustment or reconciliation shall be made in the determination of such Ad-hoc Trading Charge upon or as a result of the later carrying out of any Reconciliation Settlement Run or other adjustment of any such data;
  - (c) the Ad-hoc Trading Charge itself will have arisen outside any Settlement Run and accordingly shall be excluded from account (in both paragraphs (a) and (b) of Section N6.4) by the FAA in carrying out any reconciliation under that Section.

### 1.3 Party Daily Reallocation Proportions

- 1.3.1 For the purposes of the Code, in relation to any Trading Party and any Settlement Day, the "**Party Daily Reallocation Proportion**" is the proportion determined as:

$$RCRC_p / \sum_p RCRC_p$$

where  $\sum_p$  represents the sum over all Trading Parties.

- 1.3.2 It is acknowledged that in certain circumstances the value of Party Daily Reallocation Proportion for a Trading Party might be negative, in which case any reference (in any Contingency Provision) to a liability of that Trading Party as to its Party Daily Reallocation Proportion of any amount shall be construed as an entitlement.
- 1.3.3 In accordance with paragraph 1.2.1, in the application of any Contingency Provision the Party Daily Reallocation Proportions shall be determined by reference to values of Daily Party Residual Settlement Cashflow determined in the Settlement Run (excluding the Interim Information Settlement Run) last carried out for the relevant Settlement Day before such proportions are to be determined, and shall not (unless the Panel decides otherwise) subsequently be revised.

### 1.4 Application of Contingency Provisions

- 1.4.1 For the avoidance of doubt, the Contingency Provisions shall apply (in accordance with their terms) only in relation to Settlement Periods commencing on or after the Go-live Date, but an event or circumstance giving rise to the application or operation of such provisions may occur or prevail before or on or after the Go-live Date.

### 1.5 Review of emergency arrangements

- 1.5.1 If at any time the Secretary of State announces 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) 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 any review of the type referred to in paragraph 1.5.1.
- 1.5.3 Following any review of the type referred to in paragraph 1.5.1 (or during 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.
- 1.5.4 Where the Panel has proposed a modification of the Code under paragraph 1.5.3, the Panel shall take steps, in consultation with the Authority, to coordinate the application (in relation to such proposal) of the procedures in Section F with other steps taken in consequence of such review for the consideration of modifications to (or establishment of) arrangements referred to in paragraph 1.5.3.

## 2. AVOIDABLE COSTS

### 2.1 General

2.1.1 This paragraph 2 applies for the purposes of determining Avoidable Costs (which are used in the calculation of compensation claims for certain Contingency Provisions) in relation to a BM Unit and:

- (a) such changes ("**relevant changes**") in Exports and/or Imports of that BM Unit during a Settlement Period as are specified in or determined pursuant to the relevant Contingency Provision; or
- (b) where paragraph 3 (Black Start) applies, a BM Unit that is the subject of a black start instruction (as defined in paragraph 3.3.1(b)) whether or not relevant changes occur.

2.1.2 Where any such Contingency Provision applies, the Panel shall determine, in its opinion, what is the amount of the net costs of operating the BM Unit which would not have been incurred but for:

- (a) the relevant changes in Exports and/or Imports: or
- (b) a black start instruction.

2.1.3 For the purposes of the Code, the "**Avoidable Costs**" shall be the amount determined by the Panel under paragraph 2.1.2 (which may for the avoidance of doubt be a negative amount, in a case where net costs were saved or revenues earned).

2.1.4 In determining what are the costs of operating a BM Unit and what such costs would not have been incurred (as provided in paragraph 2.1.2), the Panel shall have regard to the following:

- (a) costs include lost revenues, and costs saved include revenues earned;
- (b) in the case of a BM Unit comprising premises of a Customer, the costs which are to be counted are the costs incurred by the Customer;
- (c) costs are not to be counted unless they are demonstrably:
  - (i) costs directly incurred in the operation of the Plant and Apparatus comprised in the BM Unit;
  - (ii) costs which were reasonably and prudently incurred, and incurred pursuant to commitments reasonably and prudently made; and
  - (iii) costs the amount of which would be expected to differ according to whether there occurred the relevant changes in Exports and/or Imports or changes in operation to comply with a black start instruction in the relevant Settlement Period alone;
- (d) costs include costs (incurred or saved) of consumption of electricity or fuel;
- (e) the following costs are not to be counted:
  - (i) costs or losses in respect of damage to property (including Plant or Apparatus) or death or injury to persons;

