

Single Electricity Market Committee

**Extension to the Criteria for Approval of
Intermediary Applications
under the Trading and Settlement Code**

Consultation Paper

SEM-11-004

26th January 2011

1. Introduction

An Intermediary arrangement can be explained as permitting the owner of a generator to appoint an Intermediary to fulfil all of its obligations under the Trading and Settlement Code ('the Code' or 'TSC'). The role of Intermediaries is to act for licensees in relation to specific generator units under the Code, taking on, for example, their rights and responsibilities including bidding, settlement and provision of credit cover. In these circumstances, the unit owner has no direct obligations under the Code relating to that generator. It should be noted, however, that if an Intermediary breaches the Code, the RAs can take licence enforcement action against the generator who appointed the Intermediary (for failing to procure that the Intermediary has met its obligations under the Code).

The SEM Trading and Settlement Code specifies in paragraph 2.104 that an Intermediary may register any Generator Unit provided that the Regulatory Authorities (RAs) have consented to the registration of the relevant Generator Units by the Intermediary. Note the Code does not specify what criteria should be used by the RAs in consenting to the registration of the relevant Generator Units by an Intermediary. Therefore, the RAs determine (through published SEM Committee decision papers) the criteria to be applied when deciding on whether the Intermediary can be appointed. The SEM Committee can therefore, at its discretion, change the criteria.

The criteria for approval of Intermediary applications under the Code (see Section 2 below) have been stable for the past three years and the RAs believe the arrangements have been successful. The SEM Committee are now considering allowing a limited extension to the criteria (see Section 3 below) to allow certain Price Maker Generator Units to appoint an Intermediary to act on behalf of these units. For clarity, note the revised proposed extension to the criteria will not affect the Intermediary arrangements currently in place.

The extension is being proposed at this time as representations have been made to the SEM Committee from a potential new entrant that cannot access a support-scheme they have been allocated due to the configuration of the SEM.

The SEM Committee welcome all comments on the proposals set out in this paper. Comments should be sent in electronic form by 2nd March 2011 to Dana Kelleher at the Commission for Energy Regulation, Ireland (dkelleher@cer.ie) and Jean Pierre Miura at the Utility Regulator, Northern Ireland (jeanpierre.miura@uregni.gov.uk).

2. Criteria for Approval of Intermediary Applications

The legal basis for Intermediaries is set out in the Generation Licence and the Trading and Settlement Code. In particular, in accordance with Condition 14 of the Licence and paragraph 2.104 of the TSC, the RAs must have given prior consent to the registration of the relevant Generator Units by an Intermediary. Therefore the RAs determine the criteria for appointing Intermediaries. This is achieved through the following decision papers (please see the paper itself for reasoning behind these criteria):

Criteria for Approval of Intermediary Applications pre Go-Live

SEM/07/029¹ – published on 28th February 2007 – “Criteria for Approval of Intermediary Applications under the Trading and Settlement Code”

At a high-level, the above paper allows the appointment of an Intermediary for PSO-backed contracts where the contract was entered into before the date of this decision – the appointment of an Intermediary shall cease on termination or expiry of the contract. The specific criteria are as follows:

I. Where the Contract was entered into on or before 27 February 2007 (the date of the decision)

It shall be possible under the Code to appoint an Intermediary in relation to any generator unit in respect of contracts entered into on or before 27th February 2007.

II. Such arrangements (under I. above) shall be limited to 12 months from Market Go-Live (PSO contracts are to be exempted from this condition)

The RAs considered a period of 12 months to be ample time for participants to adapt their contractual set-up to comply with the SEM. Where a party's participation in a bilateral agreement was under a PSO contract², the use of an Intermediary will be permitted for the duration of the contract.

III. Limited to the duration of the current contracts

The appointment of an Intermediary under the Code by a PSO generator shall cease on termination or expiry of the underlying contract.

¹

<http://www.allislandproject.org/en/trading-settlement-code-decision.aspx?article=8f6591e2-1ac5-44ea-a998-a7e70da3cb8d&mode=author>

² For the purposes of this paper, a PSO Contract is contract provided for in relevant legislation in Ireland or Northern Ireland, payments under which are underwritten by a Public Service Obligation levy.

Existing Criterion for Approval of Intermediary Applications (criterion applying since Go-Live)

SEM/07/11³ – published on 10th December 2007 – “Revisions to the Criteria for Approval of Intermediary Applications under the Trading and Settlement Code”

Following a consultation⁴ (SEM/07/508) on the matter, this decision allowed for Intermediaries to be appointed where no historical contract existed and in respect of a Generator Unit that is registered as a Price Taker Generator Unit. Therefore at this present point in time, Intermediaries can only be appointed for Price Taker Generator Unit, the restriction being for market power reasons. The specific criterion is as follows:

IV. An Intermediary may be appointed where a Generator Unit has registered as a Price Taker Generator Unit in accordance with the TSC and where said Generator Unit is contracted to a Supplier Unit that is a Party to the TSC. For the avoidance of doubt the Intermediary will cease to be appointed when either or both of the following occur:

- a) on termination or expiry of the underlying contract; or
- b) on the Generator Unit ceasing to be registered as a Price Taker Generator Unit or Autonomous Generator Unit under the TSC.

