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Subject: Modification of the Trading & Settlement Code (T&SC) to Implement I-SEM, SEM-15-060

Dear Elaine, Leigh,

Bord Gáis Energy welcomes this opportunity to respond to the proposals contained in the SEM-15-060 Information Paper (the Paper) regarding modification of the T&SC to implement I-SEM.

We are largely in favour of the proposals put forward in the Paper, specifically the extent to which it is intended to involve industry in the drafting and approval of the relevant rules. We support and urge the Regulatory Authorities (**RAs**) to retain this suggested level of involvement by industry regardless of the final approved process. We do however have a number of concerns regarding applying the proposals as specifically set out in the Paper. These concerns centre on the scope of the Modifications Committee to execute these proposals, the governance and involvement in the process by the RAs and the potential for slippage in timelines for implementation of I-SEM rules.

Firstly, it is unclear whether the changes to the T&SC can be regarded as a “modification or replacement”, as recognised on page 3 of the Paper. A vast number of changes are required which could be viewed as modifications or replacements and it is questionable as to whether the Modifications Committee has the legal scope to execute the proposals in the Paper. This concern is heightened when read in the context of the stated objective of the Modifications Committee which is to “progress Modification Proposals with a view to better facilitating the achievement by the Code of the Code Objectives”¹. These Objectives are written in the context of the existing SEM thus we anticipate that a number of modifications to the current T&SC would be required² to firstly ensure the Modifications Committee has the appropriate legal scope to execute the Paper’s proposals which could be a protracted process.

Secondly, and related to the point above, we are concerned that the current structure and remit of the Modification Committee Working Groups would not be appropriate to effectively meet the objectives of the process as outlined in the Information Paper. For instance, it is suggested that the Modifications Committee will decide on whether to consult on issues that arise in each WG. Firstly, we suggest that the RAs are best placed to objectively decide what issues should be put forward for consultation. This should ensure an unbiased view of issues for consideration is put out for consultation, best enable full contribution of all interested stakeholders and assist meeting of implementation timelines. Secondly, under the current drafting of the T&SC, Modifications Committee Working Groups do not have the authority to seek consultation. Significant changes would be required to the T&SC to provide for the type of structure suggested, and we question whether this is the most efficient approach for what will only be a transitional piece of work in the lead-in to I-SEM go-live. A parallel ‘Advisory Committee’ structure using the Modifications Committee process and structure, rather than its strict governance, may be more appropriate.

From a practical perspective, given the breadth of legal drafting and review required, the process is likely to be extremely costly and we question where the funding for this will come from considering the current limited legal budget of the Modifications Committee.

¹ Para 2.148 T&SC

² Including Agreed Procedure 12 which sets out the operation of the Modifications Committee. Another element for e.g. of the T&SC requiring amendment is to provide for RAs to be working group chairs whereas the current T&SC provides that it is the secretariat that nominates working group chairs

Thirdly, in terms of composition of the WGs, it is unclear whether the RAs anticipate that the WGs are chaired by the RAs (referenced on page 3) or whether the Secretariat appoints a chair which may be the Modifications Committee chair, one of the RAs or another party with the RAs providing only a supporting and assisting role (per page 7-8). We believe that the RAs must necessarily sit on each of the WGs established, be that as chairperson or member of the WG. The role of the RAs in the WG process should not be understated as we believe that involvement of the RAs in each decision of each WG will help ensure that the entire I-SEM T&SC will be presented to the RAs reflecting decisions that they have been part of progressing and deciding/ voting on. This will minimise the risk that such decisions are not to the favour of the RAs when it comes to their final approval and involvement of the RA to this level minimises impacting the timeliness of implementation of the rules.

In conclusion, we welcome and are supportive of the proposal to incorporate active stakeholder involvement in the development of the ISEM detailed rules. Provided the above outlined concerns are dealt with, we are largely in favour of a process structured either in the form of the existing Modifications Committee or in a parallel structure similar to the Modifications Committee but acting as a transitional forum. Key considerations for the structure are that:

- i. the Committee (Modifications or Advisory) must have sufficient scope to implement the changes needed for I-SEM implementation without involving a time-consuming process of Modification / ToR drafting and approval that would ultimately delay the commencement of the implementation phase;
- ii. the RAs should lead the drafting of the rules (the RAs should drive the process in a timely and independent manner); the RAs should objectively decide what issues in each WG should go out for further Consultation to best enable all interested parties contribute to the process; the legal drafting and review costs inevitable in I-SEM implementation rules development should not be borne by the Modifications Committee solely;
- iii. the RAs should be heavily involved in each WG and be involved, along with industry, TSOs and SEMO in the decision making process from start to finish to ensure that when the final recommendation goes to the RAs in October 2016 it is in a format/ reflects decisions which the RAs are already familiar with and have been part of developing, so as to minimise changes that may be required to any element of the rules at that stage.

Finally, the process adopted should not hinder the existing Modifications Committee from dealing with modifications that relate to the SEM that may arise before I-SEM go live.

I hope that you find the above comments and suggestions helpful but should you have any queries, please do not hesitate to contact me.

Yours sincerely,

Julie-Anne Hannon
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{By email}