

Renewable Energy Feed in Tariff

(RE-FIT - 2006)

**A COMPETITION FOR
ELECTRICITY GENERATION
from
BIOMASS, HYDRO and WIND.**

Freedom of Information Act

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Abbreviations.

Biomass-AD	- Biomass Anaerobic Digestion
Biomass-CHP	- biomass fed combined heat and power
CER	- Commission for Energy Regulation
CHP	- Combined Heat and Power
ESB	- Electricity Supply Board
kWh	- kilowatt hour
MW	- Megawatt
PPA	- Power Purchase Agreement
RE-FIT	- Renewable Energy Feed in Tariff
RES-E	- renewable energy sourced electricity
“the Department” or “DCENR”	- the Department of Communications, Energy and Natural Resources
the Minister	- the Minister for Communications, Energy and Natural Resources
“the target” or “the RES-E target”	-the target addressed to a member state in Article 2 of and quantified in the Annex to Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market

Table of contents

	Clause		Content
Section I	1		Introduction
	2		Definitions and Interpretation
	3		Nature of the Support
	4		Framework of the Competition
	5		REFIT payments to suppliers
	6		Procedural matters
	7		Conditions of offers.
	8		Power Purchase Agreement.
	9		Access and Performance Monitoring
	10		Consultations with Third Parties.
	11		Costs, expenses and liabilities
	12		Acknowledgement
Section II		Annexes 1 to 3	Letters of authorisation
Section III			Application form and Attachment
			Checklist of documents to be submitted

Section 1

1. INTRODUCTION.

- 1.1** The Government has set a target, in order, amongst other things, to comply with Directive 2001/77/EC, to increase the capacity of renewable energy based electricity generating plant to at least 1,450 megawatts (MWs) installed, by 2010.
- 1.2** The Minister for Communications, Energy and Natural Resources (“the Minister”) has initiated a competition (the “Competition”) to:-
- (i) allocate support for the construction of 400 MWs, in the period to 2010, of new electricity generation plant powered by biomass, hydropower or wind energy under the “Renewable Energy Feed in Tariff” programme (REFIT), and
 - (ii) to establish a reserve list to allocate such additional support, if any, which may become available.
- 1.3** The form of support is explained in “3” of this document “this Document”. Subject to clause 1.4, the support for any particular project cannot exceed 15 years and may not extend beyond 2027.
- 1.4** The Competition is subject to any clearances required from the Commission of the European Union and any consents, clearances or licenses which might be required from any other competent body. The Minister reserves the right to alter or amend any aspect of this Competition as a consequence of any directions, conditions or requirements of any such consents, clearances or licenses.
- 1.5** No applications for support under this Competition will be accepted after such date as the Minister shall decide and notify on the website (currently, www.dcenr.ie) of the Department of Communications, Energy and Natural Resources (DCENR) and in the Official Journal of the European Union.
- 1.6** If an application is received in the Competition after 16.00 hours on a working day, or on a Saturday or Sunday or a public holiday, it shall be deemed to have been received on the next working day.

2. DEFINITIONS AND INTERPRETATION.

- 2.1** For the purposes of these terms and conditions, the following expressions shall have the following meanings: -

“ Best New Entrant price” means in respect of any calendar year, the Best New Entrant price determined for that year by the Commission for Energy Regulation (“CER”);

“biomass” means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related

industries, as well as the biodegradable fraction of industrial and municipal waste;

“combined heat and power plant” means plant harnessing energy from biomass to produce heat and electricity where plant larger than 20MW has an electrical efficiency of >30% and an overall CHP efficiency of >80% and small to medium-scale plant (1MW to 20MW) has an electrical efficiency of >20% and an overall CHP efficiency of >70%;

“connected” means:

- (a) site substation works constructed and site energised or site substation works constructed and turbines delivered onsite (with evidence of same submitted to DCENR) by 31 December 2010 or the date to which the project has been granted an extension in time to; and
- (b) REFIT Power Purchase Agreement (PPA) commenced on the basis of having at least 75% of installed capacity within 9 months of 31 December 2010 or the date to which a project has been granted an extension in time to, in line with the provision for when the period of the PSO to be imposed shall commence as set out in 4(1G) of the Electricity Regulation Act 1999 (Public Service Obligations) (Amendment) Order.

“connection offer” means, in the case of eligible domestic electricity, a grid connection offer issued by the transmission grid operator or the distribution grid operator of sufficient capacity to carry the capacity of the project submitted in the Competition or a grid connection offer which the applicant considers is not of sufficient capacity to carry the project and against which he has, before the date of submission of the application, appealed to the CER and that connection offer has not been withdrawn and, in the case of eligible imported electricity, an offer to the same effect from a transmission grid operator or a distribution grid operator of sufficient capacity to carry the capacity of the project submitted in the Competition or a grid connection offer which the applicant considers is not of sufficient capacity to carry the project and against which he has, before the date of submission of the application, appealed (where there is a right of appeal) to the appropriate authority and that connection offer has not been withdrawn;

“Directive 2001/77/EC” means Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, as amended;

“eligible domestic electricity” means electricity produced from renewable energy by new electricity generating plant in the State neither built nor under construction on 30 April 2005;

“eligible imported electricity” means electricity produced from new electricity generation plant in another Member State and imported from that Member State and covered by a guarantee of origin if the exporting state has accepted

explicitly, and stated in the guarantee of origin or in a document which refers to the guarantee of origin, that it will not, for a period of 15 years, use the electricity from that plant to meet its own renewable energy sourced electricity (RES-E) targets and has thereby also accepted that, for that period of 15 years, that electricity can be counted towards the State's RES-E target;

