

Trading and Settlement Code Modifications Committee
C/O Katia Compagnoni
SEMO Modifications Committee Secretariat
The Oval
160 Shelbourne Rd
Dublin 4

08 September 2016

Our Ref: D/16/12221

**SEM Committee Decision for the Regulatory Authorities in relation to Mod_08_14
(Recommendation Report FRR_08_14)**

Dear Katia,

On 22 May 2015, the Modifications Committee submitted its Modification Recommendation Report with regard to Modification Proposal, Mod_08_14 (Clarification of Location of SEM Collateral Reserve Accounts) in accordance with paragraph 2.213 of the SEM Trading and Settlement Code (the Code).

Modification Proposal Mod_08_14 was raised by the Market Operator (SEMO) and sought to amend the paragraph 6.19 of Code so that SEM Collateral Reserve Accounts (CRAs) may be held in either Ireland or the United Kingdom rather than either Ireland or Northern Ireland as currently implied by paragraph 6.19. The reason for introducing this change is that, as a consequence of changes to the Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks introduced by the implementation of Mod_16_11 in July 2013 and the current contract with the SEM Bank, SEM Collateral Reserve Accounts in respect of Northern Ireland participants are now held in London.

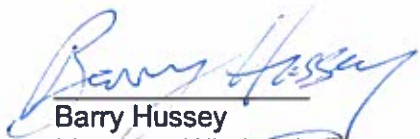
The SEM Committee notes that this proposal was debated extensively at four Modification Committee meetings and was associated with discussion of Mod_02_13 (Registration of Charges), in respect of which, the Modifications Committee submitted its Modification Recommendation Report (FRR_02_13) on 2 October 2015. The SEM Committee further notes that the Modifications Committee voted by a majority that the Proposal would better facilitate the achievement of Code Objectives 1.3.2 and 1.3.5 namely “to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner” and “to provide transparency in the operation of the Single Electricity Market”. However, three members voting in favour required that their concerns should be noted. Those concerns, identified in FRR_08_14 as “Dissenting View”, suggested that on the face of it the proposal was discriminatory in that for Rol Participants the CRAs must be in Rol, whilst for NI Participants the CRAs can be in another jurisdiction. In addition it was stated that “the Modification changes the T&SC retrospectively to align with the completed procurement exercise” (for the SEM Bank) and that “the Modification introduces English Law to the execution of the Deed of Charge, which is inconsistent with the T&SC”.

In relation to this "Dissenting View", the SEM Committee acknowledges that there is no way that the appointed SEM Bank can provide CRAs in Northern Ireland with the degree of protection required by the Code and by their contract and therefore supports the modification. In addition the SEM Committee notes that Participants have no access to the Cash Collateral held in such an account. Only the Market Operator can access the account, in line with the provisions of the Code.

Further, the Modification Proposal cannot change the Code retrospectively since any such change is disabled by paragraph 2.236 of the Code. The issue here is that the Market Operator has operated in breach of the provisions of paragraph 6.19 since CRAs were moved from Northern Ireland to London and this situation should be corrected as soon as possible. There are two ways of achieving such a correction: either moving the CRAs back to Northern Ireland, which cannot be done, for the reasons outlined; or amending paragraph 6.19 of the Code, which the Modifications Committee recommend. The issues regarding the introduction of English Law in the Deed of Charge is a matter for consideration in relation to Mod_02_13 (Registration of Charges).

Considering the above, the SEM Committee directs that, in line with the recommendation of the Modifications Committee in FRR_08_14, the Modification Proposal Mod_08_14 should be made and should be implemented on a Settlement Day basis from the next Working Day after the date of this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Barry Hussey", is written over a horizontal line.

Barry Hussey
Manager, Wholesale Electricity Market