

Single Electricity Market

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| Final REcommendation Report  *Mod\_23\_11: Additional Clause for standard letter of credit*  24 February 2012 |

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Document History

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| **Version** | **Date** | **Author** | **Comment** |
| 0.1 | 17 February 2012 | Modifications Committee Secretariat | Issued to Modifications Committee for review and approval |
| 1.0 | 24 February 2012 | Modifications Committee Secretariat | Issued to Regulatory Authorities for final decision |

Reference Documents

|  |
| --- |
| **Document Name** |
| [Trading and Settlement Code](http://semopub/MarketDevelopment/MarketRules/TSC.doc) |
| [Mod\_23\_11 Additional clause for Standard Letter of Credit](http://semopub/MarketDevelopment/ModificationDocuments/Mod_23_11%20Letters%20of%20Credit.docx) |
| [Mod\_23\_11\_V2 Additional clause for Standard Letter of Credit](http://semopub/MarketDevelopment/ModificationDocuments/Mod_23_11_V2.doc) |

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# 1 MODIFICATIONS COMMITTEE RECOMMENDATION

## Recommended for approval – Unanimous Vote

|  |  |  |
| --- | --- | --- |
| **Mod\_23\_11\_V2 : Recommended for Approval (Unanimous Vote)** | | |
| Ian Luney | Generator Member | Approve |
| Emeka Chukwureh | Supplier Alternate | Approve |
| Niamh Quinn | Generator Member | Approve |
| Jill Murray | Supplier Member | Approve |
| Mary Doorly | Generator Alternate | Approve |
| Killian Morgan | Supplier Member | Approve |
| William Steele | Supplier Member | Approve |
| Kevin Hannafin | Generator Member | Approve |

# 2 Background

This Modification Proposal was raised by Airtricity and proposes changes to Appendix A of the Trading & Settlement Code. The original version was received by the Secretariat on 22 July 2011. The proposal was initially presented at Meeting 37 of the Modifications Committee on 09 August 2011 where it was deferred. The proposal was subsequently discussed and again deferred at both Meeting 38 on 11 October 2011 and Meeting 39 on 06 December 2011. An alternative version of the proposal was submitted for Meeting 40 on 31 January 2012, where it was voted on.

# 3 PURPOSE OF PROPOSED MODIFICATION

## 3A.) Justification for Modification

This modification proposal has been made following advice from the provider of the Airtricity Letter of Credit, Lloyds TSB. Lloyds has advised that the above clause must now be included within any Standby Letters of Credit issued by them in order to comply with more stringent financial regulations. It is understood that Lloyds TSB were not alone in asking for this clause to be inserted, suggesting there is a wider held belief that it is necessary to allow the current template to align more closely with the current view of best practice within the banking sector.

## 3B.) Impact of not Implementing a Solution

Should this Modification Proposal not be implemented, there may be delays putting in place Standby Letters of Credit through our Banks. Additionally, failure to adopt the proposal would also imply that the draft Standby Letter of Credit issued by SEMO will continue to be out of line with current best practice.

## 3c.) Impact on Code Objectives

2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;

# 4 assessment of alternatives

One alternative was delivered over the lifespan of the proposal. The original version of the proposal [(Mod\_23\_11)](http://semopub/MarketDevelopment/ModificationDocuments/Mod_23_11%20Letters%20of%20Credit.docx) and the Alternative version of the proposal [(Mod\_23\_11\_V2)](http://semopub/MarketDevelopment/ModificationDocuments/Mod_23_11_V2.doc) are available from the SEMO website.

# 5 working group and/or consultation

N/A

# 6 Impact on Other Codes/Documents

N/A

# 7 impact on systems and resources

N/A

# 8 MODIFICATION COMMITTEE VIEWS

## Meeting 37 09 August 2011

The proposal was first discussed at Meeting 37 in parallel to Mod\_29\_11 *Revision of Standard Letter of Credit Template*. Supplier Alternate was in favour of discussing both proposals at the Working Group on Mod\_16\_11 *Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks*. SEMO Alternate expressed the view that it would be advisable to keep the proposals separate from the Working Group as it would be examining the broader topic of Credit Rating providers.

The Chair queried as to whether the legal drafting in Mod\_23\_11*Additional clause for Standard Letter of Credit* could be included as additional wording to Mod\_29\_11 *Revision of Standard Letter of Credit Template.*  SEMO advised that the wording of Mod\_23\_11 is not featured in SEMO’s Mod\_29\_11. SEMO Alternate advised that the SEM bank had been consulted regarding Mod\_23\_11, which states that banking practice has changed; with Lloyds advising that the clause set out in the legal drafting of Mod\_23\_11 must now be included within any Standby Letters of Credit issued by them in order to comply with more stringent financial regulations. SEMO Member asked whether the Proposer (Mod\_23\_11) had, further to a conference call with SEMO prior to the Modifications meeting, checked with their bank where the requirements had come from as it was the opinion of the SEM Bank that they were not standard provisions. Proposer (Mod\_23\_11) advised that they had not yet received an answer but would take as an action.

