

SEM Agreed Procedure

Title	Agreed Procedure 14: Disputes
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DOCUMENT HISTORY

VERSION	DATE	AUTHOR	COMMENT
2.0	20/11/2006	Regulatory Authorities	Alignment with participant comments and legal review of the Code. Please note that the Code and this procedure is still silent on how decisions of the DRB may be binding, if at all, on non-disputing parties. This needs further work.
2.1	28/02/2007	Regulatory Authorities	Updated with comments from review of Terminology across all APs and Code
2.2	28/03/2007	Regulatory Authorities	Updated for consistency and governance

RELATED DOCUMENTS

DOCUMENT TITLE	VERSION	DATE	BY
Trading and Settlement Code (Code)	V1.2A	31 Jan 2007	Regulatory Authorities
Agreed Procedure 13 “Query Generation”	V2.0		
Agreed Procedure 15 “Invoicing”	V2.0		

1. INTRODUCTION

1.1. BACKGROUND & PURPOSE

This Agreed Procedure describes the specific procedures for the raising and resolution of Disputes with which Parties to the Code must comply.

1.2. SCOPE OF AGREED PROCEDURE

This Agreed Procedure defines the process requirements for communication of information and associated timescales for the resolution of Disputes between Parties to the Code. A Dispute may be raised by any Party to the Code, or may arise automatically from a Data Query that has not been resolved under the timelines in Agreed Procedure 13 “Query Generation”.

The procedure describes the process of the raising of a Dispute, the appointment of the Dispute Resolution Board to make a decision on a Dispute, the timescales/procedure associated with a decision of the Dispute Resolution Board and the timelines to commence court proceedings if Parties are dissatisfied with the decision taken by the Dispute Resolution Board.

The procedure does not include the setting up of the Panel from which members of the Dispute Resolution Board is drawn. The procedure does not make any statement regarding court proceedings once they have begun.

This Agreed Procedure forms an annexe to, and is governed by, the Code. This document is a statement of process and procedure to be followed, having regard to Parties’ rights and obligations as established under the main body of the Code.

The provisions set out in this Dispute Resolution Process shall not prejudice or restrict the Market Operator's entitlement to seek interim or interlocutory relief directly from the appropriate Court or Courts.

1.3. DEFINITIONS

Save as expressly defined, words and expressions defined in the Code shall have the same meanings when used in this Agreed Procedure.

References to particular sections relate internally to this Agreed Procedure unless specifically noted.

1.4. COMPLIANCE WITH AGREED PROCEDURE

Compliance with this Agreed Procedure is required under the terms of the Code as set out in paragraph 1.10 of the Code.

2. DESCRIPTIVE OVERVIEW

2.1. DISPUTE DEFINITION

A “Dispute” means any claim, dispute or difference of whatever nature between any of the Parties howsoever arising under, out of or in connection with the Code and shall for the avoidance of doubt, include a Settlement Dispute.

A “Settlement Dispute” means any Dispute which arises out of a failure to resolve a Settlement Query or a Data Query in accordance with the Code.

2.2. DISPUTE RESOLUTION BOARD

The Dispute Resolution Board (DRB) may be comprised of either a sole member or three members and is appointed from a Panel of available DRB members established and maintained by the Market Operator. The Panel shall consist of not less than 10 members at all times and a DRB Chairperson shall be nominated from the Panel members by the Market Operator with the pre-approval of the Regulatory Authorities. The DRB Chairperson should be independent of all Disputing Parties. A vice-chairperson will also be appointed by the DRB Chairperson to provide cover in the event of the chairperson being unavailable.

The Panel is established by the Market Operator with the pre-approval of the Regulatory Authorities and the members are appointed on the basis of their experience of dispute resolution procedures. A member of the Panel should understand the electricity industry or have the ability to acquire an understanding.

When acting as a member of a DRB the Panel member will be independent of any Disputing Party and to a Dispute upon which they are asked to deliberate.

The Disputing Parties shall agree the number and identity of members on a particular DRB. In the event that the Disputing Parties are unable to agree either the number of members of the DRB or, in the case of a sole member DRB, the identity of that sole member, the decision will be made by the DRB Chairperson. Should a three member Panel be agreed by the Disputing Parties or imposed by the DRB Chairperson following a failure of the Disputing Parties to agree, each Disputing Party shall appoint one member and the two appointed members shall select a third.

Should a member of the DRB decline or be unable to participate or have membership terminated by agreement of all Disputing Parties, the DRB Chairperson or vice-chairperson will appoint a replacement within 5 Working Days.

Where there are more than two Disputing Parties, the DRB shall be appointed by the DRB Chairperson unless all Disputing Parties agree the number and members of the DRB within 10 Working Days

The DRB is entitled to determine the applicable procedure for resolving a Dispute, including the manner and the timing of any written submissions and any oral hearings.

