

Supplementary Report
The provision of Letters of Credit for energy balancing credit cover
Modification Reference Number 0572
Version 1.0

This Supplementary Report is made pursuant to Rule 8.9 of the Modification Rules and follows the format required under Rule 8.10. and is a supplement intended to be read in conjunction with Final Modification Report 0572.

This extension to the consultation process resulted from Ofgem's instruction to Transco to supply legal text to support implementation of this proposal and the subsequent decision of the Modification Panel to re-consult. The Panel decision was made on the basis that the submission of the text to Ofgem constituted a significant change to the previous Modification Report and, consequently, deserved a period of re-consultation.

1 Summary of the Further Representations

Nine Users have submitted representations to this further consultation; **BP Gas Ltd., British Gas Trading Ltd., Chevron UK Ltd., D-Gas b. v., Powergen UK Plc ("the Proposer"), Quantum Energy Distribution (trading as V-is-on gas), Shell Gas Direct, SSE Energy Supply Ltd. and Statoil (U.K.) Ltd.**

The balance of representations received was not in favour of implementation. Two Users, V-is-on gas and the Proposer stated that they were in favour of implementation, with the remaining seven Users stating that they were opposed to implementation.

The views expressed within the new batch of representations generally reiterated the points made during the original consultation although two Users used the opportunity to comment on the legal drafting. Of the representations that commented on the legal text, all expressed support: Powergen stated, *"...we are happy to support this legal text..."*

A reoccurring theme throughout the representations was that this issue should be considered in conjunction with the Ofgem Credit Consultation and with other Modification Proposals currently under discussion. This view was expressed by five of the respondents

Of the Users supporting implementation, V-is-on Gas believes that by implementing this Proposal the risk to the community is reduced and the resulting cost of providing the required security would result in User costs that should be relatively low and controllable. V-is-on Gas wrote *"...A shipper who remains balanced should require relatively low levels of security to avoid cash calls, and therefore will incur minimal cost..."*

Several Users believe that costs would be substantially increased for little corresponding reduction in risk should this Modification Proposal be implemented. Additionally, on the subject of increased cost, a number of Users suggested that this could result in a barrier to entry for small players. Chevron stated *"...otherwise creditworthy companies having to spend hard cash establishing Letters of Credit from financial institutions. We would expect a cost benefit analysis of this proposal... such that gas shippers could understand what value would be added to the UK gas*

community...” Gaz De France stated “...we find it unusual that procedures are being put in place whose incentive is to increase the cost of doing business and therefore reduce the number of participants in the gas market.” BP Gas Marketing believes it “...places yet another cost on to shippers and suppliers which ultimately may have to be recovered from customers, and does not necessarily increase the level of security or offer better protection from smearing costs around the gas industry...”.

BGT are one of several Users that believes the current arrangements are adequate and stated “... we continue to believe that Parent Company Guarantees and Approved Credit Ratings, intelligently applied, should remain as instruments of creditworthiness. To move to a mandatory use of Letters of Credit would provide little additional security but would add to the cost of credit cover. Across the industry as a whole this is a significant sum. These costs will inevitably pass through the supply chain and may ultimately be borne by consumers...”

SSE urged Ofgem “...not to over-react to the unique circumstances of Enron or TXU by removing the use of Parent Company Guarantees (PCGs) or Approved Credit Ratings (ACRs) as an appropriate form of credit cover. It is clear that such a policy would result in a substantial amount of industry capital being tied up in, for example, escrow accounts. As we pointed out in our previous response, the financial costs of providing such cover would be significant...”.

Several respondents commented on possible implementation timescales, SSE believes that “ As minimum, we consider that three months’ notice period would be necessary for us to put alternative security arrangements in place.” Shell Gas Direct also believes that “If Ofgem were to approve this modification proposal, it should provide sufficient time for shippers to negotiate LoC.” And that “this will take many months, not just a few weeks.” Statoil stated that if the proposal were to be implemented “the effective date for obtaining LoC should commence in a new gas year” in order to avoid “additional duplication costs for credit cover in the same period”

Similarly, Chevron commented, “...that the implementation date for new security requirements for a shipper should be on the expiry of their existing instruments.”

2 Legal Text

Note: There are two small changes to the legal text circulated during the period of further consultation. Sections 2.1.2 and 2.3.1 have been revised to include references to Letters of Credit or cash being the only acceptable forms of energy balancing security.

Full text included in Appendix 1

Signed for and on behalf of Transco.

Signature:

Debbie Dowling
Finance Manager
Support Services

Date:

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Appendix 1

Section X
NETWORK CODE SUPPLEMENT:
Energy Balancing Credit Management

1 GENERAL

1.1 Introductions

- 1.1.1 This Supplement forms a part of the Network Code Principal Document; and references to the Code include this Supplement.
- 1.1.2 The effect of the provisions of Sections F4.5.3(a)(ii), F6.5.1(a)(ii) and P6.3.7(a)(ii) is that if a User fails to make payment of any Energy Balancing Charge when due, all other Users may become liable for (in aggregate) an equivalent amount (together with an amount in respect of the cost of financing such non-payment).
- 1.1.3 Users have agreed (inter se) to, and requested Transco to implement, the provisions of this Supplement with a view to limiting the extent to which they will incur the liability described in paragraph 1.1.2.
- 1.1.4 Nothing in this Supplement shall modify the provisions referred to in paragraph 1.1.2.
- 1.1.5 This Supplement is independent of and shall apply separately from the provisions of Section V3 (which relates to indebtedness of Users other than in respect of Energy Balancing Charges).
- 1.1.6 In this Supplement "**Energy Balancing Invoice**" means an Invoice Document in respect of any Energy Balancing Charges or interest thereon.