- (ii) insurance premia; and
- (iii) financing costs and overhead costs;
- (f) amounts payable (other than by way of rebate of payment for supply), under any contract or otherwise, by way of compensation for loss of supply or otherwise in consequence of relevant changes in Exports and/or Imports, by the Lead Party to the person referred to in paragraph (b), are to be disregarded; and
- (g) amounts payable or receivable under the Code in respect of Trading Charges or BSCCo Charges are to be disregarded.

## 2.2 Procedures

2.2.1 Where under any Contingency Provision the amount of Avoidable Costs is to be determined for any Settlement Period or Periods:

- (a) the Lead Party shall prepare, consistently with the principles in paragraphs 2.1.3 and 2.1.4, and submit to BSCCo its estimate (for each such Settlement Period) of the net costs of operating the BM Unit which would not have been incurred:
  - (i) but for the relevant change in Exports and/or Imports; or
  - (ii) but for a black start instruction,

together with an explanation of and supporting information for its estimate, and shall provide to the Panel such further information as the Panel may require for the purposes of making its determination under paragraph 2.1.2;
- (b) if required by the Panel, the Lead Party shall, by such time as the Panel may reasonably stipulate, submit a statement signed by its (or in the case in paragraph 2.1.4(b), the Customer's) statutory auditors to the effect that the Party's estimate of such costs have been prepared on a fair, complete and reasonable basis and consistent with the principles in paragraphs 2.1.3 and 2.1.4; and
- (c) BSCCo shall notify the Panel's determination under paragraph 2.1.2 to the Lead Party.

2.2.2 If requested by the Authority, the Panel will discuss with the Authority any determination(s) to be made under paragraph 2.1.2, and will take account of any guidance from the Authority in making such determination(s); and the Panel will exclude from account (in such determination(s)) any cost, or a cost of any description, which the Authority directs the Panel to exclude.

### 3. BLACK START

#### 3.1 General

3.1.1 This paragraph 3 will apply if and only if the Transmission Company informs Users pursuant to OC9.4 of the Grid Code that either a Total Shutdown or a Partial Shutdown exists and that the Transmission Company intends to implement a Black Start (the terms 'Users', 'Total Shutdown', 'Partial Shutdown', 'Black Start' and 'Total System' each having, for the purposes of this paragraph 3, the meanings given thereto in the Grid Code).

3.1.2 Where this paragraph 3 applies:

- (a) BSCCo shall (as soon as is practicable following the Transmission Company's notification under OC9.4 of the Grid Code) notify all Parties that a Total Shutdown or Partial Shutdown exists and that the Transmission Company intends to implement a Black Start;
- (b) the Transmission Company shall (as soon as is practicable following its notification under OC9.4 of the Grid Code) determine, in its reasonable opinion, the time and date with effect from which the Total Shutdown or Partial Shutdown commenced and inform BSCCo of that time and date;
- (c) BSCCo shall determine the Settlement Period that corresponds with the time and date from which the Total Shutdown or Partial Shutdown commenced (as determined by the Transmission Company under paragraph (b)) and, as soon and so far as is practicable, notify all Parties of that Settlement Period;
- (d) following the Transmission Company's determination (under OC9.4.7.9 of the Grid Code) of the time the Total System could return to normal operation, the Panel shall determine, after consultation with the Transmission Company, the Settlement Period with effect from which the provisions of this paragraph 3 are to cease to apply, having regard to the following matters and any other matters or processes set out in the relevant BSCP:
  - (i) the time the Total System could return to normal operation under the Grid Code determined by the Transmission Company;
  - (ii) the desirability of a return to normal operation under the Code at the same time or as soon as practicable thereafter; and
  - (iii) the amount of time which (in the opinion of the Panel) it is reasonable to allow for Parties to recommence operations under or for the purposes of Sections Q and P;
- (e) at any time up until one hour prior to the Settlement Period from which the provisions of this paragraph 3 would otherwise cease to apply, the Transmission Company may determine (in accordance with OC9.4.7.9 of the Grid Code) that the Total System could not return to normal operation at that time;
- (f) the Panel shall revise its determination under paragraph (d) if the Transmission Company determines under paragraph (e) that the Total System could not return to normal operation at that time; and
- (g) BSCCo shall promptly notify all Parties of the Panel's determination under paragraph (d) and, where applicable, paragraph (f).

