Single Electricity Market
(SEM)

Decision Paper on Eligibility for Priority Dispatch Pursuant to Regulation (EU) 2019/943

SEM-20-072
04 November 2020

EXECUTIVE SUMMARY

This Decision Paper outlines the feedback received to SEM-20-028 and the SEM Committee's response and decisions in the areas of;

1. Eligibility for priority dispatch status before 4 July 2019 pursuant to Article 12(6) of the Regulation.
2. Eligibility for demonstration projects and facilities with an installed capacity of less than 400kW pursuant to Article 12(2) of the Regulation.
3. Changes to priority dispatch status due to significant modifications under Article 12(6).
4. Voluntary cessation of priority dispatch status under Article 12(3).
5. Application of each Decision at Transmission and Distribution level and framework for communication of priority dispatch status of units between the System Operators and SEMO.

In terms of eligibility for priority dispatch, the SEM Committee has decided that where by 4 July 2019:

1. a unit had completed commissioning and testing associated with energisation as defined in the applicable Grid Codes and Distribution Codes and was when commissioned subject to priority dispatch, or;
2. such a unit had secured a route to market under a REFIT Letter of Offer or preliminary accreditation under the Renewables Obligation Order (Northern Ireland) 2009 (as amended) (the NIRO Order) support scheme and becomes active under the terms of the relevant scheme, or;
3. such a unit had secured a route to market under a corporate Power Purchase Agreement and becomes active under the original terms agreed (Power generating facilities wishing to rely on this ground of eligibility should apply to the RAs within 3 months of this Decision to demonstrate eligibility on the basis of objective evidence and once energised, further confirmation will be required that the support under the PPA remains as per the terms originally agreed in order to be eligible for priority dispatch);

such units will continue to be eligible for priority dispatch. Where there are any significant modifications as per Article 12(6) following 4 July 2019 as defined in this Decision, units

progressing towards energisation under these criteria should no longer be eligible for priority dispatch.

The SEM Committee has set out a number of principles related to the interpretation of Article 12(6) in relation to the definition of significant modifications. A list of modification types deemed significant based on these principles is also provided in Appendix 1 in order to provide clarity to stakeholders on the types of changes which will result in loss of priority dispatch status. However, the SEM Committee notes that this list may not be exhaustive and requests any changes to this list to be submitted on a joint basis by the TSOs and DSOs for consideration by the RAs on a periodic basis. Where additions or changes are required the RAs will publish an updated list of significant modifications for the purpose of Article 12(6). The intention is for this list to be coordinated on an all-island basis and published in order to provide certainty to stakeholders as requested in a number of consultation responses.

Once the market rules and systems are established to cater for priority dispatch and non-priority dispatch renewables, the SEM Committee is of the view that units should be able to make a choice on whether they wish to retain their priority dispatch status or not.

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1. Introduction

1.1 Clean Energy Package Background

The Clean Energy for all Europeans package (CEP) consists of eight legislative acts which were adopted by the European Parliament and European Council in 2018 and 2019 following Commission proposals in November 2016. This involves a comprehensive update of the EU's energy policy framework aimed at enabling the transition to cleaner energy and facilitating a reduction in greenhouse gas emission levels of 40% by 2030 compared to 1990. The revised Regulation on the internal market for electricity (EU) 2019/943[1] under the CEP seeks to amend aspects of wholesale electricity markets in Europe, enhance integration and progress the transition to renewable energy. Having entered into force in July 2019, the majority of the Articles in the Regulation apply from January 2020.

A high-level review was conducted by the RAs in the second half of 2019 to identify the areas of the Regulation which may require action by the SEM Committee with respect to the all-island SEM. The RAs identified a number of areas for action by the SEM Committee in 2020, along with coordination with relevant Government Departments in Ireland and Northern Ireland, in order to progress implementation of the Regulation. Based on this review, a Roadmap for progressing these six areas in 2020 was outlined by the SEM Committee in an Information Paper published in December 2019[2].

Two of the areas identified in the Information Paper relate to Article 12 '*Dispatching of generation and demand response*' and Article 13 '*Redispatching*'. Options for the implementation of these Articles in the SEM were consulted on in SEM-20-028. This Consultation closed on 22 June 2020 and considered a range of issues including the definition of dispatch and redispatch in the SEM, changes to eligibility for priority dispatch under the Regulation and compensation for non-market based redispatch.

[1] Regulation (EU) 2019/943 on the internal market for electricity.
[2] SEM-19-073 Roadmap to Clean Energy Package Implementation.

1.2 Purpose of this Decision Paper

Following the Consultation on implementation of Articles 12 and 13 of the Regulation, an Information Note, SEM-20-052 was published which outlined the areas of work that the RAs would be progressing through to Q4 2020. One of the workstreams identified related to eligibility for priority dispatch status and conditions for changes to this status under Article 12 of the Regulation, which is the subject of this Decision Paper. The RAs received a significant level of feedback concerning the urgency of providing clarity in this area and while there were differences in respondent's views in terms of eligibility, there was broadly consensus in responses received concerning the principles for significant modifications and voluntary cessation of priority dispatch status.

40 responses were received to the Consultation overall and all non-confidential responses have now been published on the SEM Committee website.

This Decision Paper outlines the feedback received to SEM-20-028 and the SEM Committee's response and decisions in the areas of;

1. Eligibility for priority dispatch status before 4 July 2019 pursuant to Article 12(6) of the Regulation.
2. Eligibility for demonstration projects and facilities with an installed capacity of less than 400kW pursuant to Article 12(2) of the Regulation.
3. Changes to priority dispatch status due to significant modifications under Article 12(6).
4. Voluntary cessation of priority dispatch status under Article 12(3).
5. Application of each Decision at Transmission and Distribution level and framework for communication of priority dispatch status of units between the System Operators and SEMO.

1.3 Priority Dispatch in the SEM

In the SEM, the TSOs are obliged to provide priority dispatch to certain classes of generators, subject to system security considerations, with the output of such units being maximised as far as technically feasible.

Priority dispatch generation is comprised of dispatchable units such as peat, hydro and CHP and non-dispatchable (but generally controllable) units such as wind and solar. Dispatchable

units are required to submit Physical Notifications (PNs) and priority dispatch status applies to their PN quantities, with any availability above this treated in normal economic order. Non-dispatchable units may also submit PNs however the TSOs currently use their own forecast of availability to schedule these units to their full actual availability subject only to operational security constraints.