“full planning permission” means, in the case of eligible domestic electricity a full grant (and not merely a decision to grant) of planning permission issued by the relevant planning authority (or, if it is the case, An Bord Pleanála) for the construction of the appropriate electricity generating plant at the site which has not expired where such permission is required under the Planning and Development Acts; and in the case of “eligible imported electricity”, means any form of permit or permission, which has been issued and has not expired, required by the law of the Member State in question for the construction of the appropriate electricity generating plant at the site;

“guarantee of origin” means a guarantee of origin issued by another Member State under the laws, regulations and administrative provisions of that State which comply with Article 5 of Directive 2001/77/EC;

"hydro" and "hydro project" means any hydro-powered electricity generating plant with a maximum export capacity of or less than 5 MW which is connected directly to the electricity network and metered independently of any other electricity generating plant.

“large scale wind project” means an onshore wind project with a maximum export capacity greater than 5 MW which is connected directly to the electricity network and metered independently of any other electricity generating plant.

“licensed supplier” means an entity licensed to supply electricity in the State ;

“Member State” means a State which is a member of the European Union;

“new electricity generation plant” means, in the case of “eligible domestic electricity”, electricity generating plant in the State, or, in the case of “eligible imported electricity”, in the Member State in question, which was neither built nor under construction on 30 April 2005 and, in each case, which only uses renewable energy except for the use of fossil fuels in such plants which use biomass in accordance with clause 2.2;

“Power Purchase Agreement” (also referred to in these terms and conditions as “PPA”) means, in the case of eligible domestic electricity, a contractual agreement between an electricity generator and a licensed supplier obliging the latter to purchase the output from a new renewable energy powered electricity generation plant selected in this Competition at fixed prices or, in the case of eligible imported electricity, such a contractual agreement, which is expressed to be subject to the law of Ireland, between an electricity generator in the Member

State in question and a licensed supplier and, in each case, where the electricity is to be sold to final customers in the State for consumption in the State;

“PPA price” means the price paid under a PPA;

“PSO Order” means the Electricity Regulation Act 1999 (Public Service Obligations)(Amendment) Order

“reference price” means the price for a particular category of electricity set out in clause 5.1 for the purpose of calculating compensation for suppliers and includes a reference price which has been adjusted in accordance with clause 5.2;

“renewable energy” means energy from renewable energy sources within the meaning of Article 2(a) of Directive 2001/77/EC;

“small scale wind project” means any wind-powered electricity generating plant with a maximum export capacity of or less than 5 MW which is connected directly to the electricity network and metered independently of any other electricity generating plant;

“time deadline” means, as the context requires, any deadline set by or in accordance with these terms and conditions.

- 2.2** Proposals in the biomass category may include electricity generating plants requiring the use of some fossil fuel to prepare and/or ignite and/or sustain combustion of biomass fuel. Such biomass plants shall be eligible for this Competition provided that they are designed and operated to use the minimum of fossil fuel necessary for that purpose and provided that in any event less than 10% of the fuel input in any year is from fossil fuel sources. The use of such fossil fuels will be subject to monitoring and verification for the duration of the PPA.
- 2.3** The Minister may, where he considers it appropriate to do so, request any information he deems necessary for the consideration of an application or to confirm to his satisfaction compliance by an applicant or application with the Competition notes and the Minister may exclude any application if any information requested in a letter warning of the possibility of such exclusion is not received within 21 days after being requested in such a letter.
- 2.4** Projects in REFIT 1 must be connected no later than 31 December 2010, unless, in respect of a plant listed in the relevant statutory instrument the Minister has granted an extension in time to a specified later date to that project in accordance with sections 7.3 and 7.4 of the REFIT 1 Terms and Conditions. In the case of plants granted an extension of time to a specified date, projects must be connected by the specified date.
- 2.5** The following shall be included in the PSO Order:
“*The period of the public service obligations to be imposed pursuant to*

Article 6D shall commence, in respect of a REFIT power purchase agreement listed in column 2 of Schedule 3, 4 or 5 on—

(a) in the case of a generator not registered in the Single Electricity Market pursuant to Regulation 5 of the Single Electricity Market Regulations, on the date on which the supplier purchases output from the plant of the generator which is exported for the purposes of distribution or transmission,

or

(b) in the case of a generator registered in the Single Electricity Market pursuant to Regulation 5 of the Single Electricity Market Regulations and a supplier registered as the intermediary for that generator, on the date on which the supplier purchases output from the plant of the generator which is exported for the purposes of transmission or distribution”

In the case of REFIT 1, the public service obligations to be imposed pursuant to Article 6D shall commence not later than 31 December 2010, unless, in respect of a plant specified in column 5 of Schedule 3, the Minister has notified a later date in writing to—

(i) the CER,

(ii) the supplier specified at that reference number in column 3, and,

(iii) the generator specified at that reference number in column 4

3 NATURE OF THE SUPPORT.

- 3.1** Each applicant declared successful in REFIT will receive a “letter of offer”. The “letter of offer” will confirm to any licensed electricity supplier that in return for entering into a PPA to purchase the output from the proposed renewable energy powered plant, for 15 years, the supplier will, when these terms and conditions provide for it, be entitled to receive a REFIT payment, calculated in accordance with these terms and conditions
- 3.2** Payments will be calculated and paid in accordance with clause 5 of these terms and conditions

4 FRAMEWORK OF THE COMPETITION - Underlying principles, Evidence of Competency to contribute to the target within a time limit.