1.2 Energy Balancing Credit Committee

- 1.2.1 Subject to paragraph 1.2.2 the "**Energy Balancing Credit Committee**" is the Network Code Committee or any relevant sub-committee.
- 1.2.2 Where this Supplement provides for any decision by the Energy Balancing Credit Committee (including any approval or authorisation of anything proposed to be done by Transco) such decision shall be taken by the affirmative vote of a simple majority of the members of the committee who are appointed to represent Users (and subject to such other procedures as the committee may establish); and the representatives of Transco who are members of the Network Code Committee or any relevant sub-committee will not vote on any matter brought before the Energy Balancing Credit Committee pursuant to this Supplement.
- 1.2.3 Transco may consult with the Energy Balancing Credit Committee in relation to any aspect of its functions under this Supplement, and may at any time convene a

meeting of such committee on any reasonable period of notice.

1.2.4 Where Transco has any reasonable grounds for wishing to consult with the Energy Balancing Credit Committee in relation to any step required to be taken under this Supplement, Transco may (where it has convened a meeting of such committee for the purposes for the earliest reasonable date) defer taking such step until it has consulted with such committee.

1.2.5 Where Transco brings to the Energy Balancing Credit Committee any matter relating to a particular User, Transco will not disclose the identity of the User to the committee unless:

- (i) the User in question agrees to such disclosure, or
- (ii) it is not practicable for the matter in question to be considered by the committee without the identity of the User being disclosed or becoming apparent, or
- (iii) Transco has given Termination Notice to the User (but this paragraph (iii) shall not of itself require Transco to inform the committee of the fact that it has given such notice to any User).

1.2.6 With the approval of the Energy Balancing Credit Committee, Transco is authorised, in implementing the provisions of this Supplement as respects Users or any particular User, to delay the implementation of any such provision or to implement any such provision on a modified basis which is (as respects the interests of Users or the User in question) less onerous than the provision in the absence of such modification.

1.3 Liability of Transco

1.3.1 Users acknowledge that the calculation of Energy Balancing Charges and other matters to be calculated under this Supplement involves the possibility of error; and agree (subject to paragraph 2.7) to make the payments required under this Supplement, and that Transco is to take the steps contemplated by this Supplement, notwithstanding any such error (on the basis that any necessary repayments or additional payments will be made following resolution of any such error).

1.3.2 Notwithstanding paragraph 1.3.1 and the provisions of this Supplement, where Transco has reasonable grounds for believing that any calculation required to be made by it for the performance of its functions under this Supplement has been or may have been made erroneously, Transco may (but shall not be required to) defer the taking of any step that would otherwise be required under this Supplement until Transco has had a reasonable opportunity of verifying such calculation.

1.3.3 Without prejudice to paragraph 1.3.4, nothing in this Supplement shall require Transco to take any step which Transco believes on reasonable grounds may result in its becoming liable to any person in damages or otherwise, whether or not the amount of any such liability would be recoverable under paragraph 1.3.7, but the possibility of a claim being made against Transco shall not of itself suffice for the purposes of this paragraph unless Transco believes on reasonable grounds that such claim would be well founded.

1.3.4 Each User authorises Transco to take any step contemplated by this Supplement,

and (without prejudice to Section V8, but subject to paragraph 1.3.8) agrees that Transco shall have no liability (in contract or tort including negligence or otherwise) to such User for taking any such step, and waives any such liability that Transco may have and any claim in respect thereof.

- 1.3.5 Nothing in this Supplement shall require Transco to take any step which conflicts with any Legal Requirement or any order of any court of competent jurisdiction.
- 1.3.6 Transco will act in good faith in implementing the provisions of this Supplement but (subject to paragraph 1.3.8) will not be liable (in contract or tort including negligence or otherwise) to any User for any failure or delay of Transco in doing so or in taking any particular step contemplated by this Supplement, and each User waives any such liability that Transco may have and any claim in respect thereof.
- 1.3.7 Subject to paragraph 1.3.8, where any person makes any claim (in negligence or otherwise) against Transco in consequence of Transco's taking any step contemplated by this Supplement:
- (i) Transco will defend such claim and will (subject to any duties of confidence) consult with and keep informed the Energy Balancing Credit Committee in relation to such claim and the defence thereof;
 - (ii) the fees, costs and expenses incurred by Transco (other than its own internal costs and expenses) in defending such claim, and any amounts which Transco may be found liable (or with the approval of the Energy Balancing Credit Committee may agree by way of settlement) to pay by way of damages or costs or otherwise in respect of such claim, shall be additional Monthly Neutrality Adjustment Costs in the months in which Transco makes payment thereof.
- 1.3.8 Nothing in the Code shall exclude or limit Transco's liability, or entitle Transco to recover from Users any amount in respect of any liability of Transco:
- (i) in respect of any death or personal injury resulting from Transco's negligence;
 - (ii) in respect of a reckless or wilful breach by Transco of this Supplement; or
 - (iii) in any case where Transco has in the exercise of its functions under this Supplement acted in bad faith or fraudulently.

1.4 Code Contingencies

Transco will not be required to implement this Supplement in any case where and for so long as, by reason of any Code Contingency, it is not reasonably practicable for Transco to perform with reasonable accuracy any calculation required for such implementation.

2 SECURITY, ENERGY BALANCING INDEBTEDNESS AND CASH CALL PRINCIPLES

2.1 Energy Balancing Credit Rules

2.1.1 The "**Energy Balancing Credit Rules**" are the rules established by Transco dated 1st March 1996 and so entitled, as from time to time amended in accordance with paragraph 2.1.5 and 2.1.6.