1.4 Treatment of new renewable units in the SEM

As set out in SEM-20-028, under the RAs' interpretation of the requirements of Article 12 and 13 of the new Electricity Regulation, the difference between renewable units with and without priority dispatch will primarily relate to energy balancing where there is too much generation to meet demand.

A further Consultation on the treatment of such units in the SEM is scheduled for Q4 2020. Following this Consultation and Decision process for the treatment of such units, the systems to implement any changes will need to be developed.

2. Feedback Received and SEM Committee Decisions

2.1 Eligibility for Priority Dispatch before 4 July 2019

Consultation Proposals

As part of the Consultation, the RAs noted that Article 12 of the Regulation removes priority dispatch for new renewable generators using renewable energy sources or high-efficiency cogeneration commissioned after 4 July 2019 (without prejudice to contracts concluded before 4 July 2019) bar certain exemptions, in order to facilitate a non-discriminatory, transparent and market-based system.

The relevant sections of Article 12 under the new Electricity Regulation state;

- *Article 12(1) - 'The dispatching of power-generating facilities and demand response shall be non-discriminatory, transparent and, unless otherwise provided under paragraphs 2 to 6, market based.'*
- *Article 12(6) 'Without prejudice to contracts concluded before 4 July 2019, power-generating facilities that use renewable energy sources or high-efficiency cogeneration and were commissioned before 4 July 2019 and, when commissioned, were subject to priority dispatch under Article 15(5) of Directive 2012/27/EU or Article 16(2) of Directive 2009/28/EC of the European Parliament and of the Council (20) shall continue to benefit from priority dispatch…'*

In SEM-20-028, the RAs considered how the terms 'commissioned' and 'contracts concluded' could be clearly applied in the SEM context. The RAs made three proposals to distinguish between units to be eligible for priority dispatch and units which would not be eligible and requested feedback on each proposal. These included the following;

1. Where a commissioning programme has been agreed on or before 4 July 2019, it was proposed that such units would be eligible for priority dispatch.
2. Where a unit was eligible to be processed to receive a valid connection offer by 4 July 2019, it was proposed that such units would be eligible for priority dispatch.
3. Where a unit becomes active under a contract concluded before 4 July 2019 such as a REFIT letter of offer or where a Power Purchase Agreement had been concluded before the cut-off date, the RAs also welcomed feedback on whether such units should be eligible for priority dispatch. For the avoidance of doubt, this would not include projects which subsequently become active under a contract concluded after this date.

As outlined as part of meetings with stakeholders on this subject, the RAs' intention was to have a clear and transparent set of criteria in place to assess eligibility, which are equitable and sympathetic to the different connection processes and support schemes in place in each jurisdiction. In the RAs' view this also needs to account for the provision in the Regulation which states '*without prejudice to contracts concluded'*, acknowledging that certain units may have progressed projects with the expectation of having priority dispatch. It is important that the criteria for eligibility are objective and can clearly demonstrate that a power-generating facility met these requirements by 4 July 2019.

Feedback Received

Option 1: Where a commissioning programme has been agreed on or before 4 July 2019, it was proposed that such units would be eligible for priority dispatch.

In terms of the feedback received to this, the majority of respondents agreed with the use of commissioning as one criterion to associate with eligibility, specifically in relation to energisation and Grid Code/Distribution Code testing rather than a specific commissioning programme being agreed for construction. This can be aligned based on the definition of commissioning across the Grid Codes and Distribution Codes in both jurisdictions.

The concept of relying on a commissioning programme agreed with the TSO would only be workable if it was made mandatory to provide a commissioning programme for all projects. As this is not currently the case, this could not be used as a criterion for eligibility for all units. In BGE's response, they note that commissioning programmes could form part of the criteria for eligibility if they are readily identifiable, with an agreed set of commissioning dates of a relatively short timeframe and where there are no changes by either party.

In their response, Aughinish Alumina are of the view that the term 'commissioned' means that the generating facility in question would have substantially completed construction, passed all performance tests including Grid Tests and received a generating license prior to 4 July 2019. A number of respondents supported this proposal in tandem with the other proposals for eligibility in the Consultation.

Option 2: Where a unit was eligible to be processed to receive a valid connection offer by 4 July 2019, it was proposed that such units would be eligible for priority dispatch.

In terms of the interpretation of '*without prejudice to contracts concluded*' and the second option of using eligibility for connection offers as a criterion, this received a mixed response.

Many respondents state that this cannot be interpreted as a 'contract concluded' by 4 July 2019 and a number of respondents are of the view that this would open up eligibility for priority dispatch to too large a pool of generators, which in their view may impact on the exposure of new renewable units to energy balancing. IWEA and NIRIG state that this could include for example projects eligible to be processed under ECP-1, those with a connection offer in NI but without a connection agreement and those with a connection offer through the CRM. On the issue of RESS-1 auctions, many respondents also are of the view that all participants should either be eligible or non-eligible for priority dispatch and that many RESS units may wish to forego priority dispatch in any case, so that they are not exposed to negative price events based on the RESS-1 Terms and Conditions.

IWEA and NIRIG also question the idea of whether '*contracts concluded*' should be with reference to a connection offer or Agreement as these are entered into and applied at different times in different jurisdictions. They would question the legality of whether being eligible to be processed for a connection offer constitutes a '*contract concluded before 4 July 2019*', as in order for a contract to exist, there must be a valid offer and acceptance.

Innogy Renewable Ireland Ltd disagree with the proposal to allow units eligible to receive a valid connection offer to have priority dispatch status. In their view the reference to '*contracts concluded'* must be interpreted as contracts that are legally binding and cannot include generators eligible to be processed for a connection offer or who have received a connection offer. In their view it will also be important to ensure that if a connection agreement is significantly modified units should also lose access to priority dispatch.

Cloosh Valley windfarm raise a potential issue whereby connection offers can be delayed and that projects might be incentivised to hold on to priority dispatch without progressing in the queue to connection.

A significant number of respondents are of the view that where a project had progressed to the stage where a connection offer was received by 4 July 2019, it should be considered to have concluded a contract for the purpose of Article 12. In addition, many highlight the fact that a number of units participating in the RESS-1 Auction have executed connection agreements prior to the cut-off date in 2019. Some respondents have noted that an executed connection agreement may be the most robust measure of a contract concluded but accept that projects that have progressed to the stage where a connection offer is issued likely meet the criteria consistent with the intent of the legislation.

