



## Single Electricity Market

### FINAL RECOMMENDATION REPORT

MOD\_13\_20 TRANSPARENCY OF DRB DECISIONS

1 MARCH 2021

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### Document History

Version	Date	Author	Comment
1.0	1 <sup>st</sup> March 2021	Modifications Committee Secretariat	Issued to Modifications Committee for review and approval
2.0	8 <sup>th</sup> March 2021	Modifications Committee Secretariat	Issued to Regulatory Authorities for final decision

### Reference Documents

Document Name
<a href="#">Trading and Settlement Code</a>
<a href="#">Modification Proposal</a>
<a href="#">Modification Proposal v2</a>

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## 1. MODIFICATIONS COMMITTEE RECOMMENDATION

### RECOMMENDED FOR APPROVAL– UNANIMOUS VOTE

Recommended for Approval by Unanimous Vote		
Paraic Higgins (Chair)	Generator Member	Approve
Sean McParland	Generator Alternate	Approve
Stacy Feldmann	Generator Member	Approve
Bryan Hennessy	Supplier Member	Approve
Ian Mullins	Supplier Member	Approve
Andrew Burke	Supplier Member	Approve
Alan Mullane	Assetless Member	Approve
Cormac Daly	Generator Member	Approve
Robert McCarthy	DSU Member	Approve
Philip Carson	Supplier Member	Approve

## 2. BACKGROUND

This Modification Proposal was raised by CRU & Utility Regulator and was received by the Secretariat on 19<sup>th</sup> November 2020. The proposal was raised at Meeting 102 on 3<sup>rd</sup> December 2020 and voted on at Meeting 103 on 11<sup>th</sup> February 2021.

Following discussion of Version 1 and Version 2 of Mod\_15\_19 and subsequent legal advice received by the Modifications Committee, the aim of this Modification is to improve the transparency provisions for decisions of the Dispute Resolution Board under the TSC. This will allow for decisions of the DRB to be made publicly available, while maintaining the confidentiality of disputing parties.

This change will result in information relating to disputes being made available to all market participants, which will ensure that there is equal access to such information. This may also reduce the overall number of disputes referred to the DRB, for example if multiple disputes cover the same or similar issues.

The legal advice sought by the Modifications Committee in this area included a number of recommendations, for example to clarify the publication timeline of such decisions, the responsible party for identifying confidential areas of the decision and publishing the information and the location of publications. The advice also suggested alternative legal drafting under Section B.19 and to the Dispute Resolution Agreement to provide for this change.

The original drafting in this area, in Mod\_15\_19 V2, was as follows;

## **Appendix B: Template for Dispute Resolution Agreement**

### **5. Transparency of the DRB process**

5.1 *Following any DRB decision being issued and the period of appeal having passed, it is the responsibility of the DRB to issue a summary of its decision via the SEMO Secretariat for publication, in a timely and accessible manner following consultation with the Disputing Parties. This must maintain the confidentiality of the Disputing Parties and have regard to the General Obligations on Members under Appendix B.*

5.2 *The objectives of issuing DRB decisions and recommendations into the public domain are to*

1. *Provide market confidence in the dispute resolution process*
2. *Encourage continuous improvement in the Code and its provisions, as may be furthered through dispute resolution and decisions made within that process*

The revised legal drafting below includes a revision to Section B.19 of the Code and a new clause within the template for Dispute Resolution Agreement in Appendix B.

## **3. PURPOSE OF PROPOSED MODIFICATION**

### **3A.) JUSTIFICATION OF MODIFICATION**

To improve the transparency of DRB decision making.

### **3B.) IMPACT OF NOT IMPLEMENTING A SOLUTION**

If this Modification is not implemented, the current requirement for SEMO to inform relevant third parties, determined to be impacted by the Dispute, of the *'existence, nature and progress of the Dispute'* under Section B.19.1.2 will be the only requirement related to the provision of information on disputes to market participants. This may result in important information being available to parties impacted by the dispute but not more widely.

### **3C.) IMPACT ON CODE OBJECTIVES**

(d) *'to provide transparency in the operation of the Single Electricity Market;'*

(e) *'to ensure no undue discrimination between persons who are parties to the Code;'*

The Code objectives include providing transparency in the operation of the Single Electricity Market, and to ensure that there is no undue discrimination between persons who are parties to the Code. This Modification ensures that all market participants receive information in relation to disputes while respecting confidentiality requirements.

## **4. WORKING GROUP AND/OR CONSULTATION**

N/A

## **5. IMPACT ON SYSTEMS AND RESOURCES**

Capacity Market Code - while not directly impacted may consider applying similar transparency and confidentiality arrangements.

## **6. IMPACT ON OTHER CODES/DOCUMENTS**

N/A

## **7. MODIFICATION COMMITTEE VIEWS**

### **MEETING 102 – 3 DECEMBER 2020**

The Proposer provided a background on this Modification Proposal advising that following a DRB decision the only requirement on SEMO is to provide an update on the achieved resolution but this does not include the publication of the content of a decision. The Proposer noted that this would help to identify Modifications to improve and reduce the overall number of disputes.