2.1.2 The Energy Balancing Credit Rules provide for:

- (i) the specified forms and the basis on which a User may provide a letter of credit or cash the guarantee of a person ("guarantor") in respect of, or by way of security for the User's indebtedness in respect of Energy Balancing Charges;
- ~~(ii) the basis on which a User or guarantor for whom there is no published credit rating (as described in such rules) may choose to have a credit rating ("special credit rating") undertaken by a credit rating agency designated by Transco;~~
- (iii) the basis on which ~~by reference to Users' and guarantors' published credit ratings or special credit ratings (where of investment grade)~~ credit limits will be determined for Users ~~and/or their guarantors;~~
- ~~(iiiiv) the basis on which, by reference to the credit limits established as described in paragraph(iii), and any guarantee /or security provided by the User, a Secured Credit Limit will be established for each User;~~
- ~~(iv) subject to paragraph 2.1.3, the basis on which Users will be required to reimburse to Transco the costs incurred by Transco in respect of special credit ratings.~~

~~2.1.3 The Energy Balancing Credit Rules will not require a User to pay the costs incurred by Transco in respect of a credit rating which is undertaken simultaneously as a special credit rating (for the purposes of this Supplement) and a credit rating for the purposes of Section V3, save to the extent that what is done (for the purposes of such credit rating) in connection with this Supplement exceeds what is so done in connection with Section V3.~~

2.1.34 Subject to paragraph 2.1.56, and without prejudice to any express requirement under this Supplement to comply therewith, the Energy Balancing Credit Rules do not form part of and are not incorporated into the Code.

2.1.54 With the approval of the Energy Balancing Credit Committee, Transco may revise the Energy Balancing Credit Rules upon giving notice to all Users of not less than 2 months or such shorter period as may in any particular case be approved by the Committee.

2.1.56 For the purposes only of enabling Transco or a User to propose a modification pursuant to the Modification Rules, the Energy Balancing Credit Rules shall be deemed to be incorporated into and to form part of the Code.

2.2 Secured Credit Limit

2.2.1 Each User shall secure that its Cash Call Limit elected under paragraph 2.4 is not greater than 85% of its Secured Credit Limit.

2.2.2 For each User the "**Secured Credit Limit**" shall be: the amount determined under

paragraph 2.2.3:

- ~~(a) — subject to paragraph (b), the amount determined under paragraph 2.2.3;~~
- ~~(b) — if the User so elects by notice to Transco, where and for so long as the User has a special credit rating of at least the level specified in the Energy Balancing Credit Rules for the purposes for this paragraph (b), the sum of £50,000.~~

2.2.3 The amount referred to in paragraph 2.2.2 is the either ~~sum~~ of the following amounts:

- (a) ~~either:~~
 - ~~(i) — where the User either has a published credit rating or has chosen to have a special credit rating, the credit limit assigned to the User in accordance with the Energy Balancing Credit Rules; or~~
 - ~~(ii) — where the User has provided the Guarantee of a guarantor who either has a published credit rating or has chosen to have a special credit rating, the lesser of:~~
 - ~~(1) — the credit limit assigned to the guarantor in accordance with the Energy Balancing Credit Rules, and~~
 - ~~(2) — where under the Guarantee the amount for which the guarantor may be liable is limited, the maximum amount guaranteed; and where the User has provided more than one Guarantee, the sum for each such Guarantee of the amounts under this paragraph (ii); and~~
- (b) where the User has provided Security, the amount for the time being of the Security.

2.2.4 A User may apply to increase its Secured Credit Limit by giving notice to Transco specifying the basis (in accordance with paragraph 2.2.3) for the increased limit and (if the User wishes) the increased limit sought, and where any new or revised ~~Guarantee or~~ Security forms or forms part of such basis, submitting such ~~Guarantee or~~ Security.

2.2.5 Where a User applies to increase its Secured Credit Limit:

- ~~(i) — where the basis for the increased Secured Credit Limit includes a request for a special credit rating or revised special credit rating of the User or an existing or new guarantor, Transco will (subject to the User's confirmation of its willingness to make the reimbursement referred to in paragraph 2.1.2(v), where required) arrange for such special credit rating;~~
- (ii) Transco will revise the User's Secured Credit Limit in accordance with the Energy Balancing Credit Rules and paragraph 2.2.2 as soon as reasonably practicable after the User's application; ~~or (as the case may be) completion of the special credit rating under paragraph (i);~~
- (iii) where the revised Secured Credit Limit determined under paragraph (ii) is

less than that specified by the User, Transco will notify the User as soon as reasonably practicable after Transco becomes aware thereof.

2.2.6(a) A User's Secured Credit Limit may also be revised, in accordance with the Energy Balancing Credit Rules, save where paragraph 2.2.6(b) applies, on notice of not less than 30 Days (or any lesser period agreed by the User) to the User:

- (i) at intervals of approximately 12 months;
- (ii) where any published credit rating of a provider of security ~~the User or any guarantor~~ is revised downwards;
- (iii) where (but without prejudice to any requirement of the Energy Balancing Credit Rules) any ~~Guarantee~~ or instrument of Security expires or is determined;
- (iv) where at any time Transco has reasonable grounds to believe that the effect of the review will be to reduce the User's Secured Credit Limit

provided that nothing in this Supplement shall require Transco to undertake a review under paragraph 2.2.6(ii) or 2.2.6(iii).

2.2.6(b) Where any published credit rating of a provider of security ~~the User or any guarantor providing security for the User~~ is revised downwards to the extent that the said credit rating following such revision is less than the minimum prescribed credit rating as set out in the Energy Balancing Credit Rules, a User's Secured Credit Limit may be immediately reviewed and revised by Transco in accordance with the Energy Balancing Credit Rules, on notice to the User.