In their response CEWEP note that relying on a signed connection offer for example would bring an element of arbitrary timing into the discussion, for example where connection offers were under dispute.

ISEA support the proposal for generators eligible for a connection offer by 4 July 2019 to be eligible for priority dispatch. In their view however this proposal needs careful legal review to ensure that this can meet the test for contracts having concluded. ISEA also noted in their response that approximately 92% of solar projects participating in the RESS-1 auction executed connection agreements prior to the cut-off date in 2019. In their view a connection agreement is one of the few contracts that are objectively dated and are demonstrably a contract so are a suitable test for eligibility.

Indaver are of the view that the most objective non-disputable measure of appropriately progressed projects with assumed priority dispatch status is whether a generator was in receipt of a connection offer by 4 July 2019.

In ERG Renewable's view, projects 'eligible to be processed to receive a valid connection offer' should qualify for priority dispatch. In general terms, all those developing subsidy free projects and with a route-to-market well defined before 4 July 2019 should opt in/out for priority dispatch.

Dublin Waste to Energy state in their response that any project that has progressed to the stage where a connection offer; a REFIT letter of offer or PPA offer has been made likely meets the criteria consistent with the intent of the legislation. Where a generator has received a connection offer ahead of 4 July 2019, assuming no further increases in Maximum Export Capacity (MEC) are applicable, then that unit should be eligible for priority dispatch.

Option 3: Where a unit becomes active under a contract concluded before 4 July 2019 such as a REFIT letter of offer or where a Power Purchase Agreement had been concluded before the cut-off date, the RAs also welcomed feedback on whether such units should be eligible for priority dispatch. For the avoidance of doubt, this would not include projects which subsequently become active under a contract concluded after this date.

A significant number of respondents support the third proposal in the Consultation, where a unit that becomes active under a contract concluded by 4 July 2019 in anticipation of having priority dispatch should be eligible. In many responses it is stated that the most objective measure of this is whether a unit has a REFIT or NIRO Letter of Offer or a CPPA before 4 July

2019 and becomes active under this route to market. In their view, where a project becomes active under another route to market it should not be eligible for priority dispatch.

In their response, IWEA and NIRIG highlight that the non-applicability of priority dispatch to generators commissioned post 4 July 2019 is "Without prejudice to contracts concluded before 4 July 2019" which in their view seeks to achieve protection for active projects with a clear route to market that are actively making progress on financing and commissioning, the most objective measure of this being a REFIT or ROCs Letter of Offer or a CPPA before 4 July 2019. Developers that have made material investment in the expectation of certain market and/or subsidy interactions for such projects, and correspondingly such generation once constructed and operational, should continue to benefit from full priority dispatch. Energia is aligned with both IWEA and EAI in supporting the view that the correct approach to the grandfathering of priority dispatch rights is to limit the scope of any such grandfathering to contracts concluded prior to 4 July 2019, that provide a route to market.

In their response, ElectroRoute propose that where a project becomes active under a different route to market, for example RESS instead of REFIT, it should not receive priority dispatch.

In ESB GT's view, this proposal strikes an appropriate balance between extending the grandfathering provisions of Article 12 to those who would had made significant investment in the delivery of their projects and who had established a clear route to market with fixed commercial terms and financing arrangements in place at the time the Regulation came into force and adhering to the ending of priority dispatch after 4 July 2019.

Innogy Renewable Ireland Ltd agree that where a unit becomes active under a contract concluded before 4 July 2019 such sites should retain their right to priority dispatch but that this should be removed if they fail to meet their contractual requirements.

A number of respondents, including EAI, also note the importance of creating a level playing field for all new renewable technologies in support schemes and avoiding a situation whereby participants in the RESS-1 Auction in 2020 have a mixture of eligibility for priority dispatch. A number of respondents are of the view that a clean break between units within earlier support schemes and RESS would be preferable.

In their responses, both NIE Networks and ESB networks highlight the significant amount of distribution connected generation which did not appear to be considered as part of the consultation as the arrangements for connection at the distribution level are different in each jurisdiction.

EirGrid and SONI consider that a clear definition of the term "contract" is required, in order to ensure that this is commonly understood. Decisions in respect to eligibility also need to reflect the differences in the connection processes in each jurisdiction of the SEM. EirGrid and SONI propose the following definition for eligibility in their response;

"*Where by 4 July 2019 a unit:*

(i) has executed a connection offer, or

(ii) has received a connection offer which has not yet lapsed, or

(iii) is eligible to be processed to receive a valid connection offer (i.e. has an application deemed complete/effective)"

SEM Committee Response and Decision

Overall, there were 25 positions provided by respondents to the Consultation on this issue, with varied positions on the options presented in the Consultation Paper and some alternative proposals from respondents to define eligibility. These are outlined in more detail in the published responses to SEM-20-028.

Given the significant change this brings to the market, a decision on eligibility needs to be measurable, transparent and equitably applied and account for the fact that many units would have been progressing to market with the expectation of having priority dispatch at the time the Clean Energy Package was being adopted. The SEM Committee understands however that the intent of the Regulation is to transition to market-based mechanisms for the majority of power generating facilities using renewable energy sources, encouraging balance responsibility, flexibility and a level playing field between market participants.

This Decision also needs to be cognisant of the different support schemes and connection processes in place across both jurisdictions at both the transmission and distribution level and account for the impact in terms of the exposure of new units without priority dispatch to energy balancing.

The Regulation sets out two criteria for eligibility for priority dispatch, where a unit has been 'commissioned' before 4 July 2019 and where 'contracts have been concluded' by this date. Each of these has been considered in turn by the RAs in terms of their applicability across each of the TSOs and DSOs in Ireland and Northern Ireland.

Unit Commissioning

There are objective definitions within the TSO Grid Codes and DSO Distribution Codes that enable assessment of whether commissioning for a unit has completed or not, which can be used as a criterion for eligibility for priority dispatch before 4 July 2019.

