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RE: SEM-20-033 - Consultation on Intermediary Arrangements in the SEM

Dear Adam and Ian,

Bord Gáis Energy (**BGE**) welcomes the opportunity to respond to this consultation on Intermediary Arrangements in the SEM.

1. Context

The Intermediary arrangements can be viewed as an important mechanism to facilitate participants in finding a route to market since the SEM's inception in 2007. We believe that there is a continued role for them not only for existing units using this mechanism but also as a route to market for new types of participants envisaged by the Clean Energy Package (**CEP**).

Any changes to Intermediary arrangements resulting from this Consultation and the consultation on Aggregation that is running in parallel to this (SEM-20-042) must in BGE's view ensure that the key attributes of a well-performing market remain unaltered and enhanced where possible. In particular:

- The market needs to maintain transparency which would include continuing unit-based bidding practices in SEM and ensuring that changes to the Intermediary arrangements' eligibility criteria, or indeed any move towards considering Intermediaries as "aggregators" under applicable EU legislation,¹ does not reduce transparency in the market. Furthermore, the flow of volumes (and related revenues) for individual units as between the ex-ante markets and balancing market must remain clear and easily traceable/ linkable;
- Enhancement of market liquidity is to be encouraged. In the context of Intermediaries, access for new entrants and new technologies should be facilitated in a manner that increases the levels of market competition and liquidity. By corollary; Intermediary arrangement changes should not: reduce liquidity, contribute to market concentration or potentially facilitate manipulative behaviours in the markets, and;
- The oversight and controls on Intermediaries, the information available on Intermediaries and its publication and the administration of Intermediaries need to be clear.

It is within this context that BGE has established its responses to this consultation. We provide responses below to the questions posed in the Consultation in the order of BGE's view on priority.

¹ Please see section 8 below for BGE's initial views on Intermediaries and aggregation

2. Eligibility Criteria for Intermediaries

Consultation Question 1: *The RAs propose to revise Part C of the eligibility criteria to allow for a broader range of market participant categories to apply and also to provide for renewable units which may be dispatchable and/or controllable to take part in such arrangements. The revised criterion would be; where a Wind Power Unit, a Pumped Storage Unit, a Battery Storage Unit, a Demand Side Unit or a Solar Power Unit with a Maximum Export Capacity of less than 100MW is contracted to a Supplier that is Party to the TSC.*

In summary, BGE supports the amendment to Part C of the eligibility criteria subject to certain clarifications around: the need to monitor overall volumes traded by the entity that is an Intermediary instead of a unit limit; a need to ensure that any of these units that are de-minimus are traded in the market as transparently as possible to maximise liquidity, and; where non-dispatchable units and older units with no priority dispatch should now sit in terms of eligibility. We address these issues in more detail under section 2.a below. BGE also believes that there is a need to revise the duration of the continued use of Criterion A and the sustainability of the limitations under Criterion D given possible limitations its continued application places on access to PPAs by suppliers. We address each of these criterion concerns in turn below.

The route to participation in the SEM that Intermediary arrangements offer is dependent on maintaining suitable eligibility criteria. The eligibility criteria in BGE's view need to respect the attributes of a well-performing market as referenced in section 1 above and need to reflect the changing generation landscape in SEM and developing EU legislative requirements. It is on this basis that we provide the following views.

a. Proposed Criterion C amendment

BGE supports the updating of Eligibility Criterion C to allow a broader range of market participant categories to apply to take part in Intermediary arrangements subject to: the maintenance of the principles of unit-based bidding and settlement; de minimus volumes being required to be seen in 'gross' in the market and; necessary Intermediary volume monitoring such that regulatory intervention can occur where necessary to mitigate market power concerns. This in our view would encourage access for new entrants and new technologies to SEM in a manner that should increase the levels of market competition and liquidity.

On the issue of Intermediary volume monitoring, BGE is unclear as to the rationale behind applying a limit of Maximum Export Capacity <100MW to units falling under this criterion and see it as a potential limitation to route to market for some units. For example, the increased appetite shown in the new Programme for Government for offshore wind generation would suggest that this limit would remove the option of Intermediary arrangements to these new facilities. BGE does acknowledge that part of the basis for the original eligibility criteria in general included aims of avoiding inadvertent market power risks.² We suggest that the default position should be that no limitation as to the size of the units that are eligible under Criterion C applies. Instead, it should be explicit that an Intermediary's total volumes should be viewed as contributing to the generation market share of the entity that is acting as the Intermediary with a view to mitigating market power concerns. This may in our view require active monitoring of Intermediary arrangements and related volumes to ensure relevant generation market share thresholds, breaches of which heighten market power concerns, are not exceeded by virtue of Intermediary volumes.