Underlying principles.

- 4.1** The Competition is to secure a target of 400 MW of newly constructed renewable energy based electricity generating plants by 2010. The Minister may, by a notice published on the website of the Department (currently, www.dcenr.ie) and in the Official Journal of the European Union, increase that target.
- 4.2** The Minister invites applications, in the form notified in this Document, for support for new renewable energy based electricity generating plant in accordance with these terms and conditions.

- 4.3** The law of Ireland shall be applicable to this Competition and the courts of Ireland shall have exclusive jurisdiction to deal with any dispute arising out of this Competition or about the interpretation or application of any of the terms and conditions of this Competition.

Evidence of Competency to contribute to the target within a time limit

- 4.4** A “letter of offer” will not be made in any case unless:
- (i) planning permission has been obtained for the construction of the proposed electricity generating plant at the proposed site and this is demonstrated to the Minister in the application or it has been demonstrated that planning permission is not required, and
 - (ii) a connection offer has been made by the appropriate network operator to connect the project submitted in REFIT and this is demonstrated to the satisfaction of the Minister in the application, and
 - (iii) in the case of a Biomass project,
 - (a) evidence has been submitted of the manner in which the amount, if any, of fossil fuel necessary to run the plant will be minimised and that such fuel in any case will not exceed 10% of fuel input in any year and how such use of fossil fuel will be monitored and verified, and
 - (b) evidence has been submitted of the availability of the qualifying fuel source (or the raw material necessary to make it).

5 REFIT PAYMENTS TO SUPPLIERS – Reference prices, Adjustments to reference prices, Calculation of reimbursements.

Reference prices.

- 5.1** The following shall be the reference prices for each category of electricity for the purpose of calculating compensation for suppliers-

- i. Large Scale Wind category – 5.7 eurocents per kWh.
- ii. Small Scale Wind category – 5.9 eurocents per kWh.
- iii. Hydro – 7.2 eurocents per kWh.
- iv. Biomass Landfill Gas 7 eurocents per kWh.
- v. Other Biomass – 7.2 eurocents per kWh.

Adjustments to Reference Prices.

- 5.2** The reference prices in 5.1(i)-(v) will be adjusted by way of indexation annually by the annual increase, if any, in the consumer price index in Ireland commencing 1 January 2007.

Calculation of reimbursements.

- 5.3** In every case, the supplier shall be paid, for every kWh purchased under the PPA, 15% of the reference price in 5.1 (i).
- 5.4** If, in respect of any year, the BNE price is less than the reference price in clause 5.1 (i) the supplier shall be paid the difference between the two for every kWh purchased under the PPA.
- 5.5** If the PPA price is equal to, or greater than, the reference price for the category to which the electricity belongs then the supplier shall be paid, for every kWh purchased under the PPA, the difference between the reference price for the category to which the electricity belongs and the reference price in clause 5.1 (i).
- 5.6** If the PPA price is less than the reference price for the category to which the electricity belongs then the supplier shall be paid, for every kWh purchased under the PPA, the difference between the PPA price and the reference price in clause 5.1 (i), provided that the PPA price is greater than the reference price in clause 5.1 (i) .

6 PROCEDURAL MATTERS

Applications, Delivery of Documents, Allocation of the limited support, Selection process, Withdrawal of Applications and Closure of REFIT reserve list/s.

Formal Applications

- 6.1** Interested parties will be required to submit an application consisting of-
- this Document properly endorsed - see clause 12 below,
 - a fully completed application form – see Section II and
 - all of the applicable attachments requested in this document.

Applications must be delivered under a sealed cover marked “REFIT application” in printed hard copy form (not electronically). Applications shall not be accepted by the Minister before 10.00 hrs local time on 01 June 2006.

Delivery of Documents

- 6.2** Applications must be delivered to “Department of Communications, Energy and Natural Resources, 29/31 Adelaide Road, Dublin 2, Ireland.” Applications shall be accepted by post or directly by hand. Applications delivered by hand shall be accepted between 10.00hrs and 16.00 hrs local time on normal working days. Applications received by post or by hand on a Saturday or Sunday or a public holiday or after 16.00. hrs local time on a normal working day shall be deemed to have been received on the next working day. The Department's record of the date and time of receipt of each application shall be conclusive. An acknowledgement by the Department of receipt of an application shall be valid in any dispute only if it is in writing and stated thereon to have been issued by or on behalf of the “Renewable Energy Division, Department of Communications, Energy and Natural Resources”.

- 6.3 Applications will **NOT** be accepted in electronic form whether by e-mail or in electronic media.