In terms of unit commissioning in the SEM, Commissioning under the EirGrid Grid Code involves tests being carried out in order to confirm that a unit's plant and apparatus meet the requirements of the Grid Code. It is defined as '*Activities involved in undertaking the Commissioning Test or implementing the Commissioning Instructions pursuant to the terms of the Connection Agreement or as the context requires the testing of any item of users equipment required pursuant to this Grid Code prior to connection or re-connection in order to determine that it meets all requirements and standards for connection to the Transmission System.'*

Commissioning under the SONI Grid Code is defined as '*Testing of a CDGU, Controllable PPM, Pumped Storage Plant Demand, Energy Storage Power Station Demand, Demand Side Units, Aggregated Generating Units, Interconnector or an item of User's Equipment required pursuant to the Connection Conditions prior to connection or re-connection in order to determine whether or not it is suitable for connection to the System"*

Under the ESBN Distribution Code, commissioning is defined under the Code as '*The final process of testing part of a system prior to that part of the system being considered suitable for normal use.*'

Commissioning is defined under the NIE Networks Distribution Code as '*Testing of an item of User's Equipment required pursuant to the Connection Conditions prior to connection or re-connection in order to determine whether or not it is suitable for connection to the System'.*

The SEM Committee agrees with respondent's proposals in this area to look at eligibility based on testing prior to connection to the Transmission or Distribution system which applies to all generators prior to energisation rather than an agreed commissioning programme which would only be applicable in some cases. On this basis, the SEM Committee is of the view that where a unit had completed commissioning as defined in the Grid Codes and Distribution Codes prior to 4 July 2019, it should be eligible for priority dispatch in the SEM.

Contracts Concluded

In terms of the provision within the Regulation which states '*Without prejudice to contracts concluded before 4 July 2019*' the SEM Committee agrees with the points raised by a number of respondents in that projects which had significantly progressed with the expectation of having priority dispatch before 4 July 2019 should be eligible as long as the process for assessment of 'contracts concluded' is transparent, time limited and in line with the Regulation.

The SEM Committee's view is that the intent of this section of the Regulation is to make some allowance for a limited transition period prior to the cut-off date in July 2019, while minimising the addition of new priority dispatch generation with intent that dispatching should be as far as possible market based and non-discriminatory. The 'contracts concluded' exception within the Regulation is intended to facilitate the interests of persons who had not commissioned renewable generation facilities eligible for priority dispatch by 4 July 2019 but who had, by that date, acquired sufficient rights (and undertaken sufficient obligations) to enable them eventually to proceed to commissioning and energisation of such facilities.

While the Consultation Paper included proposals which attempted to accommodate the different processes for issuing connection offers at Transmission and Distribution level in Ireland and Northern Ireland, the SEM Committee acknowledges the difficulty in defining eligibility for receipt of a connection offer and connection offers themselves as conferring the expectation of priority dispatch, as this does not in itself provide for a route to market. The SEM Committee also notes the concern highlighted by many respondents of whether a connection offer or agreement can meet the criteria outlined in the Regulation and the difficulties this may present in terms of how long it may take for units to complete commissioning and energisation even where a connection agreement is in place. This is linked to the different timelines and processes for connection offers and agreements in each jurisdiction.

In terms of the issue of a potential mix of priority dispatch and non-priority dispatch units in the RESS-1 Auction highlighted by a number of respondents, the SEM Committee is cognisant of the fact that many units taking part in the first auction already had signed connection agreements in place before the cut-off date. The SEM Committee also understands that connection agreements are executed at different stages in the process towards energisation in each jurisdiction.

The SEM Committee also acknowledges the points raised by some respondents concerning the impact of more expansive eligibility criteria on new units exposed to energy balancing. The RAs have reviewed information on connected and contracted generation published on the

System Operator's websites in order to understand how these criteria may impact on different units which had significantly progressed financing and development of projects with the expectation of priority dispatch. Based on the second part of this Decision on the application of significant modifications under Article 12(6), it should be noted that over time energy balancing will be applied to a larger pool of units that lose eligibility for priority dispatch. Units will also be able to voluntarily forgo priority dispatch as set out in Section 2.4 of this Decision.

It is the SEM Committee's view that the expectation of eligibility for priority dispatch could reasonably be based on the award of rights to support under the REFIT and NIRO schemes in place in each jurisdiction as these present a route to market for a generation facility to be developed and energised.

These schemes were put in place prior to the adoption of the Regulation, with transparent sets of terms and conditions and cut off dates to qualify for inclusion in each scheme.

In terms of eligibility related to contracts concluded under the support schemes for renewable units in Ireland and Northern Ireland, the REFIT Scheme was administered in a number of rounds. REFIT 2 came into operation in March 2012 and closed to new applicants by 31 December 2015. Under the REFIT terms and conditions projects were required to be connected by the end of 2017 and were required to have in place a connection agreement within 90 days of receiving a letter of offer. The scheme provides for a minimum price for electricity exported. REFIT payments are paid to the supplier with whom the REFIT applicant has entered into a REFIT PPA.

The Northern Ireland Renewables Obligation scheme also closed to large scale onshore wind in March 2016, small scale onshore wind in June 2016 and any other new applicants on 31 March 2017. Full accreditation under the scheme requires a generating station to be commissioned, defined under Article 2(1) of the Renewables Obligation Order (Northern Ireland) 2009[3] (the NIRO Order). Preliminary accreditation is available to facilities which have obtained planning consent but have not yet been commissioned. Once accredited, generators are issued Renewables Obligation Certificates (ROCs) which can be sold to suppliers (usually as part of a Power Purchase Agreement (PPA) under which the supplier purchases the output from the facility) to allow them to redeem them against their Renewables Obligation.

An alternative route to market for generators to one of the support schemes mentioned above could potentially be to enter into a corporate PPA with a customer (off-taker) which typically

[3] "commissioned", in relation to a generating station, means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that that generating station is capable of commercial operation

entails the customer purchasing electricity from the generator at an agreed price for the term of the agreement. A number of responses also proposed that corporate Power Purchase Agreements should also be considered where agreed before the cut-off date and where projects progress to market under such PPAs under the terms originally agreed. The SEM Committee has considered this and where a reasonable expectation of the commissioning of a renewable generation facility benefiting from priority dispatch was established based on the strength of a corporate PPA concluded by 4 July 2019, such facilities should be treated the same as those which had secured support under a support scheme by this date, provided that support under such a PPA remains available to a facility under the terms originally agreed.