3.1.3 For the purposes of the Code, a "**Black Start Period**" is a period commencing at the start of the Settlement Period determined by BSCCo under paragraph 3.1.2(c) and ending at the end of the Settlement Period immediately before the Settlement Period determined by the Panel under paragraph 3.1.2(d) or paragraph 3.1.2(f), whichever is applicable.

3.1.4 BSCCo shall, as soon and so far as is practicable, keep Parties informed of the operation of BSC Systems and, in so far as it is informed by the Transmission Company, of the operation of the Transmission System during a Black Start Period.

### **3.2 Variation of rules**

3.2.1 In relation to all Settlement Periods which fall within a Black Start Period:

- (a) operation of the balancing mechanism shall be suspended in accordance with Section Q5.4;
- (b) the Lead Parties of BM Units which are given instructions under the Grid Code shall be entitled to be compensated subject to and in accordance with paragraph 3.3 (and, if otherwise applicable, Section Q8 shall not apply);
- (c) notification of contract volumes shall be suspended in accordance with Section P1.6 (and, if otherwise applicable, Section P5 shall not apply);
- (d) a single imbalance cash-out price shall apply in accordance with Section T1.7;
- (e) the value of Credit Assessment Energy Indebtedness ( $CEI_{pj}$ ) shall be set to zero for all Trading Parties for the purposes of Section M; and
- (f) the value of Metered Energy Indebtedness ( $MEI_{pj}$ ) shall be set to zero for all Trading Parties for the purposes of Section M.

3.2.1A In relation to all Settlement Days that fall wholly or partially within a Black Start Period the value of Actual Energy Indebtedness ( $AEI_p$ ) shall be set to zero for all Trading Parties for the purposes of Section M.

3.2.2 Where this paragraph 3 applies, the Panel may, after consultation with the Transmission Company, for the purposes of making arrangements for a return to normal operations under the Code, determine and notify Parties that:

- (a) any data submitted (in accordance with Section Q2, Q3 or Q4) by Lead Parties, and/or
- (b) any Volume Notifications submitted by Volume Notification Agents

during any part or parts (as specified by the Panel in such notification to Parties) of the Black Start Period, shall be disregarded for the purposes of the Code.

### **3.3 Lead Party compensation**

3.3.1 Subject to the provisions of the Code, each Party which:

- (a) is the Lead Party of any BM Unit (whether or not comprising Plant or Apparatus which is comprised in a Black Start Station as defined in the Grid Code), and

- (b) is given any instruction (a "**black start instruction**") by the Transmission Company pursuant to OC9.4.7.4, BC2.7 or BC2.9 of the Grid Code relating to any Settlement Period(s) during a Black Start Period

may, within the period of 20 Business Days after the end of the Black Start Period, submit to BSCCo a claim for payment of compensation to be determined in accordance with this paragraph 3.3.

3.3.1A The Panel may approve a period longer than 20 Business Days for the submission of a claim for compensation under paragraph 3.3.1:

- (a) upon application of the Lead Party within the period of 20 Business Days after the end of the Black Start Period; or
- (b) as the Panel deems appropriate in the circumstances.

3.3.1B A claim for payment of compensation submitted under paragraph 3.3.1 shall comprise:

- (a) a claim, the form of which shall be prescribed under the relevant BSCP;
- (b) a statement detailing the claim in accordance with paragraph 3.3.5(a); and
- (c) any additional supporting material in accordance with paragraph 3.3.5(b).

