

Trading and Settlement Code Modifications Committee  
c/o Esther Touhey  
SEMO Modifications Committee Secretariat  
The Oval  
160 Shelbourne Rd  
Dublin 4

30 September 2024

**Our Ref:** F/26446

**Updated SEM Committee Decision for the Regulatory Authorities in relation to  
Mod\_05\_23 (Final Recommendation Report FRR\_05\_23)**

Dear Esther,

On 1 June 2023, the Modifications Committee submitted its Final Recommendation Report (FRR) with regards to Modification Proposal Mod\_05\_23 'Market Compensation for Firm Curtailment' in accordance with Paragraph B.17.18.1 of Part B of the SEM Trading and Settlement Code (TSC). Modification Proposal Mod\_05\_23 was submitted to the Modifications Committee by SEMO on 5 April 2023 and discussed and voted on at Meeting 116 on 20 April 2023.

The SEM Committee, in 2020 and 2021, undertook a process of consultation relating to a number of matters regarding the Clean Energy Package, including a consultation on Dispatch, Redispatch, and Compensation Pursuant to Regulation (EU) 2019/943 (SEM-21-026) and a Proposed Decision on the Treatment of New Renewable Units in the SEM (SEM-21-027). A Decision Paper related to these papers, SEM-22-009, was published in March 2022.

This Modification aims to provide for implementation of the element of Decision SEM-22-009 related to the retention of ex-ante market revenues for firm curtailment going forward from the implementation date of this Modification. As noted by SEMO, this Modification is not seeking to implement arrangements for the retention of the ex-ante revenue for firm curtailment volumes for the period between January 2020 and the implementation date of this Modification, which will require separate implementation.

If this Modification is implemented, it would result in firm curtailment volumes receiving the same settlement treatment as firm constraint does today by including those volumes in the discount charge (which is a payment from SEMO to the Party registered, on behalf of the generator operator, under the TSC ) with a deemed decremental price of zero such that any imbalance charge would be offset and those volumes would retain their ex-ante market revenue. Costs would be recovered via the imperfections charge in the same way as those costs are recovered for firm constraint as indicated in the relevant decision. Settlement of non-firm curtailment volumes would remain unchanged (i.e., they would remain excluded from discount charges but would continue to receive curtailment charges reflecting the relative magnitude of the curtailment price, being the weighted average price of all ex-ante trades and the imbalance price for a given unit in a given period).

This Modification, if it is implemented, would implement the forward-looking element of the SEM Committee policy Decision SEM-22-009 in relation to the treatment of non-market based redispatch compensation pursuant to Regulation (EU) 2019/943.

The RAs note that this Modification was recommended for approval on a majority basis by the Modifications Committee.

On 20 September 2023, the SEM Committee issued a decision letter to SEMO directing that, in accordance with Paragraph B.17.20 of the Code, a modification, as set out in Appendix 1 of FRR\_05\_23, be implemented on 1 October 2024.

At the time of making this decision in September 2023, the ruling of the High Court on a challenge to Decision SEM-22-009 was pending. SEM-22-009 had been challenged in two sets of High Court proceedings. A judgment, covering both proceedings, was delivered on 10 November 2023; a further judgment was delivered on 1 July 2024; and a further ruling was delivered on 10 July 2024 (together the “High Court Judgments”). The High Court quashed the SEM-22-009 Decision and made various declarations. A stay on the High Court orders was put in place until the matter comes before the Court of Appeal on 11 October 2024. The CRU, as the Respondent, issued appeals in both cases on 8 August 2024 and intends to issue an application for a further stay pending the determination of the appeals.

Given the High Court Judgments and notwithstanding that a stay is currently in place on the High Court’s orders, the SEM Committee considers that implementation of Decision SEM-22-009 should not occur at this time. The SEM Committee also considers that the Modification, which aims to provide for implementation of the element of Decision SEM-22-009 related to the retention of ex-ante market revenues for firm curtailment going forward, should not be implemented at this time. That is so, in particular, where aspects of the Modification could conflict with the High Court Judgments, which, among others, provide that financial compensation under Article 13(7) of Regulation (EU) 2019/943 must be paid by the TSO to the generator operator, which may not be Party to the TSC, and not to an

intermediary registered under the TSC on behalf of the generator operator or via the retaining of revenues from ex-ante markets which would occur absent this decision by the SEM Committee.

Having considered the implications for the market and the potential impact on customers, and considering the complexity of the issues and the difficulties that would be encountered in attempting to reverse outcomes if it were to be required, the SEM Committee has concluded that Mod\_05\_23 should not be implemented on this date.

Therefore, the SEM Committee hereby amends the decision of 20 September 2023 and directs that the implementation of this Modification, as set out in Appendix 1 of FRR\_05\_23, is put on hold until further notice. The related system change should not be switched on in the market systems until further notice.

Yours sincerely,

**Kevin Hagan**  
**Manager**  
**Wholesale Electricity Markets**  
**Commission for Regulation of Utilities**

**Lisa Tate**  
**Manager**  
**Wholesale Electricity Markets**  
**Utility Regulator**

*(sent by email with no signature)*