The DRB shall gather evidence from each of the Disputing Parties and make its decision within 30 Working Days for Disputes with two Disputing Parties, 40 Working Days for more than two Disputing Parties or some other agreed term, of its appointment. The decision of the DRB shall become binding within 15 Working Days of the receipt by all Disputing Parties of the decision, or if determined by the DRB at a later time to allow for actions by the Market Operator to resolve the Dispute. The decisions of the DRB are not binding on any non-Disputing Party other than the Market Operator insofar as required to resolve the Dispute. Each Disputing Party will be responsible for paying a proportionate and equal share of the remuneration of the DRB as well as their own costs, unless the DRB decides otherwise

The agreement between the Disputing Parties and the DRB will incorporate the Dispute Resolution Agreement contained in Appendix O to the Code, with such amendments as are agreed between them.

An Upheld Dispute will be declared as either an Upheld Dispute with Low Materiality or an Upheld Dispute with High Materiality.

An Upheld Dispute with Low Materiality where Final Settlement has not occurred for the relevant Dispute Period will have the input data to Settlement amended and outputs will be corrected for the next Timetabled Settlement Rerun.

An Upheld Dispute with Low Materiality where the final Timetabled Settlement Rerun has occurred for the relevant Dispute Period will result in performing a dedicated Settlement Rerun within a timeframe directed by a Competent Authority or the DRB.

An Upheld Dispute with High Materiality will result in the input data being corrected for the relevant Dispute Period and a dedicated Settlement Rerun within a timeframe directed by a Competent Authority or the DRB.

Where the resolution of a Dispute requires a Settlement Rerun, such Settlement Rerun will only be carried out in relation to the Settlement Day(s) that are the subject of the Settlement Query or Settlement Dispute and the result will be applied to all Participants.

Where the result of an Upheld Dispute determines that Commercial Offer Data or Technical Offer Data has been applied incorrectly or Actual Availability or Dispatch Quantity has been calculated incorrectly, the SMP Market Schedule Quantities, Capacity Payments and Capacity Charges will be recalculated, and a Settlement Rerun will then be undertaken.

If Metered Generation or Market Schedule Quantity has been applied or calculated incorrectly and the correct application or calculation would require it to change by more than the Settlement Recalculation Threshold, Capacity Payments, Capacity Charges, SMP and Market Schedule Quantities will be recalculated, and a Settlement Rerun will then be undertaken.

If of Eligible Availability, Net Demand, SMP or Ex-Post Loss of Load Probability has been calculated incorrectly, Capacity Payments and Capacity Charges will be recalculated..

2.3. EXPRESSING DISSATISFACTION

Within 15 Working Days of receipt of a decision by the DRB, or if no decision is forthcoming from the DRB within 15 Working Days of the time allowed for resolution of the Dispute by the DRB, either of the Disputing Parties may express dissatisfaction in writing to the other Disputing Party or Parties and the DRB.

If no notice of dissatisfaction is lodged within 15 Working Days the DRB decision is final and binding.

A period of 21 Working Days is then available to the Disputing Parties to attempt to resolve the Dispute before the Dispute may be finally settled by court proceedings.

3. PROCEDURE DEFINITION

3.1. RAISING A DISPUTE

3.1.1. Overview

A Dispute must be raised by a Party within 28 days of the Party being aware of the Disputed Event and in any event within 2 years of the Disputed Event having occurred. The Party raising the Dispute will notify the Dispute Counterparty or Dispute Counterparties and the Market Operator. Where the Market Operator should reasonably determine that the resolution of a Disputed Event will impact further Parties who have not been served the Notice of Dispute, the Market Operator will inform that third party of the existence, nature and progress of the Dispute, while maintaining the confidentiality of the Disputing Parties. If the Market Operator has been served with a Notice of Dispute, the Regulatory Authorities must also be informed by the Party raising the Dispute. Where a Dispute results from an unresolved Data Query or Settlement Query the Notice of Dispute shall be deemed to have been issued on the date on which the Market Operator was required to issue its determination in respect of the Settlement Query or Data Query.

A minimum period of 10 Working Days following receipt of the Notice of Dispute is then set aside for the Disputing Parties to try and resolve the Dispute without recourse to the DRB. This period can be extended following agreement between the two Parties, with consent of the Market Operator, or the Regulatory Authorities where the Market Operator is a Disputing Party.

If the Disputing Parties cannot agree a resolution the Dispute may be referred to the DRB. There is no obligation on either Party to refer the Dispute even if agreement between the Parties is not reached. However, where a Dispute is to be referred then the Referral Notice must be sent within 10 Working Days of the meeting to resolve the Dispute or within some other specified time as agreed between the two Parties.

Failure to submit a Referral Notice within the specified time frame shall require the Party that raised the Dispute to either no longer pursue the Dispute, or re-notify the Dispute Counterparty and the Market Operator.

