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To: The Civil Aviation Authority (CAA)

Via email only: economicregulation@caa.co.uk

20th August 2019

Dear Sir/Madam

Economic regulation of capacity expansion at Heathrow airport: consultation on early costs and regulatory timetable

We respond to the above consultation dated July 2019 on behalf of Lakeside Energy from Waste Limited (LEfW), Grundon Waste Management Limited (GWM) and Viridor Waste Management Limited (VWML). Within this document all three entities are referred to as “Lakeside” for ease.

Background

The Lakeside Energy from Waste (EfW) facility is owned and operated by LEfW, a joint venture between GWM and VWML. It treats some 440,000 tonnes of residual waste per annum. This primarily comprises municipal solid waste, most of which is sent to the facility by Local Authorities located in the West London area and along the M4 corridor, including Slough Borough. There is also a smaller amount of commercial industrial waste treated from a similar catchment.

The High Temperature Incinerator (HTI) facility is located on the same site as the EfW facility. It is owned and operated by GWM and is designed to treat 10,000 tpa of clinical / hazardous waste from NHS hospitals and medical establishments, such as doctor’s surgeries and dentists, waste from research establishments, industrial process residues and other wastes requiring secure disposal, eg contraband from Border Force.

Within this document the two facilities are referred to as “EfW Facility” for ease.

The existing EfW Facility, located on Lakeside Road, is to be demolished to accommodate the expansion of Heathrow Airport under the terms of the Airports National Policy Statement (ANPS) and subject to the approval of a Development Consent Order (DCO).

Lakeside wishes to have the EfW facility replaced as there remains a need for the waste management and energy generation capacity that it provides. A replacement site has been found close to the existing site, where it will not affect the Heathrow Airport expansion proposals but will continue to provide its current local and sub-regional benefits to residual waste management, low carbon/renewable energy generation, employment and the economy.

This site is also identified in Heathrow Airport Limited’s (HAL) most recent consultation master plan within the development of area “M” which consists of the rail head, construction set down area and ultimately airport associated development.

Lakeside has been in consultation with the CAA over their concerns of HAL's development as well as the need to take mitigation action to protect their business activities prior to any decision on HAL's DCO. As the CAA will appreciate losing the physical assets will mean the extinguishment of the Lakeside business and will have downstream implications for the profitability of GWM and VWML. Coupled with this is the significant impact on the costs of waste management for Local Authorities in the area, the NHS as well as the local businesses all of whom rely on efficient, clean and cost-effective waste management.

Lakeside has been, and will continue to be, in negotiation with HAL over their proposals that will see the current site on Lakeside Road being acquired with vacant possession by Heathrow in late 2023. This date is key to Lakeside. It is the date by which time a new EfW Facility must gain planning consent, appropriate Environmental Permits, construction procured, and the replacement site built and tested. As of today, that leaves just 4 years to achieve, the minimum time that any such facility can be planned and built.

In order to achieve these tight timescales a planning application (with EIA) has been submitted (June 2019) to Slough Borough Council for the construction and operation of a replacement Energy from Waste (EfW) facility and High Temperature Incinerator (HTI) on land located to the west of the Iver South Sludge Dewatering Centre and south of the M4 motorway. In parallel in the next few weeks an application for the appropriate permits to operate the plants will also be submitted to the Environment Agency. In addition to this, EPC contractors have been approached and the initial PQQ has been undertaken.

Lakeside is having to be very pro-active to have any chance to achieve continuation of business after the 2023 date. Currently this involves their own commitment to funding half the planning and permit applications at high risk (shared equally between Lakeside and HAL). Lakeside feels this is unfair, in that it is only due to the expansion plans and time frames for the Heathrow DCO and provision of a third runway by 2026 that such "at risk cost" action to mitigate has had to be taken. A much fairer system would be to allow all such costs, along with land procurement and construction costs, to be part of the early Category C costs and incorporated into Heathrow's Regulated Asset Base (RAB). Lakeside has taken this action as it cannot afford any further time delay in funding decisions without seriously jeopardising the ability to relocate.

Consultation

This submission concentrates on Chapter 2 of the consultation document and the early Category C costs. Such costs would cover planning costs for relocated businesses as well as enabling costs of construction, all prior to the DCO being granted. Essentially it covers costs that need to be released to provide an efficient and best way for Heathrow to relocate activities that otherwise would be extinguished.