While there is no definition of PPAs included in the SEM Market Codes, Under Directive (EU) 2018/2001 a 'renewables power purchase agreement' is defined as '*a contract under which a natural or legal person agrees to purchase renewable electricity directly from an electricity producer*[4].

As corporate PPAs are commercial arrangements the SEM Committee is concerned that there is no visibility or standard terms and conditions which can be measured against the cut-off date. On this basis, where a generation facility which was not commissioned by 4 July 2019 but had concluded a corporate PPA by this date and wishes to claim eligibility for priority dispatch, an application will need to be made to the RAs within 3 months of publication of this Decision demonstrating eligibility on the basis of suitable, objective evidence and once energised, further confirmation will be required that the support under the PPA remains as per the terms originally agreed.

Based on these considerations and responses received, the SEM Committee has decided on a set of eligibility criteria for priority dispatch pursuant to the Regulation that try to balance all of these issues and can be transparently demonstrated through monitoring of commissioned units based on information provided by the TSO and DSOs reporting, award of rights for support under the REFIT and NIRO schemes and (where relevant, corporate PPAs) awarded (or, in the case of such PPAs, concluded) by the cut-off date.

Under these criteria, projects will retain eligibility for priority dispatch only where the relevant unit had completed commissioning and testing by 4 July 2019, or had by that date secured a

[4] Article 15(8) of the Directive states 'Member States shall assess the regulatory and administrative barriers to long-term renewables power purchase agreements, and shall remove unjustified barriers to, and facilitate the uptake of, such agreements. Member States shall ensure that those agreements are not subject to disproportionate or discriminatory procedures or charges.
Member States shall describe policies and measures facilitating the uptake of renewables power purchase agreements in their integrated national energy and climate plans and progress reports pursuant to Regulation (EU) 2018/1999.'

route to market (and subsequently becomes active) under a REFIT Letter of Offer, preliminary accreditation under the NIRO Order support scheme or a corporate PPA.

Where there are any significant modifications as per Article 12(6) after 4 July 2019 as defined in this Decision, units progressing towards energisation under these criteria should no longer be eligible for priority dispatch.

SEM Committee Decision:

Where by 4 July 2019:

1. a unit had completed commissioning and testing associated with energisation as defined in the applicable Grid Codes and Distribution Codes and was when commissioned subject to priority dispatch, or;
2. such a unit had secured a route to market under a REFIT Letter of Offer or preliminary accreditation[5] under the Renewables Obligation Order (Northern Ireland) 2009 (as amended) (the NIRO Order) support scheme and becomes active under the terms of the relevant scheme, or;
3. such a unit had secured a route to market under a corporate Power Purchase Agreement and becomes active under the original terms agreed (Power generating facilities wishing to rely on this ground of eligibility should apply to the RAs within 3 months of this Decision to demonstrate eligibility on the basis of objective evidence and once energised, further confirmation will be required that the support under the PPA remains as per the terms originally agreed in order to be eligible for priority dispatch);

such units will continue to be eligible for priority dispatch. Where there are any significant modifications as per Article 12(6) following 4 July 2019 as defined in this Decision, units progressing towards energisation under these criteria should no longer be eligible for priority dispatch.

[5] The SEM Committee notes that the ability to become active under a route to market secured under the REFIT or NIRO Order scheme before 4 July 2019 would be contingent upon timely satisfaction of any conditions applicable under such scheme. In that context, it understands that the deadline for satisfaction of the conditions applicable under the NIRO Order scheme for most if not all generation facilities which had secured a route to market under that scheme prior to 4 July 2019 had expired before that date

2.2 Eligibility for demonstration projects and facilities with an installed capacity of less than 400kW

Consultation Proposals

With respect to the removal of priority dispatch for new renewable generators (those commissioned after 4 July 2019), the Consultation Paper noted that certain new renewable generation and demand-side facilities are excluded from these requirements, covering:

- New renewable energy generating facilities with an installed electricity capacity of less than 400kW, unless a derogation is sought by a Member State. From 1 January 2026, priority dispatch will apply only to power generating facilities using renewable energy sources with an installed electricity capacity of less than 200 kW.
- Power-generating facilities using high-efficiency cogeneration with an installed electricity capacity of less than 400 kW, if provided for by a Member State.
- Generators, energy storage facilities and other demand-side response units demonstrating innovative technologies, subject to approval by the regulatory authority with a limitation to such priority for the time and extent necessary for achieving the demonstration purposes;

The Electricity Regulation defines a 'demonstration project' as '*a project which demonstrates a technology as a first of its kind in the Union and represents a significant innovation that goes well beyond the state of the art*'. Under Article 12, Member States should ensure that priority dispatch is afforded to demonstration projects subject to approval by the Regulatory Authority for a limited time period.

The RAs sought feedback as part of the Consultation on the types of demonstration projects that may be suitable for an application process for limited priority dispatch eligibility. The RAs proposed that an application process will need to be established to provide RA consent for such units to be eligible, in communication with the TSO and DSO in each jurisdiction.

Feedback Received

In their responses both Coillte and CEWEP state that any such demonstration projects should be unique at European level within the scope of the Regulation and have limited priority dispatch from the date of energisation subject to any delays which can be demonstrated to be outside the control of the demonstration projects.

NIE Networks are of the view that demonstration projects should be facilitated for any technology where there is the need to develop learning (for example to update policies, procedures and systems) specifically in relation to the power system and energy market in Northern Ireland and Ireland. It may be appropriate to award priority dispatch status to demonstration projects that could provide learning specifically regarding market processes and systems and would facilitate the continued connection of renewable technologies and contribute towards the achievement of ambitious renewable energy targets.

BGE believes this category of projects should cover unproven technologies in the market such as those being discovered through the FlexTech programme and residential/ domestic sector technologies in the DSR space being included which would include domestic EV technology and storage.

EirGrid and SONI are of the view that any demonstration project that would be seeking limited Priority Dispatch would have to follow an RA approval process. Demonstration projects wishing to provide energy and participate in the SEM would follow the normal registration process for the energy market and balancing arrangements.

In their response, Limerick CityxChange are of the view that if a project can successfully demonstrate that they fit the criteria of a "Demonstration Project", then they should be entitled to priority dispatch for an agreed period. In their view this period should be able to reflect the community risk associated with local electricity generation and contractual obligations such as RESS auctions and PPA's.

