

SEM COMMITTEE

TRADING AND SETTLEMENT CODE

RA Modification Proposals

CONSULTATION PAPER

12th June 2009

SEM-09-065

Introduction

The SEM Trading and Settlement Code (the Code) commenced on 3rd July 2007, when the Framework Agreement was signed by the original signatories. The Code contains within it the mechanisms by which changes may be made to the terms of the Code – the Modifications Process¹. The Regulatory Authorities (RAs) can use those processes to propose any change that they believe should be made to the Code. The process allows the Modifications Committee eight months to consider a Modification Proposal before a recommendation report is required to be submitted to the RAs seeking a determination in respect of that proposal².

The SEM Committee is conscious that there may be Modification Proposals submitted by the RAs under the Code, which are driven by or linked to the SEM Committee's or RA's statutory functions, duties or objectives. Under these circumstances, the SEM Committee does not believe that it is always appropriate to allow the Modifications Committee eight months to consider an issue where the RAs have already undertaken public consultation on an issue within their remit and that instead a process similar to that used for Modification Proposals deemed to be "Urgent" should be used.

Modifications deemed "Urgent" under the Code is defined by reference to criteria that a Modification Proposal shall fulfill in order that it may be determined to be "Urgent"³. The Code provides that Modification Proposals classified as Urgent may be subject to a fast-track process for decision making and subject to a plan for reaching a decision, which the RAs have the right to veto or to direct amendments to⁴.

The SEM Committee takes the view that the procedure used for Modifications Proposals that are deemed 'Urgent' is a reasonable and more appropriate process for a Modification Proposal which is driven by or linked to the SEM Committee or the RA's statutory functions, duties, or objectives and on which public consultation has already been undertaken by the RAs such that further consultation on the Modification Proposal by the Modification Committee would be duplicative and unnecessary.

The SEM Committee is therefore publishing this consultation to seek views on the above proposal that the process set out in the Code for dealing with Urgent Modifications should also be allowed for a new class of Modification Proposal (proposed to be named 'RA Modification Proposals').

¹ See paragraphs 2.147 to 2.236 of the Code

² See paragraph 2.192 of the Code

³ See paragraph 2.208 of the Code

⁴ See paragraph 2.211 of the Code

The SEM Committee welcomes all comments on the proposals in this paper. Comments should be sent, preferably in electronic form, to:

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The closing date for comments is Friday, 3rd July 2009.

Following a decision on this proposal by the SEM Committee, the proposed relevant changes to the Trading and Settlement Code may be raised as a Modification Proposal at the next meeting of the Modification Committee.

1. Background

Following consultation, the Single Electricity Market (SEM) Trading and Settlement Code (the Code) was designated and came into effect on 3rd July 2007 and the SEM went live on 1st November 2007. Section 2 of the Code sets out the process by which the Code may be amended (see paragraphs 2.147 to 2.236). This is the only process for amending the Code.

When the Code was being developed it was thought possible that future amendments to the Code would largely be left to the Participants and that the RA's interest in proposing Modifications would be limited. This has been largely true to date as the RAs have only proposed 11 modifications (about 6% of the total). However, it is becoming clear that future regulatory developments could result in increased amendments to the Code, which may have wider scope and greater regulatory significance (for example, see "Scope of CPM Medium Terms Review", SEM-09-035, 8th April 2009; see also the "SEM Committee Annual Report", SEM-09-022, March 2009, and its Section 11 setting out the work-plan for the second year of the SEM).

The SEM Committee⁵ takes the view that some change to the Code Modifications Process may be necessary to enable changes which result from regulatory matters, and which have already been the subject of wide consultation by the RAs, to move through the Modifications Process in a more efficient manner and without requiring the Modifications Committee to duplicate processes which have already been undertaken outside the Code processes. However, the SEM Committee also take the view that any such amendments should not limit the proper review by the Modifications Committee nor by-pass the Code Modifications Process.

2. Code Modification Process

An outline of the SEM Trading and Settlement Code modification process is as follows:

- Any person may submit a Modification Proposal to amend the Code;
- Such proposals are required to propose changes to the Code legal drafting;
- Such proposals are also required to set out how the proposer believes that the Modification Proposal would better facilitate the Code Objectives;

⁵ The SEM Committee is established in Ireland and Northern Ireland by virtue of section 8A of the Electricity Regulation Act 1999 as inserted by section 4 of the Electricity Regulation (Amendment) Act 2007, and Article 6 (1) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 respectively. The SEM Committee is a Committee of both CER and NIAUR (together the RAs) that, on behalf of the RAs, takes any decision as to the exercise of a relevant function of CER or NIAUR in relation to an SEM matter.

- The Modifications Committee is obliged to consider and to develop any Modification Proposal (making use of working groups as it wishes) and to decide whether it believes that the resultant Modification Proposal will better facilitate the Code Objectives;
- The Modifications Committee then prepares a Modification Recommendation Report (the contents of which is set out in paragraph 2.215 of the Code) to the RAs. Such a report is required to be submitted within 8 months⁶ of the receipt of a Modifications Proposal (see paragraph 2.192);
- On receipt of the Modifications Committee report, the RAs (on behalf of the SEM Committee) can make one of three decisions on the Modification Proposal set out in the report:
 - Direct a modification to the Code;
 - Reject the modification proposal; or
 - Direct the Modifications Committee that further work is required.