The consultation document suggests such costs have been estimated to have risen from £650m in the 2018 consultation to £2.4 billion (all at 2014 prices). It is recognised by the CAA in para 2.1 and 2.2 that such costs include "the costs of relocating certain large commercial and other facilities" and that "early Category C expenditure must be to promote the effective and timely delivery of the overall programme for capacity expansion..."

Lakeside do not intend to comment on the regulation of such costs. This is for others more involved in the process to comment on. Notwithstanding this, however, the need to agree such costs without delay if the current timetable for the EfW relocation is to be delivered in a timely and efficient manner is essential.

The EfW Facility is without doubt one of the largest of the facilities that requires relocation. The consultation document recognises such facilities in several paragraphs. It is assumed, from discussions with HAL, that EfW Facility is one of these large commercial facilities. If it is not, then it is strongly recommended the CAA request that it is considered part of this for reasons set out in this response.

If not relocated the extinguishment of the EfW Facility would create a significant claim for compensation. This would reflect business extinguishment of LEfW as well as downstream impacts of

the associated business activities of the claimants from the loss of such an important facility. It is therefore prudent to work towards the cheaper and more efficient process of relocation.

Costs that should be allowed under early Category C costs include:

- Planning Application (from June 2019)
- Permit Application (from June 2019)
- Acquisition of land and associated fees (late 2019)
- Procurement of EPC contractor (from June 2019)
- Construction and commissioning of the EfW Facility (early 2020 to 2023 – although these may not all be within early Category C costs once the DCO is granted)

Para 2.4 of the consultation explains CAA's concern on covering such costs in early Category C costs. The risk to the Heathrow consumer is if these costs are "sunk" and the consumer ends up paying for them even if Heathrow expansion does not go forward. This risk can be considered two ways. These early Category C costs are being promoted as they are cheaper than the alternative if Heathrow expansion does go forward. The cost of extinguishment of the EfW Facility is significantly greater than the cost of relocation; as such the consumer would pay more if Heathrow did go ahead and these costs had not been allocated into early Category C costs and thus the funding to relocate could not be secured.

The risk should not just be viewed in terms of Heathrow consumers. If the EfW Facility is demolished without replacement the cost to numerous Local Authorities (such as West London Waste Authority, Berkshire Councils through RE3, Surrey and Wiltshire), NHS Trusts and such customers as Border Force and Thames Valley Police will also increase if Heathrow goes ahead and the EfW Facility is not replaced. There is no other similar facility that can treat the waste and the impact is likely to result in the majority of waste going to landfill. These unintentional costs should not be underestimated and should also form part of this decision-making process to ensure funding is available for the relocation and allowed to be added to the RAB.

It should also be noted by the CAA that the EfW Facility also takes waste from Heathrow, the airlines serving Heathrow and the associated business serving the airport. This includes what is known as "Cat 3 wastes". This is food waste from outside the UK collected at Heathrow from aircraft cabins. Such wastes need to be treated at appropriately licenced sites in order to prevent pests and diseases from food grown and processed outside the UK entering the UK. The EfW Facility is one of only a few licenced sites that can undertake this important biosecurity role.

Paragraph 2.9 states that "In particular, it may be appropriate to commence work on the re-provision of certain large facilities where it is uneconomic or impractical to extinguish the facility..." This is exactly the situation for Lakeside.

Paragraph 2.16 outlines some options the CAA has asked HAL to make a quantitative assessment of in terms of the early Category C costs. The options suggested do not provide any mitigation from the fact the EfW Facility needs to be built prior to the delivery of the runway, in fact by late 2023 when it is anticipated vacant possession of the Lakeside Road site will be required to allow the runway to be built. The last option identified "cessation of work on expansion ... until political certainty is provided" although reducing perhaps the risk of sunk costs, does not reduce the need for the early Category C costs, but may allow for a more considered process to deliver the new facility in a time scale that would allow some degree of time contingency. The danger of this is always that a delay is provided, but no further work is undertaken, and it simply provides a deferral to the start of the work, when extra time pressures may be imposed. If this option is chosen, then Lakeside's costs will still need to be covered under early Category C costs to ensure delivery in a cost-effective manner.