SEM Committee Response and Decision

In the SEM Committee's view, no changes are required to the market rules associated with the requirements under Article 12 for units under 400kW and 200kW and such units would need to take part in the market and scheduling and dispatch process in order to benefit from priority dispatch in the SEM.

In terms of demonstration projects, applicants which are of the view that they meet the criteria as set out in the Regulation as '*a project which demonstrates a technology as a first of its kind in the Union and represents a significant innovation that goes well beyond the state of the art*' are invited to submit an application to the RAs for a decision on whether they should be eligible for priority dispatch. The RAs will consult with the TSOs and DSOs in each jurisdiction before making a decision on eligibility based on any applications received.

SEM Committee Decision:

Projects are invited to submit applications to the RAs demonstrating how they meet the criteria for demonstration projects as set out in the Regulation to be provided priority dispatch for a limited time period. The RAs will consult with the TSOs and DSOs in each jurisdiction before making a decision on eligibility based on any applications received.

2.3 Changes to Priority Dispatch status due to Significant Modifications

Consultation Proposals

Article 12(6) states that priority dispatch shall no longer apply to power generating facilities '*from the date on which the power-generating facility becomes subject to significant modifications, which shall be deemed to be the case at least where a new connection agreement is required or where the generation capacity of the power-generating facility is increased'*

The RAs interpreted this to mean that a unit would no longer be eligible for priority dispatch where;

1. A new connection agreement is required.
2. Where the generation capacity of a power generating facility has been increased.

As part of the Consultation Paper, the RAs noted their concern that depending on the implementation of this requirement, this may limit useful or relatively minor modifications if they introduce a requirement for a new connection agreement. It was acknowledged however that the implications of any loss of priority dispatch are likely to diminish as more renewable generators are no longer eligible for such treatment. The RAs sought feedback on their interpretation and further considerations for implementation of this requirement.

Feedback Received

The majority of respondents agree that the Regulation is clear that units forfeit priority dispatch where their generation capacity is increased but propose that the interpretation of what constitutes '*significant modifications*' should afford some flexibility and not inadvertently prevent further facilitation of renewables and decarbonisation. There is also consensus from a number of respondents that a new connection agreement by itself should not trigger loss of priority dispatch but should only be lost if there is a material change to a metered Generator Unit that has led to a requirement for a new connection offer.

A number of proposals were provided by respondents for modifications which should not be defined as significant for the purpose of this requirement such as changes to the connection methodology, sharing/merging of a grid connection with another separately metered Generator Unit, lifecycle improvements to control systems, new connection agreements issued for procedural reasons, increased in Maximum Import Capacity (MIC) or changes involved in optimising generation.

Coillte state in their response that the Regulation allows for pragmatic local market flexibility to be taken in the interpretation of this Article. In their view a power generating facility should be defined as a Generator Unit in the SEM and significant modifications should exclude investments that would not be untypical during a normal life cycle of a wind farm.

Bord na Mona would support the development of a schema that clearly delineates between amendments which are significant and those that are deemed non-significant. They note that there is an analogous process for EPA licences which distinguishes between technical amendments and the need for a full review of a licence. Cloosh Valley Windfarm also request clarity in their response on the definition of significant modifications versus minor amendments.

In their response, ISEA state that their position is that if the installed capacity of a generator has not increased, if the generator has not been repowered, or if the generator has not been replaced with a different technology, then business-as-usual configuration of connection offers and agreements should not trigger loss of priority dispatch as there has been no material change to power generating facility. In their view there are many procedural reasons when new connection agreements are issued where there is no change to the power generating facility.

IWEA and NIRIGs' position is that a new connection agreement by itself does not trigger the loss of priority dispatch, but that it is lost if there is a material change to a metered Generator Unit that has required a new connection offer. In their view, the co-location of new renewables development with existing generation and the merging of two units with priority dispatch, along with technical, commercial or administrative grid modifications should not result in a unit losing priority dispatch.

Energia supports IWEA's and NIRIG's position and in their view, Article 12 only requires that there is significant modification to a power generation facility where a new connection agreement is required, not when a new connection agreement is entered into for convenience. Energia would support clear processes being put in place by System Operators as to when new connection agreements are required.

ERG Renewables are also of the view that new connection agreement by itself does not trigger the loss of priority dispatch. Instead, priority dispatch should be considered lost if there is a material change to a metered Generator Unit that requires a new connection offer. In their responses, ElectroRoute and Innology Renewables both state that there should be flexibility in what constitutes a significant modification other than changes which result in generation capacity being increased.

In SSE's view the definition of "significant modifications" that would necessitate the issuing of a new connection agreement lacks sufficient clarity in the SEM. This needs to change in order to drive a clearer understanding of what should trigger a new connection agreement in the context of Article 12. In their view, units may avoid optimising generation at their site due to the risk of losing priority dispatch. Cloosh Valley Wind Farm also notes that this a key consideration for the retention of priority dispatch by units who may wish to optimise generation at their site, but may avoid doing so, because of the potential loss of priority dispatch.

Enerco's position is that the interpretation of 'significant modification' should not prevent efficient forms of further renewable developments, including for example a separately metered extension to a windfarm under an existing connection agreement or the merging of two units with priority dispatch.

In Aughinish Alumina's view, it should be clarified that an increased MIC to a site should not constitute a significant modification as increased electrification can form part of the decarbonisation of industrial facilities. In their view, there should also be a differentiation made between a 'facility' and a 'site' where a power generation facility exists within a site. If the import or export capacity is increased on a site due to an additional facility being installed the existing facility should not lose its priority dispatch status. The interpretation of "significant modifications" to a "power-generating facility" should be made carefully so that it will not hamper future decarbonisation of industry through electrification and remove tools to further integrate renewables. Discretion should be afforded to the RAs especially if it reduces the carbon intensity of the power/heat economy in line with government targets.

In their response, Dublin Waste to Energy highlight the issue that in the event of additional waste capacity being necessary, it is likely that additional Waste to Energy capacity would be the preferred treatment method which would likely involve an increase in generation capacity. In their view the implementation of this regulation at best creates uncertainty for growth in this space, and at worst creates a barrier to entry altogether.

