
APPENDIX B: DISPUTE RESOLUTION AGREEMENT

1. This Appendix B contains the template for a Dispute Resolution Agreement.
2. Words in square brackets should be deleted as appropriate depending on whether there is a one member DRB or a three member DRB.

TEMPLATE FOR DISPUTE RESOLUTION AGREEMENT

DISPUTE RESOLUTION AGREEMENT

GENERAL CONDITIONS OF DISPUTE RESOLUTION AGREEMENT FOR A DISPUTE RESOLUTION BOARD

BETWEEN:-

1 THE DISPUTING PARTIES, REFERRED TO IN ANNEX 1

AND

2 EACH MEMBER OF THE DISPUTE RESOLUTION BOARD, REFERRED TO IN ANNEX 2 ("MEMBER" OR "THE MEMBERS" AS APPLICABLE)

RECITALS

- A. The Disputing Parties are, directly or via the Accession Deed, adhering parties to the Framework Agreement dated xxx, by which they agree to be bound by the terms of the Trading and Settlement Code ("Code").
- B. The Disputing Parties are parties to a Dispute within the meaning of the Code.
- C. The Dispute has, in accordance with section B.19 of the Code, been referred to a [single member / three member] Dispute Resolution Board ("DRB") for resolution.
- D. In order to facilitate the resolution of the Dispute by the DRB, the Disputing Parties wish to enter into this Agreement with each of the Members, setting out the terms and conditions upon which each Member is engaged to hear and determine the Dispute.

1. Definitions and Interpretation

1.1 Unless the context requires otherwise, words and expressions which are not otherwise defined in this Dispute Resolution Agreement (including the Recitals) shall have the meanings assigned to them in the Code.

1.2 Where the DRB is comprised of a single member, references to “the Members” shall be construed as references to “the Member” and references to “each Member” shall be construed as references to “the Member”.

2. General Provisions

2.1 Each Disputing Party engages each Member to constitute a Dispute Resolution Board to hear and determine the Dispute.

2.2 Each Member accepts that engagement.

2.3 Each Member agrees to hear and determine the Dispute:

1. in accordance with the Code, the Framework Agreement and Applicable Laws; and
2. on the terms and conditions set out in this Agreement.

2.4 This Agreement shall take effect when signed by all parties to this Agreement, on the last date of signature by a party.

2.5 The appointment of the Members pursuant to this Agreement is a personal appointment. At any time, the Members may give not less than 14 days’ notice of resignation to the Disputing Parties and to the Market Operator, and, where the Market Operator is a Disputing Party, to the Regulatory Authorities, and the Dispute Resolution Agreement shall terminate upon the expiry of this period.

2.6 No assignment or subcontracting of the Dispute Resolution Agreement is permitted without the prior written agreement of all the Disputing Parties to it and of the Members.

2.7 When appointing each Member, the Disputing Parties shall request of the relevant Member and shall be entitled to rely upon the Member’s representations that he/she:

1. is experienced in and familiar with alternative dispute resolution procedures; or
2. has appropriate experience of the electricity industry, or the particular matters the subject of the dispute,

and that he/she is familiar with, or shall, prior to the commencement of the hearing of the Dispute, be familiar with, the provisions of the Code.

3. Warranties

3.1 The Members warrant and agree that they are and shall be impartial and independent of the Market Operator and the Disputing Parties. Each Member shall promptly disclose, to each Disputing Party and to the other Members, any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

4. ~~Objectives~~Role of the Dispute Resolution Procedure~~DRB~~

4.1 ~~It is intended that procedures effected under this Dispute Resolution Agreement should to the extent possible~~A DRB shall:

- 1.~~(a).~~ ~~be simple, quick and inexpensive~~investigate and resolve the Dispute;
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; and~~

~~5-(b) encourage resolution of the dDisputes without formal legal representation or reliance on legal procedures;~~

~~(c) to the extent possible, ensure that the dispute resolution process is fair, simple, quick, and inexpensive;~~

~~(d) have regard to the provisions of the Code in determining the Dispute;~~

~~(e) have regard to the information submitted by the Disputing Parties in connection with the Dispute in accordance with B.19.9.2 of the Code; and~~

~~(f) issue a Decision in accordance with B.19.10 of the Code.~~

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 Secretariat no later than [thirty (30) days] from the date that the DRB issued its decision to the Disputing Parties, for publication on the Market Operator's website (or such other forum for publication as directed by the Regulatory Authorities) 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 Secretariat 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 Secretariat 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.