Allocation of the limited support

- 6.4 Compliant applications will be ranked for subsequent assessment on the basis of the earliest date application/s received or deemed received first on or after the commencement date. All applications received or deemed received on the same day shall be deemed received at the same time on that day.
- 6.5 If at any time the capacity of compliant applications received or deemed received on the same day is greater than the unallocated support remaining then the selection of the successful application(s) will be decided at the Minister's discretion -
- by the earliest forecast delivery date for a connection, or,
 - by technology or category, or,
 - by lot.
- 6.6 Any non-compliant application, including any application received prior to the commencement date, shall be returned to the applicant for stated reasons. The date of receipt of any subsequent application for the same project shall be the date upon which the subsequent application is received or if appropriate shall be the subsequent date deemed received. Where in accordance with clause 2.3 clarification is sought from an applicant and on the basis of that clarification the Minister is satisfied the application was not compliant on the date received or deemed received that application shall be returned to the applicant. Any application which is the subject of a request for clarification from the Minister may be conditionally entered on a list of compliant applications and may be removed if the Minister subsequently determines on the basis of additional information or in the absence of adequate additional information that the application was not or is no longer compliant.
- 6.7 Subject to clause 6.5, if at any time the next proposed application to be selected for support would exceed the remaining unallocated support at that time, the Minister may, in his sole discretion, subject to any limitations arising from clause 1.4, increase the threshold in that category by the amount necessary to grant the application for the full amount applied for (but without being obliged to do so or without creating any legitimate expectation or promise of any kind). In the alternative, the Minister may request such compliant applicant to reduce the capacity bid to that of the remaining unallocated support. In such circumstances, if that applicant refuses or neglects to accede to such a request within 30 days of receipt of the request, the Minister will then be at liberty to proceed to select the next ranked compliant applicant and this procedure will be repeated as often as may be necessary.
- Selection process.**
- 6.8 All compliant applications shall be ranked in date order, as described in clause 6.2, in a table of the type illustrated in table 1 following.

Illustrative table 1

Col. 1	Col. 2	Col. 3	Col. 4	Col 5
Entry no.	Legal entity	Capacity/ Technology	Date received	Ranking (if required)
1	ABC Limited	10 MW wind	1/1/2050	
2	DEF Limited	30 MW wind	1/1/2050	
3	JKL Limited	4 MW lfg	2/1/2050	

6.9 Any compliant applications submitted or on hand when or after the available support is fully allocated shall be entered in a reserve list listed in date order. All compliant applications remaining or received after the available support capacity is fully allocated at any time shall be ranked in the reserve list by date received or deemed received in a table of the type illustrated in table 2 following. If for whatever reason additional support capacity becomes available the allocation of support will be done in accordance with clause 6.4, 6.5 and 6.7 as appropriate.

6.10

Illustrative Table 2

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
Entry no.	Legal entity	Capacity/ Technology	Date received	Ranked, if applicable
4	GHI Limited	2 MWs Hydro	1/2/2050	1
5	NOP Limited	5 MWs Wind	1/2/2050	1
6	QRS Limited	2 MWs Other biomass	1/3/2050	2
7	TUV Limited	30 MWs wind	1/3/2050	2

Withdrawal of Applications

6.11 Any applicant may withdraw an application from the reserve list by notifying such a decision in writing to the Minister.

Closure of REFIT reserve list/s

6.12 The Minister may close or cease the reserve list by public notice to that effect on the Department’s website (currently, www.dcenr.ie) and in the Official Journal of the European Communities.

7 CONDITIONS OF OFFER

- 7.1** It shall be a condition of any letter of offer (conditional or otherwise) in this Competition that each recipient of an offer shall comply with the terms and conditions of the Competition and any other legal or regulatory requirements applicable to the project in question. In the case of any material breach of any of these terms or conditions, other than those in sub-clause 7A (7B contains other provisions for withdrawal of a letter of offer), or of any such legal or regulatory requirements, any letter of offer may be withdrawn.
- 7.2** The purpose of the obligations in sub-clause 7A following is to ensure that each successful applicant, in addition to the other terms and conditions and requirements, is obliged to make timely and reasonable progress to deliver its project promptly and to deal promptly with all matters under its control. Therefore, all applicants should note that the time limits stated in sub-clause 7A are strict and that, subject to clause 7.3 and 7.5, time will be of the essence and a letter of offer may, subject to clause 7.3 and 7.5, be withdrawn in the event of failure to comply with such a time limit.
- 7.3** If circumstances arise whereby the applicant will be unable to meet a time deadline due to circumstances beyond its control and if an extension to the time limit is required, then the applicant shall give prior written notification to the Minister setting out the reasons and the extended period which the applicant requires to meet the relevant obligation and the Minister may, if satisfied that:-
- (i) the circumstances stated have occurred, and
 - (ii) the reasons for the delay are outside the control of the applicant, and
 - (iii) do not arise due to the fault or neglect of the applicant, its servants or agents, and
 - (iv) that the time extension sought is reasonable, and
 - (v) that the obligation referred to can be reasonably shown to be achievable by the requested extended date,
- accede to the request to extend the time deadline limit (but the Minister shall not be obliged to do so and this discretionary power shall not give rise to any legitimate expectation or promise of any kind).
- 7.4** In respect of any approved extended deadline time will be of the essence in respect of such extended period. Where an extended deadline is not adhered to, the Minister may withdraw a letter of offer from an applicant who fails to meet it.
- 7.5** The Minister may, even where no applications for extensions of time limits have been received, publish, in the event of a delay in connections affecting, or likely to affect, all REFIT applicants or a category (which may be a category defined by type of project or by reference to some factor related to the likely impact of such a delay) of them, a notice extending, for all REFIT applicants or such a category, a specified deadline, or all deadlines, by a specified period of time or

until a specified date. The Minister may extend such an extension as and when he considers it to be necessary.

7.6 If it appears to the Minister that there may be grounds for believing that an applicant is not proceeding with reasonable diligence in taking any of the steps necessary to ensure that the applicant’s planned commissioning date is met then the Minister may send to the applicant a notice stating those grounds and requesting the applicant’s observations within 28 days of receipt of the notice. If, after the applicant’s observations have been considered, the Minister is of the opinion that the applicant is not proceeding with such reasonable diligence then the Minister may withdraw the letter of offer.