2.3 ~~Guarantee and Securities~~ies

2.3.1 For the purposes of this Supplement:

- ~~(a) "Guarantee" means a guarantee of a User's indebtedness for Energy Balancing Charges, substantially in the form set out in the Energy Balancing Credit Rules, given and duly authorised and executed by an eligible guarantor in accordance with those rules;~~
- (b) "**Security**" means letter of credit or cash by way of security for a User's indebtedness for Energy Balancing Charges, in ~~one of the forms specified in, and~~ provided and documented in accordance with any applicable requirements of, the Energy Balancing Credit Rules.

2.3.2 Where a User proposes that any ~~Guarantee or~~ Security be given not substantially in accordance with the requirements of the Energy Balancing Credit Rules, Transco will table the User's proposal at the first meeting of the Energy Balancing Credit Committee convened not less than 10 Business Days following the User's proposal; but Transco will not be required to accept the User's proposal unless and until such Committee shall have approved such proposal.

2.3.3 Any reference in this Supplement to the amount of any ~~Guarantee or~~ Security shall be to such amount:

- (i) in the case of Security, as determined in accordance with the Energy

Balancing Credit Rules; and

- (ii) as reduced by the amount of any payment made pursuant to ~~such Guarantee (except where the Guarantee is unlimited in amount) or (as the case may be) of any~~ the application of such Security.

2.3.4 A User who has provided a ~~Guarantee or~~ Security may request Transco to release such ~~Guarantee or (in whole or in part) Security (in whole or in part) or (in the case of a Guarantee) to agree to a reduction in the amount guaranteed;~~ and following such a request, provided that the requirement in paragraph 2.3.5 is met, Transco will, as soon as reasonably practicable and ~~(except where paragraph 2.3.6 applies)~~ in any event within 10 Business Days after such request, comply with such request.

2.3.5 The requirement is that at the date 2 Business Days before the date of such release or reduction the amount of the User's Outstanding Relevant Balancing Indebtedness does not exceed 90% of the lesser of:

- (i) the amount of the User's Cash Call Limit; and
- (ii) the amount of the User's revised Secured Credit Limit established (in accordance with the Energy Balancing Credit Rules and paragraph 2.2.2) on the basis of the reduced or released ~~Guarantee or~~ Security.

~~2.3.6 Where the User's request includes a request for a special credit rating or revised special credit rating of the User or an existing or new guarantor Transco will (subject to the User's confirmation of its willingness to make the reimbursement referred to in paragraph 2.1.2(v), where required) arrange for such special credit rating.~~

~~2.3.6.7 A Guarantee or instrument~~ An instrument of Security shall not be a part of the Code nor an Ancillary Agreement; and no provision of or modification of the Code, nor any inconsistency between the Code and any such ~~Guarantee or~~ instrument, and nothing done by Transco pursuant to the Code, shall prejudice or invalidate any such ~~Guarantee or~~ instrument.

2.4 Cash Call Limit

2.4.1 For each User the "**Cash Call Limit**" is the amount, not exceeding 85% of the User's Secured Credit Limit, elected by or assigned to the User in accordance with this paragraph 2.4 as the limit on its Outstanding Relevant Balancing Indebtedness.

2.4.2 Each User shall, on or before the User Accession Date, notify Transco of the initial amount of its Cash Call Limit.

2.4.3 A User may by giving notice to Transco of not less than 7 Business Days revise its Cash Call Limit provided that its revised Cash Call Limit is not greater than 85% of its Secured Credit Limit.

2.4.4 Where a User notifies Transco of a revised Cash Call Limit, or a User's Secured Credit Limit is reduced, and as a result its Cash Call Limit is or would be greater than 85% of its Secured Credit Limit, it shall be assigned a Cash Call Limit which is equal to 85% of its Secured Credit Limit.

2.5 Calculation of Outstanding Relevant Balancing Indebtedness

2.5.1 In relation to each Gas Flow Day (the "**relevant Day**"), as soon as reasonably practicable after the Day on which (pursuant to Section E2.1.2) initial Entry Allocation

Statements are required to be submitted to Transco, or in accordance with paragraph 2.5.6 or 2.7.6, Transco will calculate for each User:

- (a) the amount of the Relevant Balancing Charges for the relevant Day; and
- (b) the amount of the Outstanding Relevant Balancing Indebtedness.

2.5.2 For the purposes of this Supplement:

- (a) **"Relevant Balancing Charges"** means the Daily Imbalance Charges, Scheduling Charges, Basic Balancing Neutrality Charges and Physical Renomination Incentive Charges which would (on the basis set out in paragraph 2.5.3) be payable, and the Market Balancing Action Charges and other charges in respect of Eligible Balancing Actions taken pursuant to Contingency Balancing Arrangements which are payable, by or to each User in respect of the relevant Day;
- (b) **"Basic Balancing Neutrality Charges"** are the amounts that would be determined as Balancing Neutrality Charges in accordance with Section F4 on the basis that the Unit Daily Neutrality Amount (under Section F4.3) is calculated on the basis of the Basic Net Neutrality Amount only, and disregarding the Adjustment Neutrality Amount;
- (c) **"Anticipated Balancing Indebtedness"** for each User is an amount calculated, in respect of all Days in the relevant period (each such day ('i')), in accordance with the following formula:

$$ABI = \sum_{i=d-n}^{d-1} \left(ADSAP_i * \sum_{j=i-n-9}^{i-n} \frac{DI_j}{10} \right)$$

where:

ABI is the Anticipated Balancing Indebtedness;

ADSAP_i is the Adjusted System Average Price for a Day, 'i', being any Day falling during the relevant period, which shall be the System Average Price for that Day 'i'; except where either:

- (i) the SAP the Day 'i', is greater than the mean of the SAPs for the previous 10 days plus 1.96 times the standard deviation of the SAPs for the previous 10 days ("**the Upper Limit**"), in which case the ADSAP shall be equal to the Upper Limit; or
- (ii) SAP the Day 'i', is less than the mean of the SAPs for the previous 10 days minus 1.96 times the standard deviation of the SAPs for the previous 10 days ("**the Lower Limit**"), in which case the ADSAP shall be equal to the Lower Limit.