The obligations of the Parties under the Code (including payment of any invoice amounts by the Invoice Due Date) shall not be affected by reason of the existence of a Dispute, save for as provided for in any determination of the DRB.

A Participant must follow the Dispute process before a Dispute can be referred to Court.

3.2. DISPUTE RESOLUTION BOARD

3.2.1. Overview

The Disputing Parties will attempt to agree the size of the DRB. There are two options: a sole member DRB or a three member DRB. The DRB members must be selected from a Panel established by the Market Operator with Regulatory Authorities pre-approval. If a sole member DRB is agreed then the Disputing Parties will attempt to agree the identity of the member.

Should the Disputing Parties not agree the number of members of the DRB within 10 Working Days, or the identity of the member(s) within 5 Working Days after the form of the DRB has been agreed, the responsibility for unresolved decisions will transfer to the DRB Chairperson.

Where there are multiple Disputing Parties, all elements must be agreed in writing within 10 Working Days, or else the chairperson of the Panel will decide on any unresolved issues.

Where the Market Operator is a Disputing Party, the Regulatory Authorities will take over the role of the Market Operator.

3.3. RESOLVING THE DISPUTE

3.3.1. Overview

A Dispute can be resolved by agreement between the Disputing Parties or by decision of the DRB. Following the agreement, the decision shall be incorporated within the Dispute Resolution Agreement and copied to the Disputing Parties and the Market Operator. To help resolve the Dispute all Parties are obliged to provide the DRB with the information it requests in relation to the Dispute. Disputing Parties will also submit all information into the DRB which they consider appropriate to help the DRB make its decision.

Following the decision of the DRB the Disputing Parties can notify their dissatisfaction with the decision to the other Disputing Party. A notice of dissatisfaction may also be raised by either Disputing Party if the DRB has not made a decision within the required time frame that may have been extended by agreement between the DRB and both Disputing Parties.

Following a notice of dissatisfaction the Disputing Parties are given a period of time to resolve the issues. If the issues cannot be settled amicably then the Dispute will finally be settled by court proceedings.

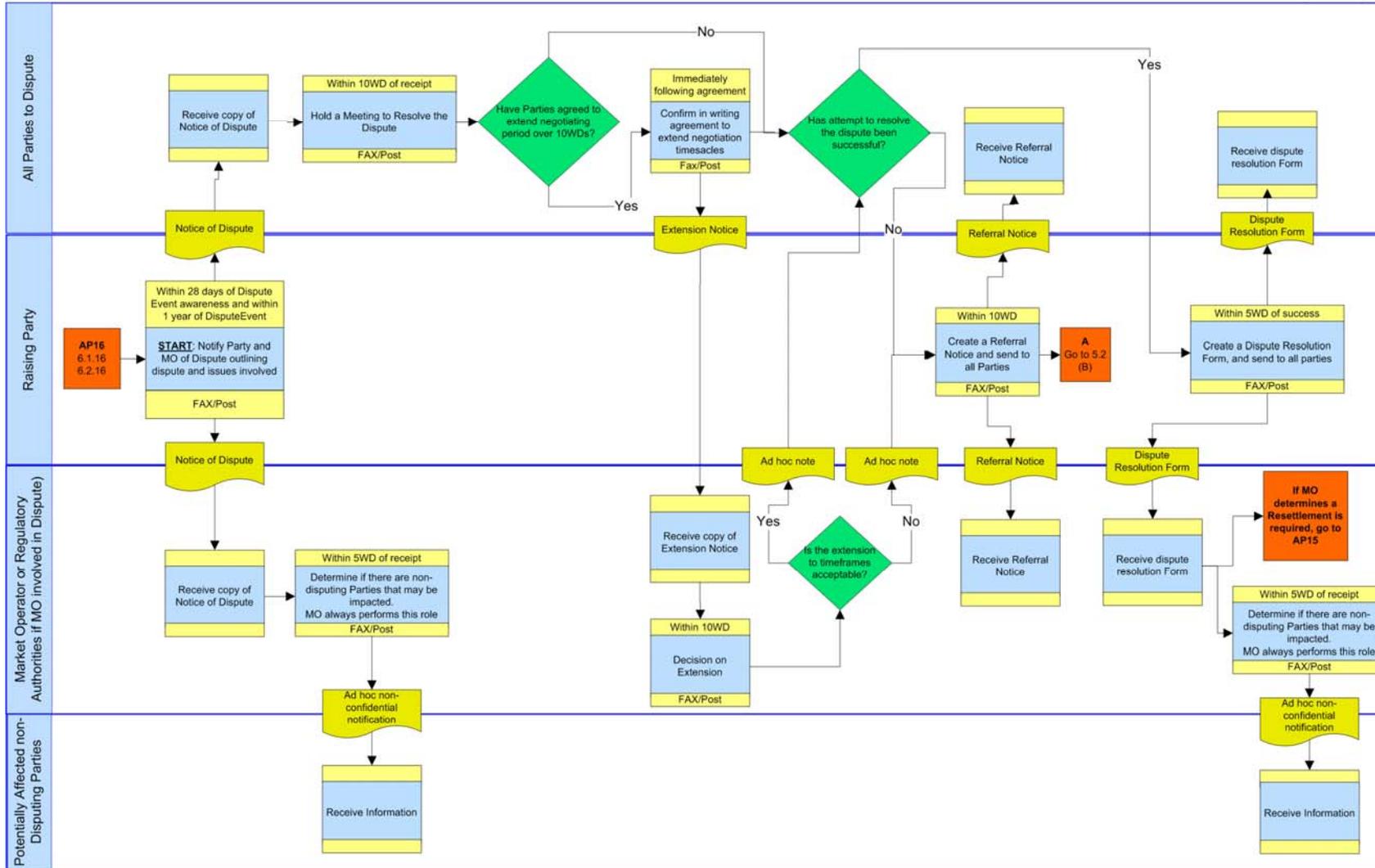
If a Disputing Party fails to comply with the DRB's decision once it has become binding, and no notice of dissatisfaction has been raised the other Disputing Party or Parties may take such action as they deem necessary, including the commencement of court proceedings, to enforce the relevant DRB Decision. There is no requirement to return to the DRB or seek amicable settlement.

