

B.19 DISPUTE RESOLUTION

B.19.1 Preliminaries

- B.19.1.0 A “**Dispute**” means any claim, dispute or difference of whatever nature between any of the Parties howsoever arising under, out of or in relation to the Code or the Framework Agreement (including the existence or validity of the same) in respect of which:
- () one Party has served a Notice of Dispute; or
 - (a) a Dispute is deemed to arise under paragraph G.3.2.15 following a Settlement Query.
- B.19.1.1 A Notice of Dispute may be served on any number of Parties. Where the Market Operator reasonably determines that the resolution of a Disputed Event will impact a third Party who has not been served a Notice of Dispute, the Market Operator will inform that third Party of the existence, nature and progress of the Dispute, while maintaining the confidentiality of the Disputing Parties.
- B.19.1.2 Subject to the requirements set out in sections B.19.2 and B.19.3, a Dispute is deemed to exist when one Party notifies another Party or Parties in writing of the Dispute by way of a Notice of Dispute within the applicable timeframe, as follows:
- () for a Pricing Dispute, within five Working Days of the relevant Imbalance Settlement Price being published;
 - (a) for Disputes in relation to Settlement Queries under section G.3.2, within five Working Days of receipt of the Market Operator’s response to the relevant Settlement Query;
 - (b) for Disputes in relation to a claimed conflict between the Code and other relevant Legal Requirements, within 5 Working Days of the request of the Regulatory Authorities or the Market Operator in accordance with paragraph **Error! Reference source not found.**; and
 - (c) for all other Disputes, 20 Working Days of that Party having become aware of the Disputed Event and in any event within 2 years of the Disputed Event having occurred.
- B.19.1.3 The Notice of Dispute shall briefly set out the nature of the Dispute (including the Disputed Event(s)) and the issues involved. A copy of the Notice of Dispute shall be sent to the Market Operator and, where the Market Operator is a party to the Dispute, to the Regulatory Authorities.
- B.19.1.4 In the event of a Pricing Dispute, the Market Operator is to identify the relevant published Imbalance Settlement Price as being subject to the Dispute.
- B.19.1.5 The provisions set out in this Dispute Resolution Process shall not prejudice or restrict any Party’s entitlement to seek interim or interlocutory relief directly from the appropriate Court or Courts having competent jurisdiction.
- B.19.1.6 The obligations of the Parties under the Code shall not be affected by reason of the existence of a Dispute, save as provided for in any decision of the Dispute Resolution Board or a Court having competent jurisdiction. Disputing Parties shall continue to perform all of their obligations and functions as required by the Code including, for the avoidance of doubt, fulfilling all payment obligations as payment falls due.
- B.19.1.7 A published Imbalance Settlement Price may only be amended, adjusted, changed or varied in accordance with section **Error! Reference source not found.**

B.19.2 Reasonable Endeavours Obligations

B.19.2.0 Where a Dispute concerns:

- () the application of the provisions of the Code relating to Credit Cover Requirements and action is being taken under section **Error! Reference source not found.** or **Error! Reference source not found.**; or
- (a) the non-acceptance of a Contracted Quantity under section **Error! Reference source not found.**,

then:

- (b) the Disputing Party and the Market Operator shall negotiate in good faith and use reasonable endeavours to resolve the Dispute within 1 Working Day or otherwise as soon as is practicable; and
- (c) unless the Disputing Party and the Market Operator agree a resolution to the Dispute:
 - (i) within five Working Days of receipt of the Notice of Dispute; or
 - (ii) within 10 Working Days, if the Disputing Parties agree to extend this time,

the Disputing Party may refer the Dispute to a Dispute Resolution Board by issuing a Referral Notice as soon as practicable, and in any case within 5 Working Days of the expiry of the negotiating timelines set out in this paragraph B.19.2.0, otherwise the Dispute will be deemed to be withdrawn.