We would welcome further consideration and discussion of this potential market power concern by the RAs, before a final decision is made.

In line with BGE's desire that any changes to Intermediary arrangements should not impact on existing transparency and liquidity (but enhance it where possible), BGE would like to confirm our understanding and continued position that unit-based bidding and unit-based settlement will persist under Intermediary arrangements. We would welcome confirmation that there will be no scope for an Intermediary to be considered as a stand-alone unit itself (under which multiple units can be bid and settled on a pooled basis), by virtue of

² As discussed in the SEM-11-014 decision. Please see section 2.c for further discussion on the 100MW limit included in Criterion D and for BGE views on Criterion D in general

any changes to these Intermediary arrangements. The continued application of the principle of unit-based bidding and unit-based settlement for units being traded via Intermediaries is critical across all markets to maintain market transparency and liquidity. There should be no dilution of this principle on foot of the arrival of new participants and technologies in the market seeking a route to market via an Intermediary. In practice, BGE has concerns that market liquidity could be eroded if de-minimus volumes of the technology types listed under Criterion C are permitted to be netted off against demand within one Supplier Unit in the market. Effectively, we ask that the “gross” generation position of these de-minimus units be “seen” in the market to ensure that the onset of considerable volumes of small generation in future is not lost to the market in terms of liquidity. This loss would also have considerable negative impacts for transparency and for ease of monitoring and measuring units’ performance in the market. BGE’s support for the proposed new Eligibility Criterion C is on the understanding that the eligibility of new participants and technologies to engage in Intermediary Arrangements in the SEM (a) at a minimum maintains the principle of unit-based bidding and settlement and (b) ensures de-minimus volumes are seen in ‘gross’ volume in the market.

We also note that the proposed new Criterion C does not appear to cover non-dispatchable wind units and ask whether the intention is to exclude such unit types from using Intermediary arrangements going forward?

Finally, we note the proposed new Criterion C in its definition refers to wind units as “*including new units without priority dispatch*” – we would welcome clarification that *existing* units that have priority dispatch but that decide to drop priority dispatch status, will also fall under Criterion C?

b. Historical contracts (Criterion A)

The origin of Intermediary Arrangements was “...to facilitate the transfer over of a number of legacy power-purchase arrangements (PPAs) that existed prior to the introduction of the SEM, and its gross mandatory pool design.”³ BGE’s understanding is that these legacy PPAs are captured within the current Eligibility Criterion A – “Where a party’s participation in a bilateral agreement is under a PSO contract then the use of an Intermediary will be permitted for the duration of that contract”.

The definition of “PSO contract” was set out in AIP/SEM/07/029⁴ as “...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.”. The “*relevant legislation*” condition in this definition requires one to refer to the applicable Electricity legislation and the contracts qualifying thereunder as PSO contracts. Given the expiration of the peat PSO contracts at the end of 2019 it is questionable as to the duration of the relevance that this category continues to have in Ireland at least. Should the RAs feel that the intent of Criterion A remains viable in today’s SEM, then the appropriate definition and clarification would be welcomed.

c. Generator / Supplier Affiliation (Criterion D)

BGE understands that the original driver behind the affiliation test in Criterion D⁵ was market power based. SEM-11-014 noted that essentially, the intention of this criterion 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. Our understanding of the continued application of this eligibility criterion is that any generator unit that is in receipt of government supports and that is <100MW, can only contract with a supplier to whom it is affiliated. This therefore allows only generator units >100MW to contract with suppliers outside of its company affiliations which limits the pool of generation units with whom suppliers, with no wind farm/ renewables ownership, can enter into PPAs. Given the upcoming RESS auctions and number of renewables whose support schemes are due to expire BGE believes there is a case to review this limitation given the change in the generation landscape since Criterion D was initially designed. As the electricity market becomes more renewables dominated, the continuation of Criterion D in its current format could arguably be viewed as facilitating the growth of market

³ SEM-20-033 (p2)

⁴ Decision Paper on the Criteria for Approval of Intermediary Applications under the Trading and Settlement Code

⁵ Whereby, subject to applicable licence conditions, the Intermediary appointed will only act on behalf of a generator in the SEM with which it has a related undertaking or affiliate as set out in the relevant jurisdictional Generation Licences

power and limiting the pool of renewables with which suppliers can contract. BGE would welcome the RAs' view and further clarification on this issue in their decision.

