

Single Electricity Market

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| Final REcommendation Report  Mod\_35\_18 clarifications to dispute process  12 December 2018 |

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Document History

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| --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Comment** |
| 1.0 |  | Modifications Committee Secretariat | Issued to Modifications Committee for review and approval |
| 2.0 |  | Modifications Committee Secretariat | Issued to Regulatory Authorities for final decision |

Reference Documents

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| **Document Name** |
| [Trading and Settlement Code](http://www.sem-o.com/MarketDevelopment/MarketRules/TSC.docx) |
| [Modification Proposal Form](https://www.sem-o.com/documents/market-modifications/MOD_35_18/Mod_35_18_ClarificationstoDisputeProcess.docx) |
| [Presentation](https://www.sem-o.com/documents/market-modifications/MOD_35_18/Mod_37_18_Housekeeping__35_18_Disputes__36_18_SD.pptx) |
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# MODIFICATIONS COMMITTEE RECOMMENDATION

## Recommended for approval– unanimous Vote

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| **Recommended for Approval by Unanimous Vote** | | |
| Julie Anne Hannon (Chair) | Supplier Member | Approve |
| Robert McCarthy | DSU Alternate | Approve |
| Philip McDaid | Supplier Member | Approve |
| William Steele | Supplier Member | Approve |
| Paraic Higgins | Generator Member | Approve |
| Sinead O’Hare | Generator Member | Approve |
| Mark Phelan | Supplier Alternate | Approve |
| Kevin Hannafin | Generator Member | Approve |
| Cormac Daly | Generator Member | Approve |

# Background

This Modification Proposal was raised by SEMO and was received by the Secretariat on the 28th November 2018. This proposal was raised and voted on at Meeting 88 on the 12th December 2018

Concerns were raised during the resolution of Pricing Disputes after following I-SEM go live and the MO has identified 3 areas where clarifications and changes have been proposed on this Modification form.

1. Paragraph B.19.2.2 currently gives the Disputing Party the same length of time to refer the Dispute to the DRB, as the time to negotiate the resolution to said Dispute i.e. 5WD. This means that if the negotiations between MO and Disputing Party happen on the last available day, the Disputing Party only has until COB on the same day for the referral. It is therefore appropriate for the Disputing Party to have 1 additional WD after the end of the negotiating period to complete the necessary administrative steps for a referral to the DRB. This proposal changed it to 6 WD after the submission date of the Notice of Dispute.
2. Paragraph B.19.3, specifically refers to decisions of Dispute Resolution Board and how the resolution is subject to Settlement Recalculation Threshold and Price Materiality Thresholds. The intent of the Code would be to apply such limits to all Disputes and Queries being resolved, without distinction to those being decided upon by a Dispute Resolution Board or as part of the standard amicable process. It is also to be applied to material error being identified by the MO under section E.3.8. This is in line with the intent of the Code to strike a balance between correcting errors having a significant impact to the Market and provide as much

stability to the Imbalance Price and Settlement as possible. It also reaffirms consistency between all Dispute types and resolution of other Market issues raised in Settlement Queries. Section B.19.3 has been renamed to avoid confusion with the defined term ‘General Dispute’; these provisions can apply to all Dispute type (specified within each paragraph) not just General Disputes.

1. Paragraph E.3.8.1 which relates to MO identifying material errors that could result in a recalculation of the Imbalance Settlement Price. The concept was introduced to facilitate the resolution of issues that were identified by the MO as being clearly incorrect before any PTs would have had an opportunity to query or dispute the issue. However, without the specification added to the legal drafting as part of this Mod, it appears that the MO will not have an opportunity to declare manifest error as part of a dispute resolution because paragraph E.3.8.1 bounds it to 5 Working Days (WD) after the publication of Imbalance Settlement Price. In reality a Dispute could be raised by PTs within 5 WD and the resolution must happen within further 5WD. This additional timeline should also be taken into consideration so that the MO has sufficient time to investigate the issue raised once it has become aware of it.