7.7 Table 3

7A – Conditions of offer	7B –Grounds of withdrawal
<p>Each recipient of a letter of offer shall:</p> <p>(a) within 5 working days of its receipt acknowledge receipt of the offer to the Department in writing;</p> <p>and</p> <p>(b) within 30 days of its receipt (excluding Saturdays Sundays and public holidays) execute a PPA with a licensed supplier and within 5 working days thereafter produce acceptable evidence to the Department that it has executed a PPA;</p>	<p>A letter of offer may be withdrawn at the Minister’s discretion where an applicant:</p> <p>(a) fails to acknowledge receipt of a letter of offer to the Department within 10 days of its receipt;</p> <p>or</p> <p>(b) within 35 days of receiving a letter of offer (excluding Saturdays Sundays and public holidays) fails to execute a PPA with a licensed supplier or fails to produce acceptable evidence to the Department that it has executed a PPA;</p>
<p>and</p> <p>(c) within 90 days of its receipt make the necessary applications to the Commission for Energy Regulation for statutory permission/s unless the necessary permissions have previously been obtained from CER or applied for;</p> <p>and</p> <p>(d) comply with any timelines or conditions fixed by the network operator to complete a connection except where an appeal (where there is a right of appeal) is brought against a decision of</p>	<p>Or</p> <p>(c) fails to provide to the Department within 95 days of its receipt evidence that an application for the necessary statutory permission/s to the CER has been submitted or evidence it has already obtained the necessary statutory permission/s;</p> <p>or</p> <p>(d) fails to comply with any timeline or condition fixed by the network operator to complete a connection except where an appeal (where there is a right of appeal) is brought against a decision of</p>

<p>the network operator and it is not reasonable to expect compliance with the timeline or condition in question until the outcome of the appeal is known and such appeal is made as soon as maybe and is pursued with reasonable diligence;</p> <p>and</p> <p>(e) in the event of such an appeal, comply with any such timeline or condition as revised in accordance with the decision on the appeal, or, in a case in which the decision on the appeal contains no such revision, within a time to be fixed by the Minister</p> <p>and</p> <p>(f) within 30 days of the making of an Order under section 39 of the Electricity Regulation Act,1999, in respect of the PPA's referred to in these terms and conditions submit to DCENR a detailed time schedule consisting of reasonable deadlines for the conclusion of -</p> <ul style="list-style-type: none"> (i) financial close, meaning the appropriate funding arrangements are in place, and (ii) contracts for the completion of civil works, electrical works and purchase and installation of the generating plant. <p>and</p> <p>(g) promptly deliver to the Department or the CER or an electricity network operator any additional information requested except where an appeal (where there is a right of appeal) is brought against such a request of the network operator and such appeal is made as soon as maybe and is pursued with reasonable diligence;</p>	<p>the network operator and it is not reasonable to expect compliance with the timeline or condition in question until the outcome of the appeal is known and such appeal is made as soon as maybe and is pursued with reasonable diligence;</p> <p>or</p> <p>(e) in the event of such an appeal, fails to comply with any such timeline or condition as revised in accordance with the decision on the appeal, or, in a case in which the decision on the appeal contains no such revision, within a time to be fixed by the Minister</p> <p>or</p> <p>(f) within 35 days of the making of an Order under section 39 of the Electricity Regulation Act,1999, in respect of the PPA's referred to in these terms and conditions fails to submit to the Department the detailed time schedule referred to in 7A(f);</p> <p>or</p> <p>(g) fails to provide to the Department or the CER or an electricity network operator any additional information requested except where an appeal (where there is a right of appeal) is brought against such a request of the network operator and such appeal is made as soon as maybe and is pursued with reasonable diligence;</p>
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<p>or</p> <p>(h) in the event of such an appeal, promptly comply with any such request as revised in accordance with the decision on the appeal, or, in a case in which the decision on the appeal upholds the request, promptly deliver the information requested;</p>	<p>or</p> <p>(h) in the event of such an appeal, fails to comply promptly with any such request as revised in accordance with the decision on the appeal, or, in a case in which the decision on the appeal upholds the request, promptly deliver the information requested;</p>
<p>and</p> <p>(ij) submit to the Minister a current Tax Clearance Certificate from the Revenue Commissioners or, in the case of a non-resident applicant, submit to the Minister such a Certificate or a statement of suitability from the Irish Revenue Commissioners;</p> <p>and</p> <p>(k) in the case of an applicant who has submitted an option on an appropriate interest in the site of the project satisfy the Minister that appropriate title has been obtained within a period notified by the Minister.</p>	<p>or</p> <p>(ij) fails to submit a current Tax Clearance Certificate or a statement of suitability from the Irish Revenue Commissioners as appropriate;</p> <p>or</p> <p>(k) in the case of an applicant who has submitted an option on an appropriate title in the site of the project within the period notified by the Minister fails to satisfy the Minister that appropriate title has been obtained.</p>

7.8 In 2011, the CER introduced a decision paper, CER/11/093 on Connection Offer Policy and Process (“COPP”), which addresses the matter of “over installation” above MEC by renewable generators. The system operators COPP paper setting out the rule set and approved by CER in May 2011 is attached at Appendix 1 of the CER Decision. To ensure consistency between the COPP decision and the REFIT schemes, REFIT is being brought in line with this decision.