It was explained that there was some drafting to this extent in Mod\_15\_19. The Proposer noted that the points are addressed in section B.19.10 of the legal drafting where it states a copy of the decision will be sent to the Market Operator to discuss with disputing parties. Changes would also be introduced in the Agreed Procedures where it will note that the decision is to be sent in 30 days. It was also advised that if there is notice of dis-satisfaction timelines need to be reviewed. This would be a part of the Dispute Resolution Agreement.

A Supplier Member queried if it was possible for disputing parties to have a veto if an agreement could not be reached in 15 days regarding the content of the publication. It was noted the new timelines were introduced to help and it was important for all participants to be satisfied their views are respected. The Proposer asked the Committee if they thought any further clauses were needed and if any other views were held.

A number of Members highlighted some changes to be made to the legal drafting regarding clarity by adding a clause to prevent information to be 'unreasonably withheld' and being consistent with the use of 'days' and 'working days'.

An Assetless Member noted the high transparency of the current market but believed that when discussing this Modification a lot of emphasis was given to confidentiality and redaction. It was queried what kind of principle was being upheld in this area. The Proposer advised that copies of DRB decisions have been seen by the RAs and the Committee needed to decide how comfortable they were with these decisions being public as they may contain a variety of data or information that may be of confidential nature. The Proposer assured the Committee that the aim was to create a safe place for disputing parties and to strike a balance between transparency and protecting sensitive business data. A discussion ensued around redacted documents and if the DRB could have the final decision on what is published rather than the disputing parties.

The Proposer agreed that there were a number of changes that need to be reviewed and an updated version would be submitted for the February meeting.

### **MEETING 103 – 11 FEBRUARY 2021**

The Proposer gave an overview of this Modification noting the changes that were made to the legal drafting regarding the timeline for DRB decisions and also removing the specified time period to consult with involved parties.

These changes follow the comments put forward by Participants at the previous meeting.

## **8. PROPOSED LEGAL DRAFTING**

Minor change to clause in 4A 'Publication of the DRB's decision' requested in Modifications Meeting 103 therefore this Legal Drafting will replace the v2 Mod in the Appendix:

### **TSC Part B new paragraphs B.19.10.2 and B.19.10.3**

B.19.10.2 Subject to B.19.10.3, the DRB shall send a copy of its decision to the Market Operator no later than 30 Working Days from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised under B.19.9.7. Such a decision shall be published by the Market Operator on its website no later than two Working Days after receipt.

- B.19.10.3 The DRB shall:
- maintain the confidentiality of the Disputing Parties;
  - prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
  - prior to sending a copy of its written decision to the Market Operator for publication, consult with the Disputing Parties ~~for 15 Working Days~~ 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
  - have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement.
- B.19.10.3 For the avoidance of doubt, the DRB shall make the final decision on the designation of any commercially sensitive information of the Disputing Parties on a reasonable basis

#### **New Clause 4A of template for Dispute Resolution Agreement in TSC Appendix B**

##### 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 Market Operator no later than 30 ~~Working days~~ from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised under B.19.9.7, for publication on the Market Operator's website in accordance with the Code.

##### 4A.2 The DRB shall:

- maintain the confidentiality of the Disputing Parties;
- prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
- prior to sending a copy of its written decision to the Market Operator 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
- have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement.

#### **Change to Agreed Procedure 14 Section 3.3 – Additional step 12**

Step Description	Timing	Method	From/by	To
The DRB shall send a copy of its decision to the Market Operator no later than 30 days from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised	Once decision of DRB has become final and binding in accordance with the Code	-	DRB	Disputing Parties and Market Operator

## 9. LEGAL REVIEW

N/A

## 10. IMPLEMENTATION TIMESCALE

It is recommended that this Modification should be made effective from the first settlement date following publication of the SEM Committee decision.

## 1 APPENDIX1: MOD\_13\_20 TRANSPARENCY OF DRB DECISIONS

<b>MODIFICATION PROPOSAL FORM</b>			
<b>Proposer</b> <i>(Company)</i>	<b>Date of receipt</b> <i>(assigned by Secretariat)</i>	<b>Type of Proposal</b> <i>(delete as appropriate)</i>	<b>Modification Proposal ID</b> <i>(assigned by Secretariat)</i>
CRU and Utility Regulator	19 <sup>th</sup> November 2020	Standard	Mod_13_20 v2
<b>Contact Details for Modification Proposal Originator</b>			
<b>Name</b>	<b>Telephone number</b>	<b>Email address</b>	
CRU and Utility Regulator			
<b>Modification Proposal Title</b>			
<b>Transparency of DRB Decisions</b>			
<b>Documents affected</b> <i>(delete as appropriate)</i>	<b>Section(s) Affected</b>	<b>Version number of T&amp;SC or AP used in Drafting</b>	
T&SC Part B/ Appendix Part B/Agreed Procedure 14	B.19.10 & Appendix B	29 April 2020	
<b>Explanation of Proposed Change</b> <i>(mandatory by originator)</i>			
<p>Following discussion of Version 1 and Version 2 of Mod_15_19 and subsequent legal advice received by the Modifications Committee, the aim of this Modification is to improve the transparency provisions for decisions of the Dispute Resolution Board under the TSC. This will allow for decisions of the DRB to be made publicly available, while maintaining the confidentiality of disputing parties.</p> <p>This change will result in information relating to disputes being made available to all market participants, which will ensure that there is equal access to such information. This may also reduce the overall number of disputes referred to the DRB, for example if multiple disputes cover the same or similar issues.</p> <p>The legal advice sought by the Modifications Committee in this area included a number of</p>			