3.3.2 For the purposes of this paragraph 3.3, in relation to a Settlement Period in the Black Start Period and a BM Unit:

- (a) the "**black start compensation amount**" shall be an amount determined as:

$$(A - B)$$

where

A is the amount of the Avoidable Costs of the Lead Party in relation to the operation of the BM Unit as determined by the Panel under paragraphs 3.3.4(a) and 3.3.4(c);

B is an amount determined as:

$$(BSCQ_{ij}^n * P_{ij}^n)$$

where  $P_{ij}^n$  is the System Sell Price (equal, in accordance with Section T1.7.1, to the System Buy Price) for that Settlement Period; and

$BSCQ_{ij}^n$  is the quantity (in MWh) determined by the Panel under paragraph 3.3.4(b) and shall be called the "**black start compensation volume**";

- (b) for the purposes of paragraph (a),  $BSCQ_{ij}^n$  shall be negative where it represents an increase in net Imports or a reduction in net Exports, zero (0) where it represents no change in Exports and/or Imports and otherwise positive.

3.3.3 Where a Party submits a claim under paragraph 3.3.1, each Settlement Period (in the Black Start Period) in relation to which the Lead Party is given any black start instruction shall be a "**relevant**" Settlement Period for the purposes of this paragraph 3.3, and the amounts to be determined under this paragraph 3.3 shall be determined for all such Settlement Periods.

- 3.3.4 Where a Party submits a claim under paragraph 3.3.1, the Panel shall determine, in its opinion:
- (a) what changes in Exports and/or Imports of the BM Unit during each relevant Settlement Period resulted from action taken by the Lead Party for the purposes of complying (in accordance with the Grid Code) with black start instructions relating to that Settlement Period; and
  - (b) what is the net quantity (in MWh) of such changes in Exports or Imports of the BM Unit for each such Settlement Period; and
  - (c) what, if any, other changes occurred in the operation of the BM Unit as a result of a black start instruction.
- 3.3.5 For the purposes of assisting the Panel to determine a claim for compensation under this paragraph 3.3:
- (a) the Lead Party shall, at the time at which it submits its claim under paragraph 3.3.1, provide a statement to the Panel of the changes which the Lead Party considers to be the changes described in paragraph 3.3.4(a), the quantity which the Lead Party considers to be the net quantity described in paragraph 3.3.4(b) and the changes which the Lead Party considers to be the changes described in paragraph 3.3.4(c), and shall provide such other information as the Panel may reasonably request for the purposes of determining the matters in paragraphs 3.3.4(a), (b) and (c), for each relevant Settlement Period;
  - (b) the Lead Party may at the time at which it submits its claim under paragraph 3.3.1 submit additional supporting material to establish the validity of its claim;
  - (c) the Lead Party shall comply with the requirements of paragraph 2.2.1 in relation to determination of Avoidable Costs;
  - (d) the Transmission Company and each Distribution System Operator shall provide such information as the Panel may reasonably request for the purposes of determining the black start compensation volumes; and
  - (e) the Transmission Company shall provide such information as the Panel may reasonably request for the purposes of determining the changes in operation of a BM Unit described in paragraph 3.3.4(c).
- 3.3.6 Where the Lead Party has submitted a claim in accordance with paragraph 3.3.1, subject to the provisions of the Code:
- (a) the Lead Party shall be entitled to be paid by the BSC Clearer the net sum, for all relevant BM Units and relevant Settlement Periods, of the black start compensation amounts, together with compound interest calculated by applying the Base Rate on a daily basis on each compensation amount from (and including) the Initial Payment Date for the relevant Settlement Period to (but not including) the date (if later) when such payment is made;
  - (b) for the avoidance of doubt, if the net sum for a Lead Party, of the black start compensation amounts, for all relevant BM Units and relevant Settlement Periods is a negative sum, the Lead Party shall not be liable to pay for that sum;
  - (c) each Trading Party (including the Lead Party) shall be liable to pay to the BSC Clearer its Black Start Reallocation Proportion of the net amount payable to the Lead Party under paragraph (a);

- (d) the amounts of the entitlements and liabilities under paragraphs (a) and (c) shall be Ad-hoc Trading Charges for the purposes of Section N6.9; and
- (e) BSCCo shall give such instructions to the FAA as are necessary to give effect to the payment of such Ad-hoc Trading Charges.