B.19.2.1 In the case of a Pricing Dispute:

- () the Disputing Party and the Market Operator shall negotiate in good faith and use reasonable endeavours to resolve the Pricing Dispute within five Working Days of the issue of the Notice of Dispute; and
- (a) unless the Market Operator determines that a manifest error has occurred under paragraph **Error! Reference source not found.**, a Disputing Party may refer the Pricing Dispute to a Dispute Resolution Board by issuing a Referral Notice as soon as practicable, and in any case within 8 Working Days of the issue of the Notice of Dispute, otherwise the Dispute will be deemed to be withdrawn.

B.19.2.2 In the case of any other kind of Dispute (“**General Dispute**”):

- () each Disputing Party must procure that a nominated representative of the Disputing Party, with authority to resolve the General Dispute, meets within 10 Working Days of the date of the issue of the Notice of Dispute with the nominated representatives of the other Disputing Parties to seek to resolve the General Dispute;
- (a) the Disputing Parties shall negotiate in good faith and use reasonable endeavours to agree a resolution to the General Dispute; and
- (b) if, having met in accordance with sub-paragraph (a), the Disputing Parties are unable to reach agreement within a further period of 10 Working Days of first meeting, the General Dispute may within a further period of 20 Working Days be referred by any Disputing Party to a Dispute Resolution Board by issuing a Referral Notice, otherwise the Dispute will be deemed to be withdrawn.

B.19.2.3 This section is not intended to preclude Disputing Parties meeting to seek to resolve a Dispute at any time.

B.19.2.4 Where the Market Operator is not a Disputing Party, and the Disputing Parties agree a resolution to a Dispute, they shall advise the Market Operator.

B.19.3 **General Provisions for Disputes**

B.19.3.0 All decisions in relation to the resolution of a Dispute or a manifest error identified by the Market Operator as per paragraph E.3.8.1 are subject to the Settlement Recalculation Threshold and a Price Materiality Threshold determined as follows:

() a Settlement Recalculation Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Settlement Recalculation Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later; and

(a) a Price Materiality Threshold shall be proposed by the Market Operator from time to time and approved by the Regulatory Authorities. The Market Operator shall publish the approved Price Materiality Threshold within 5 Working Days of receipt of the Regulatory Authorities' approval or two months before it commences to apply, whichever is the later.

B.19.3.1 Where a Disputed Event is in respect of one or more of the matters set out in paragraph G.3.2.5 and a Party becomes aware of the Disputed Event before the 20 Working Day period for raising a Settlement Query under paragraph G.3.2.3 expires, the Disputing Party must undertake the procedures set out in section G.3.2 before issuing a Notice of Dispute.

B.19.3.2 In the event that the Market Operator does not resolve a Settlement Query within the timeframe set out in paragraph G.3.2.15, the Settlement Query shall automatically become a Dispute and the Notice of Dispute shall be deemed to have been issued on the date on which the Market Operator was required to issue a resolution in respect of the Settlement Query.

B.19.3.3 Without prejudice to the jurisdiction of a Court to award costs pursuant to its jurisdiction in that regard where applicable, the Market Operator shall be liable for all costs in connection with a Dispute arising by operation of paragraph B.19.3.2.

B.19.3.4 In the case of a General Dispute, the Disputing Parties may mutually agree in writing with the written consent of the Market Operator (or the Regulatory Authorities where the Market Operator is a Disputing Party) to extend the period for negotiation or any other time period set out in the Dispute Resolution Process.

B.19.4 **Pricing Disputes**

B.19.4.0 The Party raising a Pricing Dispute shall provide supporting evidence to enable the Dispute Resolution Board to assess under paragraph B.19.9.3 the likelihood that the matter being disputed will, if the Dispute is upheld, satisfy the Price Materiality Threshold.