Where the Dispute is the result of the Market Operator's failure to resolve a Settlement Query within the relevant timescale they will be liable for all Court costs.

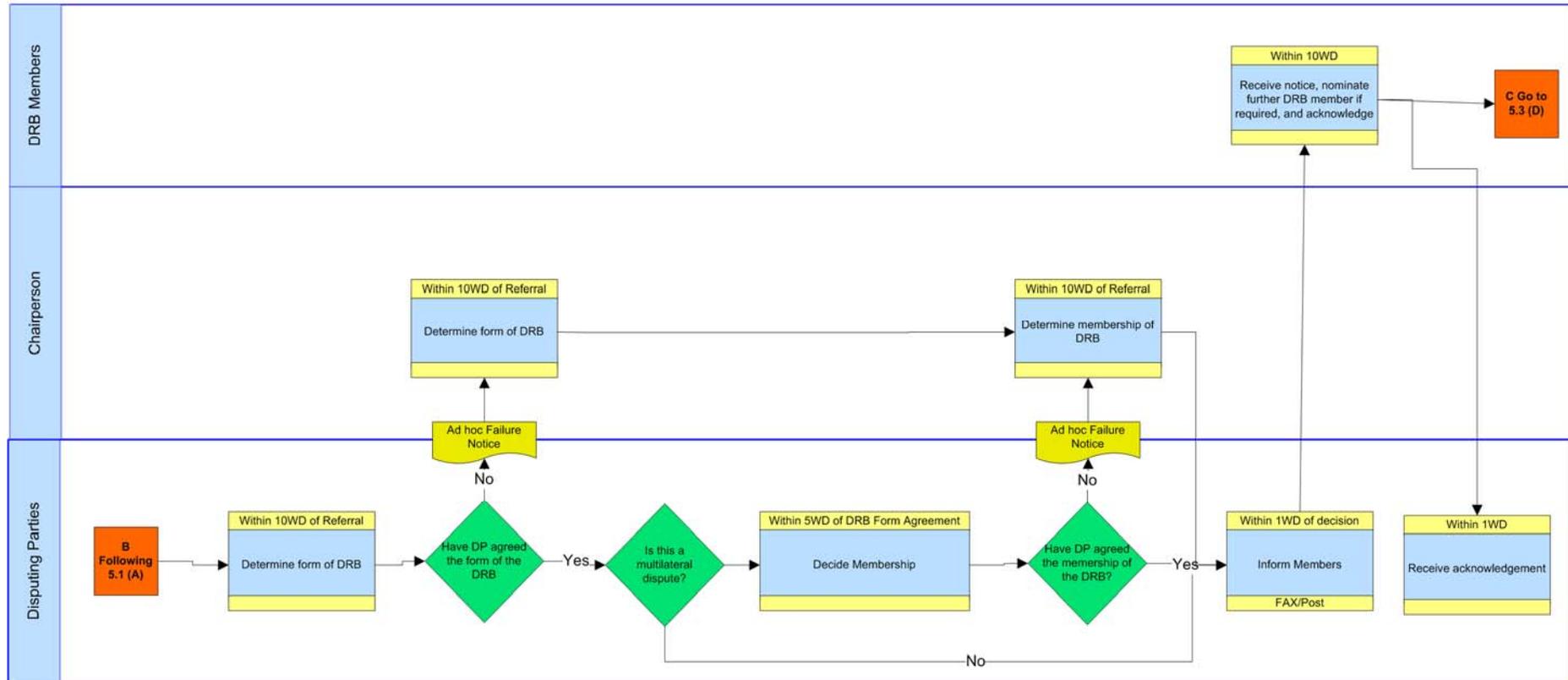
A Disputing Party may produce evidence or raise arguments not previously put before the DRB in the course of its consideration of the Dispute or included in the notice of dissatisfaction given by that Party. However, any decision of the DRB shall be produced as evidence in any Court proceedings.

