



Single Electricity Market

FINAL RECOMMENDATION REPORT

MOD_12_20 AMENDMENTS TO DRB PROCESS

9 FEBRUARY 2021

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Document History

Version	Date	Author	Comment
1.0	9 th Feb 2021	Modifications Committee Secretariat	Issued to Modifications Committee for review and approval
2.0	16 th Feb 2021	Modifications Committee Secretariat	Issued to Regulatory Authorities for final decision

Reference Documents

Document Name
Trading and Settlement Code
Modification Proposal

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1. MODIFICATIONS COMMITTEE RECOMMENDATION

RECOMMENDED FOR APPROVAL– UNANIMOUS VOTE

Recommended for Approval by Unanimous Vote		
Paraic Higgins (Chair)	Generator Member	Approve
Eamonn Boland	Supplier Alternate	Approve
Sean McParland	Generator Alternate	Approve
Robert McCarthy	DSU Member	Approve
Ian Mullins	Supplier Member	Approve
David Gascon	Generator Alternate	Approve
Bryan Hennessy	Supplier Member	Approve
Philip Carson	Supplier Member	Approve
Stacy Feldmann	Generator Member	Approve
Alan Mullane	Assetless Member	Approve

2. BACKGROUND

This Modification Proposal was raised by CRU and the Utility Regulator and was received by the Secretariat on 13th November 2020. The proposal was raised and voted on at Meeting 102 on 3rd December 2020.

Following discussion of Version 1 and Version 2 of Mod_15_19 and subsequent legal advice received by the Modifications Committee, the aim of this new Modification is to provide a number of improvements to the process of DRB decision making, in relation to the number of members of the Dispute Resolution Board and DRB decisions in relation to Modifications to the Code.

As part of the drafting of this Modification, the RAs have reviewed recent feedback received in relation to this area and the number of disputes raised so far in 2020, as recorded in SEMO's monthly performance reports, compared to the determination in August 2019 which gave rise to considerations on the role of the DRB.

This Modification aims to make a number of targeted functional amendments to Section B.19 of the Code and this will be kept under review by the RAs in case further amendments are required in future. The earlier legal drafting changes proposed in relation to Section B.19.5 are not being progressed as part of this Modification.

Each area of proposed changes is outlined below;

Dispute Resolution Board

This change ensures that where disputing parties cannot agree on the number of members to be appointed to the DRB in relation to a Dispute, it is comprised of three members to avoid a situation where there is a default of one member appointed without explicit agreement, as in such instances the Dispute may require a larger panel to consider the issue.

DRB Decisions

The intention of the amendment to Section B.19.10 of the Code outlined below is to allow for the DRB to recommend as part of its decision that a Modification to the Code should be considered in accordance with the normal Modification process. This could occur for example where the DRB has determined that no form of remedy is currently available under the Code. This is also reflected in section B.19.14.1.

3. PURPOSE OF PROPOSED MODIFICATION

3A.) JUSTIFICATION OF MODIFICATION

The intention of this Modification is to make improvements to the process of DRB decision making that have been identified and discussed with the Modifications Committee following discussions of earlier versions of this Modification, a working group and discussion of legal advice received.

3B.) IMPACT OF NOT IMPLEMENTING A SOLUTION

If this Modification is not implemented, where a Dispute is raised and relevant parties cannot agree to the number of members of the DRB, one member may be appointed by default, however some complex issues will benefit from a greater number of members to consider these.

In addition, where as a result of a dispute it is identified that changes may be required to the TSC, there is currently no provision within the scope of DRB decisions to recommend this.

3C.) IMPACT ON CODE OBJECTIVES

- (b) *to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;*
- This Modification should improve the DRB decision making process and help to identify changes required to the TSC as a result of disputes.

4. WORKING GROUP AND/OR CONSULTATION

N/A

5. IMPACT ON SYSTEMS AND RESOURCES

Capacity Market Code - while not directly impacted we may consider applying similar DRB arrangements

6. IMPACT ON OTHER CODES/DOCUMENTS

N/A

7. MODIFICATION COMMITTEE VIEWS

MEETING 102 – 3 DECEMBER 2020

The Proposer introduced the Modification Proposal noting that it aims to target 2 improvements around the Dispute Resolution Board. The first change was to ensure that if disputing parties could

not agree on the number of parties to make a decision then the figure would fall to 3 Members. It was advised that there would be a change to B.19.6.3 and AP14.