Dlj is the User's Daily Imbalance for the Day 'j' falling during the Imbalance Period (being a positive or (as the case may be) negative amount in accordance with Section E5.1.2),

d is the relevant Day

n is the number of days in the relevant period,

"relevant period" is the period from (and including) the 7th Business Day preceding the relevant Day, d, until (and including) the Day preceding the relevant Day ('d-1');

"Imbalance Period" is the period from and including nine Days preceding the day 'i-n' until (and including) the day 'i-n'

- (d) **"Outstanding Relevant Balancing Indebtedness"** for each User means (subject to paragraph (g)) the sum of:
- (i) the net aggregate amount (payable by or to the User) of the Relevant Balancing Charges for each Day of the Uninvoiced Period;
 - (ii) the Net Invoice Amounts in respect of all Energy Balancing Charges under each Energy Balancing Invoice which has been submitted for which the Invoice Due Date is on or after the calculation Day;
 - (iii) the Net Invoice Amounts in respect of all Energy Balancing Charges under each Energy Balancing Invoice which has been submitted for which the Invoice Due Date is before the calculation Day and which have not been paid by the User;
 - (iv) the User's Anticipated Balancing Indebtedness, less the amount (excluding any interest earned thereon) of any Cash Call which has been paid by the User and not for the time being applied in or towards payment of any Invoice Amount under paragraph 2.8;
- (e) the **"calculation Day"** is the Day on which Transco makes the calculation under paragraph 2.5.1;
- (f) for the purposes of paragraph (d)(i) the **"Uninvoiced Period"** is the period from the first Day of the earliest Billing Period in respect of which no Energy Balancing Invoice has been submitted to the User up to and including the relevant Day;
- (g) in determining the amount of a User's Outstanding Relevant Balancing Indebtedness, Transco will make an appropriate allowance for any material unpaid amount which may be payable to the User pursuant to Section F1.4;
- (h) in determining Outstanding Relevant Balancing Indebtedness, amounts payable by the User shall be positive, and amounts payable to the User shall be negative; and where Outstanding Relevant Balancing Indebtedness would otherwise be negative it shall be deemed (for the purposes of this

Supplement only) to be zero.

2.5.3 The Relevant Balancing Charges and a User's Anticipated Balancing Indebtedness will be calculated in respect of each Gas Flow Day on the basis of the amounts determined as the User's UDQIs on the basis of initial Entry Allocation Statements, applying (where relevant) the provisions of Section E2.1.8 or E2.1.9, and on the basis of the User's UDQOs determined in accordance with Section E3.

2.5.4 Users acknowledge that:

- (i) subject to paragraphs 2.5.6 and 2.7.6, the calculation of Relevant Balancing Charges and a User's Anticipated Balancing Indebtedness will disregard any revision of initial Entry Allocation Statements pursuant to Section E2.1.3;
- (ii) the calculation of Outstanding Relevant Balancing Indebtedness takes no account of Energy Balancing Charges which either may become payable by Transco to a User, or may become payable by a User to Transco, in respect of Days after the relevant Day and up to the calculation Day.

2.5.5 For the avoidance of doubt paragraph 2.5.4 is without prejudice to the subsequent determination of Energy Balancing Charges for the purposes of submission of an Energy Balancing Invoice.

2.5.6 Where:

- (a) any Entry Allocation Statement submitted in respect of any Day in the Uninvoiced Period has been revised (in compliance with the requirements of Section E2.1.3) so as to reduce the UDQI of any User, and
- (b) any User so requests Transco by notice given not less than 5 Days before the Entry Close-out Date, and
- (c) the amount by which such UDQI was so reduced exceeds whichever is the greater of:
 - (i) 2,000,000 kWh (68,260 *therms*), and
 - (ii) an amount determined as 10% of the aggregate of the User's UDQIs (determined as at the time of such request) for all System Entry Points for the relevant Day,

Transco will as soon as reasonably practicable recalculate the amount of all Users' Outstanding Relevant Balancing Indebtedness on the basis of the revised UDQIs under all of the revised Entry Allocation Statements for the relevant Day.

2.6 Cash Calling

2.6.1 Where the amount of a User's Outstanding Relevant Balancing Indebtedness exceeds the amount of its Cash Call Limit, Transco will as soon as reasonably practicable on or after the calculation Day submit to the User a Cash Call.

2.6.2 The Cash Call shall be for an amount calculated as the sum (rounded up to the nearest £1,000) of:

- (i) the amount by which the User's Outstanding Relevant Balancing Indebtedness exceeds the amount of its Cash Call Limit, and

- (ii) an amount equal to 10% of the User's Cash Call Limit.

2.6.3 For the purposes of this Supplement:

- (i) a "**Cash Call**" is a notice, in the form set out in the Energy Balancing Credit Rules, requiring the User to make payment to Transco of the amount stated in the notice;
- (ii) where the context requires, a reference to a Cash Call includes the amount required to be paid and the requirement to pay such amount.

2.6.4 Subject to paragraph 2.6.5, where a Cash Call is given on a Day which is not a Business Day, or after 15:00 hours on a Business Day, it shall be treated as having been made on the next following Business Day.

2.6.5 Paragraph 2.6.4 shall not apply to a revised Cash Call made pursuant to paragraph 2.7.3.

2.7 Cash Call Appeals

2.7.1 Where:

- (i) a Cash Call (the "**relevant**" Cash Call) has been submitted to a User;
- (ii) the amount of the relevant Cash Call, alone or in aggregate with any other Cash Calls made to the User in the same calendar month, exceeds whichever is the lesser of £1,000,000 and 20% of the User's Cash Call Limit, and
- (iii) the User considers that the amount of the relevant Cash Call has been calculated erroneously,

the User may, not later than 12:00 hours on the Business Day on which the relevant Cash Call is (in accordance with paragraph 2.8.1, disregarding paragraph 2.7.8(i)) due for payment, so notify Transco, specifying in as much detail as is possible the User's reasons for so considering.