4. SWIMLANE DIAGRAMS

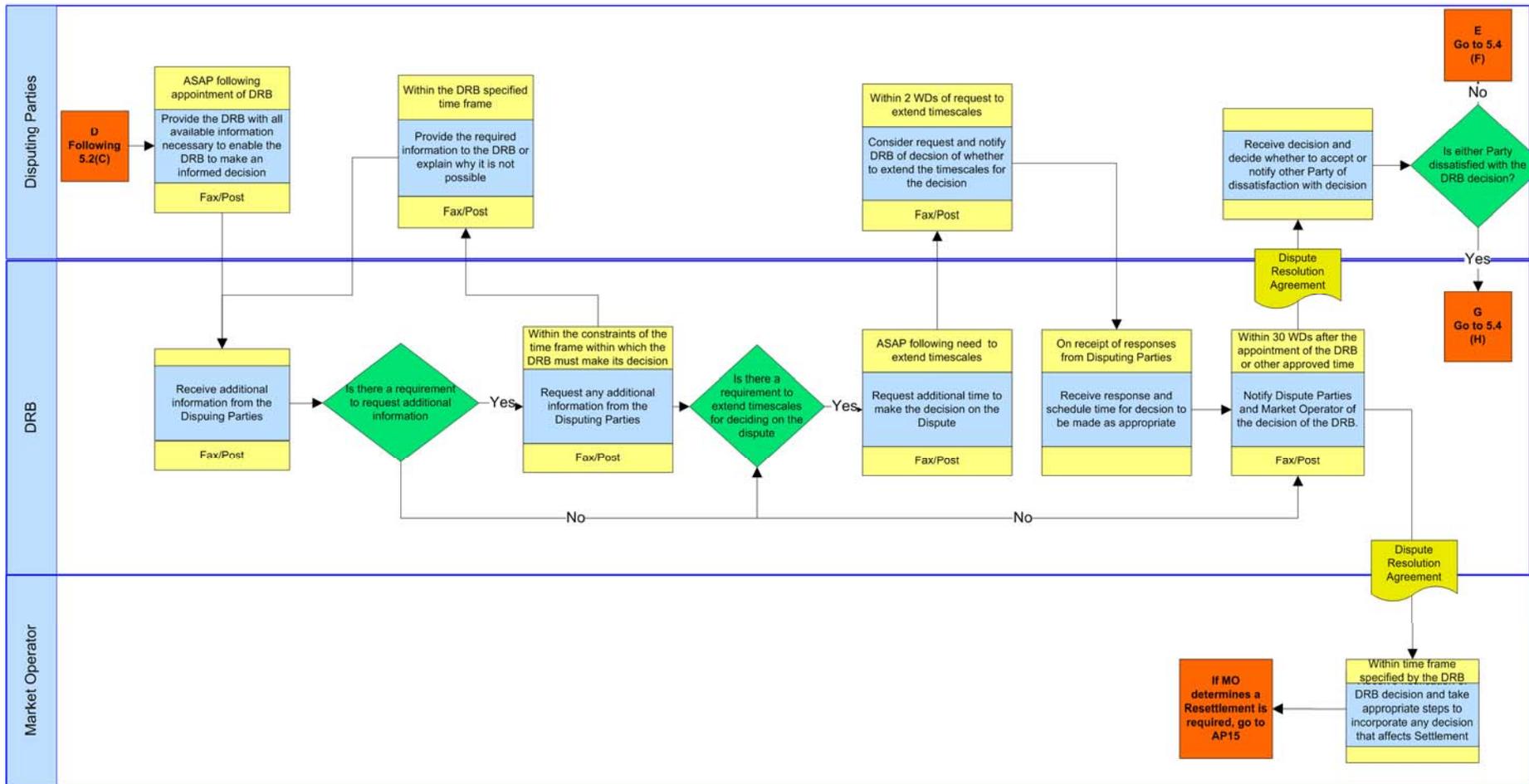
5.1 Raising a Dispute



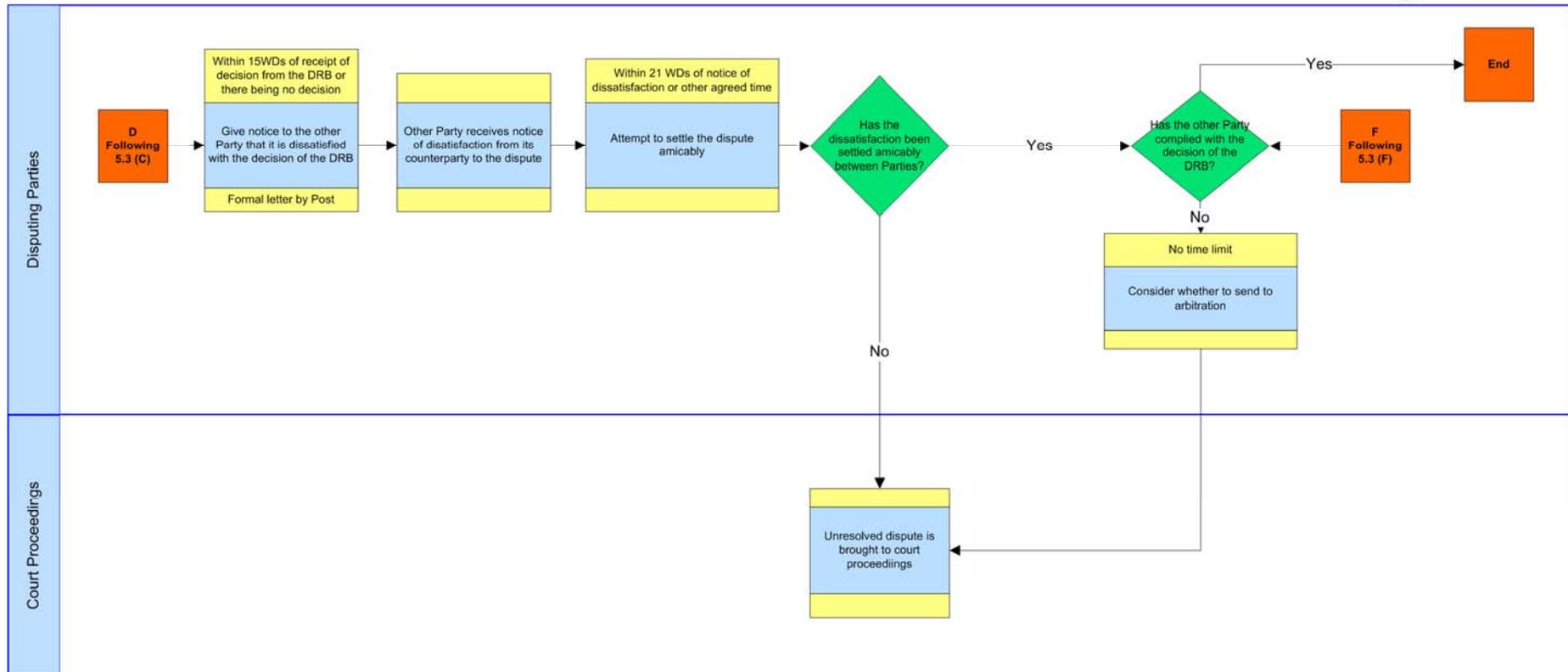
5.2 Dispute Resolution Board Composition



5.3 Dispute Resolution Board Operation



5.4 Handling of DRB Decision



5. PROCEDURAL STEPS

5.1. RAISING A DISPUTE

#	Procedural Step	Timing	Method	From/By	To
1a	<p>Dispute not arising from a Settlement Query or Data Query</p> <p>Notify Dispute Counterparty or Dispute Counterparties of the Dispute by sending a Notice of Dispute. The Notice of Dispute shall include the nature of the Dispute and the issues involved.</p>	Within 28 days of Disputing Party being aware of the Disputed Event and within 1 year of the Disputed Event	Fax/post	Disputing Party	Dispute Counterparty or Dispute Counterparties
1b	<p>Dispute arising from a Settlement Query or Data Query</p> <p>Notify Market Operator, as the Dispute Counterparty, of the Dispute by completing and sending a Notice of Dispute. The Notice of Dispute shall include the nature of the Dispute and the issues involved.</p>	Within 5 Working Days of receipt of the Market Operator's determination in respect of a Settlement Query	Fax/post	Disputing Party	n/a
2	Send a copy of the Notice of Dispute to the Market Operator. To clarify, if the Dispute Counterparty is the Market Operator then a copy of the Notice of Dispute must still be sent to the Market Operator. If the Dispute Counterparty is the Market Operator, also send a copy of the Notice of Dispute to the Regulatory Authorities.	Within the same timescales as the Notice of Dispute is sent to the Dispute Counterparty	Fax/post	Disputing Party	Market Operator (Regulatory Authorities)
3	Market Operator identifies other potentially impacted Participants or Parties, and notifies them of the Dispute	Within 5 Working Days	Fax/post	Market Operator	Potentially impacted Parties

