



Single Electricity Market

Publication of Trading and Settlement Code Version 1.2 Legal Review Consultation

Cover Note

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1. Introduction

1.1. General

On 15 February 2006, the Regulatory Authorities (“RAs”) published Version 1.0 of the Trading and Settlement Code (the “Code”) that will underpin trading in the Single Electricity Market (“SEM”) between Ireland and Northern Ireland. Version 1.0 of the Code comprised the market design for the SEM, and (subject to the completion of a formal change control procedure) formed the basis for the development of the technical specification of central market systems, as well as the basis for a number of detailed procedures under the Code – the Agreed Procedures (“APs”).

Today the RAs publish a legally reviewed draft of the Code for public consultation, Version 1.2.

Also published today is an AIP Market Documentation Web Page, available at <http://www.allislandmarket.org/changecontrol.html>. This site provides a single source for all relevant market documentation, including successive versions of the APs, while also explaining the status and governance of these documents between now and market go live. This site is provided for information, and is intended to aid market participants in their understanding of the interactions between various elements of the market design documentation. This site will be updated regularly by the RAs.

The following note sets out the status of the Version 1.2, in the context of the suite of market documentation. It also describes at a high level the changes made to this version of the Code since version 1.0 of the Code was last published.

1.2. Request for Comments

The RAs request comment from interested parties in relation to the provisions of the draft Code. The RAs note that the design elements of the Version 1.2 are NOT subject to review, and that there is a ‘design freeze’ in place that prevents any amendments to central market systems. Nonetheless the RAs invite comment on drafting and legal aspects of the Code Version 1.2.

The Regulatory Authorities intend and prefer to publish all comments received, but are prepared to facilitate those respondents that wish that certain sections of their submission remain confidential. Accordingly, respondents that so wish should submit these sections in an appendix that is clearly marked “confidential”.

Comments on this paper should be forwarded, preferably in electronic form, to Peter McLay at:

pmclay@cer.ie

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Commission for Energy Regulation
The Exchange,

Belgard Square North,
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The deadline for the receipt of comments is 20 February 2007.

2. The Status of Version 1.2

On completion of the detailed business rules, the RAs, together with the System Operator SEM Programme (including the SEM Implementation Team) embarked on a formal change control process to govern changes to the baselined documentation (then version 0.10 of the Code). This process remains ongoing, to ensure a structured approach to the management and coordination of changes to the documentation, having regard to the need for appropriate impact assessment of changes. The AIP Market Documentation Page published today shows all of the formal change controls raised to date, as well as an updated 'baselined' version of the Code reflecting all approved change controls up to 11 January 2007. .

Version 1.2 is not a 'baselined' document. It has been produced in advance of formal change control to give timely sight of the output of the Code legal review. While it does include all of the changes agreed under the formal change control process, it also goes beyond this and makes further changes that have not formally been agreed. (It should also be noted that the text of approved changes may have altered somewhat due to the legal drafting.) Version 1.2 should therefore be viewed as a strong indicator of what the final version of the Code will contain, but may be subject to change in the event that changes made cannot be supported by systems in the requisite timescales.

The RAs note that each of the changes put forward in this document, Version 1.2, will undergo formal change control. It is intended that these changes, together with any changes made to the Code arising out of this consultation will be incorporated in a further document, Version 1.3 of the Code, to be published for final consultation at the end of March. It is intended that all changes incorporated in Version 1.3 will have undergone formal change control in advance of publication. The AIP Market Documentation Page will be updated regularly with change control requests as they are raised.

3. Key Points to Note concerning Version 1.2

3.1. Drivers of Change in Version 1.2

Version 1.2 of the Code reflects changes arising from two sources, that is, legal and technical changes.

