



Single Electricity Market

FINAL RECOMMENDATION REPORT

MOD_11_22 PERMITTING THE USE OF EMAIL TO COMMUNICATE
CREDIT COVER CHANGES ON DEMAND GUARANTEES

22 SEPTEMBER 2022

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Document History

Version	Date	Author	Comment
1.0	22 Sept 2022	Modifications Committee Secretariat	Issued to Modifications Committee for review and approval
2.0	29 Sept 2022	Modifications Committee Secretariat	Issued to Regulatory Authorities for final decision

Reference Documents

Document Name
Trading and Settlement Code
Mod_11_22 Permitting the use of email to communicate credit cover changes on Demand Guarantees

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1. MODIFICATIONS COMMITTEE RECOMMENDATION

RECOMMENDED FOR APPROVAL– UNANIMOUS VOTE

Recommended for Approval by Unanimous Vote		
Paul McGuckin	Flexible Participant Member	Approve
Robert McCarthy	DSU Member	Approve
Eoghan Cudmore	Supplier Alternate	Approve
Sean McParland	Generator Alternate	Approve
Andrew Burke	Supplier Member	Approve
Rochelle Broderick	Supplier Member	Approve
Brigid Reilly	Supplier Alternate	Approve
Bryan Hennessy	Supplier Member	Approve
Stacy Feldmann	Generator Member	Approve
Paraic Higgins (Chair)	Generator Member	Approve
David Caldwell	Supplier Alternate	Approve
Cormac Fagan	Assetless Member	Approve
Cormac Daly	Generator Member	Approve

2. BACKGROUND

This Modification Proposal was raised by Pinergy and received by the Secretariat on the 23rd August 2022. The Proposal was raised and voted on at Meeting 112 on the 6th September 2022 with a version 2 submitted on the 7th September 2022.

The Modification Proposal states that currently, Part B of T&SC, Appendices and Agreed Procedures provide that the registration, cancellation and amendment of Letters of Credit (LoC) and Demand Guarantees should be communicated by SWIFT.

SWIFT is a messaging network that Financial Institutions use to transmit information and instructions through a standardised system of codes. It is typically used by Banks.

Non-bank Financial Institutions, e.g. Insurance Undertakings do not necessarily use SWIFT.

Therefore, the code needs to be modified to accept alternative forms of communication to be used for the registration, cancellation and amendment of Demand Guarantees.

The alternative forms of communication in the amendment is E-mail.

Communication for LoC's will continue to be done via SWIFT only.

In addition, following a legal review of the definition of an Insurance Undertaking has recommended the definition should be slightly amended to ensure it is consistent with the definition of a Credit Cover Provider for a Letter of Credit.

3. PURPOSE OF PROPOSED MODIFICATION

3A.) JUSTIFICATION OF MODIFICATION

This change ensures that the code can facilitate the use of a Demand Guarantee as collateral with alternative forms of communication provided for in addition to SWIFT.

3B.) IMPACT OF NOT IMPLEMENTING A SOLUTION

Market participants will not be able to use a Demand Guarantee as a form of collateral therefore precluding a secure, liquid source of credit cover to market participants. It will also reduce competition among credit providers ultimately disadvantaging the consumer.

3C.) IMPACT ON CODE OBJECTIVES

The modification above furthers the following aims of the code:

- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
- (d) to promote competition in the Single Electricity Market;
- (f) to ensure no undue discrimination between persons who are parties to the Code; and
- (g) 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.

4. WORKING GROUP AND/OR CONSULTATION

N/A

5. IMPACT ON SYSTEMS AND RESOURCES

No impacts on systems with minor impact on processes, procedures and publications.

6. IMPACT ON OTHER CODES/DOCUMENTS

N/A

7. MODIFICATION COMMITTEE VIEWS

MODIFICATIONS MEETING 112 – 6TH SEPTEMBER 2022

The Proposer provided an update on this Modification noting that Mod_01_22 Balance Surety Demand Guarantee had been approved to add a further form of acceptable collateral called a Surety or Demand Guarantee.

It was advised that currently the T&SC contains a requirement for Demand Guarantee to carry out communication in the form of swift payments by financial institutions and it was found that insurance undertakings could not use swift. It was noted that this Modification will permit email as an alternative form of communications with SEMO. Also, a correction to the definition of Demand Guarantees brought it in line with letter of Credit as they do not need an EEA approval.