5. General Obligations of the Members

5.1 Each Member shall:

1. have no interest financial or otherwise in the Disputing Parties, nor any financial interest in the Code except for payment under the Dispute Resolution Agreement;

2. not previously have been employed as a consultant or otherwise by any of the Disputing Parties, except in such circumstances as were disclosed in writing to all of the Disputing Parties before they signed the Dispute Resolution Agreement;

3. have disclosed in writing to the Disputing Parties and the other Members, before entering into the Dispute Resolution Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Disputing Parties, and any previous involvement in the SEM;

4. not, for the duration of the Dispute Resolution Agreement, be employed as a consultant or otherwise by any of the Disputing Parties, except as may be agreed in advance in writing by the Disputing Parties and the other Members;
5. comply with the applicable provisions of section B.19 of the Code;
6. not, while a Member, enter into discussions or make any agreement with any of the Disputing Parties regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Resolution Agreement;
7. ensure his/her availability for all site visits and hearings as are necessary;
8. be knowledgeable of the Code and all elements of the Dispute by studying all documents received prior to commencement of the hearing of the Dispute; and
9. treat the details of the DRB's activities and hearings as private and confidential, and [subject to Clause 4A](#), not publish or disclose them without the prior written consent of the Disputing Parties and the other Members.

6. General Obligations of the Disputing Parties

- 6.1 The Disputing Parties and the Disputing Parties' employees, officers, servants or agents shall not request advice from or consult with the Members regarding the Code, otherwise than in accordance with the procedures determined by the DRB under the Code and the Dispute Resolution Agreement, and except to the extent that prior agreement is given by all other Disputing Parties and the other Members. The Disputing Parties shall be responsible for compliance with this provision by the Disputing Parties' employees, officers, servants or agents.
- 6.2 The Disputing Parties undertake to each other and to the Members that the Members shall not, except as otherwise agreed in writing by the Disputing Parties and the Members, be liable for any claims for anything done or omitted in the discharge or purported discharge of the Members' functions, unless the act or omission is shown to be in bad faith.
- 6.3 The Disputing Parties hereby jointly and severally indemnify and hold each Member harmless from and against claims from which he/she is relieved from liability under the preceding clause 6.2.

7. Breach of this Agreement

- 7.1 The parties acknowledge that the failure by a Disputing Party to comply with a requirement or determination of the Dispute Resolution Board:
 1. does not constitute a breach of this Agreement; but
 2. is a breach of the Code that may be referred to the Market Operator as an alleged breach of the Code, to be dealt with in accordance with the terms of the Code.

8. Payment

- 8.1 The Members' basis for charging shall be [insert basis for charging].
- 8.2 The Disputing Parties hereby agree to share equally the costs of the Members amongst them, subject to the terms of the Code and, in particular, any decision of the Dispute Resolution Board including as to costs.

9. Termination

- 9.1 At any time:

1. the Disputing Parties may jointly terminate the Dispute Resolution Agreement by giving 21 days' notice to the Members; or
 2. the Members may resign as provided for in clause 2.
- 9.2 If any of the Members fails to comply with the Dispute Resolution Agreement, the Disputing Parties may, without prejudice to their other rights, jointly terminate it by notice to the Members. The notice shall take effect when received by the Members.
- 9.3 Any such notice, resignation and termination shall be final and binding on the Disputing Parties and the Members. However, a notice for the purposes of clause 9.1(1) or 9.2 by a Disputing Party, but not by all, shall be of no effect.
- 9.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties having accrued prior to the date of termination.

10. Default of the Members

- 10.1 If a Member fails to comply with any obligation under clause 5, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Disputing Parties for any fees and expenses received by the Member and the other Members, for proceedings or decisions (if any) of the DRB which are rendered void or ineffective.

11. Severability

- 11.1 If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in this Agreement. Failure to agree on such a provision within one month of commencement of those negotiations shall result in automatic termination of this Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of the Agreement shall be suspended during such a negotiation.

12. Waiver

- 12.1 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

13. Entire Agreement

- 13.1 This Agreement and the Code, constitute the entire, complete and exclusive agreement between the parties in relation to the subject matter hereof, being the terms of engagement of the Members by the Disputing Parties.

14. Governing Law and Jurisdiction

- 14.1 Any dispute or claim arising out of or in connection with this Dispute Resolution Agreement shall be governed by the laws of Northern Ireland and the parties hereby submit to the jurisdiction of any of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising out of, under or in relation to this Dispute Resolution Agreement, in accordance with the terms of the Code.

EXECUTED THIS DAY OF

BY

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DISPUTING PARTY

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DISPUTING PARTY

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DRB MEMBER

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DRB MEMBER

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DRB MEMBER