Windfarms

The CER explains that the decision is to cater for house load and losses on the generators network on the windfarm site.

The project size accepted into REFIT cannot be greater than the MEC of the site – hence if the MEC of a site on which a REFIT project is installed is 10MW, then the project may be accepted into REFIT for 10MW, even if greater than this is actually installed in line with the CER/11/093 decision. The maximum export capacity of the project however remains 10MW and that is the amount the project may be accepted into REFIT for.

Project developers that install above their Maximum Export Capacity (MEC) up to the cap are required to ensure the windfarm is technically controlled such that the MEC cannot physically be exceeded. The supplier with whom the REFIT applicant enters a REFIT PPA with is required to provide evidence of this technical control to CER when making their annual returns.

In the COPP decision, the CER has set a 5% cap based on a percentage of a generating facility's MEC. Wind generators are permitted to install MEC x 105%, then rounded up to the nearest turbine.

Where a developer installs above the MEC on a site up to the maximum 5% allowable, they must undertake in writing not to raise the MEC of the site during the period of REFIT support. In the event that they do, separate metering will be required for the part of the site that exceeds the amount the project was accepted into REFIT for and this will be strictly enforced. In the event that separate metering is not installed, the project will be removed from the scheme.

The CER has explained how the COPP decision applies in the following example:

A wind generator has an MEC of 10MW and uses turbines rated at 2.3MW each. Maximum permitted installed capacity under the COPP decision would be calculated thus: $10\text{MW} \times 105\% = 10.5\text{MW}$
 $10.5\text{MW} \div 2.3\text{MW} = 4.6$, rounded up to install 5 turbines.

It is recalled to all project developers that there is a requirement under REFIT to have full planning permission for all installed capacity.

Non-wind renewable generators

In the case of non wind renewable generators, CER have said that the rounding up to nearest turbine approach is primarily designed to consider the issues associated with wind turbines, but may also be applicable to other types of generation, however this is determined by the system operators on a case by case basis.

The position on REFIT with regard to non-wind renewable generators is that the project size accepted into REFIT cannot be greater than the MEC of the site – hence if the MEC of a site on which a REFIT project is installed is 10MW, then the project may be accepted into REFIT for 10MW, even if greater than this is actually installed in line with the CER/11/093 COPP decision. The maximum export capacity of the project however remains 10MW and that is the amount the project may be accepted into REFIT for.

In line with the COPP decision, the maximum size that may be installed by a renewable non-wind generator is to be determined on a case by case basis solely by the relevant system operator. DCENR will not enter into any arbitration or discussion on this matter.

The project size that will be accepted into REFIT cannot be greater than the MEC and where a developer installs above the MEC on a site up to the limit determined by the system operator, they must undertake in writing not to raise the MEC of the site during the period of REFIT support. In the event that they do, separate metering will be required for the part of the site that exceeds the amount the project was accepted into REFIT for and this will be strictly enforced. In the event that separate metering is not installed, the project will be removed from the scheme.

It is recalled to all project developers that there is a requirement under REFIT to have full planning permission for all installed capacity.

8 POWER PURCHASE AGREEMENT (CONTRACT).

- 8.1** The PPA shall state the purchasing terms, including the price and the minimum amount of electricity to be purchased, from the new electricity plant selected in this Competition and be for a period not exceeding fifteen years.
- 8.2** A PPA may be made subject to all or any of the following conditions- (a) the project securing a letter of offer under this Competition and (b) the making of an Order under section 39 of the Electricity Regulation Act,1999, in respect of the PPA's referred to in these terms and conditions and (c) that a PPA may be cancelled by the agreement of the project developer/generator and the supplier (in the event of such a cancellation, the letter of offer shall cease to confer any entitlement with effect from the date of cancellation of the PPA and, subject to clause 8.4, no renovation or revival of the PPA shall confer any such entitlement).
- 8.3** Any cancellation, or amendment affecting the purchasing terms or the duration, of a PPA, shall be notified to the Department forthwith.
- 8.4** If a PPA which complies with these conditions is terminated, the letter of offer may, on the application of the successful applicant and with the prior written consent of the Minister, be transferred to another licensed supplier if that supplier enters into a PPA which is compliant with these conditions for the remainder of the 15 year term.
- 8.5** (a). In accordance with Clause 1.4 and the EU Commission decision in file N571/2006*¹ and this clause, an applicant who submits a project into the REFIT programme which is accepted into REFIT by the Department may withdraw that project from the REFIT programme and thereby leave the PPA for the open market by giving 12 months prior notice of the date of withdrawal to the Minister and the supplier who is the counterparty to the relevant PPA. In the event of such a withdrawal–

- i) the letter of offer shall, insofar as it affects the project developer/generator, which includes any future developer/generator developing or operating the same project within REFIT, cease to confer any entitlement within the REFIT programme with effect from the notified date of withdrawal and no renovation or revival of the REFIT offer shall be permitted after the date notified as the withdrawal date has passed, and
- ii) insofar as it affects any supplier as a party to a PPA, the supplier shall cease to qualify for REFIT compensation payments (clause 5.2 – 5.6 refer) in respect of any power metered or purchased from that project after the notified date of withdrawal from REFIT has passed.

8.5 (b) For the avoidance of doubt in interpreting the preceding provision it shall be noted as follows.