In Indaver's view, the requirement for change of a connection agreement should relate to the full or partial repowering of the power generation facility or a significant change to the overall generation technology triggering a change in MEC. Modifications and improvements to a generation facility should not fall under the scope of a significant change. Indaver have also requested clarity on whether a modification to a connection agreement may be required if there is a change to an MIC or if equipment is materially changing. In their view, modifications and improvements to generation facilities should not fall within this scope, as this could lead organisations to forgo investing in projects that have potential for decarbonisation. This could

also have an impact on incentives to treat more waste where priority dispatch is lost due to increased tonnage of waste being processed.

In CEWEP's response, they state that providing changes don't result in an increase in MEC, these should be allowed without the loss of priority dispatch for a facility and any new connection agreements issued for a procedural matter should not trigger a loss of priority dispatch.

Dublin City Council and the three Waste Management Regional Offices raise a concern that an increase in generation capacity for a waste to energy facility will mean that such facilities would lose their priority dispatch status, which may create uncertainty for future growth and a barrier to entry for such units, which could have significant consequences for waste management planning.

BGE is of the view that any units re-powering or increasing generation capacity would likely be doing so outside of a PPA period and at that point they would have had the benefit of the PPA and any supports. In this case such units should be flexible, reactive and balance responsible and any dispensations or distortions to loss of priority dispatch would undermine the intent of the legislation.

In their response, NIE Networks noted that currently, when any information contained within a connection agreement between NIE Networks and a generator connected to the distribution network changes, a new connection agreement is issued, irrespective of the type of modifications such as a change of legal entity. In their view, the RAs should apply a consistent approach to all network operators in Northern Ireland and Ireland to ensure that there are no unintended consequences. In addition, they highlighted the fact that currently there is no notification process between DNOs and TSOs where a connection agreement has been amended.

ESB Networks also note in their response that connection agreements are re-issued for a range of reasons that would not constitute a 'Significant Modification' to the generation unit – for example, a Change of Legal Entity of the owner of a unit. While the Regulation is clear that an increase in capacity will be categorised as significant modification, ESBN note in their response that it is not clear whether this relates to installed capacity or contracted capacity or a change in technology type. In their view it will also be important to identify how this will be recorded, how and when this will be communicated to the Generator, and how and when a change to priority dispatch status is communicated to the SEMO to ensure appropriate treatment in the market.

SONI and EirGrid also state in their response that the TSOs may issue a modified connection agreement for a number of reasons, many of which are not material, or reflective of any significant modification to the unit itself. EirGrid and SONI suggest that it would not be in line with the intention of the Regulation that a unit should lose priority dispatch for changes to the connection agreement that are not material and do not reflect significant modifications to the unit. They suggest that the significant modification concept should be aligned with the 'material change' that triggers whether or not Connection Network Code requirements are applicable to a unit under a connection agreement. EirGrid and SONI have proposed the following concept to be applied to implement this aspect of the Regulation;

"Modifications to the Connection Agreement should not impact the Customer's Priority Dispatch status, except where the following applies:

- *the modification provides for an increase in MEC;*
- *the modification provides for a change in technology type;*
- *the modification provides for a change in the manner of operation of the unit;*
- *the modification provides for a repowering which may lead to an extension to the duration of the Connection Agreement."*

SEM Committee Response and Decision

The SEM Committee agrees with the majority of respondents to this question in that the interpretation of a significant modification as applied to the SEM should as far as possible not impact on useful changes that may deliver more efficient or low carbon solutions, while being compliant and in line with the intent of the Regulation.

Based on an assessment of responses received the SEM Committee has set out a number of principles related to the interpretation of Article 12(6) in this area. A list of Modification types deemed significant based on these principles is also provided in Appendix 1, which is published with this Decision, in order to provide clarity to stakeholders on the types of changes which will result in loss of priority dispatch status. However, the SEM Committee notes that this list may not be exhaustive and requests any proposed changes to the list of significant modifications which would entail a loss of priority dispatch based on these principles to be submitted by the System Operators on a periodic basis for review and approval by the RAs. The intention is for the list in Appendix 1 to be coordinated on an all-island basis. As changes are required, the RAs will update this document in order to provide certainty to stakeholders

on modifications impacting on priority dispatch status as requested in a number of consultation responses.

The SEM Committee supports the view that there is a distinction between a new connection agreement being required due to a significant technical change or difference in the manner of operation of a unit versus a connection agreement which is reissued for procedural reasons such as a change of legal entity. Similarly to the distinction introduced in Regulation 2019/943 between 'new' units without priority dispatch and established units which retain eligibility for priority dispatch, the three European Connection Codes[6] apply to new users connecting to the Transmission and Distribution systems and are only applied to existing users where the users' plant is modified to such an extent that its connection agreement must be 'substantially revised', which is in line with this interpretation.

While the SEM Committee is of the view that new connection agreements can continue to be issued under the current processes of each System Operator, in order to be compliant with the Regulation the System Operators will be required to clarify whether a new connection agreement is being issued pursuant to a 'significant modification' or not based on the principles set out below and the list included in Appendix 1.

These principles are intended to inform the publication of a list of modifications deemed significant under the Regulation as per Appendix 1 of this Decision along with any future changes or additions required;

1. A 'power generating facility' is defined in the Electricity Regulation as '*a facility that converts primary energy into electrical energy and which consists of one or more power-generating modules connected to a network'.* Based on the unit-based design of the SEM, the SEM Committee is of the view that this should be interpreted to mean a Generator Unit as defined in the Trading and Settlement Code[7].

[6] For example see Article 4 of Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (Text with EEA relevance) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2016_112_R_0001#d1e1086-1-1. Commission Regulation (EU) 2016/1388 establishing a network code on requirements for demand connection and Commission Regulation (EU) 2016/1447 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules also reference new and existing users.

[7] Under the TSC a Generator Unit means one or more Generators, other item of Dispatchable plant or a notional unit registered as a Generator Unit under this Code.
For the purposes of the Code a Generator Unit may be any one of the following types:

a) physical: Aggregated Generator Unit, Demand Side Unit, Energy Limited Generator Unit, Hydro-electric Generator Unit, Pumped Storage Unit, Battery Storage Unit, Trading Unit, Wind Power Unit, Solar Power Unit or Dual Rated Generator Unit;
b) notional: Assetless Unit, which includes a unit registered by a SEM NEMO or a Shipping Agent under section B.8, an Interconnector Error Unit or Interconnector Residual Capacity Unit.

