



An Roinn Cumarsáide,  
Fuinnimh agus Acmhainní Nádurtha  
Baile Átha Cliath 2.

Department of Communications,  
Energy and Natural Resources,  
Dublin 2.

~~Our Ref: FOI/2008/50~~

13th January 2009.

Mr. Cormac Little,  
William Fry Solicitors,  
Fitzwilton House,  
Wilton Place,  
Dublin 2

Dear Mr. Little,

I refer to the request, dated 17<sup>th</sup> September 2008, which you made under the Freedom of Information Act, 1997, the application fee for which was received in the FOI Unit on the above mentioned date, for access to records held by this Department. Specifically:

**Summary of Request:** *All documents, including and not limited to, notes of meetings, telephone calls, internal memoranda and correspondence between the Department, the Department of Foreign Affairs and the European Commission relating to the notification under State Aid rules of a scheme related to the next market support mechanism for renewables to be known as the Renewable Energy Feed In Tariff (the REFIT scheme) and the implementation of that scheme, leading up to the European Commission's decision dated 25 September 2007, in particular letters from the relevant Irish authorities to the European Commission dated 28 August 2006, 1 February 2007, 23 April 2007, 3 May 2007, and 4 July 2007.*

Access is being granted in full to the records that exist in this case. Record Nos 1-5 as specified in the Schedule of Records (attached) are available on this Department's web site. The emails, etc relating to Record No. 6 are enclosed..

You may appeal this decision to Mary Rabbitte, Freedom of Information Officer, FOI Unit, Department of Communications, Energy and Natural Resources, Elm House, Earlsvale Road, Cavan. To appeal, you need only write to the FOI Officer referring to this decision. You must make your appeal within four weeks of receiving this letter (the making of a late appeal may be permitted in appropriate circumstances). The appeal will involve a complete re-consideration of the matter by a more senior member of the staff of this Department.

Yours sincerely,

Gerald Mc Tiernan  
Renewable Energy Division

Requesting records re. REFIT

Record No.	Brief Description & Date of Record	File Ref.	No. of Pages	Relevant facts	Findings/ conclusions (Public Interest Considerations, (If applicable))	Grant/refuse/ part-grant	Basis of Refusal: Section of Act	Record edited/Identify deletions
1	Formal Notification for State Aid No. 571/2006 – Ireland and Part III.10 Supplementary Information Sheet on Environmental Protection Aid	REFIT 1/2	32	Dated 28/8/2006	Sent to European Commission	Grant	N/A	N/A
2	Submission for State Aid No. 571/2006 – Ireland RES-E Support Programme	REFIT 1/2	14	Dated 31/1/2007	Sent to European Commission	Grant	N/A	N/A
3	Submission for State Aid No. 571/2006 – Ireland RES-E Support Programme	REFIT 1/2	3	Dated 23/4/2007	Sent to European Commission	Grant	N/A	N/A
4	Submission for State Aid No. 571/2006 – Ireland RES-E Support Programme	REFIT 1/2	4	Dated 3/5/2007	Sent to European Commission	Grant	N/A	N/A
5	Submission for State Aid No. 571/2006 – Ireland RES-E Support Programme	REFIT 1/2	2	Dated 4/7/2007	Sent to European Commission	Grant	N/A	N/A
6	Emails responding to queries from the European Commission in relation to the State Aid submission	REFIT 1/2	230 approx	Dated from 27/10/2006 to 27/9/2007	Communications sent to and from the European Commission	Grant	N/A	N/A

17/09/2008

Mr Cormac Little  
William Fry Solicitors  
Fitzwilton House,  
Wilton Place,  
Dublin 2,

FOI Request Reference: FOI/2008/50

Dear Mr. Fry,

I refer to your FOI request under Section 7 of the Freedom of Information Acts, 1997 and 2003, received in this office on 17/09/2008 requesting all documents relating to the REFIT scheme. The application was received along with the associated fee.

The officer handling your request will be Mr Gerald McTiernan, Renewable and Sustainable Energy Division, Department of Communications, Energy and Natural Resources, 29 – 31 Adelaide Road, Dublin 2. Phone: 016782950

You can expect to receive your decision by the 15/10/2008.

If you have not received a decision by that time, you are automatically entitled to appeal to the Department for a review of the matter. This review proceeds on the legal basis that the initial request is considered to be refused once the specified time for responding to it has expired. A request for a review should be addressed to the undersigned at the address shown.

Please note the Department of Communications, Energy and Natural Resources has a policy of posting a summary of non-personal requests and decisions on the Departments website for reference purposes.