Proposer (Mod\_29\_11) advised that alternative wording may be an option, however stated that it is not possible to have a caveat that is applicable to only one Participant. Supplier Member stated that it was not possible to vote on Mod\_23\_11 as the proposer was awaiting feedback from Lloyds. Two actions were placed at the Meeting;

* Airtricity to attain feedback regarding Mod\_23\_11 from Lloyds.
* Participants to review both Modification Proposals (Mod\_23\_11 and Mod\_29\_11) and submit comments in advance of Meeting 38.

## Meeting 38 11 October 2011

Supplier Alternate advised that no feedback had been attained from Lloyd’s in advance of the Meeting, thus the action was not closed off at the Meeting. Supplier Alternate questioned as to whether it would be constructive for the Treasury representatives from the Working Group on Mod\_16\_11 Credit Eligibility Requirements, to review both Mod\_23\_11 and Mod\_29\_11. SEMO advised that an action had been placed on Participants at the previous Meeting to review both proposals and submit comments in advance of Meeting 38. Power NI Supplier Alternate, Bord Gáis Energy Supplier Member and Viridian Power and Energy Generator Member confirmed that their Treasury representatives had reviewed the proposals and were satisfied with them.

The Chair stated that if SEMO’s proposal (Mod\_29\_11) was approved, and Airtricity’s proposal deferred (Mod\_23\_11), it would result in Mod\_23\_11 becoming null and void as the wording would be obsolete as it is based on the current drafting of the Code. SEMO Member advised that SEMO had no objection to the additional wording, stating however that Dankse Bank had confirmed that the clause set out in the legal drafting of Mod\_23\_11 is as a result of a change in standard practice as stated in the justification and that Airtricity had undertaken to ask their bank why it was necessary. SEMO Member stated that Participants had advised they felt that the current LOC wording was archaic, thus it would be preferable to have the new wording in the Code as soon as practicable. Proposer of Mod\_23\_11 advised that Airtricity were content to vote on both proposals or only SEMO’s proposal, Mod\_29\_11. RA Member advised that as there was an outstanding action on Mod\_23\_11 regarding the justification, it would not be appropriate to proceed with a vote on this proposal. Secretariat advised that if SEMO’s proposal was approved it would be necessary to insert the additional wording in the FRR. The action from Meeting 37 remained on Airtricity:

* Airtricity to attain feedback regarding Mod\_23\_11 from Lloyds.

## Meeting 39 06 december 2011

Proposer advised that the feedback received from Lloyds indicates that rights under LOC are not assignable. SEMO confirmed that they have no issue with the addition of the clause but noted that the justification stated this was standard banking practice, and the action was for Airtricity to explain this, which they have now done. Proposer stated that Lloyds advised that the insertion of this clause was necessary. Supplier Member questioned where the proposed wording would fit with the previously approved Mod\_29\_11 *Revision of Standard Letter of Credit Template*. Secretariat advised that Mod\_29\_11 was with the regulators awaiting a decision and the current provisions in the Code remained legally binding, therefore any drafting changes in the form of a proposal must be an edit to the existing rules. Secretariat further noted that the option exists for the proposal to be Recommended for Approval subject to the legal drafting changes and an FRR not drafted until after the decision was delivered by the RAs regarding Mod\_29\_11. The Committee were in agreement that the preferred solution was to defer the Modification until a decision was delivered on Mod\_29\_11. RA observer asked if a two month period in which the LOC is undergoing changes will impact on Participants renewing their letters. MO Member advised that the majority of LOCs are renewed in November each year. Secretariat advised that the RAs can set the effective date of the two proposals to align if preferred. An action was placed on Airtricity:

* Proposer to submit alternative version of proposal upon receipt of RA Decision of Mod\_29\_11

## Meeting 40 31 January 2012

The RAs issued their decision on Mod\_29\_11 *Revision of Standard Letter of Credit Template* with an effective date of09 January 2012. Mod\_23\_11\_v2 *Additional clause for Standard Letter of Credit* was submitted by Airtricity in advance of Meeting 40. At the Meeting, the proposer advised that the action placed on Airtricity at Meeting 39 to submit an alternative version of the proposal upon receipt of RA Decision of Mod\_29\_11 Revision of Standard Letter of Credit Template, was now closed due to submission of the alternative version. Proposer advised that the clause had been inserted into the new Letter of Credit template.