2.7.2 Where a User gives a notification under paragraph 2.7.1:

- (i) the relevant Cash Call (and the obligation of the User to make payment thereof) will be suspended, subject to paragraph 2.7.3;
- (ii) Transco will review the details provided by the User and will review the calculations made of the User's Outstanding Relevant Balancing Indebtedness;
- (iii) if requested by Transco the User shall provide by telephone or facsimile any further details or explanation of its view.

2.7.3 Following its review under paragraph 2.7.2(i) Transco will as soon as reasonably practicable (and wherever possible within 24 hours after the User's notification under

paragraph 2.7.1):

- (i) where it is reasonably satisfied that there has been or may have been such an error, withdraw the relevant Cash Call or revise the relevant Cash Call accordingly and submit the revised Cash Call to the User;
- (ii) otherwise, notify the User that the original Cash Call remains valid (and is no longer suspended);

and any such revised Cash Call or notification shall be substantially in the form set out in the Energy Balancing Credit Rules, and if given on a Day which is not a Business Day or after 17:00 hours on a Business Day shall be treated as having been given on the next following Business Day.

2.7.4 A User may not give a further notification under paragraph 2.7.1 to Transco in respect of the relevant Cash Call (whether or not revised under paragraph 2.7.3).

2.7.5 Where:

- (a) a Cash Call (the "**relevant**" Cash Call) has been submitted to a User;
- (b) the amount of the relevant Cash Call, alone or in aggregate with any other Cash Calls made to the User in the same calendar month, exceeds whichever is the lesser of £1,000,000 and 20 % of the User's Cash Call Limit,
- (c) any Entry Allocation Statement submitted by or on behalf of the User in respect of any Day in the Uninvoiced Period has been revised (in compliance with the requirements of Section E2.1.3) so as to increase the User's UDQI, and
- (d) the amount by which such UDQI was so increased exceeds whichever is the greater of:
 - (i) 500,000 kWh (*17,060 therms*), and
 - (ii) an amount determined as 5% of the aggregate of the User's UDQIs (determined at the relevant time) for all System Entry Points for the Day referred to in paragraph (c),

the User may, not later than 12:00 hours on the Day on which the Cash Call is (in accordance with paragraph 2.8.1, disregarding paragraph 2.7.8(i)) due for payment, by notice to Transco request Transco to recalculate the amount of the User's Outstanding Relevant Balancing Indebtedness on the basis of such revised UDQI.

2.7.6 Where a User makes a request under paragraph 2.7.5 Transco will as soon as reasonably practicable (and wherever possible within 24 hours after such request) withdraw the relevant Cash Call or revise (on the basis of the recalculated Outstanding Relevant Balancing Indebtedness) the relevant Cash Call and submit the revised Cash Call to the User.

2.7.7 Without prejudice to paragraph 2.5.6, Transco will not be required to recalculate the Outstanding Relevant Balancing Indebtedness of any other User by reason of a request under paragraph 2.7.5.

2.7.8 Where a User gives a notification under paragraph 2.7.1 or request under paragraph 2.7.5, further references in this Supplement:

- (i) to the date of a Cash Call are to the Day of Transco's revised Cash Call under paragraph 2.7.3(i) or 2.7.6 or notification to the User under paragraph 2.7.3(ii), and
- (ii) to the amount of a Cash Call are to any revised amount under paragraph 2.7.3(i) or 2.7.6.

2.7.9 A notification under paragraph 2.7.1 or notice under 2.7.5 shall be given:

- (i) by facsimile, or
- (ii) by telephone confirmed by facsimile given not later than 17:00 hours on the same Day.

2.8 Payment of Cash Calls

2.8.1 A User shall, subject to paragraph 2.7, make payment of the full amount of a Cash Call on the Business Day following the Day on which the Cash Call was made.

2.8.2 Sections S3.2.1 and S3.3 shall apply in respect of the payment of a Cash Call.

2.8.3 Where a User pays an amount ("**Cash Call Payment**") in respect of a Cash Call:

- (i) where there is any amount (in respect of Energy Balancing Charges) unpaid by the User under an Energy Balancing Invoice for which the Invoice Due Date was before the date on which the Cash Call was paid, Transco will apply the Cash Call Payment in or towards payment of such unpaid amount;
- (ii) except as provided in paragraph (i) Transco will (unless it required payment by the User to be made to such account) as soon as reasonably practicable after receipt thereof pay the Cash Call Payment (or the balance thereof after application under paragraph (i)) into a Cash Call Account.

2.8.4 In relation to each User a Cash Call Account is a separately designated sub-account of a general interest bearing account in the name of Transco at any branch in the United Kingdom of a bank at which Transco maintains accounts other than pursuant to this paragraph 2.8 (which account may be the account to which the User is to make payment pursuant to and in accordance with Section S3.2.1).

2.8.5 The moneys (including interest) for the time being standing to the credit of a Cash Call Account shall belong beneficially and absolutely to Transco and (without prejudice to paragraph 2.8.6) there shall be no implied or constructive trust in respect thereof in favour of the User, and Transco shall be under no obligation to repay any of such moneys to the User.

2.8.6 Subject to paragraph 2.8.7, where at any time:

- (i) there is any amount standing to the credit of a User's Cash Call Account, and
- (ii) the User's Outstanding Relevant Balancing Indebtedness is less than 90% of the User's Cash Call Limit,

Transco will if requested by the User pay to the User an amount equal to the amount standing to the credit of the Cash Call Account or (if less) to such part thereof as will,

after repayment to the User, result in the User's Outstanding Relevant Balancing Indebtedness being approximately equal to 90% of the User's Cash Call Limit.

