



Response by Energia to SEM Committee

SEM-24-048 Imperfections Charge 2024/25

And

Reforecast Report 2022/23

Consultation Paper

26 July 2024

1 Introduction

Energia welcomes the opportunity to respond to SEM Committee consultation SEM-24-048 Imperfections Charge 2024/25 Consultation Paper. Energia has outlined key feedback below for consideration ahead of finalising the final charge for 2024/25.

2 Consultation Response

2.1 Article 13(7) & Associated Costs

Estimate of Potential Liability for Article 13(7) & Associated Costs

Energia has concerns that the estimated amount proposed to be collected does not meet the level of payments that will be required to be paid as the key assumption underpinning this estimated amount does not align with the requirements under Article 13(7) of Regulation (EU) 2019/943 as confirmed in the High Court Judgment.

The consultation paper SEM-24-048 states that the “*potential costs associated with the TSOs’ interpretation of a recent High Court judgment is (€158 million) and it is proposed that this money is collected to help meet any future obligations which may arise*” and that “*the SEM Committee considers it appropriate to include the current best estimate of the potential liability in tariffs based on the TSOs estimate.*” It is also stated at paragraph 4.3 of the Imperfections Charges Forecast for Tariff Year 2024/25 published by the TSOs that a key assumption regarding the €158 million estimate is “*compensation for constraint and curtailment volumes from 01 January 2020 to 30 September 2025, up to market price level*” (emphasis added).

Energia notes that the consultation paper was published on the same date as the second High Court judgment in the SEM Decision SEM 22009 (the “**Second High Court Judgment**”) and so the SEM Committee did not have the benefit of this judgment in preparing this consultation paper. However, having regard to the findings of the Second High Court Judgment, Energia believes that the TSOs’ assumption above is incorrect and inconsistent with Article 13(7) as it does not make the required provision for foregone financial support, including forgone revenues from state support schemes and corporate power purchase agreements. As such, Energia believes that the proposed €158 million provision is incorrect and significantly underestimates the level of funding required and that sufficient funding will not be in place for the TSOs to meet future payment obligations under Article 13(7).

Energia therefore requests that the RAs and the TSOs recalculate this provision to ensure that it adequately accounts for compensation required to be paid under Article 13(7), including for foregone financial support and not just lost market revenues.