

MODIFICATION PROPOSAL FORM			
Proposer (Company)	Date of receipt (assigned by Secretariat)	Type of Proposal (delete as appropriate)	Modification Proposal ID (assigned by Secretariat)
CRU and Utility Regulator	19 th November 2020	Standard	Mod_13_20 v2
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
CRU and Utility Regulator			
Modification Proposal Title			
Transparency of DRB Decisions			
Documents affected (delete as appropriate)	Section(s) Affected	Version number of T&SC or AP used in Drafting	
T&SC Part B/ Appendix Part B/Agreed Procedure 14	B.19.10 & Appendix B	29 April 2020	
Explanation of Proposed Change (mandatory by originator)			
<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 Modification is to improve the transparency provisions for decisions of the Dispute Resolution Board under the TSC. This will allow for decisions of the DRB to be made publicly available, while maintaining the confidentiality of disputing parties.</p> <p>This change will result in information relating to disputes being made available to all market participants, which will ensure that there is equal access to such information. This may also reduce the overall number of disputes referred to the DRB, for example if multiple disputes cover the same or similar issues.</p> <p>The legal advice sought by the Modifications Committee in this area included a number of recommendations, for example to clarify the publication timeline of such decisions, the responsible party for identifying confidential areas of the decision and publishing the information and the location of publications. The advice also suggested alternative legal drafting under Section B.19 and to the Dispute Resolution Agreement to provide for this change.</p> <p>The original drafting in this area, in Mod_15_19 V2, was as follows;</p> <p>Appendix B: Template for Dispute Resolution Agreement</p> <p>5. Transparency of the DRB process</p> <p>5.1 Following any DRB decision being issued and the period of appeal having passed, it is the responsibility of the DRB to issue a summary of its decision via the SEMO Secretariat for publication, in a timely and accessible manner following consultation with the Disputing Parties. This must maintain the confidentiality of the Disputing Parties and have regard to the General Obligations on Members under Appendix B.</p> <p>5.2 The objectives of issuing DRB decisions and recommendations into the public domain are to</p> <ol style="list-style-type: none"> 1. Provide market confidence in the dispute resolution process 2. Encourage continuous improvement in the Code and its provisions, as may be 			

furthered through dispute resolution and decisions made within that process

The revised legal drafting below includes a revision to Section B.19 of the Code and a new clause within the template for Dispute Resolution Agreement in Appendix B.

Legal Drafting Change

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

TSC Part B new paragraphs B.19.10.2 and B.19.10.3

B.19.10.2 Subject to B.19.10.3, the DRB shall send a copy of its decision to the Market Operator no later than 30 Working Days from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised under B.19.9.7. Such a decision shall be published by the Market Operator on its website no later than two Working Days after receipt.

B.19.10.3 The DRB shall:

- a) maintain the confidentiality of the Disputing Parties;
- b) prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
- c) prior to sending a copy of its written decision to the Market Operator for publication, consult with the Disputing Parties for 15 Working Days in respect of the information to be redacted from the written decision for publication, and have due regard to the Disputing Parties' view of what information the DRB should designate as commercially sensitive; and
- d) have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement,

B.19.10.3 For the avoidance of doubt, the DRB shall make the final decision on the designation of any commercially sensitive information of the Disputing Parties on a reasonable basis

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New Clause 4A of template for Dispute Resolution Agreement in TSC Appendix B

4A. Publication of the DRB's decision

4A.1 Subject to Clause 4A.2, the DRB shall send a copy of its decision to the Market Operator no later than 30 Working days from the date that the DRB issued its decision to the Disputing Parties, for publication on the Market Operator's website in accordance with the Code.

4A.2 The DRB shall:

- (a) maintain the confidentiality of the Disputing Parties;
- (b) prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
- (c) prior to sending a copy of its written decision to the Market Operator for publication, consult with the Disputing Parties in respect of the information to be redacted from the written decision for publication, and have due regard to the Disputing Parties' view of what information the DRB should designate as commercially sensitive; and
- (d) have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement.

Change to Agreed Procedure 14 Section 3.3 – Additional step 12

Step Description	Timing	Method	From/by	To
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<p>The DRB shall send a copy of its decision to the Market Operator no later than 30 days from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised</p>	<p>Once decision of DRB has become final and binding in accordance with the Code</p>	<p>-</p>	<p>DRB</p>	<p>Disputing Parties and Market Operator</p>
<p>Modification Proposal Justification (Clearly state the reason for the Modification)</p>				
<p>To improve the transparency of DRB decision making.</p>				
<p>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)</p>				
<p>(d) 'to provide transparency in the operation of the Single Electricity Market;'</p> <p>(e) 'to ensure no undue discrimination between persons who are parties to the Code;'</p> <p>The Code objectives include providing transparency in the operation of the Single Electricity Market, and to ensure that there is no undue discrimination between persons who are parties to the Code. This Modification ensures that all market participants receive information in relation to disputes while respecting confidentiality requirements.</p>				
<p>Implication of not implementing the Modification Proposal (State the possible outcomes should the Modification Proposal not be implemented)</p>				
<p>If this Modification is not implemented, the current requirement for SEMO to inform relevant third parties, determined to be impacted by the Dispute, of the 'existence, nature and progress of the Dispute' under Section B.19.1.2 will be the only requirement related to the provision of information on disputes to market participants. This may result in important information being available to parties impacted by the dispute but not more widely.</p>				
<p>Working Group (State if Working Group considered necessary to develop proposal)</p>	<p>Impacts (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.)</p>			
	<p>Capacity Market Code - while not directly impacted may consider applying similar transparency and confidentiality arrangements</p>			
<p>Please return this form to Secretariat by email to balancingmodifications@sem-o.com</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.