The second change would include that a provision would be made that a Modification Proposal could be suggested by the DRB if an issue was found in the interpretation of the T&SC.

DSU Member gave support to the Modification but suggested it may work better if the DRB would be able to get the Regulator or Market Operator to propose who submits the Modification as currently there is no obligation on anyone to propose this to the Committee. The Proposer agreed with the comment and assured that drafting would be included to clarify this. It was advised if it is part of a decision a new Modification would be recommended directly by the DRB and this would close off the ability on the RA side. It would then be progressed if deemed necessary. A Supplier Member and Generator Member agreed that industry should propose a Modification if one needed. With the dispute made public a decision could be made on what changes were needed and how the Code could be improved going forward.

A discussion ensued on how to draft this into the Code with a Generator Member suggesting the update was made in the Agreed Procedures as an action step instead of having it in the main body of the T&SC. This way would ensure that the step was captured.

SEMO proposed that if this was put as an action, the action would be to refer the issue back on the Modifications Committee which would have the final say on how to progress the Modification and whether to assign it to a Member to submit it. After agreement from Members on SEMO's proposal, the Chair summarized that there was no need for a version 2 to this Modification but rather an update to the legal drafting to be captured in the FRR.

8. PROPOSED LEGAL DRAFTING

At Meeting 102 the Modification in Appendix 1 was Recommended for Approval subject to minor amendments. The Proposer submitted the following updated legal drafting to take these into account.

B.19.6 Dispute Resolution Board

B.19.6.3 The DRB shall be comprised of either a sole member or three members, **except where the Disputing Parties cannot agree on the number of members. In this case, it shall be comprised of three members. The DRB and** shall be appointed from a panel of available DRB members established and maintained by the Market Operator with the prior approval of the Regulatory Authorities ("**the Panel**"). The Market Operator shall review the membership of the Panel, checking the continued willingness and availability of members to be included at least once every year. The Market Operator shall publish the name and brief curriculum vitae for each Panel member.

B.19.10 DRB Decisions

B.19.10.1 DRB decisions may:

- (a) declare that:
 - (i) the Dispute has been wholly or partially upheld; or
 - (ii) the Dispute has not been upheld; **and**
- (b) declare the correct application or interpretation of a provision of the Code; **and/or**
- (c) advise ~~any other~~ **the** form of relief that may be appropriate in the circumstances; **and/or**
- (d) recommend that a Disputing Party take a specified action within a specified timeframe; **and/or**

(e) where, in the opinion of the DRB, the Dispute has given rise to issues that may require a Modification to the Code, recommend that such a Modification be considered (in accordance with section B.17).

B19.14 Consequences of DRB Decision

B19.14.1 The Market Operator shall implement a final and binding decision of the DRB and shall, if necessary to do so in the case of an Upheld Dispute:

- (a) procure a recalculation of an Imbalance Settlement Price in accordance with paragraph E.3.8.2 where the Price Materiality Threshold is exceeded;
- (b) procure a Settlement Rerun in accordance with the outcomes of the Upheld Dispute where the Settlement Recalculation Threshold is exceeded; and / or
- (c) take any other action that the Market Operator considers necessary to implement the decision. In the case of a recommendation by the DRB this may take the form of a proposed Modification to the Code as per B.17 and associated Agreed Procedures.

Change to Agreed Procedure 14 Section 3.23

Step	Step Description	Timing	Method	From / By	To
1	If there are more than 2 Disputing Parties go to step 10.	-	-	-	-
2	Hold a meeting to decide the composition of the DRB. If agreement on the composition of the DRB is reached, go to step 4, otherwise, notify the Chairperson and go to step 3 -if agreement cannot be reached three DRB members should be appointed.	Within 10 WD of receipt of Referral Notice	Meeting	Disputing Parties	-
3	Chairperson determines the composition of the DRB, appoints the appropriate number of DRB members from the Panel and notifies the Disputing Parties, Market Operator and Regulatory Authorities, go to step 12.	Within 10 WD of receipt of notification at step 1	Email/ Facsimile	Chairperson	Disputing Parties, Market Operator, Regulatory Authorities
4	If the Disputing Parties agree to appoint a sole member DRB, go to step 6	-	-	-	-