3. Extension of Intermediary Arrangements to Ex-Ante Markets, and Amendments to the Form of Authority

Consultation Question 5: *What is your view on the potential added value of the application of Intermediary Arrangements in the Ex-Ante Markets?*

Consultation Question 7: *Are there further changes to the FoA that the Regulatory Authorities should consider?*

BGE takes these two questions together.

In summary, BGE supports the application of Intermediary arrangements to the ex-ante markets on the proviso that it does not impact market transparency or liquidity. Alignment is needed between participant registrations in the balancing and ex-ante markets, and the same Intermediary needs to be acting for the participant in all markets so that trade and position transparency is maintained, and settlement facilitated. Intermediary arrangements should also not be permitted to operate in a way that aggregates volumes such that liquidity may be removed from the market, i.e. the unit-based bidding and unit-based settlement attributes of the market must not be diluted for example by moving to an interpretation of Intermediaries that sees them being considered a "unit" of itself under which pooled volumes can be bid and settled. On this matter, please see our answer under section 2.a. above and the importance of ensuring that all volumes, including de minimus volumes, of units to which Intermediary arrangements are extending reach the market in "gross" form.

On the Form of Authority ("**FoA**") we suggest adding the option for appointing an Intermediary in the ex-ante markets to the existing FoA. The same Intermediary needs to represent the participant in all markets to maintain trade and position transparency and facilitate settlement.

This proposal is a natural build-on for Intermediary Arrangements in SEM to allow units and participants full access to markets and comply with Article 7 of Regulation (EU) 2019/943 (CEP). The operational arrangements for Intermediaries must ensure that the principles of transparency and liquidity remain part of the process design. Sufficient arrangements will need to be in place with the NEMO (i.e. SEMOpx) to allow seamless market information flows for participants using Intermediary arrangements to ensure that participants, on a unit basis, have the same registration details in both the ex-ante and balancing markets, and that the same nominated Intermediaries are recognised as such in both markets. Participants will need to use the same Intermediary for all markets to maintain transparency and linkage of traded positions, otherwise for example we see considerable complexities arising in ensuring accurate settlement of reliability option obligations where applicable. The use of Intermediary arrangements in the ex-ante markets should not be permitted to be used as a mechanism to remove liquidity from the market. Intermediaries should not be seen as a unit themselves, and the principle of unit-based bidding and settlement in the ex-ante markets needs to be maintained. Any lack of transparency in or between markets if different Intermediaries are permitted to be used by participants could lead to manipulative behaviours in the markets, impacting market integrity and competitiveness.

The Form of Authority ("**FoA**") that governs the appointment of Intermediaries by participants needs to be amended to reflect the above position. The current FoA could add the option of appointing the same Intermediary that is representing the unit in the balancing market and/ or capacity market, to also represent that unit in the ex-ante markets. It is critical in our view at present that the same Intermediary represent a unit across ex-ante, balancing and capacity markets (where so decided by the relevant unit) such that volumes traded through an Intermediary can be easily traced/ assigned to the relevant unit for transparency and settlement purposes across the various markets.

4. Application of Intermediary Arrangements to Suppliers

Consultation Question 2: *The RAs propose to allow Suppliers to take part in Intermediary arrangements. Do you agree with this proposal and do you have a view on whether this should be available to all suppliers or only to those below a certain threshold of market share?*

