

**MODIFICATION PROPOSAL FORM**

<b>Proposer</b> <i>(Company)</i>	<b>Date of receipt</b> <i>(assigned by Secretariat)</i>	<b>Type of Proposal</b> <i>(delete as appropriate)</i>	<b>Modification Proposal ID</b> <i>(assigned by Secretariat)</i>
<b>ElectroRoute</b>	<b>9<sup>th</sup> July 2020</b>	<b>Standard</b>	<b>Mod_08_20</b>
<b>Contact Details for Modification Proposal Originator</b>			
<b>Name</b>	<b>Telephone number</b>	<b>Email address</b>	
Alan Mullane Caoimhe Giblin Rory O'Loughlen Ronan Doherty		<a href="mailto:alan.mullane@electroroute.com">alan.mullane@electroroute.com</a> <a href="mailto:caoimhe.giblin@electroroute.com">caoimhe.giblin@electroroute.com</a> <a href="mailto:rory.ologhlen@electroroute.com">rory.ologhlen@electroroute.com</a> <a href="mailto:ronan.doherty@electroroute.com">ronan.doherty@electroroute.com</a>	
<b>Modification Proposal Title</b>			
Imbalance prices to reflect the real-time value of energy			
<b>Documents affected</b> <i>(delete as appropriate)</i>	<b>Section(s) Affected</b>	<b>Version number of T&amp;SC or AP used in Drafting</b>	
<b>T&amp;SC Part B</b>	<b>Part B Section D Paragraph D.4.4.12</b>	<b>Version 21</b>	
<b>Explanation of Proposed Change</b> <i>(mandatory by originator)</i>			
<p>Mod_10_19 "Removal of Negative QBOAs related to Dispatchable Priority Dispatch Units from the Imbalance Price" (the "Modification") was submitted to the Modifications Committee in June 2019 and was rejected by a majority of six to four Committee Members. On 30 October 2019, the SEM Committee rejected the recommendation of the Modifications Committee and directed the Modification be implemented in the next available release. The SEM Committee's primary motivation for rejecting the recommendation and implementing the Modification was to resolve a mismatch between the market rules and the SEM Committee Detailed Design, specifically the Building Blocks Decision (SEM-15-064) which stated: "<i>the decremental price from priority dispatch generators will be used for settlement purposes only. This will not be price setting.</i>"</p> <p>The Modification has not yet taken effect. The Regulatory Authorities did not specify a date on which it would take effect in its decision to approve the Modification as required by B.17.20.4, but rather decided that the Modification should go live as soon as practicable once the associated system implementation is delivered. It is understood that the Regulatory Authorities intend to shortly announce the date that the Modification will take effect.</p> <p>In making its decision to approve the Modification, the Regulatory Authorities decided that because the Guideline on Electricity Balancing was not applicable until 31 December 2019, there were no barriers to progressing and implementing the Modification. This no longer remains the case. Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the "Balancing Regulation") came into force in Ireland and Northern Ireland following a transitional derogation on 31 December 2019. Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (the "Electricity Regulation") came into force on 1 January 2020. The Modification would introduce changes to the T&amp;SC that are incompatible with both the Balancing Regulation and the Electricity Regulation. Pursuant to Article 288 of the Treaty on the Functioning of the European Union ("TFEU"), an EU Regulation has general application to Member States, is binding in its entirety and is directly applicable without the need for any national implementing legislation. Implementation of the Modification would therefore put both Ireland and Northern Ireland in breach of Article 288 of the TFEU.</p> <p>Furthermore, an EU Regulation also has direct effect, meaning that it can be relied on in a national court, and its provisions will override any inconsistent national law (<i>Van Gen den Loos (case 26/62) EU:C:1963:1, at page 13</i>). As emanations of their respective States, the Regulatory Authorities are bound by EU Regulations. In addition, even if the Modification were to commence it would not be lawful to settle the market in the manner required by the Modification to the extent of any incompatibility with the Balancing Regulation and the Electricity Regulation. Reasons why the</p>			

Modification is incompatible with the Balancing Regulation and the Electricity Regulation include:

Firstly, both recital 17 of the Balancing Regulation and recital 15 of the Electricity Regulation state, *“The general objective of imbalance settlement is to ensure that balance responsible parties support the system’s balance in an efficient way and to incentivise market participants in keeping and/or helping to restore the system balance. This Regulation defines rules on imbalance settlement, ensuring that it is made in a non-discriminatory, fair, objective and transparent basis. To make balancing markets and the overall energy system fit for the integration of increasing shares of variable renewables, imbalance prices should reflect the real-time value of energy”* (emphasis added)

The Electricity Regulation contains several explicit provisions which would now make the Modification unlawful, including but not limited to:

1. Article 3(a) and (b), which clearly state, that prices must be formed on the basis of demand and supply, dictated by market rules which encourage free price formation.
2. Article 3(c) and (g) – which clearly state that market rules shall deliver appropriate investment incentives for generation thereby facilitating fair competition. The suppression of market pricing signals negatively impacts the facilitation and the development of flexible generation, flexible demand and sustainable generation.
3. Article 6(5) – which unambiguously states that imbalances must be settled at a price that reflects the real time value of energy.
4. Article 10 – which clearly prohibits measures which directly or indirectly impose maximum or minimum limits in wholesale electricity markets (including balancing markets). There is an express imposition on the Regulatory Authorities “to take all appropriate actions to eliminate...any policy or measure which could serve to restrict wholesale price formation.”
5. Article 13(5) – no cognisance has been given to the suppression of market pricing signals which ensure transmission system operators and distribution system operators take appropriate measures to improve the capability and flexibility of the electricity grid to minimise downward redispatching of electricity produced from renewable energy sources or from high-efficiency cogeneration.

The SEM Committee submitted Ireland’s *Roadmap to Clean Energy Package Implementation* (SEM-19-073) to the European Commission on 16<sup>th</sup> December 2019. In it, they did not mention the intended change to priority dispatch units pricing in the formation of the imbalance price, but did state that *“there shall be no restrictions to the formation of the wholesale electricity price”* apart from harmonised limits on maximum and minimum clearing prices for the ex-ante markets. They further declared *“the RAs will review the wholesale market to identify any limitations in the market which could restrict such price formation”*. The European Commission in their response (30<sup>th</sup> April 2020) welcomed that there were currently no regulated prices in the SEM, and invited Ireland *“to maintain its commitment not to intervene in price formation”*.

This Modification Proposal is required to reverse the changes made by the Modification simultaneously with the commencement of the Modification to ensure that the formation of prices in the SEM does not breach the applicable EU Law and does not put Ireland and Northern Ireland in breach of the TFEU.

**Legal Drafting Change**

*(Clearly show proposed code change using **tracked** changes, if proposer fails to identify changes, please indicate best estimate of potential changes)*

Trading and Settlement Code Part B (as amended, including by the Modification) to be amended with effect from the effective date of the Modification as follows:

~~D.4.4.12 Where a Generator Unit is Dispatchable, has Priority Dispatch and has non-zero marginal costs, each Price corresponding to a Quantity in a set of Incremental Price Quantity Pairs in respect of this Generator Unit shall be set to zero by the Market Operator for the purposes of the Imbalance Pricing calculations detailed in Section E. For the avoidance of doubt, the submitted values will be used for the calculation of Commercial Offer Data for Bid Offer Acceptances in section F.3 for the determination of Settlement Payments, Settlement Charges, Capacity Payments, Capacity Charges as detailed in Section F from Section F.5 onwards and these Price values shall be deemed to be zero for the calculation of Commercial Offer Data for Bid Offer Acceptances in section F.3 for use in Imbalance Pricing Calculations in Section E.~~

F.3.2.1 The Market Operator shall, for each Generator Unit,  $u$ , and for each Period,  $h$ , derive, from the individual sets of Incremental and Decremental Price Quantity Pairs submitted by each Participant through its Commercial Offer Data in accordance with Chapter D and adjusted by the Market Operator in accordance with paragraphs D.4.4.6 [and](#) D.4.4.7 ~~and D.4.4.12~~ a set of Price Quantity Pairs for each set of Complex Bid Offer Data or Simple Bid Offer Data (as applicable), comprising a single set of Quantities each having two prices applicable (an Incremental Price and a Decremental Price), as follows:

- (a) The Quantities ( $q_{uih}$ ) for the single set of Price Quantity Pairs shall be the Quantities in each set of Incremental and Decremental Price Quantity Pairs submitted by the Participant and processed by the Market Operator, ranked in order of increasing Quantity value, and assigned in this order a Band,  $i$ . For positive Quantity values, the Band,  $i$ , shall increase from zero with every Quantity increasing from zero. For negative Quantity values, the Band,  $i$ , shall decrease from zero with every Quantity decreasing from zero. For Quantities equal to zero, the Band,  $i$ , shall be zero; and
- (b) The Incremental Price ( $PINC_{uih}$ ) for the Quantity ( $q_{uih}$ ) in the single set of Price Quantity Pairs shall be the Price from the set of Incremental Price Quantity Pairs applicable at that Quantity. The Decremental Price ( $PDEC_{uih}$ ) for the Quantity ( $q_{uih}$ ) in the single set of Price Quantity Pairs shall be the Price from the set of Decremental Price Quantity Pairs applicable at that Quantity.