B.19.5 **Objectives** Role of the Dispute Resolution Process DRB

~~B.19.5.1 It is intended that the Dispute Resolution Process set out in or implemented in compliance with the Code and described in detail in the following paragraphs should to the extent possible:~~

B.19.5.1 A DRB shall:

(a) investigate and resolve Disputes referred to it:

- (b) encourage resolution of Disputes without formal legal representation or reliance on legal procedures;
- (c) ~~(a) be to the extent possible, ensure~~ that the Dispute Resolution Process is fair, simple, quick, and inexpensive; and
- ~~(b) preserve or enhance the relationship between the Disputing Parties;~~
- ~~(c) resolve and allow for the continuing and proper operation of the Code having regard to the Code Objectives;~~
- ~~(d) resolve Disputes on an equitable basis in accordance with~~ have regard to the provisions of the Code ~~having regard to the Code Objectives in determining a Dispute referred to it;~~
- ~~(e) take account of the skills and knowledge that are required for the relevant procedure~~ have regard to the information submitted by the Disputing Parties in connection with the Dispute in accordance with B.19.9.2; and
- ~~(f) encourage resolution of Disputes without formal legal representation or reliance on legal procedures~~ issue a Decision in accordance with B.19.10.

B.19.6 Dispute Resolution Board

- B.19.6.0 A Disputing Party shall immediately send a copy of any Referral Notice which it issues to the Market Operator (or to the Regulatory Authorities where the Market Operator is a Disputing Party) to the other Disputing Parties, and the Market Operator shall forward the Referral Notice to the chairperson of the Panel referred to in paragraph B.19.6.2.
- B.19.6.1 Referral of a Dispute to a DRB in accordance with the Dispute Resolution Process and compliance with the applicable provisions set out in sections B.19.1 to B.19.13 is a pre-condition to the entitlement to refer a Dispute to Court.
- B.19.6.2 The DRB shall be comprised of either a sole member or three members ~~and shall~~ except where the Disputing Parties cannot agree on the number of members. In this case, it shall be comprised of three members. The DRB shall be appointed from a panel of available DRB members established and maintained by the Market Operator with the prior approval of the Regulatory Authorities (“**the Panel**”). The Market Operator shall review the membership of the Panel, checking the continued willingness and availability of members to be included at least once every year. The Market Operator shall publish the name and brief curriculum vitae for each Panel member.
- B.19.6.3 The Panel shall consist of no less than 10 members subject to any vacancies which may arise from time to time which shall be filled as soon as practicable. Any vacancies arising from time to time shall not invalidate the Panel. The Regulatory Authorities shall from time to time nominate a member of the Panel to act as chairperson of the Panel. The identity of the members of the Panel and the chairperson shall be published by the Market Operator. The chairperson shall be responsible for nominating the member(s) of the DRB if the parties to a Dispute fail to agree on the composition of the DRB from the members of the Panel in accordance with paragraphs B.19.6.8 to B.19.6.10. The members of the DRB so appointed shall be independent of any Disputing Party to any dispute on which they shall be called to deliberate. The Regulatory Authorities shall appoint a replacement chairperson immediately on the position of chairperson being vacated on a permanent basis for any reason.
- B.19.6.4 The chairperson shall, with the prior agreement of the Regulatory Authorities, nominate a vice-chairperson from the members of the Panel, from time to time to

perform the chairperson's function in the event of the latter's unavailability or in the event of the chairperson's position being temporarily vacant. The chairperson and the vice-chairperson shall be retained under contract to the Regulatory Authorities. Where appropriate and at the sole discretion of the Regulatory Authorities, the contract may include provision for payment of a stipend to the chairperson and vice-chairperson in order to cover the reasonable expenses incurred by that person in connection with carrying out his or her duties under the Code. The Market Operator will indemnify the Regulatory Authorities for any payments made under the contract. The Market Operator shall with the prior approval of the Regulatory Authorities nominate further members to the Panel from time to time as may be necessary to fill any vacancies and to maintain the membership of the panel at a minimum of 10 members. Subject to paragraph B.19.6.6, there shall be no restriction on the ability or entitlement of the chairperson or vice-chairperson to act as a member of a DRB by virtue of holding those positions except where a dispute arises between the Disputing Parties in respect of the number of Members or the identity of Members of the DRB in relation to the Dispute concerned in which case the chairperson shall be proscribed from appointing himself to the DRB.