3.3.6A The Implementation Date for the application of compound interest pursuant to paragraph 3.3.6(a) shall be the Go-live Date.

3.3.7 Subject to Section I5.1, for the purposes of the Code, in relation to any Trading Party, the Black Start Reallocation Proportion is the proportion determined as:

$$\sum_d \sum_a \sum_i QCE_{iaj} / \sum_d \sum_p \sum_i QCE_{iaj}$$

where

- $\sum_i$  represents, for each Energy Account a, in Settlement Period j, the sum over all BM Units i that are in offtaking Trading Units;
- $\sum_a$  represents the sum over all Energy Accounts a, for Party p;
- $\sum_p$  represents the sum over all Trading Parties p;
- $\sum_d$  represents the sum over all Settlement Periods in the seven Settlement Days immediately preceding the Settlement Day on which the Black Start Period commenced

provided that, where such seven day period includes any day before the Go-live Date, there shall (in the above formula) be used, in relation to Settlement Periods in any such day, such quantities (pursuant to the Pooling and Settlement Agreement or otherwise) as the Panel shall determine to be appropriate.

## 4. CIVIL EMERGENCIES AND FUEL SECURITY PERIODS

### 4.1 Application of emergency powers

4.1.1 This paragraph 4 applies in any case (whether before, on or after the Go-live Date):

- (a) where the Secretary of State gives a direction under Section 34(4)(b) of the Act; or
- (b) where:
  - (i) any action is taken by or on behalf of Her Majesty's Government pursuant to and in accordance with the emergency provisions set out in sections 1 to 4 of the Energy Act 1976, and
  - (ii) the Secretary of State is of the opinion (in his discretion) that such action has, or will or is likely to have, a material effect on the ability of any person or persons to generate, participate in the transmission of, distribute or supply electricity in pursuance of a Licence or Exemption; or

- (c) where any action is taken by or on behalf of Her Majesty's Government pursuant to and in accordance with the emergency provisions set out in section 96 of the Act;

and (in any such case) for so long as such direction or action continues in force or effect, and for such period (if any) thereafter as appears to the Secretary for State to be appropriate in all the circumstances.

- 4.1.2 For the avoidance of doubt, where this paragraph 4 applies, directions and notices may from time to time be given by the Secretary of State under each of paragraphs 4.2, 4.3 and 4.4 independently or together.

## **4.2 Single Imbalance Price**

- 4.2.1 Where this paragraph 4 applies, if at any time the Secretary of State, in his discretion, after consultation with the Authority, gives a direction to the Panel that this paragraph 4.2.1 is to apply, specifying the time of commencement of such direction in accordance with paragraph 4.2.2(a), a single imbalance cash-out price shall apply in accordance with Section T1.7 in relation to each relevant Settlement Period.

- 4.2.2 For the purposes of paragraph 4.2.1, a relevant Settlement Period is a Settlement Period for which Gate Closure falls within the period:

- (a) commencing at the time specified by the Secretary of State (not being earlier than the time at which his direction is given under paragraph 4.2.1); and
- (b) ending at such time as the Secretary of State may (at any time after giving a direction under paragraph 4.2.1) direct by notice of not less than 48 hours given to the Panel.

- 4.2.3 Where the Secretary of State gives a direction to the Panel under paragraph 4.2.1 or 4.2.2(b), BSCCo shall send a copy of such direction to all Parties as soon as possible after receiving the same.

- 4.2.4 For the avoidance of doubt, directions under paragraph 4.2.1 may be given by the Secretary of State on more than one occasion (in relation to the same circumstances giving rise to the application of this paragraph 4) where, following any one such direction, the period referred to in paragraph 4.2.2 is to end or has ended.

## **4.3 Historic limit on balancing mechanism prices**

- 4.3.1 Where this paragraph 4 applies, if at any time the Secretary of State, in his discretion, after consultation with the Authority, gives a direction to the Panel that this paragraph 4.3.1 is to apply, specifying the matters specified in paragraph 4.3.3, historic price limits shall apply in the Balancing Mechanism in accordance with Section Q5.5 in relation to each relevant BM Unit and relevant Settlement Period.

