

SEM Committee Communication

Thursday 1st March 2012

On 23rd February 2012 the Supreme Court in Ireland (Record Number 285/11) handed down, by a 3-2 majority, a Judgement which quashed the 8th October 2010 SEM Committee Directions to Huntstown Power Company and Viridian Power Limited. The Directions were issued pursuant to paragraph 7 of Condition 15 of each generators Licence to Generate and instructed these generators not to include any amount in respect of the Carbon Revenue Levy as enacted by the Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010 paid or to be paid by it in its Commercial Offer Data in the Single Electricity Market (SEM).

The SEM Committee published notice of that judgement on 27 February 2012 and has since received further requests for clarification of the Committee's view of its implications for bidding in the SEM.

The SEM Committee notes the terms of the leading judgement, delivered by Hardiman J. that the Carbon Revenue Levy is a biddable cost and that the cash value of that levy is its opportunity cost. Therefore as matters stand and on the basis of that judgement the SEM Committee is of the view that Huntstown Power Company and Viridian Power Limited are required to include the cash value of the Carbon Revenue Levy within their Commercial Offer Data.

Moreover, the SEM Committee does not see any material difference between those two generators and other generators who pay the Carbon Revenue Levy and are subject to the cost-reflectivity obligation set out in Licence Condition 15 and the Bidding Code of Practice. It is therefore of the same view that they are required to include the cash value of the Carbon Revenue Levy within their Commercial Offer Data. This should be done no later than Gate Closure on Friday 9th March 2012.

The SEM Committee is currently considering the implications of the judgment and may issue further communications or publish a consultation paper should that be considered necessary.

Ends