Process of approved Trading and Settlement Code Modifications coming into effect

29th August 2007

Introduction

On the 3rd July 2007, the Commission for Energy Regulation and the Northern Ireland Authority for Utility Regulation (The Regulatory Authorities or RAs) designated the Single Electricity Market Trading and Settlement Code (TSC) to be that Code as published on the All Island Project website on 3rd July[1], and modified from time to time thereafter in accordance with procedures set out in the TSC. The designated Code holds the reference number AIP/SEM/07/379.

At the TSC Modification Committee meeting on 20th August 2007 the RAs were requested to clarify an issue in relation to the modification process and the legal status of the Code.

The Committee's key question was if an RA approved modification has to be inserted into the TSC for it to be legally binding and/or for it to come into effect, or if RA approval alone was sufficient for the modification to have legal status. Essentially, the Committee sought clarification on what version of the code parties were bound by at any particular time.

RA Clarification

1. In the process of a proposed modification, the decision of the voting members of the Committee to propose the modification (or not) has no legal status in relation to the TSC. That decision is part of the input to the RAs which they will use in reaching their decision whether to:

    (a) direct a modification in accordance with the recommendation of the Mods Committee;

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[1] See http://www.allislandproject.org/en/trading-settlement-code-decision.aspx?article=1854c8b6-c4d1-46fd-a86b-03c6fa7330f4

(b) direct a modification not in accordance with the recommendation (i.e. change the modification or direct a modification which the Committee isn't proposing);

(c) reject the modification proposal;

(d) require the Mods Committee to do more work.

2.   If the RAs direct a modification is to be made then, pursuant to paragraph 2.220 of the Code, the modification becomes effective either (i) within 2 Working Days of the Regulatory Authorities decision; or (ii) on such date as the Regulatory Authorities state in their decision.

The term "decision" is not defined in the Code. However, the RAs have a practice of issuing joint decision documents which are dated. We would take the view that paragraph 2.220 should be interpreted as referring to a joint decision of the RAs, which is issued to the Mods Committee, directing that a modification is to be made. As a matter of contract, the modification automatically becomes an effective part of the Code on the date that is two working days after the date of such decision, or on the effective date specified in the decision. Where the RAs specify the effective date, the timing is likely to be aligned with a series of software releases through the year, planned by the Market Operator to enable effective control of software versions in its systems. This process will be part of the Market Operator's development strategy which the MO licences call for.

Under paragraph 2.342 of the Code, the Market Operator is under an obligation to amend the published version of the Code to reflect a modification as soon as the modification takes effect. However, this is expressly stated not to affect the date of coming into effect of the modification. As such, a modification may become effective before the published draft of the Code is amended to include the modification.

3.   As a separate issue, from the date that the decision is made by the RAs to direct that a modification be made, there is a legally binding agreement between the parties to the Code that the modification will take effect on the applicable effective date. The Market Operator is obliged under paragraph 2.342 to keep an up-to-date published list of all pending modifications which have not yet come into effect. As a procedural matter, it would be useful if the Modifications Committee maintained a working draft of the Code incorporating all modifications which have been approved by the RAs so that new modification proposals could be proofed against this draft.