Step	Step Description	Timing	Method	From / By	To
5	If the Disputing Parties agree to appoint a three member DRB go to step 8	-	-	-	-
6	Agree the identity of the sole member of the DRB. If agreement is reached notify the DRB member, the Chairperson, Market Operator and Regulatory Authorities. If agreement is not reached, notify the Chairperson and go to step 7.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	All Disputing Parties	DRB member, Chairperson, Disputing Parties, Market Operator, Regulatory Authorities
7	Chairperson shall nominate the sole member of the DRB from the Panel and shall notify the relevant persons of the appointment, go to step 12.	Within 10 WD of receipt of notification from Disputing Parties at step 6	Email / Facsimile	Chairperson	DRB member, Disputing Parties, Market Operator, Regulatory Authorities
8	The Disputing Parties nominate one DRB member each and shall notify the relevant persons of the appointment.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory Authorities
9	The DRB members appointed under step 8 nominate the third member of the DRB and notify the relevant persons of the appointment, go to step 12.	Within 5 WD of appointment at step 8	Meeting and notification by Email / Facsimile	DRB members	DRB members, Chairperson, Market Operator, Regulatory Authorities
10	The Disputing Parties shall seek to agree the composition of the DRB and the identity or identities of the member(s) of the DRB. If agreement is reached the Disputing Parties shall notify the relevant persons of the appointment, go to step 12.	Within 10 WD of receipt of Referral Notice	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory Authorities

Step	Step Description	Timing	Method	From / By	To
	If agreement is not reached, notify the Chairperson and go to step 11 (three DRB members will be appointed in this case).				
11	Chairperson determines the composition of the DRB (i.e. sole member or three member DRB), nominates the member(s) of the DRB and notifies the relevant persons	Within 10 WD of receipt of request from Disputing Parties at step 10	Email / Facsimile	Chairperson	DRB members, Chairperson, Market Operator, Regulatory Authorities
12	Meet to finalise and execute Dispute Resolution Agreement in the form set out at Appendix B "Dispute Resolution Agreement" of the Code.	Within 15 WD of appointment of DRB	Meeting	DRB and Disputing Parties	-
13	If at any stage any member of DRB declines or is unable to act for reasons set out in the Code, that member must notify the Disputing Parties and the Chairperson.	Immediately following nomination, or if subsequent event gives rise to inability to act, immediately following that event	Email / Facsimile	DRB member	Chairperson and Disputing Parties
14	If at any stage the Disputing Parties terminate the appointment of any member of the DRB pursuant to paragraph B.19.7.2 of the Code, the Disputing Parties shall notify the Chairperson.	Immediately following unanimous agreement to terminate appointment	Email / Facsimile	Disputing Parties	Chairperson
15	Chairperson shall nominate and notify a replacement member and proceed with process in accordance with steps 1 to 11, or, if a Dispute Resolution Agreement is already executed, arrange	Within 5 WD of notification at step 14	Email / Facsimile	Chairperson	New DRB member and Disputing Parties

Step	Step Description	Timing	Method	From / By	To
	for new member to execute in place of outgoing member.				
Change to Agreed Procedure 14 Section 3.3					
7	DRB makes its decision having due regard to the objectives of the Dispute Resolution Process and notifies Disputing Parties in writing of its decision and reasons for its decision. If this decision includes a recommendation by the DRB for a proposed Modification to the Code, the Market Operator will raise this for discussion at the next Modifications Committee Meeting and outline proposed next steps (if any).	For bilateral Disputes, within 30 WD of appointment of DRB or such longer period as agreed by DRB and the Disputing Parties under step 6; or For multilateral Disputes, within 40 WD of appointment of DRB or such longer period as agreed by DRB and the Disputing Parties under step 6	Email / Facsimile	DRB	Disputing Parties, Market Operator or Regulatory Authorities

9. LEGAL REVIEW

N/A

10. IMPLEMENTATION TIMESCALE

It is recommended that this Modification should be made effective from the first settlement date following publication of the SEM Committee decision.