MO Observer listed some process changes they would have to implement as a result of this Modification including manual tracking of the Demand Guarantees, while Letter of Credit are managed fully by the SEM Bank. MO Member also noted that Demand Guarantees are financial products product offered by Banks in addition to Insurance Undertakings and that this proposal lacks a template specific to those. This would have to be drafted by a banking institution as it would be very specific to the banking sector.

Following a vote on the Modification Proposal, the MO Member noted that the Proposer failed to mention that minor comments and adjustment to the language of the Demand Guarantee Templates in Appendix A were received by the SEM Bank and those will be circulated for comments by the Members in order to be included in the FRR.

MO Member also raised an issue with Insurance Undertakings that do not have a branch in the Dublin or Belfast area. This creates a risk in case urgent communications are required during software or outlook failure. Currently Letter of Credit Providers have the failsafe of the SEM Bank which are mandated by requirements in the tender process to have a branch in either Dublin or Belfast. In case of system failure documents can be manually couriered between SEMO and the SEM Bank who also has dedicated PC for business continuity. This safety net will not be available with Demand Guarantee because there is no requirement for a locational branch. The Member were requested to consider this risk and whether they would require SEMO to raise an additional Modification to rectify this inconsistency, it was generally accepted that this poses a low risk and no additional Proposal would be required.

8. PROPOSED LEGAL DRAFTING

The proposed Modification impacts a number of documents, namely:

- TSC Part B Appendices
- Part B Agreed Procedure 9
- TSC Part B ~~S-G~~ 9.1.3

The impact on each document is set out below. Amendments and additions are in red. Full marked up copies of each document are attached.

TSC Part B Appendix

A new standard template for a Demand Guarantee has been included in Appendix A omitting references to SWIFT and permitting communication by email and physical delivery, as set out below.

1. **TEMPLATE FOR STANDARD DEMAND GUARANTEE**

Form ~~of Doc Credit~~: Demand Guarantee

~~Documentary~~ Bond Number:

Insurance Undertaking Name and Address

Date of Issue:

Applicable Rules: URDG :This Demand Guarantee is subject to the Uniform Rules for Demand Guarantees International Chamber of Commerce Publication No. 758 .

Date and Place of Expiry:

Applicant [insert Participant's name] or [insert company name] on behalf of [insert Participant's name]

Beneficiary: EirGrid plc and SONI Limited, trading as "SEMO", being the Market Operator under the SEM Trading and Settlement Code. [address]

Currency Code, Amount (Maximum total amount):

~~Partial Shipments/~~Drawings: Allowed. This guarantee is for up to the amount of.....

Documents required:

Beneficiary Statement, as detailed below, must be on Market Operator letterhead **which can be sent by email to [insert email address(s)]**

QUOTE:

"We, the Market Operator under the Trading and Settlement Code (the "Beneficiary") hereby state that [insert Participant's name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [insert details] and as a result we hereby demand[insert amount being claimed] under Demand Guarantee number..... issued by[insert name of Insurance Company]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Demand Guarantee referred to above have the same meaning when used in this Beneficiary Statement."

SIGNED FOR AND ON BEHALF OF THE MARKET OPERATOR.

NAME..... TITLE.....

UNQUOTE

Additional Conditions:

1. This Demand Guarantee is available by payment at sight against presentation to the **Insurance Undertaking** of a Beneficiary Statement as detailed in Documents required.
2. The Beneficiary Statement must be made on original letterhead paper of the Beneficiary and signed on its behalf, and must be emailed / presented to **the Insurance Undertaking** on or before the Expiry Date.
2. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions **and provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast**, we shall make payment under this Demand Guarantee for Same Day Value on that day or if received after 14:00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the **Beneficiary** by email.
4. We the **Insurance Undertaking** hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Demand Guarantee in respect of any claims we may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever.
5. Effective From:
6. This Demand Guarantee is personal to you and your rights hereunder including the right to receive proceeds to this Demand Guarantee, are not assignable.

This Demand Guarantee shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising under, out of, or in relation to this Demand Guarantee.

Charges:

All **Insurance Undertaking** charges are for the account of the Applicant.

Instruction to Pay:

PLEASE REFER TO ADDITIONAL CONDITIONS.