B.19.6.5 No Party to the Code shall hold the chairperson or vice-chairperson liable for any claims for anything done or omitted in the discharge or purported discharge of the chairperson's or vice-chairperson's functions under the Code, unless the act or omission is shown to be in bad faith. The Disputing Parties shall jointly and severally indemnify and hold the chairperson or vice-chairperson harmless from and against claims made by any third party against the chairperson or vice-chairperson in connection with their discharge or purported discharge of the chairperson's or vice-chairperson's functions under the Code, unless the claim is in connection with an act or omission shown to be in bad faith.

B.19.6.6 The Panel shall include suitably qualified experts from relevant disciplines who:

- () are experienced in and familiar with alternative dispute resolution procedures which do not involve litigation; and/or
- (a) have an understanding of the electricity industry or have the ability quickly to acquire such an understanding.

B.19.6.7 Where there are no more than two Disputing Parties, the Disputing Parties may agree within 10 Working Days of date of receipt by the receiving Party of the Referral Notice to establish a sole member DRB or a three member DRB. If the Disputing Parties to a Dispute agree to establish a sole member DRB, they shall agree to appoint the sole DRB member within a further 5 Working Days. If the Disputing Parties agree on a three member DRB, then each Disputing Party will within a further period of 5 Working Days nominate one member of the Panel to the DRB and the two members so nominated will appoint the third member within a further period of 5 Working Days. Each Disputing Party shall promptly notify the chairperson of the Panel of the identity of any member of the DRB that it has agreed with the other Disputing Party and/ or nominated.

B.19.6.8 In the event the Disputing Parties do not within the relevant period notify the chairperson of the Panel of their agreement on:

- () the number of members of the DRB; or
- (a) having agreed a sole member DRB, the identity of the sole member,

then, the chairperson of the Panel will within a further period of 10 Working Days determine the number of members of the DRB and appoint the appropriate number from the Panel, or in the case of the appointment of a sole member DRB, appoint the sole member from the Panel. In making any such determination and

appointment, the chairperson will take account of the complexity of the Dispute as set out in the Notice of Dispute and the range of issues which may be relevant.

B.19.6.9 In the event that the Disputing Parties agree upon a three member DRB but a Disputing Party does not notify the chairperson of the Panel of its nomination from the Panel, then the chairperson shall make the necessary nomination from the Panel within 10 Working Days of the end of the relevant period.

B.19.6.10 Where there are more than two Disputing Parties to any Dispute, then the DRB shall be appointed by the chairperson of the Panel unless all Disputing Parties have, within 10 Working Days of the date of receipt by the counterparties of the Referral Notice, notified the chairperson as to both the number of members of the DRB which shall be either one or three and as to the identity of member(s) to be selected from the Panel. In the absence of such notification, the chairperson shall:

- () determine whether a sole member or three member DRB is appropriate; and
- (a) appoint the member or members of the DRB from the Panel, and shall notify the Disputing Parties.

In making any such determination and appointment, the chairperson will take account of the complexity of the Dispute as set out in the Notice of Dispute and the range of issues which may be relevant.

B.19.6.11 The agreement between the Disputing Parties and either the sole member DRB or each of the three members of a three member DRB shall incorporate by reference the Dispute Resolution Agreement contained in Appendix B "Dispute Resolution Agreement", with such amendments as are agreed between them.

B.19.7 Changes in DRB Members

B.19.7.0 In the event any member of a DRB declines to act or is unable to act as a result of death, disability, incapacity, resignation or termination of appointment, the chairperson of the Panel or, where the chairperson of the Panel is the member affected, the vice-chairperson of the Panel shall appoint a replacement within 5 Working Days of notification of the relevant event. Such appointment shall be final and binding.

B.19.7.1 The appointment of any member of the DRB may be terminated by unanimous agreement of the Disputing Parties. Should this occur, paragraph B.19.7.0 shall apply.