- 2.8.7 A User may not make a request pursuant to paragraph 2.8.6 less than 5 Days before the Invoice Due Date in respect of any Energy Balancing Invoice, and Transco shall be entitled to disregard any such request purportedly so made.
- 2.8.8 The amount standing to the credit of a User's Cash Call Account together with interest accrued thereon (after deducting an amount equal to any payment to the User under paragraph 2.8.6) will be applied by Transco in or (pro rata) towards payment of the Invoice Amounts in respect of Energy Balancing Charges under the Energy Balancing Invoice(s) for which the Invoice Due Date(s) next follows the date of payment of the relevant Cash Call Amount.

2.9 Failure to pay Cash Call

- 2.9.1 Where a User has not paid the whole of a Cash Call by the Business Day following the Day on which the Cash Call was made, and irrespective of the amount of the User's Outstanding Relevant Balancing Indebtedness as at any Day after the calculation of the Cash Call, Transco shall be entitled to, and as soon as reasonably practicable after such Business Day will, submit to the User a notice substantially in the form set out the Energy Balancing Credit Rules, notifying the User that Transco will give Termination Notice to the User if the User does not pay the amount of the Cash Call in full by the 3rd Business Day after the date of such notice.
- 2.9.2 Where Transco has given notice to a User under paragraph 2.9.1, and until the Cash Call is paid in full Transco will not pay, and (irrespective of the Invoice Due Date) shall be entitled to withhold payment pursuant to any Energy Balancing Invoice in respect of, any amounts payable to the User in respect of Energy Balancing Charges.
- 2.9.3 Where Transco has given notice to a User under paragraph 2.9.1 and the User has not paid the amount referred to in the notice in full by the 3rd Business Day following the date of such notice, Transco shall be entitled to, and as soon as reasonably practicable after such 3rd Business Day will, give Termination Notice (for the purposes of Section V4.3.3) to the User to the effect that the User shall cease to be a User with effect from the Day following the date of the Termination Notice.
- 2.9.4 Transco will send a copy of any notice given under paragraph 2.9.1 or 2.9.3 to the Director.
- 2.9.5 For the avoidance of doubt, Transco will not ~~call upon any Guarantee or~~ realise and apply any Security in respect of any Cash Call (the basis on which a ~~Guarantee would be called or~~ Security realised and applied being set out in paragraph 3.3).
- 2.9.6 Where Transco has given a Trading Participant a Termination Notice pursuant to this paragraph 2.9 it shall promptly inform the Trading System Operator.

3 PAYMENT OF ENERGY BALANCING INVOICES

3.1 Resolution of queries after payment in full

It is agreed that, notwithstanding Section S4.2.2, Users shall pay the Net Invoice Amount under each Energy Balancing Invoice in full on the Invoice Due Date, notwithstanding any Invoice Query (and accordingly that Section S4.3 will apply in respect of any such Invoice Query).

3.2 Failure to make payment

- 3.2.1 Where a User does not pay the Net Invoice Amount under an Energy Balancing Invoice in full on the Invoice Due Date, notwithstanding Section V4.3.1(a) Transco shall be entitled to, and as soon as reasonably practicable after the Invoice Due Date will, submit to the User a notice, substantially in the form set out in the Energy Balancing Credit Rules, notifying the User that Transco will give Termination Notice to the User if the User does not pay the outstanding amount of the Net Invoice Amount in full by the 5th Business Day after the date of such notice.
- 3.2.2 Where Transco has given notice to a User under paragraph 3.2.1 and the User has not paid the outstanding amount of the Net Invoice Amount in full by the 5th Business Day following the date of such notice, Transco shall be entitled to, and as soon as reasonably practicable after such 5th Business Day will, give Termination Notice (for the purposes of Section V4.3.3) to the User to the effect that the User shall cease to be a User with effect from the Day following the date of the Termination Notice.
- 3.2.3 Transco will send a copy of any notice given under paragraph 3.2.1 or 3.2.2 to the Director.
- 3.2.4 Where Transco has given notice to a User under paragraph 3.2.1, and until the Net Invoice Amount under the relevant Energy Balancing Invoice is paid in full, Transco will not pay, and (irrespective of the Invoice Due Date) shall be entitled to withhold payment pursuant to any Energy Balancing Invoice in respect of, any amounts payable to the User in respect of Energy Balancing Charges.

3.3 ~~Guarantees and Securities~~y

- 3.3.1 Transco may make ~~a call upon a Guarantee~~ or take any step to enforce and realise any Security at any time after Transco has given notice to the User under paragraph 3.2.1 at which any part of the Net Invoice Amount under any Energy Balancing Invoice remains outstanding.
- 3.3.2 It shall not be a condition to Transco's giving Termination Notice under paragraph 3.2.2 that Transco shall first have ~~made any call upon any Guarantee or~~ taken any steps to enforce or realise any Security.

