

MODIFICATION PROPOSAL FORM			
Proposer (Company)	Date of receipt (assigned by Secretariat)	Type of Proposal (delete as appropriate)	Modification Proposal ID (assigned by Secretariat)
CRU and Utility Regulator	19 th November 2020	Standard	Mod_12_20
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
CRU and Utility Regulator			
Modification Proposal Title			
Amendments to DRB Process			
Documents affected (delete as appropriate)	Section(s) Affected	Version number of T&SC or AP used in Drafting	
T&SC Part B, Agreed Procedure 14	B.19.6, B.19.10, B.19.14	29 April 2020	
Explanation of Proposed Change (mandatory by originator)			
<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 new Modification is to provide a number of improvements to the process of DRB decision making, in relation to the number of members of the Dispute Resolution Board and DRB decisions in relation to Modifications to the Code.</p> <p>As part of the drafting of this Modification, the RAs have reviewed recent feedback received in relation to this area and the number of disputes raised so far in 2020, as recorded in SEMO's monthly performance reports, compared to the determination in August 2019 which gave rise to considerations on the role of the DRB.</p> <p>This Modification aims to make a number of targeted functional amendments to Section B.19 of the Code and this will be kept under review by the RAs in case further amendments are required in future. The earlier legal drafting changes proposed in relation to Section B.19.5 are not being progressed as part of this Modification.</p> <p>Each area of proposed changes is outlined below;</p> <p>Dispute Resolution Board This change ensures that where disputing parties cannot agree on the number of members to be appointed to the DRB in relation to a Dispute, it is comprised of three members to avoid a situation where there is a default of one member appointed without explicit agreement, as in such instances the Dispute may require a larger panel to consider the issue.</p> <p>DRB Decisions The intention of the amendment to Section B.19.10 of the Code outlined below is to allow for the DRB to recommend as part of its decision that a Modification to the Code should be considered in accordance with the normal Modification process. This could occur for example where the DRB has determined that no form of remedy is currently available under the Code. This is also reflected in section B.19.14.1.</p>			
Legal Drafting Change (Clearly show proposed code change using tracked changes, if proposer fails to identify changes, please			

B.19.6 Dispute Resolution Board

B.19.6.3 The DRB shall be comprised of either a sole member or three members, **except where the Disputing Parties cannot agree on the number of members. In this case, it shall be comprised of three members. The DRB and** 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.19.10 DRB Decisions

B.19.10.1 DRB decisions may:

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

B19.14 Consequences of DRB Decision

B19.14.1 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:

- (a) procure a recalculation of an Imbalance Settlement Price in accordance with paragraph E.3.8.2 where the Price Materiality Threshold is exceeded;
- (b) procure a Settlement Rerun in accordance with the outcomes of the Upheld Dispute where the Settlement Recalculation Threshold is exceeded; and / or
- (c) 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.**

Change to Agreed Procedure 14 Section 3.23

Step	Step Description	Timing	Method	From / By	To
1	If there are more than 2 Disputing Parties go to step 10.	-	-	-	-
2	Hold a meeting to decide	Within 10	Meeting	Disputing	-

	the composition of the DRB. If agreement on the composition of the DRB is reached, go to step 4, otherwise, notify the Chairperson and go to step 3. if agreement cannot be reached three DRB members should be appointed.	WD of receipt of Referral Notice		Parties	
3	Chairperson determines the composition of the DRB, appoints the appropriate number of DRB members from the Panel and notifies the Disputing Parties, Market Operator and Regulatory Authorities, go to step 12.	Within 10 WD of receipt of notification at step 1	Email / Facsimile	Chairperson	Disputing Parties, Market Operator, Regulatory Authorities
4	If the Disputing Parties agree to appoint a sole member DRB, go to step 6	-	-	-	-
5	If the Disputing Parties agree to appoint a three member DRB go to step 8	-	-	-	-
6	Agree the identity of the sole member of the DRB. If agreement is reached notify the DRB member, the Chairperson, Market Operator and Regulatory Authorities. If agreement is not reached, notify the Chairperson and go to step 7.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	All Disputing Parties	DRB member, Chairperson, Disputing Parties, Market Operator, Regulatory Authorities
7	Chairperson shall nominate the sole member of the DRB from the Panel and shall notify the relevant persons of the appointment, go to step 12.	Within 10 WD of receipt of notification from Disputing Parties at step 6	Email / Facsimile	Chairperson	DRB member, Disputing Parties, Market Operator, Regulatory Authorities
8	The Disputing Parties nominate one DRB member each and shall notify the relevant persons of the appointment.	Within 5 WD of agreement at step 1	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory

					Authorities
9	The DRB members appointed under step 8 nominate the third member of the DRB and notify the relevant persons of the appointment, go to step 12.	Within 5 WD of appointment at step 8	Meeting and notification by Email / Facsimile	DRB members	DRB members, Chairperson, Market Operator, Regulatory Authorities
10	The Disputing Parties shall seek to agree the composition of the DRB and the identity or identities of the member(s) of the DRB. If agreement is reached the Disputing Parties shall notify the relevant persons of the appointment, go to step 12. If agreement is not reached, notify the Chairperson and go to step 11 (three DRB members will be appointed in this case).	Within 10 WD of receipt of Referral Notice	Meeting and notification by Email / Facsimile	Disputing Parties	DRB members, Chairperson, Market Operator, Regulatory Authorities
11	Chairperson determines the composition of the DRB (i.e. sole member or three member DRB), nominates the member(s) of the DRB and notifies the relevant persons	Within 10 WD of receipt of request from Disputing Parties at step 10	Email / Facsimile	Chairperson	DRB members, Chairperson, Market Operator, Regulatory Authorities
12	Meet to finalise and execute Dispute Resolution Agreement in the form set out at Appendix B "Dispute Resolution Agreement" of the Code.	Within 15 WD of appointment of DRB	Meeting	DRB and Disputing Parties	-
13	If at any stage any member of DRB declines or is unable to act for reasons set out in the Code, that member must notify the Disputing Parties and the Chairperson.	Immediately following nomination, or if subsequent event gives rise to inability to act,	Email / Facsimile	DRB member	Chairperson and Disputing Parties

	immediately following that event				
14	If at any stage the Disputing Parties terminate the appointment of any member of the DRB pursuant to paragraph B.19.7.2 of the Code, the Disputing Parties shall notify the Chairperson.	Immediately following unanimous agreement to terminate appointment	Email / Facsimile	Disputing Parties	Chairperson
15	Chairperson shall nominate and notify a replacement member and proceed with process in accordance with steps 1 to 11, or, if a Dispute Resolution Agreement is already executed, arrange for new member to execute in place of outgoing member.	Within 5 WD of notification at step 14	Email / Facsimile	Chairperson	New DRB member and Disputing Parties

Change to Agreed Procedure 14 Section 3.3

7	DRB makes its decision having due regard to the objectives of the Dispute Resolution Process and notifies Disputing Parties in writing of its decision and reasons for its decision. <u>If this decision includes a recommendation by the DRB for a proposed Modification to the Code, the Market Operator will raise this for discussion at the next Modifications Committee Meeting and outline proposed next steps (if any).</u>	For bilateral Disputes, within 30 WD of appointment of DRB or such longer period as agreed by DRB and the Disputing Parties under step 6; or For multilateral Disputes, within 40 WD of appointment of DRB or such longer period as agreed by DRB and the Disputing Parties under step 6	Email / Facsimile	DRB	Disputing Parties, Market Operator or Regulatory Authorities
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Modification Proposal Justification
(Clearly state the reason for the Modification)

The intention of this Modification is to make improvements to the process of DRB decision making that have been identified and discussed with the Modifications Committee following discussions of earlier versions of this Modification, a working group and discussion of legal advice received.

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)

- (b) *to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;*
- This Modification should improve the DRB decision making process and help to identify changes required to the TSC as a result of disputes.

Implication of not implementing the Modification Proposal

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

If this Modification is not implemented, where a Dispute is raised and relevant parties cannot agree to the number of members of the DRB, one member may be appointed by default, however some complex issues will benefit from a greater number of members to consider these.

In addition, where as a result of a dispute it is identified that changes may be required to the TSC, there is currently no provision within the scope of DRB decisions to recommend this.

Working Group

(State if Working Group considered necessary to develop proposal)

Impacts

(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.)

Capacity Market Code - while not directly impacted we may consider applying similar DRB arrangements

Please return this form to Secretariat by email to balancingmodifications@sem-o.com

Notes on completing Modification Proposal Form:

1. If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.
2. Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.
3. Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.
4. For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:

Agreed Procedure(s):	means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in either Part A or Part B Appendix D "List of Agreed Procedures". The Proposer will need to specify whether the Agreed Procedure to modify refers to Part A, Part B or both.
T&SC / Code:	means the Trading and Settlement Code for the Single Electricity Market. The Proposer will also need to specify whether all Part A, Part B, Part C of the Code or a subset of these, are affected by the proposed Modification;
Modification Proposal:	means the proposal to modify the Code as set out in the attached form
Derivative Work:	means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal

The terms "Market Operator", "Modifications Committee" and "Regulatory Authorities" shall have the meanings assigned to those terms in the Code.

In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of Part A or Chapter B of Part B of the Code (and Part A Agreed Procedure 12 or Part B Agreed Procedure 12) , which I have read and understand, I agree as follows:

1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:
 - 1.1 to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;
 - 1.2 to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;
 - 1.3 to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;
 - 1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.
2. The licences set out in clause 1 shall equally apply to any Derivative Works.
3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.
4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.
5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.