B.19.8 Costs

B.19.8.0 Subject to paragraphs B.19.8.1 and B.19.8.3, each Disputing Party shall be responsible for paying an equal share of the costs of the DRB in respect of the Dispute involving them and shall bear its own costs of the procedure.

B.19.8.1 The DRB may make a decision as to the award of costs in any Dispute which decision shall be binding on the Disputing Parties.

B.19.8.2 The provisions of paragraph B.19.3.3 apply where the Market Operator does not resolve a Settlement Query within the timeframe set out in paragraph G.3.2.15.

B.19.9 DRB Procedures

B.19.9.0 For the purposes of this Code, a Dispute is deemed to be referred to the DRB as of the date of the receipt or issue of the Referral Notice by the Market Operator.

B.19.9.1 Disputing Parties shall promptly make available to the DRB all such additional information as they consider appropriate or as the DRB may require for the

purposes of making a decision on a Dispute. The DRB may request any information it considers relevant.

- B.19.9.2 For a Pricing Dispute, within five Working Days after the appointment of the DRB, or such longer time as may be agreed by the Disputing Parties, the DRB must consider and advise the Disputing Parties of its assessment as to the likelihood that the matter being disputed will, should the Dispute be upheld, satisfy the Price Materiality Threshold.
- B.19.9.3 The DRB shall be entitled to determine the applicable procedure including the manner and the timing of any written submissions and any oral hearings. In determining the applicable procedure, the DRB shall have regard to the considerations set out in paragraph **Error! Reference source not found.** above as well as the number of Disputing Parties. The DRB shall not act as arbitrator and neither the Arbitration Act 2010 (Ireland) nor the Arbitration Act 1996 (United Kingdom) shall apply.
- B.19.9.4 The DRB shall give its decision within:
- () 30 Working Days after the appointment of the DRB where there are no more than two Disputing Parties;
 - (a) 40 Working Days after the appointment of the DRB where there are more than two Disputing Parties; or
 - (b) such other period as may be proposed by the DRB and approved by the Disputing Parties.
- B.19.9.5 The DRB's decision shall be in writing providing reasons and state that it is given under paragraph B.19.9.5. Subject to paragraphs B.19.9.7 to B.19.12.1 below, the decision shall be binding on all Disputing Parties, who shall promptly give effect to it unless or until it shall be revised in an amicable settlement pursuant to paragraph B.19.11.1. The Parties shall continue to comply with the Code in all respects.
- B.19.9.6 If any Disputing Party is dissatisfied with the DRB's decision, then that Party may, within 15 Working Days after receiving the decision, give notice to the other Disputing Party or Parties and the DRB in writing of its dissatisfaction. If the DRB fails to give its decision within the relevant period set out in paragraph B.19.9.5, then any Disputing Party may, within 15 Working Days after such period has expired, give notice to the other Disputing Party or Parties and the DRB in writing of its dissatisfaction.
- B.19.9.7 A notice of dissatisfaction referred to in paragraph B.19.9.6 shall state that it is given under that paragraph, shall set out the Dispute and the reason(s) for dissatisfaction. Except as stated in paragraphs B.19.1.5 and B.19.13.0, no Disputing Party shall be entitled to commence any Court proceedings of whatever nature in relation to or in connection with a Dispute unless a notice of dissatisfaction has been given in accordance with paragraph B.19.9.6.
- B.19.9.8 If the DRB has given its decision on a Dispute to the Disputing Parties and no notice of dissatisfaction has been given by any Disputing Party within 15 Working Days after the date of the DRB's decision, then the decision shall be final and binding upon all Disputing Parties.

B.19.10 **DRB Decisions**

B.19.10.0 DRB decisions may:

- () declare that:
 - (i) the Dispute has been wholly or partially upheld; or

- (ii) the Dispute has not been upheld; and / or
- (a) declare the correct application or interpretation of a provision of the Code; and / or
- (b) advise ~~any other~~the form of relief that may be appropriate in the circumstances; and / or
- (c) recommend that a Disputing Party take a specified action within a specified timeframe; and / or
- (d) where, in the opinion of the DRB, the Dispute has given rise to issues that may require a Modification to the Code, recommend to the Regulatory Authorities that such a Modification be considered (in accordance with section B.17).