#	Procedural Step	Timing	Method	From/By	To
4	Hold a meeting and attempt to resolve the Dispute	Within 10 Working Days of the date of receipt of the Notice of Dispute	Meeting	Disputing Parties	n/a
5	In the event that the Disputing Parties wish to extend the timescales for negotiating a resolution to the Dispute then the raising Disputing Party shall issue a Referral Notice to the other Disputing Party that details the: <ul style="list-style-type: none"> o Section of the Code under which the extension is allowed o Dispute identifier o Notice of Dispute identifier o Date by which the negotiating period has been extended 	Within 10 WDs of meeting to resolve Dispute	Fax/post	Raising Disputing Party	Market Operator Regulatory Authorities) Dispute Counterparty or Dispute Counterparties
6	Confirm acceptance of the extension to the timescales for extending the Dispute negotiating period.	Within 10 WDs of meeting to resolve Dispute	Fax/post	Dispute Counterparty	n/a
7	Send a copy of the Referral Notice to the Market Operator and the Regulatory Authorities. If the Market Operator and the Regulatory Authorities agree the extension, extend the negotiation period. Otherwise, go to step 10.	On receipt of the confirmation from the Dispute Counterparty to extend the Dispute negotiating period	Fax/post	Raising Dispute Party	Market Operator Regulatory Authorities

#	Procedural Step	Timing	Method	From/By	To
8	If the attempt to resolve the Dispute has been successful then notify the Market Operator (Regulatory Authorities where Disputing Party is Market Operator) utilising the Dispute Resolution Form. Send a copy to the Dispute Counterparty	Within 5 WDs of resolution by negotiation	Fax/post	Raising Dispute Party	Market Operator (Regulatory Authorities) Dispute Counterparty or Dispute Counterparties
9	If the Dispute resolution requires a financial resettlement, go to Agreed Procedure 15 “Invoicing”	On Dispute Resolution Form	n/a	n/a	n/a
10	If the attempt to resolve the Dispute by negotiation has been unsuccessful send a Referral Notice to the other Disputing Party stating the: <ul style="list-style-type: none"> o Section of the Code under which the Referral Notice is given o Dispute identifier o Notice of Dispute identifier o Dispute is being referred to the Dispute Resolution Board 	Within 10WDs of the meeting to resolve the Dispute or by the mutually agreed extension date	Fax/post	Either the raising Disputing Party or the Dispute Counterparty	Dispute Counterparty or Dispute Counterparties
11	Send a copy of the Referral Notice to the Market Operator, (or Regulatory Authorities where Disputing Party is Market Operator)	Within 10WDs of the meeting to resolve the Dispute or by the mutually agreed extension date	Fax/post	Either the raising Disputing Party or the Dispute Counterparty	Market Operator (Regulatory Authorities)
12	If no Referral Notice is to be sent to the Dispute Counterparty and no Referral Notice is received from the Dispute Counterparty then inform the Market Operator (Regulatory Authorities where Disputing Party is Market Operator) in writing that the Dispute is not being referred to the DRB	Between 11 and 15 WDs following meeting to resolve Dispute or agreed negotiating extension period	Fax/post	Raising Disputing Party	Market Operator (Regulatory Authorities)

5.2. DISPUTE RESOLUTION BOARD - COMPOSITION

#	Procedural Step	Timing	Method	From/By	To	Linkage
1	Arrange a meeting to decide the composition of the Dispute Resolution Board (and membership if it is a multilateral dispute)	Within 10 Working Days of receipt of the Referral Notice	n/a	Disputing Parties	n/a	n/a
2	If agreement on the form of the DRB is reached, go to step 3. If not, notify the DRB Chairperson and go to step 7	Within 15 Working Days of receipt of the Referral Notice	n/a	Disputing Parties	n/a	n/a
3	If agreement on the membership of the DRB is reached, go to step 4. If not, notify the DRB Chairperson and go to step 8	Within 5WD for bilateral disputes – immediately following step one for multilateral disputes	Fax/post	Raising Disputing Party	DRB member	n/a
4	Notify the 2 DRB members	Within 1 WD of being notified of appointment	Fax/post	DRB	Raising Disputing Party	n/a
5	If a 3 member DRB, DRB members select a third member	As soon as possible following failure to agree the identity of the sole member	Fax/post	Disputing Parties	DRB Chairperson	n/a
6	Inform the Disputing Parties of acknowledged DRB membership	Within 10 WDs of request by any or all of the Disputing Parties	Fax/post	DRB Chairperson of the Panel	Disputing Parties	n/a