Throughout the consultation document, e.g. para 2.20, the impact to the consumer is defined as the Heathrow consumer. It should be emphasised again, as it is an important factor, the impact of not relocating the EfW Facility is indeed greater than just the consumer of Heathrow. The loss of the facility will see waste management costs rise significantly for the Local Authorities that use the facility

along with such customers as the NHS. Such wider impacts must also be considered to ensure efficient delivery with reduced external impact of the Heathrow expansion.

Conclusions

The replacement of the EfW Facility is crucial in order to provide continuity to Lakeside's customers. In addition, it is essential the relocated EfW Facility is in place before the existing one is taken out of use. The lead time for the replacement is four years which includes planning (on going) construction, commissioning and testing. In order to achieve this tight timetable, Lakeside have needed to start the planning, permitting and construction process before the DCO is determined. To that end a site has been found and a planning application has been submitted to Slough Borough Council who wish to see the facilities remain within their Borough.

The process of procurement and construction will need to flow from this and work start on the replacement site in 2020 if extinguishment, or a break in the service provided, is to be avoided. Either scenario will increase costs to the consumer should Heathrow go ahead.

In summary the CAA should consider:

- Allowing the EfW Facility's relocation to be accepted as early Category C costs and as part of the RAB. This would mean significantly less cost risk to the Heathrow consumer, as the extinguishment compensation costs for LEfW and the owning companies would be significant. Relocation is the most economical and efficient way forward but needs to be undertaken now. Throughout the consultation document efficiency is key to ensure value for the Heathrow consumer.
- The additional costs of losing EfW Facility for Local Authority customers, NHS Trusts as well as local businesses (including Heathrow and associated businesses) and Government agencies such as Border Force and police forces would be significant. There are no other local facilities that have the capacity (or relevant permissions) to service these customers and the waste is likely to end up in landfill at greater cost, increased vehicle miles and less environmentally acceptable treatment of the wastes.
- The loss of the EfW Facility will also mean the loss of sustainable energy of some 37MW into the grid and the loss of potential district heating to the area.

Although it is stated above that the regulation of funding is not an issue directly addressed in this submission, the impacts of any delay or excessive tight control of cash release needs to be fully understood.

The timing of the replacement facility is crucial. The facility takes some 4 years to plan, build and test. If vacant possession of the current site is required in late 2023, it leaves very little time to ensure continuity of service. Any gap in service will increase costs to Lakeside's customer base, which is mainly local authorities. In determining how this should be regulated the CAA has to consider the timing of the funds required. Any delay through further consultation on regulation without the equal delay in delivery would jeopardise the ability to relocate without a discontinuation in service, potential loss of business and again, cost to those customers that will need to find alternatives. Lakeside cannot simply stop production of energy, as the fuel source (residual waste) is constant and needs to be managed.

Release of funding also needs to be planned efficiently. Early purchase of land, certainty in procurement etc all rely on certainty of funds being released on time and at the required level. Any timing of funding will need to bear this in mind and reflect correctly the fixed timetable for development. It should be noted that early conversations with EPC partners has already seen a number reject involvement purely based on uncertainty of funding. This needs to be addressed and addressed soon. Allowing such costs to be part of early Category C costs and within the RAB is essential for this.

As has always been the case Lakeside are continuing to work closely with HAL to ensure effective and efficiency relocation. Equally Lakeside would welcome further dialogue with the CAA and airlines to ensure all parties understand the situation and issues surrounding timing, release of funds and the

basis upon which relocation is financially preferable to extinguishment. The thrust of the consultation is to ensure that costs that have a risk of being “sunk” are in the interests of all parties. Notwithstanding this, the CAA should also consider the external costs to local authorities, the NHS etc, if Lakeside does not get the required funding to relocate now and Heathrow goes ahead; not only will the consumers of Heathrow face a higher cost burden, but the knock on impact on local authorities with higher waste management costs will be significant.

It is requested that early Category C costs should be allowed to include those required for the relocation of the EfW Facility and released in a timely manner to provide certainty in planning, land purchase, procurement and construction. In addition, that such early Category C costs should be added to HAL’s RAB in order that such costs can be funded prior to the DCO. Any further delay could put in jeopardy the relocation process and ultimately increase costs to the Heathrow consumer.

Submission on behalf of:

Lakeside EfW Ltd
Grundon Waste Management Limited
Viridor Waste Management Limited