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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)* |
| **CRU and Utility Regulator** | **28th November 2019** | | **Standard** | | **Mod\_15\_19 V2** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **CRU and Utility Regulator** | |  | |  | |
| **Modification Proposal Title** | | | | | |
| **Clarification to the description of the role of the Dispute Resolution Board under the TSC** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC Part B**  **Appendix B** | | **B.19** | | **Version from 12 April 2019** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| As notified by SEMO on 9 August 2019, a recent determination of the Dispute Resolution Board in relation to a dispute raised by a market participant found that EirGrid and SONI acted correctly under the terms of the Trading and Settlement Code but awarded a recovery of €1,696,000 million from the Socialisation Fund to the disputing market participant.  The details of this dispute and rationale for the DRB decision have not been shared publicly for the purpose of confidentiality however they have been submitted to the RAs by the Market Operator.  This Modification has been raised following a review of this decision and discussion by the SEM Committee. A number of changes are proposed to the TSC in order to clarify that the DRB’s primary role is to determine whether or not a party has acted in accordance with the provisions of the TSC.  The RAs’ aim in raising this modification is to address the following issues;   1. The DRB decision included a remedy to a dispute which is currently not provided for under the Code, i.e. a payment from the Socialisation Fund to the Disputing Party. 2. The decision interacted with SEMC decision making following the 24th of January.   It is the RAs’ view that the Trading and Settlement Code requires clarification in order to ensure that it is clear that the DRB’s primary role is to take decisions on whether a Party has complied with the provisions of the TSC, consistent with a number of comparable industry codes.  Under the TSC, a Dispute is defined as ‘*any claim, dispute or difference of whatever nature between any of the Parties howsoever arising under, out of or in relation to the Code or the Framework Agreement’*.  Where a market outcome is seen to be unfair or inequitable, any appropriate solution should be subject to SEMC decision-making and consultation with stakeholders affected by any change. The SEM Committee’s role is set out in legislation and cannot be considered as delegated to a third party. In addition, where an issue in the market arises which needs to be addressed, the Code can be modified using the modification process which involves both the Committee Members and RAs.  A number of sections of the TSC do not adequately emphasise that the primary objective of the DRB is to decide whether or not any Party has acted in accordance with the provisions of the Code.  Following the Working Group and feedback received on this Modification, the RAs have amended the drafting of this Modification to address concerns raised through the discussions regarding the Code Objectives and principle of equity and to include the following in the drafting;   * The ability for the DRB decisions to recommend modifications where no remedy exists under the Code * A requirement for at least three members of the DRB where the Disputing Parties cannot agree on a number of members. * A provision for publication of a summary of DRB decisions, respecting confidentiality requirements. | | | | | |
| **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.19.5 **Objectives of the Dispute Resolution Process**  B.19.5.1 *It is intended that the Dispute Resolution Process set out in or implemented in compliance with the Code and described in detail in the following paragraphs should ~~to the extent possible~~ have consideration for each of the following when making a decision:*  *(a)* *be simple, quick and inexpensive;*  *(b)* *preserve or enhance the relationship between the Disputing Parties;*  *(c)* *resolve and allow for the continuing and proper operation of the Code having regard to the Code Objectives;*  *(d)* *resolve Disputes ~~on an equitable basis~~ in accordance with the provisions of the Code having regard to the Code Objectives and broader principles of fairness and equity;*  *(e)* *take account of the skills and knowledge that are required for the relevant procedure; and*  *(f)* *encourage resolution of Disputes without formal legal representation or reliance on legal procedures.*    **B.19.6** **Dispute Resolution Board**  B.19.6.1 A The primary role of the DRB is to provide an escalation process, investigate and resolve any Dispute and to decide whether or not the Disputing Parties have acted in accordance with the provisions of the Code.  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 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.  