Yours sincerely,

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Seána McGearty

FOI Unit  
Department of Communications, Energy and Natural Resources  
Elm House,  
Earlsvale Rd  
Cavan

Phone: 01 6782902  
Fax: 01 6783057  
Email: [FOI.Unit@dcenr.gov.ie](mailto:FOI.Unit@dcenr.gov.ie)



# William Fry

Our Ref 018605.0005.CKL/CWA

15 September 2008

**By Post & Fax: 678 2449**

Ms Mary Rabbitte  
Freedom of Information Officer  
Freedom of Information Unit  
Department of Communications, Energy & Natural Resources  
Elm House  
Earlsvale Road  
Cavan



S.M.C.

## Request for Access to Records under the Freedom of Information Acts 1997 and 2003

Dear Ms. Rabbitte

In accordance with Section 7 of the Freedom of Information Acts 1997 and 2003, we wish to request access to the following records which we believe to be held by the Department of Communications, Energy and Natural Resources (the "Department"):

*All documents, including and not limited to, notes of meetings, telephone calls, internal memoranda and correspondence between the Department, the Department of Foreign Affairs and the European Commission relating to the notification under State aid rules of a scheme related to the next market support mechanism for renewables to be known as the Renewable Energy Feed In Tariff (the REFIT scheme) and the implementation of that scheme, leading up to the European Commission's decision dated 25 September 2007, in particular letters from the relevant Irish authorities to the European Commission dated 28 August 2006, 1 February 2007, 23 April 2007, 3 May 2007, and 4 July 2007.*

We attach for your reference a copy of the European Commission's final decision in the above matter (Decision N 571/2006).

Our preferred form of access to these records is to have copies sent by fax to (01) 639 5333 marked for our attention. In the alternative please provide copies by post to the below address.

Please find enclosed a cheque in the amount of €15 in respect of the fee for a request under Section 7. We look forward to hearing from you within the time period prescribed under the Acts.

Yours sincerely

Cormac Little/Claire Waterson

WF-1137287-v1

William Fry, Fitzwilton House, Wilton Place, Dublin 2, Ireland. DX23 Dublin  
T: +353-1-639 5000 F: +353-1-639 5333 E: info@williamfry.ie W: www.williamfry.ie

Also at 300 Park Avenue - Suite 1700, New York, NY 10022

A list of partners appears on the reverse

In association with Tughans, Northern Ireland



Brussels, 25.IX.2007  
C(2007) 4317 final

**Subject: State aid N 571/2006 – Ireland  
RES-E support programme**

Sir,

## **1. PROCEDURE**

- (1) By letter of 28 August 2006, the Irish authorities notified the Commission, in accordance with Article 88(3) EC, of the abovementioned aid scheme. By letters of 27 October 2006 and 30 March 2007, the Commission requested additional information, which the Irish authorities provided by letters of 1 February 2007, 23 April 2007, 3 May 2007, and 4 July 2007.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Background**

- (2) The notified measure replaces measures employed to support renewable energy sourced electricity (hereinafter referred to as RES-E) in the past in Ireland, which were approved by the Commission in State aid cases N 553/2001<sup>1</sup> and N 826/2001<sup>2</sup>. The previous measures were not capable of delivering by 2010 the renewables target addressed to Ireland in 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

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<sup>1</sup> OJ C 46, 20.2.2002, p. 7.

<sup>2</sup> OJ C 59, 6.3.2002.

Mr Dermot AHERN  
Ministry of Foreign Affairs  
St. Stephen's Green 80  
Dublin 2  
Ireland

- (9) The budget foreseen is 150 million € overall, or 10 million € annually.

#### **2.4. Beneficiaries**

- (10) The indirect beneficiaries of the aid are RES-E generators. The support programme is allocated up to a quantitative capacity limit of 1450 MW on a “first come – first served” basis to RES-E generators complying with the qualifying conditions of the programme. The selected RES-E generators will be awarded “letters of offer”, confirming to suppliers that those will be entitled to REFIT payments in return for entering PPAs with the selected generators.
- (11) The generators eligible to receive a letter of offer under the scheme are those who produce RES-E from small scale hydro, large scale wind, small scale wind and biomass. The Irish authorities have confirmed that all the RES-E eligible for support falls within the definition of renewable energies in Article 2 of the RES-E Directive. In order to be eligible, the RES-E plants must have planning permission and a connection offer. They must be new plants in Ireland or other EU Member States. In the latter case, the RES-E must be covered by a guarantee of origin, confirming that the exporting state will not, for a period of 15 years, use the electricity from that plant to meet its own RES-E targets under Directive 2001/77/EC, thereby accepting that the electricity can be counted towards Ireland's target. The support programme treats domestically produced and imported RES-E equally.

#### **2.5. Duration**

- (12) Access to the aid programme can be granted from the Commission approval until 31 December 2009 or when all capacity is allocated, whichever occurs first.
- (13) Once access to the programme is granted, the support can continue for up to 15 years, since the PPAs are entered for up to fifteen years. The Irish authorities have argued that the fifteen year duration of the PPAs is necessary to deliver the business case demanded by investors at least additional cost to consumers, and to minimize the aid intensity. According to the Irish authorities, with a shorter duration of the support, the unit production costs would be increased to include higher debt repayments, and the aid required would also increase.
- (14) A contracting generator can cancel a PPA at any time by agreement, or, in the case of a dispute, after giving a minimum period of notice of 12 months to the contracting supplier. In the event of any such cancellation by the generator, the letter of offer shall no more confer any entitlement to REFIT payments.

