



Letter of Credit

On 21st June 2007 the Regulatory Authorities (the “RAs”) sought views from industry members on the form of the Letter of Credit set out in Appendix A of the Trading and Settlement Code (the “TSC”) with a view to identifying any specific practical issues that this might raise with participants and their banks.

The RAs received comments from Airtricity, Bord Gáis, ESB Customer Supply, ESB International and Viridian Group. Several respondents commented that their banks are not prepared to sign up to a cut-off time that cannot be guaranteed to be met in respect of the requirement to provide “same day value”. Other respondents noted an administrative concern with “same day value” but stated that their banks can meet that requirement. The RAs note that this requirement is necessary to ensure that funds are deposited to the relevant SEM Clearing Account by midday on the day that such funds have to be paid out to the SEM Creditors and that it cannot therefore be considered to be optional, without impacting on the payment date for generators.

Several respondents mentioned a preference for the removal of the provision for automatic renewal of the Letter of Credit. The RAs do not believe that a Letter of Credit with a fixed end date raises any policy issues but note that the period of effectiveness of the instrument ought not to be less than 12 months and further note that if a Letter of Credit were not automatically renewed, each Participant concerned would have to ensure that it made arrangements to replace an expiring Letter of Credit in accordance with the TSC.

A respondent raised a number of technical comments from its bank about the detailed wording of the standard Letter of Credit in Appendix A. Also, one respondent stated their bank would have a preference for the Letter of Credit to be construed and governed in accordance with Irish Law rather than Northern Irish Law, while another respondent noted that its bank had no problem with the form of the Letter of Credit.

The RAs consider that the responses as outlined above do not highlight any significant issue with the letter of credit that would cause the existing text to be unworkable. The RAs are mindful of the need for there to be an agreed form of Letter of Credit, and that the Letter of credit in its current form had been the subject of previous consultations. The RAs would also note that the TSC (and the Agreed Procedures) were designated on 3rd July 2007 and can now only be amended through this modification processes as set out in Section 2 (and Section 8) of the TSC. As such the Regulatory Authorities are of the view that any concerns raised in the responses as outlined above are best dealt with directly through the TSC modifications process.

Any interested party may develop proposed changes to the standard form of the Letter of Credit in Appendix A and put them forward in the form of a Proposed Urgent Modification.

Please address any queries on this notice to Philip Newsome (pnewsome@cer.ie).