- 4.3.2 For the purposes of paragraph 4.3.1:

- (a) a relevant BM Unit is a BM Unit specified or of a description specified pursuant to paragraph 4.3.3(b);
- (b) a relevant Settlement Period is a Settlement Period for which Gate Closure falls within the period:
  - (i) commencing at the time specified by the Secretary of State in accordance with paragraph 4.3.3(b), and

- (ii) ending at such time as the Secretary of State may (at any time after giving a direction under paragraph 4.3.1) direct by notice of not less than 48 hours given to the Panel.

4.3.3 The matters to be specified in a direction under paragraph 4.3.1 are:

- (a) the time of commencement of such direction (not being earlier than the time at which his direction is given under paragraph 4.3.1);
- (b) either:
  - (i) that historic price limits (in accordance with Section Q5.5) are to apply to all BM Units; or
  - (ii) the description or identity of the BM Units to which such historic price limits are to apply; and
- (c) whether such historic price limits are to be determined by reference to a period other than that determined under Section Q5.5.2(c)(i), and if so what other period.

4.3.4 Where the Secretary of State gives a direction to the Panel under paragraph 4.3.1 or 4.3.2(b)(ii), BSCCo shall send a copy of such direction to all Parties as soon as possible after receiving the same.

4.3.5 For the avoidance of doubt, directions under paragraph 4.3.1 may be given by the Secretary of State on more than one occasion (in relation to the same circumstances giving rise to the application of this paragraph 4):

- (a) where, following any one such direction, the period referred to in paragraph 4.3.2(b) is to end or has ended, or
- (b) for the purposes of changing the BM Units to which historic price limits (in accordance with Section Q5.5) are to apply or the period by reference to which such historic price limits are to be determined.

4.3.6 If requested to do so, BSCCo shall assist the Secretary of State or his representative in formulating any description of BM Units for the purposes of paragraph 4.3.3(b)(ii).

#### **4.4 Revision of Credit Assessment Price**

4.4.1 Where this paragraph 4 applies, if at any time the Secretary of State, in his discretion, after consultation with the Authority, gives a direction to the Panel that this paragraph 4.4.1 is to apply, specifying the time of commencement of such direction (in accordance with paragraph 4.4.2(a)) and the period for which the direction is to apply, the Panel shall determine a reduced value of the Credit Assessment Price in accordance with such principles and/or so as to achieve such objectives as may be specified in such direction.

4.4.2 For the purposes of paragraph 4.4.1:

- (a) the reduced value of Credit Assessment Price shall (notwithstanding Section M1.4.2(b)) be effective from the time specified by the Secretary of State (not being earlier than the time at which his direction is given under paragraph 4.4.1) and shall apply for the period so specified;

- (b) the Panel may (in accordance with the principles and/or so as to achieve the objectives so specified) determine different reduced values of Credit Assessment Price to apply at different times during such period;
- (c) the Panel shall not during such period determine a revised value of Credit Assessment Price other than pursuant to paragraph 4.4.1.

4.4.3 Where the Secretary of State gives a direction to the Panel under paragraph 4.4.1, BSCCo shall send a copy of such direction to all Parties as soon as possible after receiving the same.

4.4.4 For the avoidance of doubt, a direction under paragraph 4.4.1 may be given by the Secretary of State on more than one occasion (in relation to the same circumstances giving rise to the application of this paragraph 4) and whether or not during the period specified in an earlier such direction.

## **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.

5.3.3 The procedure for submitting an application for Exceptional Costs (including the written statement and any additional information in support of the application submitted under paragraph 5.4) shall be as set out in the relevant BSCP. The Panel may determine any additional procedural requirements in relation to the progress and procedure of an application for Exceptional Costs.

#### **5.4 Statement and Evidence in Support of 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.

5.4.2 The Lead Party may submit to the Panel with its application for Exceptional Costs under paragraph 5.2.1 any additional information or explanation in support of its application under paragraph 5.2.1.

#### **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:

- (a) the Lead Party's Auditors; and
- (b) 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.