recommendations, for example to clarify the publication timeline of such decisions, the responsible party for identifying confidential areas of the decision and publishing the information and the location of publications. The advice also suggested alternative legal drafting under Section B.19 and to the Dispute Resolution Agreement to provide for this change.

The original drafting in this area, in Mod\_15\_19 V2, was as follows;

#### **Appendix B: Template for Dispute Resolution Agreement**

##### **6. Transparency of the DRB process**

6.1 *Following any DRB decision being issued and the period of appeal having passed, it is the responsibility of the DRB to issue a summary of its decision via the SEMO Secretariat for publication, in a timely and accessible manner following consultation with the Disputing Parties. This must maintain the confidentiality of the Disputing Parties and have regard to the General Obligations on Members under Appendix B.*

5.3 *The objectives of issuing DRB decisions and recommendations into the public domain are to*

3. *Provide market confidence in the dispute resolution process*
4. *Encourage continuous improvement in the Code and its provisions, as may be furthered through dispute resolution and decisions made within that process*

The revised legal drafting below includes a revision to Section B.19 of the Code and a new clause within the template for Dispute Resolution Agreement in Appendix B.

#### **Legal Drafting Change**

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

#### **TSC Part B new paragraphs B.19.10.2 and B.19.10.3**

B.19.10.2 Subject to B.19.10.3, the DRB shall send a copy of its decision to the Market Operator no later than 30 ~~Working Days~~ from the date that the DRB issued its decision to the Disputing Parties, unless a notice of dissatisfaction is raised under B.19.9.7. Such a decision shall be published by the Market Operator on its website no later than two ~~Working Days~~ after receipt.

B.19.10.3 The DRB shall:

- ~~e)~~ maintain the confidentiality of the Disputing Parties;
- ~~f)~~ prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
- ~~g)~~ prior to sending a copy of its written decision to the Market Operator for publication, consult with the Disputing Parties ~~for 15 Working Days~~ 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
- ~~h)~~ have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement.

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[B.19.10.3](#) For the avoidance of doubt, the DRB shall make the final decision on the designation of any commercially sensitive information of the Disputing Parties on a reasonable basis

**New Clause 4A of template for Dispute Resolution Agreement in TSC Appendix B**

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 Market Operator no later than 30 [Working days](#) from the date that the DRB issued its decision to the Disputing Parties, for publication on the Market Operator’s website in accordance with the Code.

4A.2 The DRB shall:

- (e) maintain the confidentiality of the Disputing Parties;
- (f) prior to sending a copy of its written decision to the Market Operator for publication, redact the identity of the Disputing Parties and any commercially sensitive information;
- (g) prior to sending a copy of its written decision to the Market Operator 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
- (h) have due regard to the General Obligations on Members set out in Clause 5 of the Dispute Resolution Agreement.

**Change to Agreed Procedure 14 Section 3.3 – Additional step 12**

Step Description	Timing	Method	From/by	To
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**Modification Proposal Justification**

*(Clearly state the reason for the Modification)*

To improve the transparency of DRB decision making.

**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*

<i>T&amp;SC for Code Objectives)</i>	
<p>(d) 'to provide transparency in the operation of the Single Electricity Market;'</p> <p>(e) 'to ensure no undue discrimination between persons who are parties to the Code;'</p> <p>The Code objectives include providing transparency in the operation of the Single Electricity Market, and to ensure that there is no undue discrimination between persons who are parties to the Code. This Modification ensures that all market participants receive information in relation to disputes while respecting confidentiality requirements.</p>	
<b>Implication of not implementing the Modification Proposal</b> <i>(State the possible outcomes should the Modification Proposal not be implemented)</i>	
<p>If this Modification is not implemented, the current requirement for SEMO to inform relevant third parties, determined to be impacted by the Dispute, of the 'existence, nature and progress of the Dispute' under Section B.19.1.2 will be the only requirement related to the provision of information on disputes to market participants. This may result in important information being available to parties impacted by the dispute but not more widely.</p>	
<b>Working Group</b> <i>(State if Working Group considered necessary to develop proposal)</i>	<b>Impacts</b> <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>
	<p>Capacity Market Code - while not directly impacted may consider applying similar transparency and confidentiality arrangements</p>
<p><b>Please return this form to Secretariat by email to <a href="mailto:balancingmodifications@sem-o.com">balancingmodifications@sem-o.com</a></b></p>	