**Modification Proposal Justification**

*(Clearly state the reason for the Modification)*

Setting Priority Dispatch units' bid prices to 0 €/MWh for the purpose of imbalance pricing calculations is incompatible with the Balancing Regulation and the Electricity Regulation and cannot now be lawfully implemented in Ireland or Northern Ireland. The Modification contravenes directions that markets must form prices freely on the basis of supply and demand by removing the price that Priority Dispatch units offer (and will receive in settlement) to reduce their power output from the price calculated – meaning the true value of energy is not expressed in the market price.

In addition to the above, the Modification disregards requirements to incentivise flexible generation and demand by suppressing price signals to specific units – particularly in the case of storage units or demand side units. These units would see the negative prices set during the dispatch down of priority units as a signal that they are needed to increase electricity consumption and prevent the dispatch down. Suppressing these price signals would be detrimental in Ireland with respect to increasing storage and demand side capability over the next decade, which in turn would significantly hinder the development of non-dispatchable renewable energy on the island of Ireland due to increased curtailment levels.

Finally, the Modification, by dampening price signals in the market, would also remove obligations on the TSO and DSO to sufficiently improve the electrical system by minimising the redispatch of renewable energy sources and high-efficiency cogeneration. Regular dispatch down of priority dispatch units suggests the grid is not sufficiently flexible as the resulting negative prices set are an indicator to the TSO and DSO to improve the system to support this generation. The Modification removes this signal and is therefore in direct conflict with both European and Irish legislation.

It is therefore of paramount importance that the Modification is disregarded in order to ensure that the Trading and Settlement Code is not in breach of EU law and does not put Ireland and Northern Ireland in breach of Article 288 of the TFEU.

**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)*

The Modification furthers the following Code Objectives:

- to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences
- to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner

- to promote competition in the Single Electricity Market
- to ensure no undue discrimination between persons who are parties to the Code
- to promote the short-term and long-term interests of consumers of electricity on the island of Ireland with respect to price, quality, reliability, and security of supply of electricity

**Implication of not implementing the Modification Proposal**

*(State the possible outcomes should the Modification Proposal not be implemented)*

B.4.1.1 of the T&SC provides that in the event of any conflict between any Party's obligation pursuant to any Legal Requirements and the Code, such conflict shall be resolved according a prescribed order of priority in which requirements under Applicable Laws take first priority.

Therefore, if this Modification Proposal is not implemented and the Modification is implemented, B.4.1.1 requires that the Modification be ignored. The Market Operator will therefore be required to ignore D.4.4.12 in order to comply with B.4.1.1. This is a highly unsatisfactory situation in that it makes the T&SC internally inconsistent, puts the Market Operator in an invidious situation and once the system changes are implemented it is practically impossible to settle the market. Alternatively, if the market systems settle the market in breach of B.4.1.1 and EU Law

- i) the Trading & Settlement Code will breach applicable European legislation, while also ignoring the specific instructions of the European Commission with respect to the formation of market prices; and.
- ii) it could lead to an extensive and labour-intensive process to reverse the necessary changes in the future e.g. there could be another lengthy repricing exercise for the period of time during which the Modification is effective.

In short, failure to implement this Modification Proposal with effect from the time of implementation of the Modification, will unnecessarily negatively impact both the SEM and its participants.

	<p><b>Impacts</b>  <i>(Indicate the impacts on systems, resources, processes and/or procedures; also indicate impacts on any other Market Code such as Capacity Market Code, Grid Code, Exchange Rules etc.)</i></p>
Not required	None
<p><b>Please return this form to Secretariat by email to <a href="mailto:balancingmodifications@sem-o.com">balancingmodifications@sem-o.com</a></b></p>	

**Notes on completing Modification Proposal Form:**

1. If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.
2. Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.
3. Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.
4. For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:

**Agreed Procedure(s):** means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in either Part A or Part B Appendix D “List of Agreed Procedures”. The Proposer will need to specify whether the Agreed Procedure to modify refers to Part A, Part B or both.

**T&SC / Code:** means the Trading and Settlement Code for the Single Electricity Market. The Proposer will also need to specify whether all Part A, Part B, Part C of the Code or a subset of these, are affected by the proposed Modification;

**Modification Proposal:** means the proposal to modify the Code as set out in the attached form

**Derivative Work:** means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal

The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.

In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of Part A or Chapter B of Part B of the Code (and Part A Agreed Procedure 12 or Part B Agreed Procedure 12) , which I have read and understand, I agree as follows:

1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:
  - 1.1 to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;
  - 1.2 to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;
  - 1.3 to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;
  - 1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.
2. The licences set out in clause 1 shall equally apply to any Derivative Works.

- 3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**
- 4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**
- 5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**