#	Procedural Step	Timing	Method	From/By	To	Linkage
7	DRB Chairperson determines form of DRB	Within 15WDs of receipt of the Referral Notice	Fax/post	Disputing Parties	DRB member	n/a
8	DRB Chairperson determines membership of DRB	Within 15WDs of receipt of the Referral Notice	Fax/post	Disputing Parties	DRB member	n/a
9	DRB Chairperson notifies Disputing Parties of all decisions. Go to Step 4.	As soon as possible following the failure	Fax/post	Disputing Party	DRB Chairperson of Panel	n/a

5.3. DISPUTE RESOLUTION BOARD - DECISION

#	Procedural Step	Timing	Method	From/By	To	Linkage
1	Provide the Dispute Resolution Board with all available information necessary to enable the DRB to make an informed decision.	ASAP following the receipt of the Referral Notice	Fax/post	Disputing Parties	DRB	n/a
2	In the event that further information is required from the Disputing Parties to enable the DRB to make its decision request this information from the Disputing Parties	Within the timescale constraints within which the DRB must make its decision	Fax/post	DRB	Disputing Parties	n/a
3	Provide the required information to the Dispute Resolution Board	Within the DRB's specified timescales	Fax/post	Disputing Parties	DRB	n/a

#	Procedural Step	Timing	Method	From/By	To	Linkage
4	If necessary, request the Disputing Parties for additional time to make the decision on the Dispute.	As soon as possible but within 30WDs following the DRBs appointment	Fax/post	DRB	Disputing Parties	n/a
5	Consider the request to extend the timescales for the Dispute Resolution Board to make its decision on the Dispute and respond as appropriate	Within 2WDs of request to extend timescales	Fax/post	Disputing Parties	DRB	n/a
6	Receive response to extend timescales and schedule decision time accordingly. Notify Disputing Parties of the decision of the Dispute Resolution Board by sending the Dispute Resolution Agreement	Within 30WDs after the appointment of the DRB or other approved time	Fax/post	Dispute Resolution Board	DRB	n/a
7	Receive Dispute Resolution Agreement from the DRB or there is no decision from the DRB. <ul style="list-style-type: none"> If either Party is dissatisfied with the decision/no decision of the DRB give notice to the other Party that it is dissatisfied with the decision/no decision. Go to Step 8 If both Parties satisfied with the decision of the Dispute Resolution Board go to Step 9 	Within 15WDs of receipt of decision or there being no decision from the DRB	n/a	Either Disputing Party	n/a	n/a
8	Attempt to settle the dispute amicably. <ul style="list-style-type: none"> If the Dispute has been settled amicably go to step 9 If the Dispute has not been settled then the Dispute may be settled through court proceedings. 	Within 21WDs of notice of dissatisfaction or other agreed time	n/a	Disputing Parties	n/a	n/a
9	If following satisfactory resolution of the Dispute a Party believes that the other Party has not complied with the decision of the DRB they may refer the matter to court proceedings.	No time limit	n/a	Either Disputing Party	n/a	n/a

6. APPENDIX 1 – DEFINITIONS AND ABBREVIATIONS

6.1. DEFINITIONS

Billing Period	As defined in the Code
Capacity Period	As defined in the Code
Code	As defined in the Code
Competent Authority	As defined in the Code
Data Query	As defined in the Code
Dispute	As defined in the Code
Dispute Counterparty	The Party against which a Dispute is raised
Dispute Period	The Billing Period or Capacity Period in which the Disputed Event occurred
Dispute Resolution Agreement	As defined in the Code
Dispute Resolution Board	As defined in the Code
Dispute Resolution Form	Form completed on successful resolution of a Dispute
Disputed Event	As defined in the Code
Disputing Party	As defined in the Code
DRB Chairperson	Chairperson of the Dispute Resolution Board who is appointed by the Regulatory Authorities from the members of the Panel to act as chairperson of the Panel. The chairperson is responsible for nominating the member(s) of the DRB if the parties to a Dispute fail to agree on the composition of the DRB from the members of the Panel.
Final Settlement	As defined in the Code
High Materiality	As defined in the Code
Low Materiality	As defined in the Code
Market Operator	As defined in the Code
Notice of Dispute	As defined in the Code
Panel	As defined in the Code
Party	As defined in the Code
Referral Notice	As defined in the Code
Regulatory Authorities	As defined in the Code
Settlement	As defined in the Code
Settlement Dispute	As defined in the Code
Settlement Query	As defined in the Code
Timetabled Settlement Rerun	As defined in the Code
Upheld Dispute	As defined in the Code
Working Day	As defined in the Code

6.2. ABBREVIATIONS

DRB	Dispute Resolution Board
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WD	Working Day
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7. APPENDIX 2 – FORMS

The following forms will be created in the final version of this Agreed Procedure:

- Standard Notice of Dispute to a counterparty;
- Referral Notice to Market Operator / DRB Chairperson
- Dispute Resolution Agreement