
**CONTRACT & LEASE FOR GREEN ELECTRICITY GENERATION FROM
LANDFILL GAS AND LANDFILL GAS MANAGEMENT AT LAMBY WAY**

Reason for the Report

1. To provide the Committee with an opportunity note and discuss the Cabinet paper titled 'Contract & Lease for Green Electricity Generation from Landfill Gas & Landfill Gas Management at Lamby Way' in advance of it being presented at the Cabinet meeting in March 2021.

Reason for the Cabinet Report

2. The Cabinet report titled 'Contract & Lease for Green Electricity Generation from Landfill Gas & Landfill Gas Management at Lamby Way' is being presented at Cabinet in March 2021 to:
 - Update Cabinet on the management of landfill gas at Lamby Way and Ferry Road;
 - Seek approval to conclude contract and lease agreements for the provision of electricity from landfill gas and landfill gas management at Lamby Way.

Background

3. The Council had a historical landfill gas lease with a company called Infinis at Lamby Way. This has been in place since December 1997, and was subsequently extended in December 2014.
4. Under the lease arrangement, Cardiff Council received 15% of the gross income from the generation and sale of electricity.

5. Should the landfill gas curve continue as forecast until 2040, it is anticipated the total value of the electricity generated from landfill gas will be in the region of £13.3 million between 2020 and 2040.
6. The Council intended to procure new arrangements via OJEU open procedure via 'Sell to Wales', and in doing this they were looking to utilise the SQUID pre-qualification document during the selection process.
7. The Council were seeking a percentage share of the royalty payments for the electricity that is transferred to the grid, this would include:
 - GDUoS income;
 - Triad income;
 - Traded Power (until 2021);
 - ROC and BSUoS; and,
 - All other associated income and savings from the process.
8. Prior to the lease finishing the Council with the support of specialist consultants engaged with OFGEM in an attempt to transfer the ROC accreditation to the Council; this accreditation represents 50% of total income and remains in place until 2027. OFGEM manages the ROC accreditation scheme, including payments and transfers.

Issues

9. Infinis did not support the transfer of ROC accreditation, and following the cessation of the lease they removed equipment from Ferry Road and wrote to OFGEM to cease the ROC accreditation for their equipment at the Ferry Road site.
10. Infinis kept their generating equipment at Lamby Way and lit the flare to burn the landfill gas as they had no lease arrangement to support electricity generation at the site.
11. The Council was not able to persuade OFGEM to transfer the ROC accreditation from Infinis to them or a new provider as rules stipulate that the ROC is attached to the specific generating equipment and, therefore, Infinis would need to support the transfer.

12. As the transfer of ROC accreditation was unable to take place without consent from Infinis it meant they potentially held have an exclusive right. This meant that the Council would be either in detriment by undertaking a competitive tender without ROC accreditation, or the tender would not be competitive or fair if Infinis were allowed to tender with their ROC accreditation.
13. In the light of the ROC transfer position, the Cabinet report set out the following points:
- The risk associated the ROC transfer meant the Council could not implement a competitive tender without being in detriment.
 - That the Council opened dialogue with Infinis to agree a new Contract and Lease for the generation of green electricity from landfill gas and landfill gas management at Lamby Way.
14. A Heads of Terms has been issued between Novera Energy Generation No.2 Limited (Infinis) and the Council for the renewal of gas management, generation rights and obligations of Infinis at the Lamby Way landfill site, with effect from 1 April 2021. The Heads of Terms agreed three main principle, these were:
- A transitional lease to enable electric generation and the receipt of royalty payments at 15% from the date of the Heads of Terms to the 1 April 2021.
 - A payment of £115,000 for the rights to gas during the Term prescribed by the Lamby Way Agreements. The Term being 1 April 2021 to 31 March 2028 unless terminated sooner.
 - Royalty payments of Gross Revenue Income of: 17% - Year 1 (commencing 1 April 2021); 16% - Year 2 (commencing 1 April 2022); 15% - Years 3, 4, 5 and 6 (commencing 1 April 2023, 1 April 2024, April 2025 and 1 April 2026 respectively); 14% - Year 7 (commencing 1 April 2027).

Report Recommendations

15. The Cabinet report will recommend:
- To approve the conclusion of contract and lease agreements for the provision of electricity from landfill gas and landfill gas management at Lamby Way as agreed in the Heads of Terms.
 - To delegate authority to the Director of Economic Development subject to consultation with the Cabinet Member Corporate Services & Performance and the Cabinet Member clean streets, recycling and environment, s.151 Officer and Director Governance and Legal Services, to deal with all aspects of the contract and lease agreements.

Way Forward

16. Members will be asked to note the content of this Member Briefing Note, and decide if any further scrutiny is required on the matter.

Legal Implications

17. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not making policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to the Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

18. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not making policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATIONS

The Committee is recommended to:

- (i) Consider the information in this report and the information presented at the meeting;
- (ii) Determine whether they would like to make any comments, observations or recommendations to the Cabinet on this matter; and,
- (iii) Decide the way forward for any future scrutiny of the issues discussed.

Davina Fiore

Director of Governance & Legal Services

24th February 2021