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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** | **7th October 2019** | | **Urgent** | | **Mod\_15\_19** |
| **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 this decision have not been shared publicly however they have been submitted to the RAs by the Market Operator. This Modification has been raised following a review of this decision. A number of changes are proposed to the TSC in order to clarify that the DRB’s primary role is to determine whether a party has acted in accordance with the provisions of the TSC.  It is the RAs’ view that the Trading and Settlement Code requires clarification in order to ensure that the DRB’s role is limited to taking decisions on whether a Party has complied with the provisions of the TSC, consistent with a number of comparable industry codes. 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.  In particular, a number of sections of the TSC refer to the resolution of disputes on an equitable basis and having regard to the Code objectives which may be interpreted as not being aligned to the primary objective of the DRB to decide whether or not any Party has acted in accordance with the provisions of the Code. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| A.2.1.5 *This section A.2 is for information only and, without prejudice to the rights, duties and obligations set out in the Licences and legislation referred to therein, is not intended of itself and should not be construed so as to create legally binding obligations as between or impose rights and duties on the Parties, provided that the Modifications Committee shall be required to have regard to the Code Objectives in accordance with section B.17 ~~and any Dispute Resolution Board shall be required to have regard to those objectives in accordance with paragraph B.19.5.~~*  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:*  *(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~~ strictly in accordance with the provisions of the Code ~~having regard to the Code Objectives~~;*  *(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 role of the DRB shall be to investigate any Dispute in order to decide whether or not the Disputing Parties have acted in accordance with the provisions of the Code.  **B.19.10** **DRB Decisions**  B.19.10.1 DRB decisions shall be limited to the following courses of action:  (a) ~~declare~~ declaring 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~~ declaring the correct application or interpretation of a provision of the Code having regard to Code Objectives;  (c) ~~advise~~ advising any other form of relief arising from a breach of the provisions of the Code that may be appropriate in the circumstances; ~~or~~  (d) ~~recommend~~ recommending that a Disputing Party take a specified action within a specified timeframe where such action will remedy a breach of the provisions of the Code or  (e) advising that no relief is possible:  (i) as no provisions of the Code have been breached or  (ii) as the remedies sought are not provided for in the Code.  **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:  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~~ strictly in accordance with the provisions of the Code; and  5. encourage resolution of disputes without formal legal representation or  reliance on legal procedures. | | | | | |
| **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 role is limited to taking decisions on whether a Party has complied with the provisions of the TSC. | | | | | |
| **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.**