In the first instance, legal changes have comprised:

- clarifications to the language of the document to reflect the status of the Code as a multilateral contract between market participants;

- statements of rights and obligations under the Code;
- inclusion of additional ancillary documents, including the framework and accession agreements, a dispute resolution agreement and a sample letter of credit;
- changes to reflect a Northern Irish governing law; and
- changes to incorporate industry comments arising from an interim consultation with members of the Rules Liaison Group – the advisory group established to consider the SEM business rules.

Further details of these changes are provided below.

This document also reflects changes to underlying business rules or technical issues in some limited circumstances. These include changes arising from:

- ongoing technical changes to the document arising from clarifications/interpretations in the implementation of systems: these changes have been captured through the change control process, and the rationale for individual change requests is stated on individual change control forms as published on the AIP Market Documentation Page;
- amendments to the capacity payments mechanism following further industry consultation on this issue;
- the addition of provisions on SMP uplift – that is the manner in which start and no load costs are recovered through the market;
- amendments to section 6 concerning credit management, reflecting the capabilities of the vendor's settlement system; and
- additional clarifications/corrections of business rules.

While the RAs have endeavoured to minimise the impact on systems brought about by clarifications of the Code, without completion of the formal change control process, it is not possible to say that all changes to the Code in version 1.2 will be deliverable for the market start date.

3.2 Specific areas of note in Version 1.2

The following paragraphs set out the key elements which have been changed in Version 1.2 of the Code, in comparison with Version 1.0. Many other relatively minor changes have been made as a result of legal reviews and of checks with Agreed Procedures (APs) and the functionality of the Market Operator's central systems.

3.2.1 *Capacity Payments Mechanism (CPM)*

The RAs have revisited the CPM as set out version 1.0 of the Code, and there has been substantial consultation on this issue since February last. It should be noted that having undergone a Regulatory Authority consultation process the CPM progressed directly to systems build to meet the implementation timeframes for market go-live. While Change Request RA321 has been raised to update the baselined market documentation, this has not yet been approved under the formal change control process, and is not reflected in the Baseline Version. This drafting has however been incorporated in Version 1.2 in the Code.

3.2.2 SMP Uplift Consultation

This mechanism has also been consulted upon since February last. Again the SMP Uplift algebra progressed directly to systems build to meet the implementation timeframes for market go-live. While a change request was raised to update the baselined market documentation, this has not yet been approved and drafting has been subsequently altered in the context of the legal review for Version 1.2. The drafting provided in Version 1.2 reflects the RAs understanding of how these rules will operate for Market Go Live.

3.2.3 Objectives

The Code Objectives have been revisited in this draft to reflect comments received from the Rules Liaison Group (RLG), while also having regard to the consultation on Market Operator licences. Given the necessity for consistency in governing documentation, corresponding changes have also been proposed to the Market Operator licences.

3.2.4 Liability

Following consultation with members of the RLG, the limitation of liability provisions of the Code have been amended substantially for Version 1.2. In particular, Parties' liability for damage caused has now been limited to liability for physical damage only. This is distinct from liability for negligence and misconduct in previous drafts. The approach provided for in Version 1.2 reflects precedent in the other equivalent Codes, including the existing Trading and Settlement Code in Ireland, the Interim Settlement Code in Northern Ireland and the Balancing and Settlement Code in Great Britain.

3.2.5 VAT

Since the publication of Version 1.0 of the Code, the SMO has engaged with Revenue Authorities in Ireland and Northern Ireland to ensure a workable approach to the charging of VAT under the Code. The RAs understand that these discussions are at an advanced stage. Version 1.2 incorporates draft text that reflects a proposed 'self billing' approach to VAT for the Pool. This text should be considered to be under review pending the outcome of discussions with the Revenue Authorities.

3.2.6 Credit Cover

Credit Cover provisions in this document have also undergone substantial change. While the underlying principles for credit management have not changed, the approach taken now reflects more closely the capabilities of the vendor's settlement systems. The key changes have been:

- A move from fixed to dynamic risk periods

- Dividing the risk period in two (actual exposure and future potential exposure) instead of using one period using just historical values directly (as proposed in the old version)
- Using statistical deviation and percentile calculation based on historical data to estimate future exposure
- Added more details regarding New and Adjusted Participants
- The extension of the period within which credit calls must be honoured in order to enable more effective use of letters of credit.