Depending upon the complexity of and controversy about the Modification Proposal this can be a very brisk or a very slow process.

3. Urgent Modifications

The Code recognises that there may be circumstances where a Modification Proposal needs to be progressed in a more time efficient manner. The Code therefore designates a class of Modification Proposals as “Urgent”, which are then subject to the fast track process. The RAs determine whether a Modification Proposal is “Urgent” or not, but an Urgent Modification is currently required to comply with at least one of the following criteria set out at paragraph 2.208:

- if not made it would prejudice safety or security of supply of electricity;
- if not made it would unduly interfere with, threaten or disrupt the operation of the SEM;
- it is required to correct an obviously material error or inconsistency in the Code.

An Urgent Modification is required to be treated differently from others. Firstly, the Modifications Committee is required to arrange an emergency meeting (rather than waiting for the next scheduled meeting⁷) to discuss it. Secondly the Modifications Committee is required

⁶ This period can be extended with RA consent.

⁷ The Code requires that the Modifications Committee meets at least once every two months (see paragraph 2.183). At present that is the frequency of its meetings.

to produce a plan for dealing with the Modifications Proposal, which the RAs may veto or amend.

This means that an Urgent Modification is likely to be dealt with by the Modifications Committee in a more time orientated fashion than would be the case for other Modification Proposals.

4. RA Modification Proposals

The SEM Committee believes that the Code should recognise that there are further Modification Proposals that should be subject to the fast-tracked “Urgent” Modification process under the Code. The SEM Committee does not believe that such a facility should be widely available and takes the view that it should be used with discretion. However, where the RAs are seeking to implement a regulatory change that impacts upon the Trading and Settlement Code and in relation to which they have already undertaken public consultation and have published their conclusions based upon that consultation, the SEM Committee takes the view that a more restricted and timely progress through the Code Modifications process is called for.

The SEM Committee therefore takes the view that any Modification Proposal which meets the following criteria may be designated as a ‘RA Modification Proposal’ and treated in the same way as a Modification Proposal which is deemed to be “Urgent” under the Code:

- the Modification Proposal is submitted by the RAs and is classified by the RAs as a RA Modification Proposal; and,
- the RAs have already undertaken public consultation, and published their conclusions or decision on the subject that the proposed changed legal drafting in the Code addresses.

These criteria are suggested to allow for RA Modification Proposals to be progressed in a more efficient manner and without requiring the Modifications Committee to duplicate the consultation process(es) which has already been undertaken by the RAs outside of the Code processes. Importantly however, the process as suggested aims to ensure that both the Code Modifications process is not sidelined and that the Modifications Committee can take a view on the implementation in the Code of the regulatory action of the RAs so that the skills and experience of the Committee can be used to enhance RA Modification Proposals.

5. Proposed Changes to the Process

Subject to comments received from respondents to this consultation, the SEM Committee therefore proposes that the Code be amended to introduce a new classification of Modification Proposal (proposed to be known as a 'RA Modification Proposals'), which meets the criteria set out in Section 4 above and which shall be treated the same as a Modification Proposal designated as "Urgent" under paragraph 2.208 of the Code. It is proposed to do this by making the changes to the Code shown below:

Urgent Modifications and RA Modification Proposals

2.206 Any person submitting a Modification Proposal may mark it as "Urgent". A person submitting a Modification Proposal marked "Urgent" shall submit the Modification Proposal to the Secretariat and to the Regulatory Authorities.

2.207 The Secretariat shall, as soon as possible on receipt of a Modification Proposal which is marked "Urgent", contact the Regulatory Authorities which shall determine whether or not it shall be treated as Urgent.

2.208 A Modification Proposal shall be determined to be Urgent by the Regulatory Authorities where, if not made, it can reasonably be anticipated that the event or circumstance with which the Modification Proposal is concerned would imminently:

1. threaten or prejudice safety, security or reliability of supply of electricity; or
2. unduly interfere with, disrupt or threaten the operation of the Single Electricity Market; or if a Modification is required to correct an obviously material error or inconsistency in the Code.

2.209 If the Regulatory Authorities determine that a Modification Proposal is Urgent under paragraph 2.208 or if the Modification Proposal is a RA Modification Proposal, the Modifications Committee shall convene an Emergency Meeting.

2.210 If the Secretariat or the Modifications Committee considers that any of the criteria in paragraph 2.208 apply in respect of any Modification Proposal that has not been marked "Urgent" by the person submitting the Modification Proposal, the Secretariat shall promptly submit the Modification Proposal to the Regulatory Authorities for consideration in accordance with paragraph 2.207 and 2.208.

2.211 In the event that a Modification Proposal is deemed to be Urgent or if the Modification Proposal is a RA Modification Proposal, the Modifications Committee shall propose the procedure and timetable to be followed in making a recommendation in respect of the Urgent Modification or RA Modification Proposal which may fast-track the normal processes provided for in this Code. The Regulatory Authorities shall have the right to veto or direct amendments to the procedure and timetable proposed by the Modifications Committee within 2 Working Days of any such proposal by the Modifications Committee.

Glossary

A RA Modification Proposal

means a Modification Proposal submitted by a Regulatory Authority which is classified by the Regulatory Authorities as a RA Modification Proposal and where the Regulatory Authorities have already undertaken public consultation and published their conclusions or decision on the subject that the proposed changed legal drafting in the Code addressed.

The SEM Committee welcomes any comments on this proposal.