- i) The exercise of the discretion permitted by this provision is a discretion to exit REFIT and thereby terminate the associated PPA for the open market in accordance with the applicable provisions, if any, of the PPA. The discretion to exit REFIT arises from the REFIT rules and therefore it is not necessary to recast PPAs to provide for this. Consequently a PPA which does not specifically provide for the generator exiting REFIT as provided for herein is still a valid PPA under REFIT rules (clause 8 refers).
- ii) Any disagreement arising between a generator and supplier about exiting REFIT which is referred to the Department shall be considered by the Department in the context of the REFIT rules.
- iii) Subject to ii) above, any dispute arising between a generator and a supplier about any provision in the associated PPA negotiated in the liberalised electricity market, whether or not that dispute arises as a consequence of the exercise of the discretion permitted by this provision, shall be settled in accordance with the provisions of the PPA.
- iv) Nothing in this clause shall be interpreted to preclude a supplier and generator from otherwise agreeing the withdrawal of a project from REFIT with less than 12 months notice where such agreement is reached between the generator and the supplier who are both parties to the same PPA.

9 ACCESS AND PERFORMANCE MONITORING.

It is a condition of this Competition that applicants who receive a letter of offer will be required to provide reasonable access to the generation site to DCENR, its employees, contractors, servants or agents (including Sustainable Energy Ireland, its employees, contractors, servants and agents) and to provide technical and generation information to them for the purpose of monitoring and forming technical assessments of efficiency, reliability and productivity.

10. CONSULTATIONS WITH THIRD PARTIES.

It is a condition of entry to this Competition that the applicant accepts that the Department may at its discretion correspond with the appropriate Regulatory Authority about related applications to construct or operate the electricity generating plant or permissions, consents or authorisations issued by it and to communicate with the appropriate network operator regarding the status of related connections to the network. Therefore, all applicants shall complete letters addressed to the market regulator and the network operators along the lines notified at Annex 1, Annex 2 and Annex 3 as part of the application in the Competition.

11 COSTS, EXPENSES AND LIABILITY

Costs and Expenses

11.1 The Department shall not be responsible or liable for any costs or expenses incurred in making any application in this Competition regardless of the conduct or outcome of the application.

Liability

11.2 Although every care has been taken in preparing this Document and equal care will be taken in conducting the process which arises out of this Competition, no representation, warranty or undertaking, express or implied, in respect of any error or misstatement by or on behalf of the Minister or any of his officers, employees, servants, advisers, contractors, or agents is or will be made or given to any applicant or to any other party, and no responsibility or liability will be accepted by the Minister or any of his officers, employees, servants, advisers or agents for the accuracy or completeness of this Document or of any other information, written or oral, which is made available to any applicant or to any other party or to the officers, employees, servants, advisers, contractors or agents of any such party. Any and all liability and/or loss of any nature whatsoever and howsoever arising (including liability and/or loss in any way resulting from the process which arises out of this document) is hereby expressly disclaimed by the Minister and his officers, employees, servants, advisers and agents to the fullest extent permitted by law.

12 ACKNOWLEDGEMENT OF NOTIFICATION AND ACCEPTANCE OF THESE TERMS AND CONDITIONS

I,(being a person duly authorised to complete the application in Section II of these notes) hereby acknowledge receipt and acceptance of the terms and conditions of the Competition

-----(<i>Signed</i>)
---/------/20- (<i>date</i>)

SECTION II

Annex 1

LETTER OF AUTHORISATION FOR RELEASE OF INFORMATION

Date

Commission for Energy Regulation Plaza House Belgard Road Dublin 24 Ireland , or ▶	▶ in the case the project is located outside the State the name and postal address of the regulatory authority for the electricity market in the State
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Dear

In consideration of acceptance by the Department of Communications, Energy and Natural Resources (DCENR) of our/my application to participate in a competition under the REFIT Programme and in compliance with the conditions of entry, we hereby authorise you to provide to DCENR such information as it may request relating to any application in which we may be involved (including any related transactions or procedures or on the state of progress in relation to such application) for an authorisation or licence/s for a project to construct a renewable energy based electricity generating station and /or to supply the output from a renewable energy based electricity generating station.

For and on behalf of Applicant

LETTER OF AUTHORISATION FOR RELEASE OF INFORMATION

Date

Addressee:

Electricity Distribution System Operator

& add postal address of that operator

To whom it may concern,

In consideration of acceptance by the Department of Communications, Energy and Natural Resources (DCENR) of our/my application to participate in a competition under the REFIT Programme and in compliance with the conditions of entry, we hereby authorise the Electricity Distribution System Operator and any legal successor to it to provide to DCENR such information as it may request relating to any application in which we may be involved (including any related transactions or procedures or on the state of progress in relation to such application) for a connection between the Distribution Network and a renewable energy based electricity generating station -

- i)(here insert the project name)
- ii) at (here insert site identification details)
- iii) of(here insert project size by installed nameplate rating)
- iv) connection reference(here insert connection identification details.)

For and on behalf of Applicant

LETTER OF AUTHORISATION FOR RELEASE OF INFORMATION

Date

Addressee Electricity Transmission System Operator

& add postal address of that operator

To whom it may concern,

In consideration of acceptance by the Department of Communications, Energy and Natural Resources (DCENR) of our/my application to participate in a competition under the REFIT Programme and in compliance with the conditions of entry, we hereby authorise the Electricity Transmission System Operator and any legal successor to it to provide to DCENR such information as it may request relating to any application in which we may be involved (including any related transactions or procedures or on the state of progress in relation to such application) for a connection between the Transmission Network and a renewable energy based electricity generating station -

- i)(here insert the project name)
- ii) at (here insert site identification details)
- iii) of(here insert project size by installed nameplate rating)
- iv) connection reference(here insert connection identification details.)