3.2.7 Trading Sites

Version 1.2 provides for the splitting of Trading Sites to allow for more than one registrant of a Unit on a single generation site.

3.2.8 Payment Default/Set-Off

Version 1.2 clarifies the rules around set off of payment defaults against monies owed to affiliated Participants.

3.2.9 Modifications Committee

Version 1.2 includes provision for the RAs to appoint to the Modifications Committee a representative of any group of participants whose views they do not believe would otherwise be adequately represented. Such an appointee would be a voting member of the Committee.

3.2.10 Market Operator Discretion

The RAs have received substantial comment from market participants concerning the level of discretion afforded to the Market Operator under previous drafts of the Code. Under Version 1.2 the level of discretion previously afforded to the Market Operator has been limited in a number of instances.

3.2.11 Governing Law

Previous drafts of the Code had not specified the governing law for the document. On Thursday the 18th of January, the Regulatory Authorities received notification from the Department of Communications Marine and Natural Resources (“DCMNR”) and the Department of Enterprise Trade and Investment (“DETI”, together the “Departments”) that the governing law for the Code should be the law of Northern Ireland. The RAs have made this provision in Version 1.2 of the Code, as well as a number of minor consequential amendments.

3.2.12 Transition

Version 1.2 contains a skeleton Transition Section (Section 7) which flags transitional issues which will need to be provided for for market go live. The RAs anticipate that this Section will need considerable further development once the main body of the Code has been finalised, and following outcomes of the Transition Workstream.

3.3 Outstanding Issues

3.3.1 Intermediaries

The provisions of the Code concerning Intermediaries have not undergone any amendment in this Version 1.2 of the Code. The RAs issued a note of clarification to the Rules Liaison Group in August concerning the criteria which may be applied to participants wishing to register intermediaries under the Code. On foot of a number of issues raised by market participants at subsequent meetings of the RLG, the RAs have undertaken to consider this issue further. The RAs intend to issue a final decision on this issue in the near future.

3.2.1 Interconnector Roles

A number of comments have been received concerning manner in which roles and responsibilities are allocated as between the Interconnector Administrator, the Interconnector Owner, the SMO and the System Operators under the Code. While these roles and responsibilities have not been amended for version 1.2 of the Code, it should be noted that these may be subject to review for version 1.3 of the Code.

3.2.2 Reports

While a number of minor amendments have been made to the Data Publication and Reporting Appendix (Appendix K) of the Code, it should be noted that the baselined list of publications is being reviewed at this time from the following perspectives: IT system and business process capability of delivering these reports to an external website (known as the SMO Website or SMOW) under the timelines specified; data confidentiality of Supplier Unit information; delivery of the information by the submitting parties (TSOs, Regulators, etc.) to the SMO for publishing under the timelines specified; the timing of the publication of certain calculated variables before the scheduled calculation run in the central market systems, and whether the form of the publications should be aligned to the Transaction contents as defined in the Code.

3.3 Next Steps – Alignment of Market Documentation

While the Code as published today is a key document, it must be acknowledged that this merely one element of a larger legal framework for the SEM. While it is essential that this document be aligned with ‘parent’ documentation such as licences and legislation, a key focus for the RAs in developing the Code for the final consultation will be on ensuring consistency with subsidiary market documentation such as the APs, and Technical Documentation which have flowed from the implementation of the Code. In Version 1.2 the RAs have sought to include aspects from the APs as published which might be considered to be more akin to ‘policy’ issues, and therefore more appropriate to a higher level of governance. The next step in this process is to ensure consistency across documents, including from the Code to the APs (and the technical documentation) and across APs.

It is intended that Version 1.3 of the Code to be published at the end of March should be accompanied by a full suite of fully aligned market documentation.