#### **2.6. Costs of producing RES-E**

- (15) The Irish authorities have presented the production costs of RES-E in Ireland split up in three elements. First, the Irish authorities have submitted that there is a significant cost of balancing undispatchable electricity. Wholesale electricity prices are not constant and can vary significantly. The Irish authorities have provided data showing hourly fluctuations in wholesale prices which are available in the market (top-up and spill), demonstrating that the aggregate net spill cost

- (21) Second, for RES-E from the more expensive RES-E technologies, electricity suppliers will receive so called premium payments of maximum 2 EUR/MWh for RES-E from small wind power projects, 13 EUR/MWh for RES-E from small hydro and landfill gas power projects, and 15 EUR/MWh for RES-E from other biomass projects. If the PPA price is below the reference prices referred to above (59 EUR/MWh for RES-E from small wind, 70 EUR/MWh for RES-E from small hydro and landfill gas, and 72 EUR/MWh for RES-E from other biomass), the premium payments will be reduced by the difference between PPA price and the reference price. To justify the premium payments, the Irish authorities have argued that it is a shared Community objective to diversify and grow the variety of available RES-E technologies. If the net additional cost of other RES-E technologies than the lowest cost alternative, i.e. large scale wind projects, were not neutralised, a rational retail supplier participating in the programme would contract for the latter form of technology only, which would impede the development of other RES-E technologies.
- (22) These two REFIT payment elements together will thus amount to the following maximum compensation for RES-E from the each eligible technology respectively:

**Table 2**

RES-E from large wind	RES-E from small wind	RES-E from small hydro and landfill gas	RES-E from other biomass
8,5 EUR/MWh	10,5 EUR/MWh	21,5 EUR/MWh	23,5 EUR/MWh

- (23) Third, so-called market price equalisation compensation will be granted to suppliers if the BNE falls significantly. If the BNE falls below a reference price of 57 EUR/MWh, the market price equalisation compensation will equal the difference between this reference price and the BNE.
- (24) The reference prices and reimbursements will be indexed to the consumer price index in Ireland. The aid cannot be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs. The plants for production of RES-E are not eligible for investment aid.

## **2.8. Market price of RES-E**

- (25) According to information provided by the Irish authorities, the market price at which electricity suppliers would accept to buy electricity *from a conventional plant* in a bilateral contract is €52 MWh. In the absence of the REFIT payments, contracting suppliers would opt to contract with conventional dispatchable plants at that market price instead of contracting to purchase all the undispachable output from selected RES-E projects for up to fifteen years. This is because of the balancing costs arising due to the guaranteed purchases from undispachable plants.

**Table 4**

		Wind Large	Wind Small	LFG	Biomass/hydro
1	"Unallocated" capital cost (row 6 in table 3 above) €/MW	800 000	700 000	1 000 000	1 500 000
2	"Unallocated" capital cost distributed per MWh for 15 years (row 1 / (15 x row 2 in table 3 above)) €/Mwh	17	15	12	22
3	Permissible BNE-reduction before compensation exceeds capital costs (66-57 + row 2) €/MWh	26	24	21	31
4	Permissible BNE-reduction in percent (row 3/66)	39 %	36 %	32 %	47 %

- (29) The Irish authorities have argued that Ireland is approximately 90% dependent on fuel imports to meet its energy needs, and that this high dependence delivers an electricity market particularly sensitive to international oil/gas prices. In other words, BNE follows international prices on fossil fuels. In consequence, in order for the aid to cover plant depreciation, international fossil fuel prices would have to be reduced in the order of 32-47 %.
- (30) If the gas prices would remain stable for, say, 3 years, the following table shows the reduction that would then be necessary in order for the total aid to cover plant depreciation:

**Table 5**

		Wind Large	Wind Small	LFG	Biomass/hydro
1	"Unallocated" capital cost (row 1 in table 4 above) €/MW	800 000	700 000	1 000 000	1 500 000
2	"Unallocated" capital cost distributed per MWh for 12 years (row 1 / (12 x row 2 in table 3 above)) €/MWh	22	20	16	29
3	Permissible BNE-reduction before compensation exceeds capital costs (66-57 + row 2) €/MWh	31	29	25	38
4	Permissible BNE-reduction in percent (row 3/66)	48 %	43 %	38 %	57 %

- (31) Since there is no conventional wisdom predicting any significant fall in fossil fuel prices continuing for 15 years of the order required, the Irish authorities argue that the accumulated state resources will not exceed investment costs under reasonable assumptions.