

Mod_08_20: Imbalance prices to reflect the real-time value of energy

20th August 2020

Overview of Mod_08_20: Imbalance prices to reflect the real-time value of energy

- Seeks to retain the **status quo** by reversing the changes made by Mod_10_19 (*“Removal of Negative QBOAs related to Dispatchable Priority Dispatch Units from the Imbalance Price”*). Due to take effect in **October 2020**
- Mod_10_19 is categorically **unlawful** with respect to:
 - *Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing* (the **“EBGL”**) and
 - *Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity* (the **“Electricity Regulation”**)
- According to B.4.1.1 of the Trading & Settlement Code, an illegal section of the code must be ignored in settling the market. Once formally established Mod_10_19 is illegal, any imbalance prices formed using it will be subject to **repricing** and another **lengthy process of resettlement** would ensue

August - October 2019: Mod_10_19 introduced contrary to recommendation of Modifications Committee

- Market change made by Mod_10_19 summarised by:
 - *“Where a Generator Unit is Dispatchable, has priority Dispatch and has non-zero marginal costs, each Price corresponding to a Quantity in a set of Decremental Price Quantity Pairs in respect of this Generator Unit shall be set to zero by the Market Operator for the purposes of the Imbalance Pricing calculations”* (emphasis added)
- Motivated by SEM-15-064 *“Detailed Design Building Blocks Decision Paper”* and SEM-19-024 *“Balancing Market and Capacity market Options Consultation Paper”*
 - Regardless of decisions in reports, both are now **irrelevant** having been superseded by EU law
 - In any case, existence of negative prices is not an excuse for the suppression of free price formation
- **22nd August 2019**: Mod_10_19 was **rejected** by the Modifications Committee by a majority of six to four; decision was overturned by the Regulatory Authorities
- **30th October 2019**: RAs dismissed Committee’s verdict in their decision letter because:
 1. The code needed to align with SEM-15-064 (now redundant)
 2. They were *“not persuaded that the lack of a systems impact assessment at the time of the Committee’s vote supports the proposed rejection of the Modification (Mod_10_19)”*
 3. The argument that a price of 0 €/MWh did not remove these units from pricing did not support a rejection of the proposal
 4. *As the EBGL was “not applicable until after 31 December 2019... no barriers to progressing and implementing this Modification are apparent” – aware of future non-compliance but decided to introduce illegal market change anyway*

January 2020: European regulations come into effect; changes proposed by Mod_10_19 made illegal

- **31st December 2019:** EBGL comes into force in Ireland and Northern Ireland. Recital 17 of the Balancing Regulation and recital 15 of the Electricity Regulation state:

*“The general objective of imbalance settlement is to ensure that balance responsible parties support the system's balance in an efficient way and to incentivise market participants in keeping and/or helping to restore the system balance. This Regulation defines rules on imbalance settlement, ensuring that it is made in a non-discriminatory, fair, objective and transparent basis. To make balancing markets and the overall energy system fit for the integration of increasing shares of variable renewables, **imbalance prices should reflect the real-time value of energy**” (emphasis added)*
- The changes proposed by Mod_10_19 leave a disparity between the price paid to priority dispatch units for energy balancing and the market price formed – hence the real-time value of energy is not reflected in the price

January 2020: European regulations come into effect; changes proposed by Mod_10_19 made illegal

- **1st January 2020:** The Electricity Regulation comes into force in Ireland and Northern Ireland, containing several explicit provisions which make Mod_10_19 unlawful, including:
 1. **Article 3(a) and (b)** clearly state that prices must be formed on the basis of demand and supply, dictated by market rules which encourage free price formation.
 2. **Article 3(c) and (g)** clearly state that market rules shall deliver appropriate investment incentives for generation thereby facilitating fair competition. The suppression of market pricing signals negatively impacts the facilitation and the development of flexible generation, flexible demand and sustainable generation.
 3. **Article 6(5)** unambiguously states that imbalances must be settled at a price that reflects the real time value of energy.
 4. **Article 10** clearly prohibits measures which directly or indirectly impose maximum or minimum limits in wholesale electricity markets (including balancing markets). There is an express imposition on the Regulatory Authorities *“to take all appropriate actions to eliminate...any policy or measure which could serve to restrict wholesale price formation.”*
 5. **Article 13(5)** – no cognisance has been given to the suppression of market pricing signals which ensure transmission system operators and distribution system operators take appropriate measures to improve the capability and flexibility of the electricity grid to minimise downward re-dispatching of electricity produced from renewable energy sources or from high-efficiency cogeneration.