For and on behalf of Applicant

SECTION III

REFIT APPLICATION FORM

and Attachment

Application for an offer of support under a competitive process publicly notified as REFIT for the purpose of supplying electricity from a new renewable energy based electricity-generating plant.

This application should be completed by a person authorised by the applicant entity to do so.

<p>1. I, _____, (*1), being authorised by the entity identified in 2 below for this purpose hereby submit an application under a competitive process publicly notified as REFIT for the purpose of supporting the construction of new renewable energy based electricity generating plant under the terms and conditions of the Competition as set out in the information notes which are returned endorsed with my signature.</p> <p>2. This application is made on behalf of - _____ (*2) trading as _____, (*2) having its offices at- _____, _____, _____ (*2).</p> <p>3. This application is submitted in respect of a proposal to construct a new renewable energy based electricity-generating plant as detailed in the Attachment.</p>	<p>(*1) here insert in BLOCK CAPITALS the name of the individual making application on behalf of the entity identified in 2 below.</p> <p>*2) here insert in BLOCK CAPITALS the details requested i.e., name of legal entity, trading name (if applicable) and the address being the address to which all future correspondence from the DCENR in regard to this application will be addressed.</p>
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4. It is accepted that this application will be processed and decided

subject to the following conditions.

- (a) The applicant agrees to be bound by the terms and conditions of this Competition as published.
- (b) This application shall be considered strictly on the basis of the information supplied in this application and the attachments hereto.
- (c) The information supplied is truthful and accurate.
- (d) No legitimate expectation or any other promise or contractual commitment is hereby created.
- (e) The time, expense and cost of the preparation of the application and its submission are at the sole expense of the applicant and are not recoverable.

Signed; _____.

being _____ (*3)

Date: ____/____/____.

5 CONTACT POINT (*4)

Phone _____

Fax _____

email _____

www _____

*3) here insert in BLOCK CAPITALS the authority to sign on behalf of the entity stated in 2. across e.g. secretary, director, partner, sole trader *etc.*

*4 Here insert in BLOCK CAPITALS contact information for future electronic correspondence

Attachment

Detailed statement on a renewable energy project submitted under REFIT

<p>TECHNOLOGY.(*1)</p> <p>(a)-----</p> <p>(b)-----</p>	<p>*1 Here insert –</p> <p>(a) the renewable energy technology or category i.e., biomass (landfill gas), biomass (other), hydro, wind (large scale), or wind (small scale) and</p> <p>(b) overall plant size <i>i.e.</i> installed (nameplate) rating (the nominated capacity).</p>
<p>ADDITIONAL DATA ON BIOMASS PROJECTS.</p> <p>CLASS (*2)</p> <p>-----</p> <p>-----</p> <p>FUELS (*3)</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>CONVERSION TECHNOLOGY (*4)</p> <p>-----</p> <p>-----</p> <p>-----</p>	<p>*2 e.g. municipal waste, agricultural waste, harvested product by type or residue by type or landfill gas.</p> <p>*3 here insert fuel type (e.g., waste, harvested produce, forestry residue, short rotation coppice, animal wastes, biogas from... etc.).</p> <p>*4) e.g. direct combustion and steam turbine, gasification and gas turbine; mass burn incineration and steam turbine <i>etc.</i></p>

<p>ADDITIONAL DATA* ON PLANNED WIND AND HYDRO PROJECTS.</p> <p>Specify:</p> <p>(i) size of each generating unit _____ (kWe)</p> <p>(ii) number of units _____ and</p> <p>(iii) type (*5) of turbines or conversion units _____</p> <p>_____.</p>	<p>*Note</p> <p>The “additional” data inserted here is for general information only. Applicants are bound by the overall plant size and technology category but are not bound by the information delivered here on turbine size or type.</p> <p>(*5) e.g. synchronous, asynchronous, fixed speed, variable speed.</p>
<p>SITE LOCATION (*6)</p> <p>-----,</p> <p>-----,</p> <p>-----.</p> <p>-----.</p> <p>Coordinates _____ (N) and _____ (E)- N.B. expressed to five digits.</p>	<p>*6) Here insert the full postal address in BLOCK CAPITALS (if available) and mapping co-ordinates of the project to <u>five</u> digits</p>

Checklist of documents to be submitted in a REFIT Application

1. A copy of the full planning permission, (including planning reference number and name of the entity granting permission or evidence of exempted status where applicable) for the site and all other consents whether statutory or otherwise or in the case of an offshore project, evidence of the holding of a Foreshore Lease or a Foreshore Licence.
2. Evidence of a connection offer which satisfies clause 4.4(i).
3. Evidence of title to the site which satisfies clause 4.4 (ii) .
4. Letters in the form of Annex 1, Annex 2 and Annex 3 to this document, tailored to the particular application duly signed.
5. Evidence, where applicable in the biomass categories, which satisfies clause 4.4 (iii).
6. Evidence, where applicable in the biomass categories, demonstrating that any CHP plant proposed which is larger than 20MW has an electrical efficiency of >30% and an overall CHP efficiency of >80% and that any CHP plant proposed which is small to medium-scale plant (1MW to 20MW)) has an electrical efficiency of >20% and an overall CHP efficiency of >70%.
7. The REFIT terms and conditions endorsed at clause 12, the completed REFIT application form.