BGE supports maximising market access for new entrants to encourage competition and liquidity, provided that key positive market attributes of transparency, market power mitigation and liquidity are not undermined. While BGE is not aware of any evidence of a barrier to entry to smaller/ new suppliers in the market we can see how the offering of Intermediary arrangements to new and small suppliers could be an avenue for access to the market for these participants. Should the RAs give further consideration to their proposal on this, we suggest that robust oversight measures are introduced to ensure that transparency on the level of market concentration of respective suppliers is maintained. For example, the volumes of the supplier acting as the Intermediary and the volumes of the supplier for whom the Intermediary is acting should be seen separately in the market at all times but the link between the Intermediary and the supplier for whom it is acting should also be explicit. In terms of market share the volumes of the entity that is the Intermediary should be added to the volumes of the Supplier for whom the Intermediary is acting to get a transparent view on market concentration. It may be the case that regulatory intervention is required if market thresholds are breached. Similarly to our views submitted under sections 2 and 3 above, it is critical that supplier / demand volumes are seen in “gross” in the market in that there should be no scope for the Intermediary concerned to be able to use the supplier volumes as a route to “netting” generation and demand in any of the ex-ante or balancing markets. BGE's starting point is that the option of using Intermediaries should be open to suppliers of all sizes provided the above noted issues are robustly addressed. However, the RAs will be better placed than us to determine whether market power issues might be caused by suppliers over a certain size using or offering Intermediary services. Therefore, whilst the default should be to minimise restrictions, there may be a case to have them.

5. Amendment of eligibility criteria for new technologies or structures

Consultation Question 3: *The RAs propose that an additional criterion is added to the Trading and Settlement Code to allow for specific registrations to be approved once they meet the SEM Committee's specific objectives in this area. A Modification to the TSC would be raised following this Consultation to provide for this change. Do you agree with this proposal?*

In summary, we do not agree with the proposal for decisions to be made without informing participants of proposed changes and facilitating their feedback, and so we propose an alternative mechanism that may address the RAs' concerns. Notwithstanding this position, we do agree with the SEM Committee objectives that were noted in the proposal namely market efficiency, non-discriminatory access, renewable energy, avoidance of additional concentration of market power, regulatory oversight and compliance monitoring. We equally support the suggestion that evidence is provided by potential new applicant types that their eligibility will not lead to a market power issue and that Intermediaries will be compliant with the unit's obligations.

BGE notes the desire of the SEM Committee to remove perceived barriers to the participation of new technologies in the electricity markets. The mechanism to achieve this outcome needs to be balanced with being fair and open with existing participants in the electricity markets such that their plans and operations on the market are not impacted by unexpected changes within the population of market participants.

This consultation suggests that the consultation process on eligibility criteria is not meeting the needs of the RAs and could be considered a barrier to new participants. We are supportive of encouraging the entry of new participants and technologies into the markets, but we are mindful that a mechanism where decisions and approvals impacting the market are made without participants' involvement or knowledge is not conducive to effective market operation. A consultation process provides participants with the opportunity to become fully

informed on the issues and of any prospective new entrants to the markets. We believe the importance of being aware of new entrants applies to all sizes of units include aggregated micro-generation for example. We do not support loss of the opportunity for market participants to provide feedback and concerns before a decision is made.

As a possible solution to balancing perceived limitations that a consultation process would bring to market access as against providing opportunities for comment by interested parties, an additional eligibility criterion might be useful. It could for example include a mandatory pre-notification to the market including details such as with who, and why the unit needs an Intermediary access that is not covered by the other categories. Interested parties should then be afforded a reasonable window to respond. A reasoned outcome based on the responses received could then be provided to the market before the application of Intermediary arrangements to the smaller/ new participants is approved.

6. Publication of a quarterly report on the SEM Committee website

Consultation Question 4: *The RAs propose to publish a quarterly report on the SEM Committee website setting out the details of the current Intermediary arrangements in place in the SEM. Participants involved in these arrangements would be required to notify the RAs and SEMO of any changes to these. Do you agree with this proposal?*

BGE supports the transparent publication of market information without the inclusion of information that is commercially or contractually sensitive. Clarity is needed on the process and schedule involved for participant engagement, and that the publication will be updated in a timely manner that is effective for users.

The publication of a quarterly report on the SEM Committee website is a positive move for transparency of information within the market place. It should for example provide insight for smaller players as to who is offering Intermediary arrangements in the market thereby facilitating market access. We would welcome clarity as to the level of detail of information to be included within the website - BGE supports a level of detail that is meaningful without publishing commercially or contractually sensitive data. Consideration too needs to be given to the updating process and timelines for participants to advise the RAs and SEMO of changes for this publication. Finally, ideally the publication will be kept up-to-date within agreed (as short as practicable) timelines so that participants can rely on the published information.

7. Limitations to the facilitation of corporate PPAs

Consultation Question 6: *Are there limitations to the current arrangements which could be revised to better facilitate corporate PPAs?*

BGE does not consider there to be any barriers in the existing arrangements to the facilitation of corporate PPAs. We believe that corporations appreciate the access that Intermediary arrangements can give them to the renewable sector for decarbonisation and long-term cost certainty reasons. The focus of the corporation is to identify the renewable generator as the source of their energy, with the application of Intermediary arrangements often via suppliers as an enabler for the delivery of the PPA volumes. We are not aware of difficulties in this respect to date.