EU Regulations have a direct effect and are binding in their entirety – any breach will result in resettlement

- Pursuant to Article 288 of the Treaty on the Functioning of the European Union (“TFEU”), an EU Regulation:
 - has **general application** to Member States,
 - is **binding in its entirety** and
 - is directly applicable without the need for any national implementing legislation.
- An EU Regulation **has direct effect** - it can be relied on in a national court, and its provisions will override any inconsistent national law (Van Gen den Loos (case 26/62) EU:C:1963:1, at page 13)
- This means...
 1. Any direct intervention in the formation of imbalance prices such that it no longer reflects the real-time value of energy is **expressly forbidden** and this is **enforceable by law**
 2. SEM-15-064 “Detailed Design Building Blocks Decision Paper”, while agreed upon at the time, has been **superseded by EU Law** and is therefore irrelevant
 3. Mod_10_19 is **illegal**, its implementation would put Ireland and Northern Ireland in breach of Article 288 of the TFEU and in accordance with B.4.1.1 of the Trading & Settlement Code, is required to be ignored in settling the market
 4. Any imbalance prices formed using Mod_10_19 will be subject to **repricing** and another **lengthy process of resettlement** would ensue

December 2019 – April 2020: European Commission states satisfaction with status quo of market

- **16th December 2019:** Ireland submitted its proposed implementation of the Clean Energy Package (including the Electricity Regulation) to the European Commission. The report did not mention the changes to imbalance price formation to be introduced by Mod_10_19
- **30th April 2020:** European Commission replied to Ireland’s report. They reiterate the following:
 - “*The Commission welcomes that there are no price caps or **regulated prices** in the Irish wholesale electricity market. The Commission invites Ireland to **maintain its commitment not to intervene in price formation** other than applying harmonised maximum and minimum clearing prices for single day-ahead and intraday coupling*”
 - “*The Commission understands that Ireland **does not apply** price caps or **regulated prices** in its balancing market. The Commission invites Ireland to **maintain its commitment not to intervene in price formation.**” (emphasis added)*
- The European Commission clearly state their approval of the current procedure for imbalance price formation, and request Ireland do not intervene in this procedure in future

Regulatory Authorities have been made aware of Regulation breach and have not provided evidence of Mod_10_19's legality

- The RAs statement in their decision letter that there were “*no barriers to progressing and implementing*” Mod_10_19 because “*the EBGL is not applicable until after 31 December 2019*” betrays an acknowledgement that a **conflict exists** between Mod_10_19 and the EBGL
 - The RAs were aware this modification potentially contravened EU regulation but insisted on introducing it before conducting a legal review anyway
- ElectroRoute have bilaterally engaged with the RAs on the legality of Mod_10_19 and have asked the market change be delayed until a detailed legal review of the change is conducted – so far, no such review has been completed
- RAs have simply stated that they are “*comfortable that there are no issues*” with the legality of Mod_10_19 with respect to the EBGL and the Electricity Regulation. This is despite having the illegality explicitly highlighted and providing no evidence of their review
 - **12th August 2020**: At the All-Island Network Code Stakeholder Forum, the RAs and TSOs state they are still “*undertaking a local code review to assess the current Balancing Market’s compliance with the EBGL*”, and that it will be at least **2-3 months** before this work is ready for consultation. How can the RAs be “*comfortable*” if this work is still ongoing?
- This is a wholly unacceptable scenario and a grossly irresponsible way for the RAs to act – the RAs are obliged to ensure that there is no conflict between the Trading & Settlement Code and applicable law

Mod_08_20 must be approved urgently to keep the status quo and prevent irreversible illegal changes taking place

- Mod_10_19 will be implemented in the market systems in **Release F in October 2020**. The RAs have indicated to ElectroRoute that these system changes will be implemented despite the request for a detailed legal review and the highlighted illegalities
- **Today's proposed modification is a final challenge to remove these illegal changes from the Trading & Settlement Code *before* Release F in October 2020 and prevent the formation of unlawful imbalance market prices. Approving Mod_08_20 will retain the status quo for now**
- Mod_08_20 will ensure the Trading & Settlement Code stays in its current form by withdrawing the changes made by Mod_10_19
- This is the simplest way to avoid an exceedingly messy situation in several months time when Mod_10_19 is found to be illegal. Further software changes will be required to remove the illegalities and the illegal prices will need to be repriced and participants resettled

Potential outcomes from today's vote

Mod_08_20 accepted

- Maintains status quo
- Removes illegality and ensures we stay compliant with EU law
- No need for future resettlement
- ... provided RAs accept the decision of the Modifications Committee this time

Mod_08_20 is rejected, or vote is deferred

- Release F will introduce illegal market changes in October 2020
- Unlawful imbalance prices will be formed which do not reflect the real-time value of energy
- Upon challenge of the legality of Mod_10_19, it will be found illegal and will require market resettlement (from October 2020 on)
- Need more information on the situation? Then accept Mod_08_20 to maintain the status quo. To defer is to accept changes which are illegal