

**Dublin Waste to Energy Limited (“DWTE”) Response to  
SEM-11-004 Extension to the Criteria for Approval of Intermediary Applications under the  
Trading and Settlement Code – Consultation Paper (the “Consultation Paper”)**

**1. Introduction**

- 1.1 DWTE is grateful for the opportunity to respond to the Consultation Paper. DWTE is the promotor of the Dublin Waste to Energy Facility (the “**Facility**”), a Public Private Partnership between Dublin City Council (“**DCC**”) and DWTE.
- 1.2 DCC has been granted an authorisation to construct the Facility by the Commission for Energy Regulation (“**CER**”) and holds a licence to generate in respect of the Facility which specifies a maximum export capacity of 80MW. In recognition of the contribution made by energy from waste to the achievement of Ireland’s renewable energy targets, DWTE has been advised by the Minister that it is intended that a REFIT letter of offer will be issued in respect of the Facility.
- 1.3 DWTE has participated in the SEM Committee (“**SEMC**”) consultations in relation to scheduling and dispatch in SEM. This response is made without prejudice to DWTE’s view that the Facility should be afforded priority dispatch for its entire output, and that DWTE should be permitted to avail of the ‘price-taker criterion’ in that context.

**2. The Consultation Paper**

- 2.1 DWTE understands that the proposed extension to the scope of the Intermediary ‘exemption’ is to facilitate a potential new entrant that cannot access a support scheme due to the configuration of the SEM. The (intended) effect of the proposed extension is to create an exemption, referred to hereinafter as the “**REFIT Access Criterion**”, for a small number of price making generator units who might not otherwise be capable of availing of REFIT support. DWTE welcomes and supports the recognition in the Consultation Paper that the market rules should not actively frustrate the delivery of RES targets, and considers that the proposed introduction of the REFIT Access Criterion will support the delivery of such targets, particularly in the short term when an enduring resolution to the treatment of so-called ‘hybrid’ generators remains outstanding.
- 2.2 As drafted however, we consider that the REFIT Access Criterion might nevertheless be unduly restrictive and may, inadvertently, prevent some would-be new entrants from accessing REFIT support or indeed from entering the market. Of the three ‘tests’ which make up the REFIT Access Criterion, we consider that only the first is required, for the reasons set out below.

**3. The REFIT Access Criterion**

- 3.1 **Test 1: “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)”**
  - (a) DWTE acknowledges the necessity of this test in order to limit the scope of the exemption, while still allowing for the proper functioning of the renewables support schemes intended to underpin the achievement of Ireland’s RES targets.

- (b) We note that the effect of this criterion is to limit the availability of the REFIT Access Criterion to a very small pool of generators as:
  - (i) the availability of REFIT support is itself limited to a stated volume of generation; and
  - (ii) the vast majority of generators availing of REFIT support qualify to register as a price taker and so will not satisfy this test.

**3.2 Test 2: The generator’s Maximum Export Capacity is less than 50MW;**

- (a) Unlike the preceding test, DWTE does not see any objective justification for the imposition of a 50MW cap on the REFIT Access Criterion. DWTE considers that a 50MW cap is too low and risks excluding other would-be market participants (including DWTE) from availing of the REFIT Access Criterion. We consider this to be counterintuitive in light of the SEMC’s stated intention of not frustrating the achievement of RES targets. A larger project would make a larger contribution to the achievement of national targets. It should not be excluded purely on the basis of size. As such, we consider that the 50MW cap should be removed or at least raised to include larger projects such as the Facility.
- (b) Although no specific rationale is given for the 50MW threshold, we assume that this requirement is intended to limit the scale of generators who participate in SEM via an intermediary. We understand this to be a function of the SEMC’s market concentration concerns. As set out at 3.1 above however, the requirement to (1) be eligible for a support scheme (currently REFIT); and (2) not to satisfy any other intermediary criterion; will already significantly mitigate this perceived risk.

**3.3 Test 3: 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.**

- (a) DWTE considers that this criterion is unduly restrictive and unnecessary. We do not consider that the mere existence of a pre-existing intermediary arrangement with a non-affiliated generator should exclude a supplier from providing an intermediary service to generators falling within the REFIT Access Criterion. Indeed such a restriction was not considered necessary in relation to other intermediary criteria.
- (b) Moreover, in relation to intermediaries who participate in the market on behalf of price taking generators, the SEMC has specifically acknowledged that the

*‘key concern regarding the additional concentration of market power....is mitigated with respect to Price Taker Generator Units...given their limited availability to influence the market price’<sup>1</sup>*

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<sup>1</sup> SEM-07-11 Revisions to the Criteria for Approval of Intermediary Applications under the Trading and Settlement Code 10 December 2007, pp. 3.

We would argue that pre-existing intermediary arrangements on behalf of non-affiliate price takers should not be considered in making a 'market concentration' or 'market power' assessment.

- (c) That being said we do not, in any event, consider that permitting a supplier to participate in the market on behalf of price taking and (as set out at 3.1 above, a very limited number of) price making generators creates a risk of market concentration or, more critically, an opportunity to exercise market power. This is because the ability of an Intermediary to exercise market power is limited by the obligations (imposed under supply licences) for the intermediary to comply with the relevant generation licence conditions in submitting Commercial Offer Data on behalf of a generator. Suppliers will be required to bid in accordance with the Bidding Code of Practice and the bids, as submitted, will be readily auditable by the Market Monitoring Unit in the same manner as those of any other generator.
- (d) Far from preventing anti-competitive effects of market concentration, we consider that this criterion might in fact create a barrier to entry for would-be new generators who are reliant on the REFIT Access Criterion. DWTE understands that the majority of (if not all) existing suppliers active in SEM who are willing to enter into offtake contracts with new entrant generators already have in place intermediary arrangements with non-affiliate REFIT supported generators. In preventing a new entrant from entering into an offtake arrangement with such suppliers, the effect of this condition is to require generators wishing to appoint an Intermediary to implement a 'supplier lite' model. This imposes an undue administrative and regulatory burden on new entrants that is not faced by competing generators who are permitted to avail of the more straightforward price taking exemption.

#### 4. **Conclusions**

DWTE supports the introduction of the REFIT Access Criterion. However we consider the second and third limbs of the test proposed to be unduly restrictive. In particular, we are concerned that there is no objective basis for the imposition of a 50MW cap on the application of this criterion, and that this may inadvertently exclude larger generators, including the Facility, from accessing REFIT support. We are also concerned that, in limiting the number of suppliers with whom new entrant generators can contract bilaterally, the third limb may (inadvertently) be unfair and even anti-competitive. We recommend that the criterion be linked solely to the requirement to access support payments.