# PURPOSE OF PROPOSED MODIFICATION

**3A.) justification of Modification**

This modification clarifies the dispute process where a strict interpretation may result in inconsistencies in the Dispute resolution process. It would also not adhere to the objectives of such process set out in paragraph B.19.5 as it would likely result in more instances of Disputes referred to the DRB particularly in cases where the MO would not have enough time to identify a manifest error. It is also unfair to Disputing Parties in circumstance where they would have insufficient time to refer a Dispute to a DRB.

**3B.) Impact of not Implementing a Solution**

SEMO considers that leaving the T&SC unchanged would lead to misinterpretation of the paragraphs identified above in the legal drafting, in inconsistencies in the resolution of Disputes and in potential additional costs to the Market as referring Disputes to the DRB would be more frequent if MO would not have sufficient time to investigate the issue once it is made aware of. It could also leave PT with insufficient time to refer a Dispute to DRB.

**3c.) Impact on Code Objectiv****es**

These objectives are furthered by this Modification:

A.2.1.4 The aim of this Code is to facilitate the achievement of the following objectives:

* + - * 1. to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;
        2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
        3. to provide transparency in the operation of the Single Electricity Market;

# Working Group and/or Consultation

N/A

# impact on systems and resources

No system or process impacts anticipated

# Impact on other Codes/Documents

N/A

# MODIFICATION COMMITTEE VIEWS

## Meeting **88 – 12 december 2018**

The proposer delivered a [presentation](https://www.sem-o.com/documents/market-modifications/Mod_36_18/Mod_37_18_Housekeeping__35_18_Disputes__36_18_SD.pptx) around the practicality of the current dispute process. Currently if issues are resolved at the last minute, either because of the length of time needed for the assessment or because a meeting could not be organised anytime earlier, participants would not have sufficient time to consider a referral to a DRB. This is because the timelines are 5WD from issue of Dispute Notice for both resolution and referral to DRB.

The presentation also addressed clarifications on when a manifest error is declared and highlighted a drafting error to be corrected in the FRR as the word ‘material’ had been used instead of ‘manifest’. Currently the identification of manifest error is bound to 5 working days which excludes the period of dispute resolution. The presenter also discussed the application of thresholds and proposed some changes to the text to clarify that they should be used in all Dispute types but clarified that all disputes will be investigated and it is only the decision around the resolution of the dispute that is subject to the threshold criterion.

A discussion ensued around the proposed 6 working days for referral to a DRB and also the turnaround of 5 working days for assessment. It was pointed out by generator members that there is a lot more data now then there was previously and the 5 days was too short of a timeline to complete the analysis.

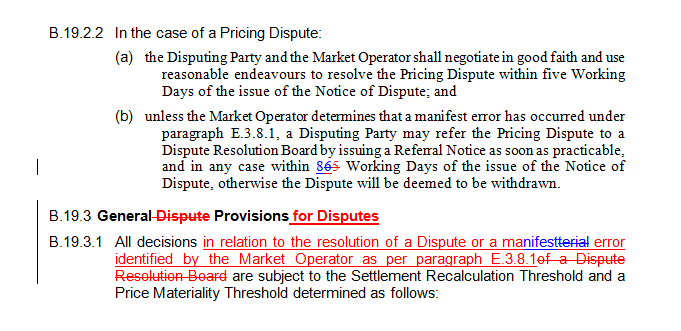
A suggestion was made that the proposed 6 working days for referral to a DRB was extended out to 8 working days so that the assessment could be completed in the first 5 days maximum leaving an extra 3 days to consider a referral and make a decision. It was agreed that the new SEM is more complex with more data and inconsistencies however this Modification did not seek to extend the timeframe to raise and assess a Dispute, as no immediate issues were identified so far. The Modification only tried to address current inconsistencies in the process; however, changes in the assessment would require a wider market discussion as those tight timelines were put in place to strike a balance between having the ability of correcting pricing errors and having stability in price. Supplier Member mentioned that they would not see favourably an increase in timelines for raising or assessing a dispute and such change should be raised as a separate Modification.