B19.6.4 The Panel shall consist of no less than 10 members subject to any vacancies which may arise from time to time which shall be filled as soon as practicable. Any vacancies arising from time to time shall not invalidate the Panel. The Regulatory Authorities shall from time to time nominate a member of the Panel to act as chairperson of the Panel. The identity of the members of the Panel and the chairperson shall be published by the Market Operator. The chairperson shall be 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 in accordance with paragraphs B.19.6.9 to B.19.6.11. The members of the DRB so appointed shall be independent of any Disputing Party to any dispute on which they shall be called to deliberate. The Regulatory Authorities shall appoint a replacement chairperson immediately on the position of chairperson being vacated on a permanent basis for any reason.  **B.19.10** **DRB Decisions**  B.19.10.1 DRB decisions may:  (a) declare that:  (i) the Dispute has been wholly or partially upheld because the relevant Party did not act in accordance with the provisions of the Code; or  (ii) the Dispute has not been upheld because the relevant Party has acted in accordance with the provisions of the Code;  (b) declare the correct application or interpretation of a provision of the Code  (c) advise any other form of relief that may be appropriate in the circumstances; ~~or~~  (d) recommend that a Disputing Party take a specified action within a specified timeframe in order to remedy a breach of the provisions of the Code; or,  (e) advise that no relief is possible as no provisions of the Code have been breached. Where no relief is possible under the current provisions of the Code, the DRB may recommend a possible remedy which may include a Modification to the Code (in accordance with B17).    **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.  **Appendix B: Template for Dispute Resolution Agreement**  **4. Objectives of the Dispute Resolution Procedure**  4.1 It is intended that procedures effected under this Dispute Resolution  Agreement should ~~to the extent possible~~ have consideration for each of the following:  1. be simple, quick and inexpensive;  2. preserve or enhance the relationship between the Disputing Parties;  3. without prejudice to the obligations of each of the Disputing Parties pursuant to the Code and in particular paragraph B.19.1.7 thereof, preserve and allow for the continuing and proper operation of the Code and the Single Electricity Market;  4. resolve disputes ~~on an equitable basis~~ in accordance with the provisions of the Code having regard to the Code Objectives and broader principles of fairness and equity; and  5. encourage resolution of disputes without formal legal representation or  reliance on legal procedures.   1. **Transparency of the DRB process**    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.    2. The objectives of issuing DRB decisions and recommendations into the public domain are to 2. Provide market confidence in the dispute resolution process 3. Encourage continuous improvement in the Code and its provisions, as may be furthered through dispute resolution and decisions made within that process | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| The aim of this modification is to provide appropriate clarity in the TSC that the DRB’s primary role is to take decisions on whether or not a Party has complied with the provisions of the TSC.  The intention of this Modification is not to narrow the role of the DRB but to clarify that its role is to seek resolution to issues of compliance with the Code. | | | | | |
| **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)* | | | | | |
| *(a) to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;*   * This change clarifies the grounds on which a dispute can be raised and upheld by the DRB which may lead to less time burden in resolving disputes.   *(b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;*   * As above.   *(c) to ensure no undue discrimination between persons who are parties to the Code; and*   * This allows any issues concerning the equity or appropriateness of provisions within the TSC to be addressed in a transparent manner through the Modifications Committee and SEMC Decision making.   *(d) 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.*   * This change ultimately promotes the interest of consumers as it ensures that any decisions on policy matters which may have a financial impact can be considered in an open and transparent manner through defined decision-making processes. | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| If this Modification is not implemented, the DRB may in future disputes determine whether the provisions of the Code resulted in an equitable outcome for the relevant party, which may negatively impact on the Modifications Committee process, the wider objectives of the Code and on SEMC decision making. | | | | | |
| **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 Market Code, Grid Code, Exchange Rules etc.)* | | |
|  | | | No | | |
| ***Please return this form to Secretariat by email to*** [balancingmodifications@sem-o.com](mailto:balancingmodifications@sem-o.com) | | | | | |

**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.**