8. Intermediaries and aggregation

BGE is cognisant of the parallel consultation on aggregation. Given our suggestions and commentary outlined above, we believe that it may be difficult to conclude that an Intermediary can be considered an “aggregator” within the strict definitions outlined in the Clean Energy Package. We understand that an Intermediary could

be seen as an entity that “combines” loads or generation but given the importance of the unit-based bidding principle and our concerns around liquidity, transparency and market power as outlined in some detail particularly in sections 2, 3 and 4 above, we believe that a clear definition of what constitutes an “aggregator” in SEM may need consideration. We will address this issue further in the separate aggregation consultation.

9. Summary

- i. BGE is generally supportive of the proposed Eligibility Criterion C amendment to Intermediary arrangements subject to: maintenance of the principles of unit based bidding and settlement; de minimus volumes being required to be seen in ‘gross’ across all markets and; necessary Intermediary volume monitoring such that regulatory intervention can occur where necessary to mitigate market power (e.g. when intermediary volumes are seen as contributing to generation market power and risk breaching acceptable thresholds). These caveats are necessary in our view to maintain key market attributes of transparency, liquidity and competition. We would also welcome further clarification from the RAs on the continued application of Category C and on our view that Category D potentially prevents level playing field access to PPAs by all suppliers whether part of a wider group of companies or not. Please see Section 2 above;
- ii. BGE supports the application of Intermediary arrangements to the ex-ante markets subject to: retaining the principles of unit based bidding and settlement such that Intermediary volumes are not ‘pooled’ or netted; not permitting the Intermediary to be seen as a “unit” itself, rather it is the representative of a unit; ensuring intermediary arrangements do not impact market transparency and liquidity – all new units’ volumes traded via an Intermediary must be seen in “gross” in the market whether de minimus or not; the use of the same Intermediary across all markets for transparency, regulatory oversight and ease of information flow reasons. Corresponding amendments to the Form of Authority could reflect this position. Please see section 3 above;
- iii. BGE supports the use of Intermediary arrangements by suppliers subject to robust oversight measures being applied. The volumes of the entity acting as the Intermediary must be easily distinguishable from the volumes of the supplier the Intermediary is representing. For transparency and liquidity reasons supplier volumes being represented should not be permitted to be used as a route to “netting” generation and demand in any of the ex-ante or balancing markets. Simultaneously, the volumes of the supplier being represented should be seen as contributing to relevant market shares which may require regulatory intervention if market share thresholds are breached. While the default should be to minimise restrictions, there may be a case to have restrictions if the RAs determine that market power issues might be caused by suppliers over a certain size using or offering Intermediary services.;
- iv. We do not agree with the proposal for decisions on the eligibility criteria for new technologies or structures to be made without informing participants of proposed changes and facilitating their feedback. As outlined in Section 5 above, we propose an additional eligibility criterion that would require a mandatory notification to the market of a request by an entity that wishes to use Intermediary arrangements but doesn’t fall into any of the other categories. A reasonable window for comment would be allowed before the RAs decide on the request;
- v. We support proposals to publish a quarterly report on current Intermediary arrangements with transparent detail that does not undermine commercially sensitive or confidential data;
- vi. BGE is not aware of any barriers in the existing arrangements to the facilitation of corporate PPAs.

BGE takes this opportunity also to comment on the parallel but separate Aggregation consultation (SEM-20-042). In summary, BGE understands how one might consider an Intermediary as an entity that ‘pools’ volumes when trading. We have expressed considerable concerns particularly in sections 2 and 3 above around the need to retain unit-based bidding and settlement and the need to continuing viewing an Intermediary as a “representative” of a unit rather than a “unit” itself, in SEM. Against this context, at present we believe that it may be difficult to conclude that an Intermediary can be considered an “aggregator” within the definitions

outlined in the Clean Energy Package. Further consideration of what constitutes an “aggregator” in SEM may be required and we will address this issue further in the separate aggregation consultation.

I hope you find the above comments and suggestions helpful. If you have any queries thereon please do not hesitate to contact me.

Yours sincerely,

Ian Mullins
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{By email}