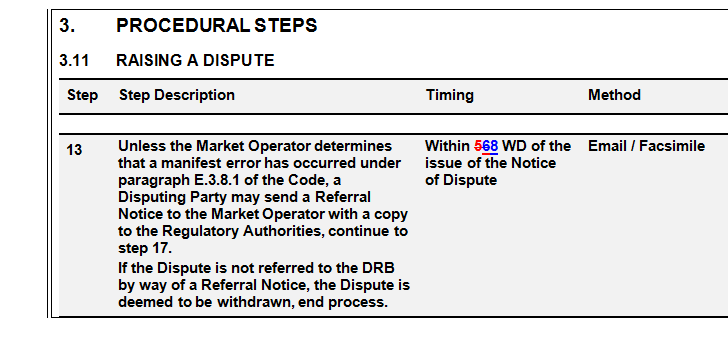
Proposer confirmed that the change from 6 to 8 working days to refer a Dispute can be made in the FRR but other changes were outside the scope of this Modification.

# Proposed Legal Drafting

The proposal change is to be updated from 6 working days to 8 working days.

Correction of an error “material” to be changed to “manifest” error – Final legal drafting below:.





# LEGAL REVIEW

N/A

# IMPLEMENTATION TIMESCALE

It is proposed that this Modification implemented as the Modifications Committee have Recommended it for Approval and on a trading day following receipt of the RA Decision.

# Appendix 1: Mod\_35\_18 Clarifications to Dispute process

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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **SEMO** | **28 November 2018** | | **Standard** | | **Mod\_35\_18** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Katia Compagnoni** | |  | | **katia.compagnoni@sem-o.com** | |
| **Modification Proposal Title** | | | | | |
| **Clarifications to Dispute Process** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC Part B** | | **B.19.3 and E.3.8** | | **Version 20** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| Concerns were raised during the resolution of Pricing Disputes after following I-SEM go live and the MO has identified 3 areas where clarifications and changes have been proposed on this Modification form.   1. Paragraph B.19.2.2 currently gives the Disputing Party the same length of time to refer the Dispute to the DRB, as the time to negotiate the resolution to said Dispute i.e. 5WD. This means that if the negotiations between MO and Disputing Party happen on the last available day, the Disputing Party only has until COB on the same day for the referral. It is therefore appropriate for the Disputing Party to have 1 additional WD after the end of the negotiating period to complete the necessary administrative steps for a referral to the DRB. This proposal change it to 6 WD after the submission date of the Notice of Dispute. 2. Paragraph B.19.3, specifically refers to decisions of Dispute Resolution Board and how the resolution is subject to Settlement Recalculation Threshold and Price Materiality Thresholds. The intent of the Code would be to apply such limits to all Disputes and Queries being resolved, without distinction to those being decided upon by a Dispute Resolution Board or as part of the standard amicable process. It is also to be applied to material error being identified by the MO under section E.3.8. This is in line with the intent of the Code to strike a balance between correcting errors having a significant impact to the Market and provide as much stability to the Imbalance Price and Settlement as possible. It also reaffirms consistency between all Dispute types and resolution of other Market issues raised in Settlement Queries. Section B.19.3 has been renamed to avoid confusion with the defined term ‘General Dispute’; these provisions can apply to all Dispute type (specified within each paragraph) not just General Disputes. 3. Paragraph E.3.8.1 which relates to MO identifying material errors that could result in a recalculation of the Imbalance Settlement Price. The concept was introduced to facilitate the resolution of issues that were identified by the MO as being clearly incorrect before any PTs would have had an opportunity to query or dispute the issue. However, without the specification added to the legal drafting as part of this Mod, it appears that the MO will not have an opportunity to declare manifest error as part of a dispute resolution because paragraph E.3.8.1 bounds it to 5 Working Days (WD) after the publication of Imbalance Settlement Price. In reality a Dispute could be raised by PTs within 5 WD and the resolution must happen within further 5WD. This additional timeline should also be taken into consideration so that the MO has sufficient time to investigate the issue raised once it has become aware of it. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| Changes to Main Body of the T&SC:    2. 19. 2. Reasonable Endeavours Obligations   ….   * + - 1. In the case of a Pricing Dispute:          1. the Disputing Party and the Market Operator shall negotiate in good faith and use reasonable endeavours to resolve the Pricing Dispute within five Working Days of the issue of the Notice of Dispute; and          2. unless the Market Operator determines that a manifest error has occurred under paragraph E.3.8.1, a Disputing Party may refer the Pricing Dispute to a Dispute Resolution Board by issuing a Referral Notice as soon as practicable, and in any case within 6 Working Days of the issue of the Notice of Dispute, otherwise the Dispute will be deemed to be withdrawn.     1. General Provisions for Disputes        1. All decisions in relation to the resolution of a Dispute or a material error identified by the Market Operator as per paragraph E.3.8.1 are subject to the Settlement Recalculation Threshold and a Price Materiality Threshold determined as follows:           1. a Settlement Recalculation Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Settlement Recalculation Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later; and           2. a Price Materiality Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Price Materiality Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later.  3. 3. 8. Changes to Published Imbalance Prices          1. If the Market Operator identifies a manifest error in a published Imbalance Settlement Price:             1. within 5 Working Days of its publication (whether or not as a result of a Settlement Query or a Pricing Dispute); or             2. as part of the resolution of a Pricing Dispute as per paragraph B.19.2.2 (a);   the Market Operator shall correct the manifest error and shall publish the corrected Imbalance Settlement Price as soon as possible and within 1 Working Day of making the correction. | | | | | |