APPENDIX

[Market Operator letterhead]

To: [Name and Address of Insurance Undertaking]

Date:

The Demand Guarantee ~~Documentary Bond~~ Number [] dated [] (“the Demand Guarantee”)

We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert Participant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [insert details]

and as a result we hereby demand[insert amount being claimed] under Demand Guarantee ~~Documentary Bond~~ Number..... issued by[insert name of Insurance Undertaking]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Demand Guarantee referred to above have the same meaning when used in this Beneficiary Statement.

For an on behalf of SEMO

Dated:

Part B Agreed Procedures 9

Various minor amendments to permit notifications of changes to posted credit cover by email for Demand Guarantees. Mark up attached.

T&SC Part B G 9.1.3

Update definition of Credit Cover Provider for Demand Guarantee to be consistent with definition for Credit Cover Provider for Letter of Credit.

A Credit Cover Provider shall in respect of a Demand Guarantee be an Insurance Undertaking which must:

(a) be authorised by (i) the Central Bank of Ireland ~~or equivalent regulatory authority in any European Economic Area (EEA) member state~~ to carry out Suretyship insurance activities in Ireland or (ii) the Financial Conduct Authority in the United Kingdom to carry out Suretyship insurance activities in the United Kingdom **or (iii) otherwise authorised to carry out suretyship activities in Ireland or the United Kingdom** ~~(in each case as applicable)~~ and

(b) satisfy one of the following requirements:

(i) be an Insurance Undertaking in ~~any of~~ **either** Ireland, ~~any EEA member state or the United Kingdom (including Northern Ireland) (as applicable):~~

(A) with a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody's Investors Service Inc.); or

(B) with a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody's Investors Service Inc.) and have a Balance Sheet Net Asset Value of not less than €1,000 million;

(ii) be a subsidiary of an Insurance Undertaking, where the parent company of that subsidiary has guaranteed the obligations of the subsidiary and such parent company has:

(A) a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody's Investors Service Inc.); or

(B) a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody's Investors Service Inc.) and has a Balance Sheet Net Asset Value of not less than €10,000 million;

9. LEGAL REVIEW

N/A

10. IMPLEMENTATION TIMESCALE

It is recommended that this Modification is implemented on a Settlement Day basis on the second Settlement Day following publication of RAs decision.

1 APPENDIX 1: MOD_11_22 PERMITTING THE USE OF EMAIL TO COMMUNICATE CREDIT COVER CHANGES ON DEMAND GUARANTEES

Proposer <i>(Company)</i>	Date of receipt <i>(assigned by Secretariat)</i>	Type of Proposal <i>(delete as appropriate)</i>	Modification Proposal ID <i>(assigned by Secretariat)</i>
Pinergy	23rd August 2022	Standard	Mod_11_22
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
Tadhg Gunnell		tadhg@pinergy.ie	
Modification Proposal Title			
Permitting the use of email and or physical delivery to communicate registering, cancelling or amending a Demand Guarantee			
Documents affected <i>(delete as appropriate)</i>	Section(s) Affected	Version number of T&SC or AP used in Drafting	
T&SC Part B Appendices, AP09, AP17	T&SC Part B Appendix A, and minor amendments to AP09	22 August, 2022	
Explanation of Proposed Change <i>(mandatory by originator)</i>			
<p>Currently, Part B of T&SC, Appendices and Agreed Procedures provide that the registration, cancellation and amendment of Letters of Credit (LoC) and Demand Guarantees should be communicated by SWIFT.</p> <p>SWIFT is a messaging network that Financial Institutions use to transmit information and instructions through a standardised system of codes. It is typically used by Banks.</p> <p>Non-bank Financial Institutions, e.g. Insurance Undertakings do not necessarily use SWIFT.</p> <p>Therefore, the code needs to be modified to accept alternative forms of communication to be used for the registration, cancellation and amendment of Demand Guarantees.</p> <p>The alternative forms of communication in the amendment is E-mail.</p>			

Communication for LoC's will continue to be done via SWIFT only.

Legal Drafting Change

*(Clearly show proposed code change using **tracked** changes, if proposer fails to identify changes, please indicate best estimate of potential changes)*

The proposed modification impacts a number of documents, namely:

- TSC Part B Appendices
- Part B Agreed Procedure 9

The impact on each document is set out below. Amendments and additions are in red. Full marked up copies of each document is attached.