1 APPENDIX 1: MOD_12_20 AMENDMENTS TO DRB PROCES**MODIFICATION PROPOSAL FORM**

Proposer <i>(Company)</i>	Date of receipt <i>(assigned by Secretariat)</i>	Type of Proposal <i>(delete as appropriate)</i>	Modification Proposal ID <i>(assigned by Secretariat)</i>
CRU and Utility Regulator	19th November 2020	Standard	Mod_12_20
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
CRU and Utility Regulator			
Modification Proposal Title			
Amendments to DRB Process			
Documents affected <i>(delete as appropriate)</i>	Section(s) Affected	Version number of T&SC or AP used in Drafting	
T&SC Part B, Agreed Procedure 14	B.19.6, B.19.10, B.19.14	29 April 2020	
Explanation of Proposed Change <i>(mandatory by originator)</i>			
<p>Following discussion of Version 1 and Version 2 of Mod_15_19 and subsequent legal advice received by the Modifications Committee, the aim of this new Modification is to provide a number of improvements to the process of DRB decision making, in relation to the number of members of the Dispute Resolution Board and DRB decisions in relation to Modifications to the Code.</p> <p>As part of the drafting of this Modification, the RAs have reviewed recent feedback received in relation to this area and the number of disputes raised so far in 2020, as recorded in SEMO's monthly performance reports, compared to the determination in August 2019 which gave rise to considerations on the role of the DRB.</p> <p>This Modification aims to make a number of targeted functional amendments to Section B.19 of the Code and this will be kept under review by the RAs in case further amendments are required in future. The earlier legal drafting changes proposed in relation to Section B.19.5 are not being progressed as part of</p>			

this Modification.

Each area of proposed changes is outlined below;

Dispute Resolution Board

This change ensures that where disputing parties cannot agree on the number of members to be appointed to the DRB in relation to a Dispute, it is comprised of three members to avoid a situation where there is a default of one member appointed without explicit agreement, as in such instances the Dispute may require a larger panel to consider the issue.

DRB Decisions

The intention of the amendment to Section B.19.10 of the Code outlined below is to allow for the DRB to recommend as part of its decision that a Modification to the Code should be considered in accordance with the normal Modification process. This could occur for example where the DRB has determined that no form of remedy is currently available under the Code. This is also reflected in section B.19.14.1.

Legal Drafting Change

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

B.19.6 Dispute Resolution Board

B.19.6.3 The DRB shall be comprised of either a sole member or three members, **except where the Disputing Parties cannot agree on the number of members. In this case, it shall be comprised of three members. The DRB ~~and~~** shall be appointed from a panel of available DRB members established and maintained by the Market Operator with the prior approval of the Regulatory Authorities (“**the Panel**”). The Market Operator shall review the membership of the Panel, checking the continued willingness and availability of members to be included at least once every year. The Market Operator shall publish the name and brief curriculum vitae for each Panel member.

B.19.10 DRB Decisions

B.19.10.1 DRB decisions may:

- (a) declare that:
 - (i) the Dispute has been wholly or partially upheld; or
 - (ii) the Dispute has not been upheld; **and**
- (b) declare the correct application or interpretation of a provision of the Code; **and/or**
- (c) advise ~~any other~~ **the** form of relief that may be appropriate in the circumstances; **and/or**
- (d) recommend that a Disputing Party take a specified action within a specified timeframe;

and/or

(e) where, in the opinion of the DRB, the Dispute has given rise to issues that may require a Modification to the Code, recommend that such a Modification be considered (in accordance with section B.17).

B19.14 Consequences of DRB Decision

B19.14.1 The Market Operator shall implement a final and binding decision of the DRB and shall, if necessary to do so in the case of an Upheld Dispute:

- (a) procure a recalculation of an Imbalance Settlement Price in accordance with paragraph E.3.8.2 where the Price Materiality Threshold is exceeded;
- (b) procure a Settlement Rerun in accordance with the outcomes of the Upheld Dispute where the Settlement Recalculation Threshold is exceeded; and / or
- (c) take any other action that the Market Operator considers necessary to implement the decision. **In the case of a recommendation by the DRB this may take the form of a proposed Modification to the Code as per B.17 and associated Agreed Procedures.**

Change to Agreed Procedure 14 Section 3.3

Step Description	Timing	Method	Form	By
1 If there are more than 2 Disputing Parties go to step 10.	-	-	-	-
1 Hold a meeting to decide the composition of the DRB. If agreement on the composition of the DRB is reached, go to step 4, otherwise, notify the Chairperson and go to step 3. if agreement cannot be reached three DRB members should be appointed.	Within 10 WD of receipt of Referral Notice	Meeting	Disputing Parties	-
1 Chairperson determines the composition of the DRB, appoints the appropriate number of DRB members from the Panel and notifies the Disputing Parties, Market Operator and Regulatory Authorities, go to step 12.	Within 10 WD of receipt of notification at step 1	Email/ Facsimile	Chairperson	Disputing Parties, Market Operator, Regulatory Authorities
1 If the Disputing Parties agree to appoint a sole member DRB, go to	-	-	-	-