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| 1. Procedural Steps    1. Raising a Dispute  | Step | Step Description | Timing | Method | From / By | To | | --- | --- | --- | --- | --- | --- |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | 13 | Unless the Market Operator determines that a manifest error has occurred under paragraph E.3.8.1 of the Code, a Disputing Party may send a Referral Notice to the Market Operator with a copy to the Regulatory Authorities, continue to step 17.  If the Dispute is not referred to the DRB by way of a Referral Notice, the Dispute is deemed to be withdrawn, end process. | Within 6 WD of the issue of the Notice of Dispute | Email / Facsimile | Any Disputing Party | Market Operator and Regulatory Authorities | |

Changes to Agreed Procedure 14 “Disputes”:

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| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | |
| This modification clarifies the dispute process where a strict interpretation may result in inconsistencies in the Dispute resolution process. It would also not adhere to the objectives of such process set out in paragraph B.19.5 as it would likely result in more instances of Disputes referred to the DRB particularly in cases where the MO would not have enough time to identify a manifest error. It is also unfair to Disputing Parties in circumstance where they would have insufficient time to refer a Dispute to a DRB. | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of Part A and/or Section A.2.1.4 of Part B of the T&SC for Code Objectives)* | |
| These objectives are furthered by this Modification:  A.2.1.4 The aim of this Code is to facilitate the achievement of the following objectives:   * + - * 1. to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;         2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;         3. to provide transparency in the operation of the Single Electricity Market; | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | |
| SEMO considers that leaving the T&SC unchanged would lead to misinterpretation of the paragraphs identified above in the legal drafting, in inconsistencies in the resolution of Disputes and in potential additional costs to the Market as referring Disputes to the DRB would be more frequent if MO would not have sufficient time to investigate the issue once it is made aware of. It could also leave PT with insufficient time to refer a Dispute to DRB. | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures; also indicate impacts on any other Market Code such as Capacity Marker Code, Grid Code, Exchange Rules etc.)* |
| N/A | N/A |
| ***Please return this form to Secretariat by email to*** [balancingmodifications@sem-o.com](mailto:balancingmodifications@sem-o.com) | |