3.4 Enforcement and recovery steps

- 3.4.1 For the purposes of this paragraph:
- (a) **"Transportation Debt"** means unpaid indebtedness of a defaulting User in respect of any amount payable under the Code other than Energy Balancing Charges;
 - (b) **"Energy Balancing Debt"** means unpaid indebtedness of a defaulting User

in respect of Energy Balancing Charges;

- (c) **"Recovery Steps"** are any steps (including any proceedings in any court, and including the defence of any counterclaim or other claim, proceeding or application made or brought by the User or a provider of security ~~or a guarantor~~ in connection with any such step taken by Transco) taken by Transco to recover any Energy Balancing Debt or Transportation Debt from a defaulting User ~~or any guarantor of the defaulting User~~, or to enforce or realise any security (including Security) provided by a defaulting User, or to enforce any judgment against a defaulting User, or to make any claim in any insolvency proceedings relating to a defaulting User;
 - (d) **"Recovered Amounts"** means amounts recovered (by way of payment of debt or damages or otherwise) by Transco as a result of taking Recovery Steps;
 - (e) **"Recovery Costs"** means all fees, costs and expenses (including any payments Transco may be required to make by way of damages or costs or otherwise by any court) incurred by Transco in taking Recovery Steps (but not including amounts in respect of Transco's own internal costs and expenses);
 - (f) Recovered Amounts or Recovery Costs are:
 - (i) **"energy balancing exclusive"** where such amounts or costs were recovered or incurred:
 - (1) in respect of or pursuant to Recovery Steps relating wholly or substantially wholly to a ~~Guarantee which secures only Energy Balancing Debt~~ or Security, or
 - (2) after Transco has informed the Energy Balancing Credit Committee that Transco has decided not to take further Recovery Steps in respect of Transportation Debt;
 - (ii) **"transportation exclusive"** where such amounts or costs were recovered or incurred:
 - (1) in respect of or pursuant to Recovery Steps relating wholly or substantially wholly to an instrument ~~guarantee or security~~ which secures only Transportation Debt, or
 - (2) after Transco has been requested by the Energy Balancing Credit Committee not to take further Recovery Steps in respect of the relevant Energy Balancing Debt;
- and otherwise are **"shared"**;
- (g) the **"energy balancing proportion"** and the **"transportation proportion"** are the aggregate amounts of a defaulting User's Energy Balancing Debt or (as the case may be) Transportation Debt outstanding at the User Discontinuance Date, and before the application of any Recovered Amounts in or towards satisfaction of such amounts, each as a proportion of the sum of such amounts;

- (h) particular Recovered Amounts and Recovery Costs are "**associated**" where such amounts are recovered pursuant to Recovery Steps in taking which such costs are incurred.
- 3.4.2 Transco agrees that it will, subject to the further provisions of this paragraph 3.4, take all reasonable steps to recover Energy Balancing Debt from a defaulting User, ~~and to make calls upon and enforce payment under the Guarantee(s) of a defaulting User~~ and to enforce and realise the Security provided by a defaulting User; provided that nothing in this Supplement shall require Transco to initiate or continue any Recovery Steps where to do so would in Transco's reasonable opinion expose Transco or any representative of Transco to any material risk or liability against which Transco is not adequately protected by virtue of paragraphs 3.4.4 and 3.4.6.
- 3.4.3 Transco will consult with the Energy Balancing Credit Committee and keep such committee reasonably informed as to the Recovery Steps it takes in relation to Energy Balancing Debt, and circumstances in which Transco does not consider it commercially worthwhile to take or continue to take such Recovery Steps in relation to Transportation Debt; and will and shall be entitled to discontinue taking Recovery Steps (other than any steps necessary for such discontinuance) where the Energy Balancing Credit Committee has authorised it to do so.
- 3.4.4 Transco shall be entitled to apply any Recovered Amounts first in or towards payment of the associated Recovery Costs.
- 3.4.5 Subject to Section V4.4.2, the balance (after application in accordance with paragraph 3.4.4) of any Recovered Amounts will be applied as follows:
 - (i) in the case of energy balancing exclusive Recovered Amounts, as to the whole of such balance, as an additional Monthly Neutrality Adjustment Revenue (by way of application towards the relevant Energy Balancing Debt) in accordance with Section F4 in the month in which Transco receives payment in respect of the Recovery Amount;
 - (ii) in the case of transportation exclusive Recovered Amounts, as to the whole of such balance, in or towards satisfaction of any Transportation Debt;
 - (iii) in the case of shared Recovery Amounts, as to the energy balancing proportion thereof (but not exceeding the amount of unpaid Energy Balancing Debt), as an additional Monthly Neutrality Adjustment Revenue (by way of application towards the relevant Energy Balancing Debt) in accordance with Section F4 in the month in which Transco receives payment in respect of the Recovery Amount, and as to the transportation proportion thereof, in or towards satisfaction of any Transportation Debt.
- 3.4.6 Where the amount of Transco's Recovery Costs exceeds the amount (if any) of the associated Recovery Amounts:
 - (i) in the case of energy balancing exclusive Recovery Costs, the whole of the excess will be an additional Monthly Neutrality Adjustment Cost in accordance with Section F4 in the month in which Transco pays such amount;
 - (ii) in the case of shared Recovery Costs, the energy balancing proportion of the

excess will be an additional Monthly Neutrality Adjustment Cost in accordance with Section F4 in the month in which Transco pays such amount.

4 APPOINTMENT OF RECEIVER

- 4.1 Subject to paragraph 4.2, where Section V4.3.3(b) applies, Transco shall, as soon as reasonably practicable, give Termination Notice (for the purposes of Section V4.3.3) to the User to the effect that the User shall cease to be a User with effect from the Day following the date set out in the Termination Notice.
- 4.2
 - 4.2.1 Before Transco shall take the action envisaged by paragraph 4.1, Transco shall convene a meeting of the Energy Balancing Credit Committee as soon as reasonably practicable following the failure of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) to provide those assurances referred to in Section V4.3.3(b) and shall consult with the Energy Balancing Credit Committee to determine whether Transco should be obliged to issue the Termination Notice, pursuant to paragraph 4.1, or whether Transco should defer taking such step.
 - 4.2.2 Subject to paragraph 1.3, Transco shall be entitled to take such action as the Energy Balancing Credit Committee recommends pursuant to the meeting referred to in paragraph 4.2.1 as soon as reasonably practicable.