Exemption to the Criteria for Approval of Intermediary Applications

Note that a further decision paper⁵ on Intermediaries was published which allowed for a time-bound exemption for ESB to appoint an Intermediary to act on behalf of the units being sold as part of the CER-ESB Asset Strategy Agreement– this was required to effect the transfer of assets to Endesa.

³ http://www.allislandproject.org/en/TS_Decision_Documents.aspx?article=255cc04f-562f-46e3-9924-d9a457875d88

⁴ http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=14771152-4ac5-44ee-b55f-645a93812b7c&mode=author

⁵ SEM/08/170 – published on 3rd November 2008 – “Special Exemption from the Criteria for the Approval of Intermediary Applications”
http://www.allislandproject.org/en/TS_Decision_Documents.aspx?article=b2036777-c400-473b-bdc4-adabeea07252

3. Proposed Extension to the Criteria for Approval of Intermediary Applications

As noted in previous papers, permitting all participants in the SEM to make use of Intermediary arrangements without restriction would have several significant drawbacks, as follows:

- The existence of Intermediary arrangements has the potential to create additional concentrations of market power e.g. if unchecked, provision for Intermediaries could, at the extreme, allow one person to bid in all available generation into the market;
- In this respect market monitoring in the SEM could be made more difficult if Intermediaries were to be permitted across the board;
- It is more complex to ensure that generation licensing obligations such as compliance with the Code, obligations to comply with the Grid Code, restrictions on bidding behaviour, compliance with other codes and contracts etc. can be applied in relation to Intermediary generator units.

In the context of the above, the SEM Committee do not believe it is appropriate to permit all participants in the SEM to make use of the Intermediary arrangements without restriction. However, at this time, the SEM Committee is considering allowing a limited extension to the current criteria for appointing Intermediaries. Such an extension of the Intermediary mechanism to an enduring facility for specific Price Maker Generator Units, as outlined below, may serve to further ensure that the SEM market rules foster an environment that is fully conducive to the achievement of national and EU targets.

Consideration has been given by the SEM Committee to what the appropriate criteria might be. Following this review, the SEM Committee propose the following criterion:

V. An Intermediary may be appointed where a Generator Unit has registered as a Price Maker Generator Unit in accordance with the TSC and where said Generator Unit is contracted to a Supplier Unit that is a Party to the TSC and the following conditions are satisfied:

- a) The generator has been allocated a support-scheme where to access the payments, the requirements of the scheme are such that an Intermediary must be appointed to receive the support-scheme payments and that no alternative means of receiving the support-scheme payments in the SEM exists (this only applies to REFIT at present); and,

- b) The generator's Maximum Export Capacity is less than 50MW;
- c) Subject to applicable licence conditions, the Intermediary appointed will only act on behalf of any other generator in the SEM with which it has a related undertaking or affiliate, with the meanings as set out in the relevant jurisdictional Generation Licences.

Condition (a) is being proposed to ensure at a minimum that the SEM is not configured in a manner that actively frustrates the delivery of these targets which fulfils the SEM Committee's duty⁶ to have regard to "the need, where appropriate, to promote the use of energy from renewable energy sources".

This condition also serves to clarify that an Intermediary can only be appointed to act on behalf of a Price Maker Generator Unit if there is no other way that the support-scheme payment can be received in the SEM⁷.

Condition (c) is being proposed to mitigate any potential for a participant to exert market power. This also meets the principle objective of the SEM of promoting effective competition⁸. Essentially, the intention of this condition is that a Supplier Unit only acts on behalf of Generator Units to which it is connected to by virtue of company ownership, structure or shareholding.

As is currently the case, a separate application in respect of each Generator Unit must be completed by the Generator wishing to appoint an Intermediary.

If there is a change in ability to access the payments for some reason (due to any SEM Committee decision on dispatch and scheduling and/or relevant legislation in either jurisdiction, for example), this policy may be reviewed.

⁶ This duty is set out in Section 9BC (5) b of the Electricity Regulation Act 1999 in Ireland and in Northern Ireland, article 9 (5) (b) the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

⁷ For example, under this proposed criteria, a Generator Unit that has priority dispatch (and therefore can register in the SEM as a Price Taker Generator Unit) cannot appoint an Intermediary to act on behalf of the Unit if it is registered as a Price Maker Generator Unit.

⁸ This duty is set out in Section 9BC (1) of the Electricity Regulation Act 1999 in Ireland and in Northern Ireland, article 9 (1) (c) the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007