step 6				
2 If the Disputing Parties agree to appoint a three member DRB go to step 8	-	-	-	-
2 Agree the identity of the sole member of the DRB. If agreement is reached notify the DRB member, the Chairperson, Market Operator and Regulatory Authorities. If agreement is not reached, notify the Chairperson and go to step 7.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	All Disputing Parties	DRB member, Chairperson, Disputing Parties, Market Operator, Regulatory Authorities
2 Chairperson shall nominate the sole member of the DRB from the Panel and shall notify the relevant persons of the appointment, go to step 12.	Within 10 WD of receipt of notification from Disputing Parties at step 6	Email / Facsimile	Chairperson	DRB member, Disputing Parties, Market Operator, Regulatory Authorities
2 The Disputing Parties nominate one DRB member each and shall notify the relevant persons of the appointment.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory Authorities
2 The DRB members appointed under step 8 nominate the third member of the DRB and notify the relevant persons of the appointment, go to step 12.	Within 5 WD of appointment at step 8	Meeting and notification by Email / Facsimile	DRB members	DRB members, Chairperson, Market Operator, Regulatory Authorities
2 The Disputing Parties shall seek to agree the composition of the DRB and the identity or identities of the member(s) of the DRB. If agreement is reached the Disputing Parties shall notify the relevant persons of the appointment, go to step 12. If agreement is not reached, notify the Chairperson and go to step 11 (three DRB members will be appointed in this case).	Within 10 WD of receipt of Referral Notice	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory Authorities
2 Chairperson determines the composition of the DRB (i.e. sole member or three member DRB); nominates the member(s) of the DRB and notifies the relevant persons	Within 10 WD of receipt of request from Disputing Parties at step 10	Email / Facsimile	Chairperson	DRB members, Chairperson, Market Operator,

					Regulatory Authorities
2	Meet to finalise and execute Dispute Resolution Agreement in the form set out at Appendix B “Dispute Resolution Agreement” of the Code.	Within 15 WD of appointment of DRB	Meeting	DRB and Disputing Parties	-
2	If at any stage any member of DRB declines or is unable to act for reasons set out in the Code, that member must notify the Disputing Parties and the Chairperson.	Immediately following nomination, or if subsequent event gives rise to inability to act, immediately following that event	Email / Facsimile	DRB member	Chairperson and Disputing Parties
2	If at any stage the Disputing Parties terminate the appointment of any member of the DRB pursuant to paragraph B.19.7.2 of the Code, the Disputing Parties shall notify the Chairperson.	Immediately following unanimous agreement to terminate appointment	Email / Facsimile	Disputing Parties	Chairperson
3	Chairperson shall nominate and notify a replacement member and proceed with process in accordance with steps 1 to 11, or, if a Dispute Resolution Agreement is already executed, arrange for new member to execute in place of outgoing member.	Within 5 WD of notification at step 14	Email / Facsimile	Chairperson	New DRB member and Disputing Parties
Modification Proposal Justification					
<i>(Clearly state the reason for the Modification)</i>					
The intention of this Modification is to make improvements to the process of DRB decision making that have been identified and discussed with the Modifications Committee following discussions of earlier versions of this Modification, a working group and discussion of legal advice received.					
Code Objectives Furthered					
<i>(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)</i>					
	<i>(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;</i>				
5.	This Modification should improve the DRB decision making process and help to identify changes required to the TSC as a result of disputes.				

Implication of not implementing the Modification Proposal <i>(State the possible outcomes should the Modification Proposal not be implemented)</i>	
<p>If this Modification is not implemented, where a Dispute is raised and relevant parties cannot agree to the number of members of the DRB, one member may be appointed by default, however some complex issues will benefit from a greater number of members to consider these.</p> <p>In addition, where as a result of a dispute it is identified that changes may be required to the TSC, there is currently no provision within the scope of DRB decisions to recommend this.</p>	
Working Group <i>(State if Working Group considered necessary to develop proposal)</i>	Impacts <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>Capacity Market Code - while not directly impacted we may consider applying similar DRB arrangements</p>
<p>Please return this form to Secretariat by email to balancingmodifications@sem-o.com</p>	