2. Where the MEC of a Generator Unit is increased, meaning the maximum export capacity of a site in MW as defined under the site's connection agreement or equivalent, it will no longer be eligible for priority dispatch under Article 12(6).
3. Where a Modification leads to a change in the technology type or manner of operation of a Generator Unit, it will no longer be eligible for priority dispatch under Article 12(6). This includes for example a different type of generation, or a change in the technical characteristics, capabilities or running regime of a Generator Unit.
4. Where a Modification leads to repowering of a Generator Unit, it will no longer be eligible for priority dispatch under Article 12(6).
5. The following will not be deemed 'significant modifications' for the purpose of Article 12(6);
    - Replacement of failed equipment where there is a like for like replacement or as close as possible replacement to faulted equipment.
    - Extension to a facility where there is a separate Generation Unit with its own control system and MEC, acting as a separate Generation Unit in the SEM, the existing Generation Unit would retain priority dispatch and the new Generation Unit would not have priority dispatch.
    - Merging or splitting of two priority dispatch Generation Units with or without changes to works.
    - Procedural or administrative modifications due for example to a change of legal entity or name.
    - An increase in MIC of a Generator Unit, meaning the maximum import capacity of a site in MW as defined under the site's Connection Agreement or equivalent.

Based on these principles, a preliminary list of modifications deemed significant or not is also published in Appendix 1 with this Decision Paper. This has been reviewed with the TSOs and DSOs in each jurisdiction but may not be exhaustive for all potential future scenarios. The SEM Committee requests that any proposed changes to this list are submitted on a joint basis by the TSOs and DSOs for consideration by the RAs on a periodic basis. Where additions or changes are required the RAs will review and publish an updated list for the purpose of Article 12(6) of the Regulation. Any changes will be included in Appendix 1 published with this Decision and noted as part of any future updates.

While this issue was not considered in SEM-20-028, in their respective responses the TSOs and DSOs noted that they currently do not have any notification process in place where modifications to connections are completed or where new connection agreements are issued. The SEM Committee request that pursuant to the detailed list of Significant Modifications

published based on the principles set out in this Decision, the System Operators and the Market Operator put in place a notification process for any modifications which impact on a unit's priority dispatch status so they can be treated appropriately in the SEM (once the rules and systems to accommodate this are established).

Where a significant modification affects a Generator Units' priority dispatch status, the RAs request that the relevant System Operator notifies the other TSOs and DSOs in the SEM and SEMO as necessary. The SEM Committee also requests that the TSOs and DSOs maintain a register of units with and without priority dispatch on the basis of this Decision Paper which will be required in order to inform the scheduling and dispatch process.

SEM Committee Decision:

The SEM Committee has set out a number of principles for the assessment of modifications deemed significant pursuant to Article 12(6) and requests that that any proposed changes to the list of significant modification detailed in Appendix 1 are submitted on a joint basis by the TSOs and DSOs for consideration by the RAs on a periodic basis. Where additions or changes are required the RAs will publish an updated version of Appendix 1 noting these changes.

The SEM Committee also requests that the TSOs and DSOs put in place a communication process with SEMO and maintain a register of units with and without priority dispatch on the basis of this Decision Paper so they can be treated appropriately in the SEM once the rules and systems to accommodate this are established.

2.4 Voluntary cessation of Priority Dispatch status

Consultation Proposals

The Consultation noted that the Regulation provides for Member States to provide incentives to installations eligible for priority dispatch to voluntarily give up priority dispatch. The RAs did not propose incentivising units to give up priority dispatch in the Consultation Paper, however once the rules and systems are established to cater for priority dispatch and non-priority dispatch renewables, the RAs were of the view that units should be able to make a choice on whether they wish to retain their priority dispatch status or not.

Feedback Received

In their response, SSE support generators having the option to opt out of priority dispatch but note that this may not be an attractive option for many existing units. BGE, ESB GT and ElectroRoute also agree that units should be able to make a choice on whether they wish to retain their priority dispatch status provided they are already in the priority dispatch pool and that the choice should be available at any point in time.

In terms of the option to voluntarily give up priority dispatch, in IWEA and NIRIG's response they note that older renewables that do not have subsidies linked to production may be content to experience higher levels of dispatch down where it is cost neutral to do so.

SEM Committee Response and Decision

Once the rules and systems are established to cater for priority dispatch and non-priority dispatch renewables, SEM Committee is of the view that units should be able to make a choice on whether they wish to retain their priority dispatch status or not. All respondents to the Consultation supported this proposal and while there is no specific incentive proposed to give up priority dispatch as part of this Decision, there may be incentives for units out of support to experience higher levels of dispatch down and avoid exposure to negative prices.

Some respondents to the Consultation are of the view that units eligible for priority dispatch should be able to choose at different times within the market whether to be treated as priority dispatch or not. This issue is not considered within the scope of this Decision Paper but will be considered further in the RAs' further consultation on the market design implications of Articles 12 and 13.

SEM Committee Decision:

Once the rules and systems are established to cater for priority dispatch and non-priority dispatch renewables, SEM Committee is of the view that units should be able to make a choice on whether they wish to retain their priority dispatch status or not.

3 Next Steps

Following publication of this Decision Paper, relevant units will be classified as eligible for priority dispatch status or not based on the eligibility criteria outlined by the SEM Committee. In practice, the treatment of such units will not change until a Decision is made on the rules for participation of non-priority dispatch renewables in the SEM and any associated system changes and implementation is complete.

The SEM Committee requests that a register of units with and without priority dispatch and communications process is put in place between the System Operator and SEMO in order to ensure that such units can be treated appropriately in the SEM once the rules and systems to accommodate this are established.

The detailed list of Significant Modifications based on the principles set out in this Decision included in Appendix 1 may be updated on a periodic basis where scenarios arise that are not currently accounted for or where further clarity is required.

The SEM Committee requests that proposed changes are submitted on a joint basis by the TSOs and DSOs for consideration by the RAs on a periodic basis as required based on modifications to connection agreements which may arise. The RAs will review these proposals and update Appendix 1 where changes or further clarity is required.

The RAs will continue to address the other areas considered in SEM-20-028 in line with the Information Paper published which sets out a number of areas of work for further Consultation and SEM Committee Decisions in 2020.