# 9 proposed legal drafting

As set out in Appendix 1 of this report.

# 10 LEGAL REVIEW

Complete

# 11 IMPLEMENTATION TIMESCALE

The proposed implementation date is one working day after the day on which the Regulatory Authority decision is made. It is proposed that this Modification is made on a Settlement Day basis.

# Appendix 1: Alternative proposal

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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **Airtricity Ltd** | **16 January 2012** | | **Standard** | | **Mod\_23\_11\_V2** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Deborah Murray** | | **01738 457728** | | [**Deborah.murray@sse.com**](mailto:Deborah.murray@sse.com) | |
| **Modification Proposal Title** | | | | | |
| **Additional clause for Standard Letter of Credit** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC** | | **Appendix A: Standard Letter of Credit** | | **Version 10** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| This document proposes the insertion of the clause shown below into the conditions set out within the current version of the Standard Letter of Credit to ensure that future Letters of Credit conform more closely to the current view of best banking practice. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| 1. Standard Letter of Credit   A.1 This Appendix A contains a standard template for a Letter of Credit.  Form of Doc Credit: IRREVOCABLE STANDBY LETTER OF CREDIT  Documentary Credit Number:  Date of Issue:  Applicable Rules: UCP [LATEST VERSION NO]  Date and Place of Expiry:  Applicant (Market Participant):  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):  Available With (ADVISING BANK IE SEMO'S BANK BY PAYMENT)  Partial Shipments/Drawings: Allowed  Documents required:  Beneficiary Statement, as detailed below, must be on Market Operator letterhead  QUOTE:  "We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert applicant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the applicant is a party) under paragraph [ insert details] and as a result we hereby demand …………..[insert amount being claimed] under Standby Letter of Credit number…….... issued by …………[insert name of Issuing Bank]. 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 Standby Letter of Credit 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. Trading and Settlement Code means the trading arrangements for the SEM   established in Northern Ireland pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and in Ireland pursuant to section 9BA(1) of the Electricity Regulation Act 1999 and as designated pursuant to regulations made under section 9BA(2)(a) of the Electricity Regulation Act 1999 (Ireland).   1. This irrevocable Standby Letter of Credit is available by payment at sight against presentation to the Advising Bank 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 Advising Bank on or before the Expiry Date. 3. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions the Advising Bank is required promptly to notify us by SWIFT of receipt of such Beneficiary Statement and inform us of the relevant details of such Beneficiary Statement. 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 Standby Letter of Credit 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 Advising Bank by SWIFT. 4. Where we, the Issuing Bank are also the Advising Bank, we may revise the above notification requirements as appropriate provided that this shall in no way affect the obligation on us to make payment under this Standby Letter of Credit. 5. We the Issuing Bank hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Standby Letter of Credit 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. 6. Effective From: 7. This Standby Letter of Credit is personal to you and your rights hereunder, including the right to receive proceeds to this Standby Letter of Credit, are not assignable.   This Letter of Credit shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of, or in relation to this Letter of Credit.  Charges:  All Issuing Bank charges are for the account of the Applicant.  All Advising Bank charges are for the account of the Beneficiary  Confirmation:  CONFIRMATION WITH OR WITHOUT? (THIS INSTRUCTION IS TO SEMO'S BANK TO ADD CONFIRMATION OR NOT)  Instruction to Pay:  PLEASE REFER TO ADDITONAL CONDITIONS.  ADVISING BANK TO CLAIM REIMBURSEMENT BY SWIFT AND RETAIN BENEFICIARY STATEMENT ON FILE. | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| This modification proposal has been made following advice from the provider of the Airtricity Letter of Credit, Lloyds TSB.  Lloyds has advised that the above clause must now be included within any Standby Letters of Credit issued by them in order to comply with more stringent financial regulations.  It is understood that Lloyds TSB were not alone in asking for this clause to be inserted, suggesting there is a wider held belief that it is necessary to allow the current template to align more closely with the current view of best practice within the banking sector. | | | | | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* | | | | | |
| 2. to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner; | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| Should this Modification Proposal not be implemented there may be delays putting in place Standby Letters of Credit through our Banks.  Additionally, failure to adopt the proposal would also imply that the draft Standby Letter of Credit issued by SEMo will continue to be out of line with current best practice. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures)* | | |
| No. | | | No impact on systems, resources, processes or procedures that we are aware of. The only impact may be the legal status of the proposed clause in the LoC. | | |
| ***Please return this form to Secretariat by email to*** [***modifications@sem-o.com***](mailto:modifications@sem-o.com) | | | | | |