TSC Part B Appendix

A new standard template for a Demand Guarantee has been included in Appendix A omitting references to SWIFT and permitting communication by email and physical delivery, as set out below.

3. **TEMPLATE FOR STANDARD DEMAND GUARANTEE**

Form of Doc Credit: Demand Guarantee

Documentary Bond Number:

Insurance Undertaking Name and Address

Date of Issue:

Applicable Rules: URDG :This Demand Guarantee is subject to the Uniform Rules for Demand Guarantees International Chamber of Commerce Publication No. 758 .

Date and Place of Expiry:

Applicant [insert Participant’s name] or [insert company name] on behalf of [insert Participant’s name]

Beneficiary: EirGrid plc and SONI Limited, trading as “SEMO”, being the Market Operator under the SEM Trading and Settlement Code. [address]

Currency Code, Amount (Maximum total amount):

Partial Shipments/Drawings: Allowed

Documents required:

Beneficiary Statement, as detailed below, must be on Market Operator letterhead **which can be delivered to the address within and sent by email to [insert email address(s)]**

QUOTE:

"We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert Participant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [insert details] and as a result we hereby demand[insert amount being claimed] under Demand Guarantee number..... issued by[insert name of Insurance Company]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Demand Guarantee referred to above have the same meaning when used in this Beneficiary Statement."

SIGNED FOR AND ON BEHALF OF THE MARKET OPERATOR.

NAME..... TITLE.....

UNQUOTE

Additional Conditions:

1. This Demand Guarantee is available by payment at sight against presentation to the **Insurance Undertaking** of a Beneficiary Statement as detailed in Documents required.

2. The Beneficiary Statement must be made on original letterhead paper of the Beneficiary and signed on its behalf, and must be presented to **the Insurance Undertaking** on or before the Expiry Date.

4. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions **and provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast**, we shall make payment under this Demand Guarantee for Same Day Value on that day or if received after 14:00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the **Beneficiary** by email.

4. We the **Insurance Undertaking** hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Demand Guarantee in respect of any claims we may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever.

5. Effective From:

6. This Demand Guarantee is personal to you and your rights hereunder including the right to receive proceeds to this Demand Guarantee, are not assignable.

This Demand Guarantee shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the jurisdiction of the Courts of Ireland and the Courts of Northern Ireland (and no other court) for all disputes arising under, out of, or in relation to this Demand Guarantee.

Charges:

All **Insurance Undertaking** charges are for the account of the Applicant.

Instruction to Pay:

PLEASE REFER TO ADDITIONAL CONDITIONS.

APPENDIX

[Market Operator letterhead]

To: [Name and Address of Insurance Undertaking]

Date:

The Demand Guarantee Documentary Bond Number [] dated [] (“the Demand Guarantee”)

We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert Participant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [insert details]

and as a result we hereby demand[insert amount being claimed] under Demand Guarantee Documentary Bond Number..... issued by[insert name of Insurance Undertaking]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.

Terms defined in the Demand Guarantee referred to above have the same meaning when used in this Beneficiary Statement.

For an on behalf of SEMO

Dated:

Part B Agreed Procedures 9

Various minor amendments to permit notifications of changes to posted credit cover by email for Demand Guarantees. Mark up attached.

Modification Proposal Justification
(Clearly state the reason for the Modification)

This change ensures that the code can facilitate the use of a Demand Guarantee as collateral with alternative forms of communication provided for in addition to SWIFT.

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)

The modification above furthers the following aims of the code:

- (b) to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
- (d) to promote competition in the Single Electricity Market;
- (f) to ensure no undue discrimination between persons who are parties to the Code; and
- (g) 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.

Implication of not implementing the Modification Proposal

(State the possible outcomes should the Modification Proposal not be implemented)

Market participants will not be able to use a Demand Guarantee as a form of collateral therefore precluding a secure, liquid source of credit cover to market participants.

It will also reduce competition among credit providers ultimately disadvantaging the consumer.

Working Group <i>(State if Working Group considered necessary to develop proposal)</i>	Impacts <i>(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.)</i>
N/A	No impact on systems with minor impact on processes, procedures and publications.
<p>Please return this form to Secretariat by email to balancingmodifications@sem-o.com</p>	