B.19.10.1 Subject to paragraph B.19.10.3, 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, and such decision shall be published by the Market Operator on its website (or such other forum for publication as directed by the Regulatory Authorities) no later than the next working day after receipt.

B.19.10.2 The DRB shall:

- (a) maintain the confidentiality of the Disputing Parties;
- (b) prior to sending a copy of its written decision to the SEMO 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 SEMO 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.

B.19.11 Amicable Dispute Settlement

B.19.11.0 Where notice of dissatisfaction has been given, the Disputing Parties shall attempt to settle the dispute amicably before the commencement of any Court proceedings may take place. However, unless both Parties agree otherwise, proceedings may be commenced in a Court having competent jurisdiction on or after the twenty first Working Day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

B.19.12 Court Proceedings

B.19.12.0 Unless settled amicably, any Dispute in respect of which notice of dissatisfaction has been issued may only be finally settled by proceedings in a Court having competent jurisdiction.

B.19.12.1 A Disputing Party may, in the proceedings before any Court having jurisdiction, adduce evidence or raise arguments not previously put before the DRB in the course of its consideration of the Dispute or included in the notice of dissatisfaction given by that Party. Any decision of the DRB shall be admissible as evidence in any Court proceedings.

B.19.13 Failure to Comply with DRB Decision

B.19.13.0 In the event that:

- () no Disputing Party has given notice of dissatisfaction within the period stated in paragraph B.19.9.7; and
- (a) the DRB's related decision (if any) has become final and binding; and
- (b) a Disputing Party fails to comply with this decision,

then any other Disputing Party may take such action as it deems necessary, including the commencement of Court proceedings, to enforce the relevant DRB decision. There shall be no mandatory reference to the DRB or requirement to refer the matter to amicable settlement in respect of such a reference.

B.19.14 Consequences of DRB Decision

B.19.14.0 The Market Operator shall implement a final and binding decision of the DRB and shall, if necessary to do so in the case of an Upheld Dispute:

- () procure a recalculation of an Imbalance Settlement Price in accordance with paragraph E.3.8.2 where the Price Materiality Threshold is exceeded;
- (a) procure a Settlement Rerun in accordance with the outcomes of the Upheld Dispute where the Settlement Recalculation Threshold is exceeded; and / or
- (b) take any other action that the Market Operator considers necessary to implement the decision. [In the case of a recommendation by the DRB this may take the form of a proposed Modification to the Code as per B.17 and associated Agreed Procedures.](#)

B.19.14.1 For the purposes of paragraph B.19.14.0(a), an Upheld Dispute that results in a Settlement Rerun shall be dealt with in one of the ways set out in paragraphs B.19.14.3 to B.19.14.5, depending on which of the following categories the Upheld Dispute falls in:

- () Upheld Dispute with Low Materiality; or
- (a) Upheld Dispute with High Materiality.

B.19.14.2 The Market Operator shall calculate the materiality of a change to Settlement Items arising from the resolution of a Dispute by reference to a single Settlement Statement or statement of Market Operator Charges.

B.19.14.3 In the event of an Upheld Dispute with Low Materiality, the Market Operator shall procure that the revised corrected data shall be used for the relevant Settlement Period for which Final Settlement has not occurred, and Settlement shall then take place on the next Timetabled Settlement Rerun.

B.19.14.4 In the event of an Upheld Dispute with Low Materiality after the final Timetabled Settlement Rerun, the Market Operator shall procure that an additional Settlement Rerun for the relevant Settlement Period shall then be performed within the timeframe directed by the DRB as a result of the Dispute Resolution Process.

B.19.14.5 In the event of an Upheld Dispute with High Materiality, the Market Operator shall procure that the revised corrected data will be used for the relevant Settlement Day and an additional Settlement Rerun for the relevant Settlement Period shall then be performed within the timeframe directed by the DRB as a result of the Dispute Resolution Process.